



Affordable Housing Committee

AGENDA

Thursday, June 6, 2023

1PM

Town Hall

Conference Room A

1. LD2003 – Analysis and Town Code Revisions
2. Update on Existing Initiatives
 - A. ADU Grant Status Update
 - B. Education Subcommittee Update

Next Meeting – September 7, 1PM

Adjourn

Attachments:

- LD2003 / Kittery Town Code Analysis
- LD1706 Enactment (delaying implementation of LD2003)

This meeting will be held in person. The public may attend in person or view the meeting via Zoom webinar. Register in advance for the webinar by clicking [here](#).

LD-2003 related amendments to Kittery's Land Use and Development Code (Title 16)

LD-2003 is a three-part ordinance. The first part deals with affordable housing and the associated density bonus, the second part focuses on allowing more density where housing is currently allowed in zoning districts (affordability not a requirement) and the third part addresses Accessory Dwelling Units (ADUs), requiring that all communities allow them without adherence to land area per dwelling unit requirements and parking requirements.

Part 1. According to LD-2003, to utilize the 2.5x affordable housing density bonus, the development must:

- designate greater than 50% of the dwelling units proposed as affordable (defined as below 80% AMI for rental and 120% AMI for owned)
- be zoned for multifamily as of July 1, 2023
- be in a growth area as defined by a community's comprehensive plan or be zoned for public utilities, special utility district etc.
- meet the State's minimum lot size requirements (basically 20,000 sf for septic)
- meet water and wastewater verification requirements
- meet the long-term affordability requirements

1. Growth areas as identified by Kittery's Comprehensive Plan's Future Land Use Map
 - a. Business-Local Zone (B-L)
 - b. Business-Local-1 Zone (B-L1)
 - c. Business-Park Zone (B-PK, formerly MU-N, Neighborhood Mixed-Use Zone)
 - d. Commercial-1 Zone (C-1)
 - e. Commercial-2 Zone (C-2)
 - f. Commercial-3 Zone (C-3)
 - g. Mixed-Use (MU-BI)
 - h. Mixed-Use Zone (M-U)
 - i. Residential-Rural (R-RL – but only a small portion between Rt 236 and Wilson Road)
 - j. Residential-Suburban (R-S)
 - k. Residential-Urban (R-U)

2. Of those zones, only these allow multifamily currently:
 - a. Business-Local Zone (B-L)
 - b. Business-Local-1 Zone (B-L1)
 - c. Commercial-1 Zone (C-1)
 - d. Commercial-3 Zone (C-3)
 - e. Mixed-Use Zone (M-U)
 - f. Residential-Suburban (R-S)
 - g. Residential-Urban (R-U)

Part 2. According to LD-2003's dwelling unit allowance section, a municipality must allow:

1. 4 dwelling units per undeveloped lot if the lot is in a zone that allows housing and is in a growth area as defined by a community's comprehensive plan or served by public utilities, special utility district etc.
2. 2 dwelling units per undeveloped lot if the lot doesn't meet the requirements of #1 above, but the lot is in a zone that allows housing and the lot meets the State lot size requirements (20,000 sf for septic)
3. Two additional dwelling units if a lot already has one dwelling unit.

No more restrictive setbacks than those for a single-family dwelling are allowed and the land area per dwelling unit may not be more than that for a single-family dwelling unit. There are also sewer/septic and drinking water verification requirements. Affordability as defined by LD-2003 is not a requirement.

4. The following zones allow housing and are in the growth area as defined by the Town's comprehensive plan:
 - a. Business-Local Zone (B-L) *
 - b. Business-Local-1 Zone (B-L1) *
 - c. Business Park Zone (B-PK, formerly MU-N, Neighborhood Mixed-Use)*
 - d. Commercial-1 Zone (C-1) *
 - e. Commercial-3 Zone (C-3) *
 - f. Mixed-Use Zone (M-U) *
 - g. Residential-Rural Zone (R-RL) (only portion between Rt 236 and Wilson Road)
 - h. Residential-Suburban Zone (R-S) *
 - i. Residential-Urban Zone (R-U) *

