



TOWN OF KITTERY

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TO: KITTERY LAND ISSUES COMMITTEE
FROM: JASON GARNHAM, DIRECTOR OF PLANNING AND DEVELOPMENT
SUBJECT: LD 2003 ZONING AMENDMENTS
DATE: AUGUST 16, 2023

SUMMARY:

Maine's Governor signed LD 2003, "An Act to Implement the Recommendations of the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions," into law in April of 2022. This law **requires Maine municipalities to adopt or amend zoning rules** that are intended to encourage development of affordable housing via three general approaches:

1. Allowing at least one Accessory Dwelling Unit to be constructed at any residential property.
2. Allowing additional units to be constructed for projects that include affordable housing.
3. Allowing development of at least 2-4 housing units per lot where housing is permitted.

Required zoning amendments – and the types of development that must be allowed by zoning – vary depending on the location of public utilities, targeted growth areas identified in the Comprehensive Plan, and Shoreland areas. Required amendments must be adopted by January 1, 2024.

Staff drafted amendments that are necessary for Kittery's Zoning code to remain compliant with Maine law. An initial draft was reviewed by Kittery's Land Issues Committee during the June 21, 2023 meeting and by the Housing Committee on July 6, 2023. Members of both committees expressed an interest in provisions that would "go further" to encourage development of housing in targeted areas. The attached amendments include changes to the way residential density – the units allowed per acre of land – is calculated for development projects. These changes are stricter for projects in Limited Growth Areas than current rules, and more flexible for projects in Targeted Growth Areas as described below.

Does this Committee recommend including these additional changes in the amendments which will be reviewed by Town Council?

BACKGROUND:

There are many types of zoning amendments the Town can consider to encourage property owners to develop housing, or specific housing types. The most impactful change(s) would be to increase the number of units that are allowed per acre within certain zoning districts. Limits on building size, footprint, or height would also need to be examined as part of an earnest effort to encourage development of housing through zoning density increases. Other potentially impactful changes would be to reduce parking minimums, reduce open space requirements, or reduce minimum setbacks. Staff and committee members agreed that such amendments, if considered, should be tested via an extensive public process and should therefore be excluded from this time-sensitive effort.

RESIDENTIAL DENSITY

However, staff identified an opportunity to simplify Title 16 and advance community goals as expressed in the Comprehensive Plan without taking on such controversial issues. Title 16 currently contains two separate methods for calculating the number of housing units that can be developed on a parcel:

“Minimum land area per dwelling unit” and “Net residential density.” **Minimum land area per dwelling unit** excludes all wetlands, rights-of-way, easements, tidal lands, and areas located below the Highest Annual Tide from the density calculation. **Net residential density** excludes those areas PLUS floodplains, 50% of wetland setback areas, and *proposed* right-of-way and parking areas. Net residential density is therefore more restrictive than Minimum land area per dwelling unit because it subtracts more resource areas, risk areas, and future site improvement areas from the base land area calculation. Neither of these methods use gross lot area (size of the parcel minus waterbodies or roads) as the base land area to be used for the residential density calculation.

Staff propose the following:

1. Delete Minimum land area per dwelling unit from Title 16. This will remove the redundancy that is created by having two separate methods for establishing base developable land area for residential density calculations.
2. Require Net residential density calculation for ALL residential projects located in Limited Growth and Shoreland Areas. (Residential- Kittery Point Village, Mixed-Use Badgers Island, Residential- Rural and Residential- Rural Conservation Zoning districts). Net residential density currently only applies to subdivisions; this amendment would expand its use to all residential projects. This amendment is supported by Comprehensive Plan goals which discourage growth in such areas and encourage protection of natural resources and open space because it would further limit the number of units which can be developed near wetlands and waterbodies.
3. Utilize “Lot area” for calculating residential density for projects located in Targeted Growth Areas. Projects in Mixed-Use, Mixed-Use Kittery Foreside, Commercial (1, 2, and 3), Business (B-L and B-L1), Residential- Suburban, Residential- Village, and Residential- Urban Zoning districts would therefore only exclude waterbodies and rights-of-way from the base land area used for calculating residential density. This may encourage “infill” development in existing neighborhoods and commercial areas where housing is allowed. This amendment is supported by Comprehensive Plan goals which encourage steering development toward areas that are served by public utilities and close to existing amenities instead of in current open space and natural areas. *Note: wetland setbacks, zoning setbacks, and building size and height limits would remain in effect as currently written.*

EXHIBITS:

Please find attached for your review:

1. Draft Zoning Amendments (required in **green**, optional in **blue**)

OTHER RESOURCES:

1. LD2003:
<http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP1489&item=9&snum=130>
2. LD2003 Guidance doc: [DECD LD 2003 digital- Feb 2023 update website 0.pdf \(maine.gov\)](#)
3. Title 16 Kittery Zoning Code: <https://ecode360.com/38252756>