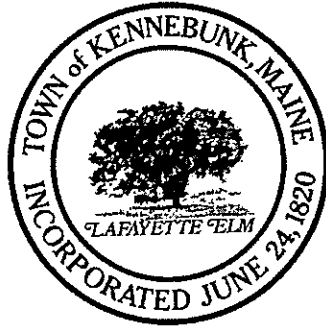


Town of Kennebunk, Maine



Planning Board

MEETING MINUTES

March 13, 2023

In Person Meeting, Town Hall, 3rd Floor, 1 Summer Street, Kennebunk

This meeting was held in person and televised on Cable TV Channel 5.
It is available for public viewing at any time at TownHallStreams.com.

Present: Chris MacClinchy [Chair], Richard Smith [Vice Chair], Janice Vance [Member], Edward Trainer [Member], Robert Metcalf [Member], and Daniel Kiley [Alternate];

Absent: None;

Also Attending: Christopher Osterrieder [Town Engineer and Director of Community Development], Karen Winton [Deputy Director, Community Development], Brittany Howard [Town Planner], and Natalie Burns [Town Attorney].

- 1. Call to Order:** Chair and presiding officer C. MacClinchy called the meeting to order at 7:00pm on March 13, 2023. The meeting was held in person and there were six voting members present. B. Howard announced that the review and public hearing of the 61 York Street application would not be heard at this session but instead be heard on March 27, 2023. This meeting, MacClinchy said, would focus on Maine's new housing law LD 2003. He then explained the sequence of the meeting: (1) an overview of the new law by B. Howard, (2) Board discussion and questions, (3) a public hearing to receive public comments and questions, and (4) the Board's continuance of the public hearing and/or agreement to make specific Ordinance changes to align the Town's Ordinance with LD 2003.

2. Agenda Items

Public Hearing LD 2003 Review

B. Howard addressed the Board and public first, offering a brief overview of Maine's new housing law. LD 2003, a law officially entitled "An Act to Implement the Recommendations of the Commission to Increase Housing Opportunities in Maine by Studying Zoning and

Land Use Restrictions”, was signed into law on August 8, 2022. However, several features of the law only take effect on July 1, 2023.

The new law, Howard stated requires municipalities to amend their local ordinances. Overall, it seeks to facilitate the creation of housing in general throughout Maine.

Discussion then ensued on different aspects of the new law and its impact on Kennebunk.

Growth Areas: Howard noted that Kennebunk’s Comprehensive Plan identified several “growth areas”. These growth zones in Kennebunk are: (1) Downtown Business [DB], (2) York Street Mixed Use Business and Residential [MRCU],(3) Village Residential [VR], (4) West Kennebunk Village Residential [WKVR], (5) Lower village Business [LVB], (6) West Kennebunk Mixed Use [WKV], and (7) Upper Square [US].

B. Howard stated that its February 27, 2023 meeting, the Planning Board recommended that the Portland Road Mixed Use district [PRMU] also be considered a growth area because of its location and access to public water and sewer. LD 2003 treats growth areas as ones particularly suitable for housing development.

Transitional Zones: Howard reminded the Planning Board that Kennebunk also had two “transitional zones” as well: (1) the Suburban Residential [SR], and (2) Coastal Resident [CR] districts. LD 2003, Howard reported, had no provisions for transitional districts. The Planning, Howard said, would have to decide how to treat these two areas.

At this juncture, The Chair called on Planning Board members who had worked on the Comprehensive Plan for their views.

R. Metcalf explained why the two areas are considered “transitional”. As he spoke, B. Howard pointed out the boundaries of both districts on an aerial map. J. Vance concurred with Metcalf. The two transitional areas, Vance stated, might be considered “rural conservation” zones since rising sea levels and other environmental issues posed threats to housing growth in these two areas longer-term.

N. Burns offered a legal opinion that the two transitional districts, which are not considered to be “growth areas” at this time, did not need to be treated as such going forward. The environmental and other concerns about the areas are valid, Burns affirmed.

R. Smith concurred. He opined that Town officials should endeavor to protect these two districts and not treat them as growth areas. E. Trainer also concurred, stating that Kennebunk had a strong housing priority, but important environment protection priority, as well. C. MacClinchy and R. Metcalf voiced agreement, but would like to hear from the public regarding this matter.

Affordable Housing: Board members next discussed the affordable housing provisions of the new law. B. Howard said affordable housing is currently allowed in Kennebunk’s Village Residential and York Street Mixed Use districts. As a result of LD 2003, however, affordable housing will likewise be permitted in these districts or zones as well:

- Village Residential
- West Kennebunk Village Residential
- Downtown Business
- Upper Square
- York Street Mixed
- Lower Village Business
- West Kennebunk Village Mixed
- Portland Road Mixed

The new state law, Howard said, not only requires that affordable housing be permitted in growth areas, but also incentivizes its creation by increasing density norms.