*All or part of the zone has public utilities or access to them

5. These zones also allow housing but are not in the growth area designated by the comprehensive plan:
 - a. Mixed-Use-Kittery Foreside (MU-KF)
 - b. Residential-Kittery Point Village Zone (R-KPV)
 - c. Residential-Rural (R-RL, the majority of it)
 - d. Residential-Rural Conservation Zone (R-RC)
 - e. Residential-Village Zone (R-V)

Of these zones, the Residential-Village Zone (R-V) and the Mixed-Use-Kittery Foreside (MU-KF) have public water and sewer. These two zones have few, if any, undeveloped lots so the 2 units per lot with an existing residence would apply, provided other requirements are met.

The Residential-Kittery Point Village Zone (R-KPV) and the Residential-Rural Conservation Zone (R-RC) have no sewer but do have public water for the most part, while the R-RL zone has limited public water and no sewer. There are undeveloped (vacant) lots in all three of these zones so the two units per vacant lot would apply. For lots that have an existing residence, the two additional units per lot would apply provided other requirements are met.

Part 3. According to LD-2003, Accessory Dwelling Units (ADUs) must be allowed in all zones where housing is allowed.

It appears that Kittery's ADU ordinance is nearly in full compliance with this portion of LD-2003 except for parking.

Conclusion: LD-2003's affordable housing and/or density allowances apply to 14 of Kittery's 18 zoning districts because they include housing as a permitted use. The ADU provisions in LD-2003 apply to those 14 zones as well as the C-2 zone that doesn't allow new housing because there are existing "grandfathered" dwelling units in that zone.

LD2003 – Kittery Town Code Title 16-Zoning

List of draft changes 6.12.2023:

Title 16 Section	
Accessory Dwelling units 16.5.3-D.1.e.2	Septic systems: add reference to MRS 30-A 4221
D.1.e.4	Wells: add reference to 01-672 C.M.R. ch. 10, section 10.25(J), Land Use Districts and Standards
D.1.e.4.f	Parking: Replace on-site parking requirement with: <i>No additional parking space is required for the accessory dwelling unit but the primary dwelling unit must have on-site parking</i>
D.2a	Unit size: Revise reference to building code standards
BL zoning Standards 16.4.17- D.1.b.1.c	Parking: add "c", reducing on-site parking required from 1.5 spaces as follows: <i>More than 50% of the dwelling units proposed will be affordable as defined by this code in which case parking is reduced to two spaces per three dwelling units.</i>
BL-1 Standards 16.4.18.D -1.a.4	Minimum land area/ dwelling unit: revise as follows: [4] When 25% or more of the dwelling units will be affordable housing units as defined by this code, the minimum land area per dwelling unit is: 1,500 1,000 square feet. [For comparison 29.4 units per acre is the current density while 43.6 units would be the new units per acre] OR When 25% 50% or more of the dwelling units will be affordable housing units as defined by this code, the minimum land area per dwelling unit is: 1,500 1,000 square feet. [43.6 units per acre for comparison]
Parking iv	Add subsection modifying on-site requirement as follows: <i>More than 50% of the dwelling units proposed will be affordable as defined by this code in which case parking is reduced to two spaces per three dwelling units.</i>
16.4.26 Business Park	Staff suggest adding definition for cluster mixed-use development
C Zones; 16.4.19 & 16.4.21 E.2.a	Density: add: <i>40 units per acre when over 50% of the units are affordable housing units as defined by this Code*.</i>
E.4.c.1	Parking: add: <i>When more than 50% of the dwelling units proposed are affordable as defined by this Code, two parking spaces for every three dwelling units.</i>
Mixed Use – Badgers Is. 16.4.24 -D.1.a.1	Change density as follows: For each of the first two dwelling units and thereafter: 6,000 square feet. <i>If more than 50% of the dwelling units will be affordable housing units as defined by this code: 1,200 square feet.</i>
Mixed Use – Kittery Foreside 16.4.25 D.2.a	Density: add: <i>(a) – 1. If more than 50% of the dwelling units will be affordable housing units as defined by this code: 2,000 square feet.</i>
D.7	Parking: add: <i>(c) Dwelling units in buildings where more than 50% of the dwelling units proposed will be affordable as defined by this code in which case parking is reduced to two spaces per three dwelling units.</i>
R-S Residential Suburban 16.4.11-D.2	Add <i>[3] When more than 50% of the dwelling units proposed will be affordable as defined by this Code and have public sewer: 12,000 square feet</i>

<p>Parking, D.5 & D.6</p>	<p>Revise as follows:</p> <p><u>(5) Parking. When more than 50% of the dwelling units provided while be affordable as defined by this code: two parking spaces per three dwelling units.</u></p> <p><u>(6) Affordable housing requirements:</u></p> <p><u>(a) All requirements in §16.5.4 Affordable Housing must be met.</u></p> <p><u>(b) Density incentives outlined above in subsection D.(2).(a).[3] may be applied to projects that create affordable housing units, as defined by this code. No proportional payment-in-lieu is required if the affordable dwelling unit requirements for the density incentives are met.</u></p>															
<p>Residential Urban 16.4.13 – D.2</p>	<p>Density: add</p> <p><u>When more than 50% of the dwelling units proposed will be affordable as defined by this code:</u></p> <p><u>i. With public sewer: 8,000 square feet</u></p>															
<p>Parking, D.6 & D.7</p>	<p>Add:</p> <p><u>(6) Parking. When more than 50% of the dwelling units provided while be affordable as defined by this code: two parking spaces per three dwelling units.</u></p> <p><u>(7) Affordable housing requirements:</u></p> <p><u>(a) All requirements in §16.5.4 Affordable Housing must be met.</u></p> <p><u>(b) Density incentives outlined above in subsection D.(2).(a).[3] may be applied to projects that create affordable housing units, as defined by this code. No proportional payment-in-lieu is required if the affordable dwelling unit requirements for the density incentives are met.</u></p>															
<p>Residential- Rural Conservation 16.4.15</p> <p>Residential – Rural 16.4.10</p> <p>Residential – Village 16.4.14</p>	<p>Revise by inserting table:</p> <table border="1" data-bbox="560 1528 1378 1749"> <thead> <tr> <th></th> <th colspan="2">Maximum total # of units allowed on lot</th> </tr> <tr> <th># of Existing Units</th> <th>Public Sewer and Water Available</th> <th>Public sewer and water not available</th> </tr> </thead> <tbody> <tr> <td>0</td> <td>4</td> <td>2</td> </tr> <tr> <td>1</td> <td>3</td> <td>3</td> </tr> <tr> <td>2</td> <td>2</td> <td>2</td> </tr> </tbody> </table>		Maximum total # of units allowed on lot		# of Existing Units	Public Sewer and Water Available	Public sewer and water not available	0	4	2	1	3	3	2	2	2
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STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-THREE

H.P. 1095 - L.D. 1706

**An Act to Clarify Statewide Laws Regarding Affordable Housing and
Accessory Dwelling Units**

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, current law requires, beginning July 1, 2023, all municipalities to allow a certain number of dwelling units under certain circumstances and the construction of accessory dwelling units on the same lot as a single-family dwelling unit and to comply with certain other zoning requirements; and

Whereas, it is the intent of this legislation to extend the implementation date for certain municipalities; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 30-A MRSA §4364, first ¶, as enacted by PL 2021, c. 672, §4, is amended to read:

For an affordable housing development approved on or after ~~July 1, 2023~~ the implementation date, a municipality with density requirements shall apply density requirements in accordance with this section.

Sec. 2. 30-A MRSA §4364, sub-§1, as enacted by PL 2021, c. 672, §4, is amended to read:

1. Definition. For the purposes of this section, "affordable housing development" means:

A. For rental housing, a development in which a household whose income does not exceed 80% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford a majority

51% or more of the units that the developer designates as affordable in the development without spending more than 30% of the household's monthly income on housing costs; and

B. For owned housing, a development in which a household whose income does not exceed 120% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford ~~a majority~~ 51% or more of the units that the developer designates as affordable in the development without spending more than 30% of the household's monthly income on housing costs.