Density Provisions: B. Howard went on to contrast Kennebunk’s current “density bonus” for affordable housing and that stipulated by LD 2003. At the present time, Kennebunk’s density bonus for affordable housing is as follows:

“The Planning Board may decrease the minimum net lot area per dwelling unit in a district by up to 25% (if between 25% and 49% of the lots or units in a residential subdivision or other residential development are earmarked for affordable housing) and up to 50% (if at least 50% of the lots or units in a residential subdivision or other residential development are earmarked for affordable housing).”

LD 2003, Howard said, requires a dwelling unit density of at least **2-1/2 times** the base density otherwise required in a given zone or district.

After discussion with Town Counsel, the Planning Board agreed to retain the provision for affordable housing between 25% and 50% but make other revisions of the Town’s Ordinance to bring it into alignment with LD 2003.

Accessory Dwelling Units [ADUs]: The new law also makes important changes regarding ADUs. In Kennebunk’s Ordinance, ADUs are referred to as “accessory apartments”. They are housing units that are smaller than and subordinate to the primary single-family home to which they are linked.

According to B. Howard, ADUs are not permitted in some Kennebunk districts. Such language must also be revised to align with LD 2003. Unit size will also have to be changed. Kennebunk’s Ordinance stipulates no minimum size for an ADU but a maximum limit of 650 sq. ft. LD 2003 sets a minimum of 190 sq. ft., but allows municipalities to set the maximum. At its meetings on February 27, 2023, the Planning Board agreed to a maximum limit of 40% of the square footage of the primary single-family dwelling on the property or a maximum of 1,000 sq. feet, whichever was less. The Town’s Ordinance is to be amended to reflect these changes.

R. Smith asked if the Town could impose a restriction that ADUs are not be used for short-term rentals. N. Burns affirmed that such a codicil or limitation could be created. Discussion about short-term rentals ensued. C. Osterrieder remarked that the Select Board was looking into the matter, but had yet to formulate a short-term rental policy. R. Smith picked up on N. Burn’s affirmation and recommended that a short-term rental limitation be created.

C. MacClinchy reminded members that Kennebunk’s Ordinance requires ADUs to be “primary residences” in which the owner or tenant resides for at least six [6] months.

C. MacClinchy suggested that "short-term rental" should not be included at this time in the list of Ordinance changes to be made. The topic, he said, required more deliberation. Other Board members disagreed. "Putting in a definition and some short-term rental measures would be a prudent thing to do," said R. Metcalf. After extensive discussion, the majority agreed to eventually include a definition as well as short-term rental limitation language in the revised Ordinance. There was also renewed discussion of "vacant lots" and "voluntary" versus "involuntary" demolitions, but without resolution. The Board instead agreed to pick up on these topics in future meetings.

Vacant Lot Density: B. Howard explained that LD 2003 additionally changes housing density on vacant lots. On vacant lots in growth areas, up to four (4) dwelling units can be built. On vacant lots in non-growth areas, up to two (2) dwelling units can be built.

In Kennebunk, districts outside of growth areas -- i.e. Branch Brook Zone A & B, Rural Conservation, Rural Residential, etc. -- had already been amended to include two-family dwellings and two-family detached dwellings on vacant lots. The Resource Protection District is not required to permit two-family dwellings as it is a shoreland district according to Town Counsel.

R. Metcalf rhetorically asked what constituted a "vacant lot". It is a term which the Board attempted to define at prior meetings, he said, but without success. How do tear-downs affect the definition? Does tearing down a building, Metcalf asked, result in a vacant lot qualifying for higher density?

E. Trainer asked if Town officials could stipulate that, after tearing down a building, a lot had to remain vacant for 3 years or some other amount of time before it can be built upon. N. Burns offered legal views and examples.

D. Kiley observed that the cost of land and of construction should limit tear-downs for the construction of multiple dwelling units. Economics, he said, would likely curtail tear-down abuse.

Affordable Housing Parking: Kennebunk's current Ordinance requires 2.25 parking spaces per dwelling unit in a multi-family project (i.e. 2 spaces per dwelling for residents plus 0.25 spaces for guest parking) and makes no reduction in the number of parking spaces required for affordable housing. LD 2003, on the other hand, states that local ordinances may not require more than two (2) parking spaces for every three (3) units

R. Metcalf observed that this change may create problems for the Town as well as residents in dwellings having less parking accommodation. R. Smith concurred, citing the potential for more off-site parking, street parking, and fire truck obstruction. Smith observed that the new law presupposes that dwellers in affordable housing will have access to public transportation. Kennebunk has little or none.