Sec. 3. 30-A MRSA §4364, sub-§1-A is enacted to read:

1-A. Implementation date. For purposes of this section, "implementation date" means:

A. January 1, 2024 for municipalities for which ordinances may be enacted by the municipal officers without further action or approval by the voters of the municipality; and

B. July 1, 2024 for all other municipalities.

Sec. 4. 30-A MRSA §4364, sub-§3, as enacted by PL 2021, c. 672, §4, is amended to read:

3. Long-term affordability. Before ~~approving~~ granting final approval of an affordable housing development, including but not limited to issuing an occupancy permit, a municipality shall require that the owner of the affordable housing development have executed a restrictive covenant, recorded in the appropriate registry of deeds, for the benefit of and enforceable by a party acceptable to the municipality, to ensure that for at least 30 years after completion of construction:

A. For rental housing, occupancy of all of the units designated affordable in the development will remain limited to households at or below 80% of the local area median income at the time of initial occupancy; and

B. For owned housing, occupancy of all of the units designated affordable in the development will remain limited to households at or below 120% of the local area median income at the time of initial occupancy.

Sec. 5. 30-A MRSA §4364, sub-§6, as enacted by PL 2021, c. 672, §4, is amended to read:

6. Subdivision requirements. This section may not be construed to exempt a subdivider from the requirements ~~for division of a tract or parcel of land in accordance with~~ subchapter 4.

Sec. 6. 30-A MRSA §4364-A, sub-§1, as enacted by PL 2021, c. 672, §5, is amended to read:

1. Use allowed. Notwithstanding any provision of law to the contrary, except as provided in Title 12, chapter 423-A, for any area in which ~~housing is residential uses are~~ allowed, including as a conditional use, a municipality shall allow structures with up to 2 dwelling units per lot if that lot does not contain an existing dwelling unit, except that a municipality shall allow up to 4 dwelling units per lot if that lot does not contain an existing

dwelling unit and the lot is located in a designated growth area within a municipality consistent with section 4349-A, subsection 1, paragraph A or B or if the lot is served by a public, special district or other centrally managed water system and a public, special district or other comparable sewer system in a municipality without a comprehensive plan.

A municipality shall allow on a lot with one existing dwelling unit the addition of up to 2 dwelling units: one additional dwelling unit within or attached to an existing structure or one additional detached dwelling unit, or one of each.

A municipality may allow more units than the number required to be allowed by this subsection.

Sec. 7. 30-A MRSA §4364-A, sub-§1-A is enacted to read:

1-A. Implementation date. For purposes of this section, "implementation date" has the same meaning as in section 4364, subsection 1-A.

Sec. 8. 30-A MRSA §4364-A, sub-§2, ¶B, as enacted by PL 2021, c. 672, §5, is amended to read:

B. A municipal zoning ordinance may establish a prohibition or an allowance for lots where a dwelling unit in existence after ~~July 1, 2023~~ the implementation date is torn down and an empty lot results.

Sec. 9. 30-A MRSA §4364-A, sub-§3, as enacted by PL 2021, c. 672, §5, is amended to read:

3. General requirements. A municipal ordinance may not establish dimensional requirements ~~or, including but not limited to~~ setback requirements, for dwelling units allowed under this section that are greater than dimensional requirements ~~or, including but not limited to~~ setback requirements, for single-family housing units, except that a municipal ordinance may establish requirements for a lot area per dwelling unit as long as the required lot area for subsequent units on a lot is not greater than the required lot area for the first unit.

Sec. 10. 30-A MRSA §4364-A, sub-§7, as enacted by PL 2021, c. 672, §5, is amended to read:

7. Subdivision requirements. This section may not be construed to exempt a subdivider from the requirements ~~for division of a tract or parcel of land in accordance with~~ subchapter 4.

Sec. 11. 30-A MRSA §4364-A, sub-§10, as enacted by PL 2021, c. 672, §5, is amended to read:

10. Implementation. A municipality is not required to implement the requirements of this section until ~~July 1, 2023~~ the implementation date.

Sec. 12. 30-A MRSA §4364-B, sub-§1, as enacted by PL 2021, c. 672, §6, is amended to read:

1. Use permitted. Except as provided in Title 12, chapter 423-A, a municipality shall allow an accessory dwelling unit to be located on the same lot as a single-family dwelling unit in any area in which ~~housing is~~ residential uses are permitted, including as a conditional use.

Sec. 13. 30-A MRSA §4364-B, sub-§1-A is enacted to read:

1-A. Implementation date. For purposes of this section, "implementation date" has the same meaning as in section 4364, subsection 1-A.

Sec. 14. 30-A MRSA §4364-B, sub-§2, as enacted by PL 2021, c. 672, §6, is amended by amending the first blocked paragraph to read:

This subsection does not restrict the construction or permitting of accessory dwelling units constructed and certified for occupancy prior to ~~July 1, 2023~~ the implementation date.

Sec. 15. 30-A MRSA §4364-B, sub-§3, as enacted by PL 2021, c. 672, §6, is amended to read:

3. Zoning requirements. With respect to accessory dwelling units, municipal zoning ordinances must comply with the following conditions:

A. At least one accessory dwelling unit must be allowed on any lot where a single-family dwelling unit is the principal structure; ~~and~~

B. If more than one accessory dwelling unit has been constructed on a lot as a result of the allowance under this section ~~or section 4364-A~~, the lot is not eligible for any additional increases in density except as allowed by the municipality; ~~and~~

C. An accessory dwelling unit is allowed on a lot that does not conform to the municipal zoning ordinance if the accessory dwelling unit does not further increase the nonconformity.

Sec. 16. 30-A MRSA §4364-B, sub-§4, ¶B, as corrected by RR 2021, c. 2, Pt. A, §110, is amended to read:

B. For an accessory dwelling unit located within the same structure as a single-family dwelling unit or attached to or sharing a wall with a single-family dwelling unit, the setback requirements and dimensional requirements must be the same as the setback requirements and dimensional requirements of the single-family dwelling unit, except for an accessory dwelling unit permitted in an existing accessory building or secondary building or garage as of ~~July 1, 2023~~ the implementation date, in which case the requisite setback requirements for such a structure apply. A municipality may establish more permissive dimensional and setback requirements for an accessory dwelling unit.

Sec. 17. 30-A MRSA §4364-B, sub-§4, ¶D is enacted to read:

D. An accessory dwelling unit that was not built with municipal approval must be allowed if the accessory dwelling unit otherwise meets the requirements for accessory dwelling units of the municipality and under this section.

Sec. 18. 30-A MRSA §4364-B, sub-§5, as enacted by PL 2021, c. 672, §6, is amended to read:

5. Shoreland zoning. An accessory dwelling unit must comply with shoreland zoning requirements established by the Department of Environmental Protection under Title 38, chapter 3 and municipal shoreland zoning ordinances, except that a municipality may not categorically prohibit accessory dwelling units in the shoreland zone that would otherwise meet requirements established by the Department of Environmental Protection under Title 38, chapter 3 and municipal shoreland zoning ordinances.

Sec. 19. 30-A MRSA §4364-B, sub-§8, ¶A, as enacted by PL 2021, c. 672, §6, is amended to read:

A. Establish an application and permitting process for accessory dwelling units that does not require planning board approval;

Sec. 20. 30-A MRSA §4364-B, sub-§10, as enacted by PL 2021, c. 672, §6, is amended to read:

10. Subdivision requirements. This section may not be construed to exempt a subdivider from the requirements ~~for division of a tract or parcel of land in accordance with~~ subchapter 4.

Sec. 21. 30-A MRSA §4364-B, sub-§13, as enacted by PL 2021, c. 672, §6, is amended to read:

13. Implementation. A municipality is not required to implement the requirements of this section until ~~July 1, 2023~~ the implementation date.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.