E. Trainer voiced similar concerns. "It will be tough to do what LD 2003 says," Trainer observed. N. Burns offered clarification: Under LD 2003, she said, a project needed to make at least 50% of its units "affordable", otherwise it would not qualify for greater density and fewer parking spaces.

J. Vance remarked that there will be no parking for visitors. After discussion, members agreed that all affordable housing units should be treated the same with 2 parking spaces for three units to keep with LD 2003's stipulation.

At this juncture, C. MacClinchy opened a Public Hearing and invited public comments and questions. Vicky Adams addressed the Board first, asking if there was a minimum time requirement for an "affordable" dwelling to remain affordable. N. Burns replied that the statute stipulates 30 years. Ms. Burns also called on the Planning Board to define "short-term rentals" before they become more of a problem.

Edward Karytko, another commentator, opined that increasing density will increase traffic on roads that are already becoming congested. "We may create more of a problem than we solve," Mr. Karytko said. More construction will also contribute to more displaced water run-off, as well. The commentator also questioned the impact of these housing changes on Kennebunk's aquifers.

Barbara Fleshman observed that allowing ADUs to use their own wells and septic systems may impact wetlands. C. Osterrieder observed that each lot will still need soil analyses by a reputable specialist to determine whether any detrimental impact was likely. Ms. Fleshman also called on the Planning Board to articulate a "demolition policy" to be added to the Ordinance as well.

Wayne Berry addressed the Board next. Among the many points which he raised, Mr. Berry disagreed with (a) the idea of recognizing "transitional zones" as "growth zones", (b) the idea of limiting the time use of short-term rentals, and (c) limitations on the use "vacant lots" which might become vacant due to a fire or flooding.

B. Howard then read emails into the record. Brenda Bryant professed that the Town was becoming too busy and these housing changes would result in more congestion. Brenda Robinson suggested that Kennebunk's Site Plan Review Board should be included in these discussions.

Jane Evelyn saw the housing changes triggered by LD 2003 having potentially wide-range impact on the community. An increase of housing density, she said, may bring more young families into the community and impact schools. The School Board may need to take this into consideration. C. MacClinchy countered that there would probably not be a huge surge in the Town's population, and C. Osterrieder concurred, suggesting that the Town's other building requirements and construction costs were likely to limit the proliferation of housing.

William Ward asked if a dwelling is destroyed by fire or storm and leaves a property vacant, would added density be granted to that parcel. N. Burns replied that the dwelling could be rebuilt as a single-family, conforming unit, but might not qualify for increased density. She offered clarification that "involuntary demolition" would not legally be a "tear-down". Mr. Ward recommended that the Town's revised Ordinance contain language clarifying this.

Wayne Berry questioned the proposed definition of "dwelling unit", and N. Burns explained the subtle differences between the Town's current definition and that of LD 2003. Mr. Berry also suggested eliminating the "40% part of the Town's maximum size formula" for ADUs

and simply limit them outright to a maximum 1,000 square feet. The commentator also questioned the treatment of "snow birds" who may rent out their Kennebunk homes when they are in Florida. Those home-owners have to be taken into consideration, he said.

C. MacClinchy kept the Public Hearing open, but there were no additional public comments or questions. R. Metcalf opined that Kennebunk's Coastal Residential District should remain a non-growth area, and all other Board members concurred. Metcalf recommended that the Suburban Residential district be treated in the same way, but other Board members did not agree. An informal poll ensued, and the majority deemed that Suburban Residential *should* be included as a growth area.

Members also agreed to make the effective date for ordinance amendments as June 14, 2023 as cited in the draft that was circulated. Members likewise agreed with the ordinance amendments that were provided to the Board.

3. Prior Meeting Minutes

C. MacClinchy then led the Board in a review of the minutes of its meeting of February 27, 2023. Several errors were identified and corrected.

Motion: **Move that the Town of Kennebunk Planning Board approve the Minutes of its meeting of February 27, 2023 as amended.**

Moved: J. Vance

Second: R. Metcalf

Vote: **Show of hands vote, 5 in favor, none opposed; the motion carried.**

4. Other Business

B. Howard presented minutes for signature.

5. Adjournment:

There being no further business, the Chair adjourned the meeting at 10:01pm.

Motion: **Move that the Planning Board of the Town of Kennebunk adjourn this meeting.**


Moved: J. Vance

Second: R. Metcalf

Vote: **Show-of-hands vote, 6 votes in favor, none opposed; the motion carried.**

Respectfully submitted by
J. Schlagheck, Clerk

Adopted by the Planning Board in its Meeting of March 27, 2023

Signed by: 

PLANNING BOARD