

**MINUTES**  
**FREEPORT PLANNING BOARD**  
**FREEPORT TOWN HALL COUNCIL CHAMBERS**  
**WEDNESDAY, DECEMBER 13<sup>TH</sup>, 2023**  
**6:00 PM**

**Attending:** Andy Arsenault, Rose Mary Burwell, Wayne Jortner, Chair Sam Kapala, Mitch Rouda, David Speirs and Assistant Planner Cecilia Smith

**Excused:** Bonnie Myles

Chair Kapala called the meeting to order at 6:05 p.m. and welcomed everyone. He reminded the Board to turn their microphones on. He explained that we have several public hearings technically, although we are really talking about one big thing tonight in a couple of public hearings. For technical reasons we will dive right in to Item I which is a public hearing on proposed amendments to Chapter 21 of the Freeport Zoning Ordinance.

**ITEM I: PUBLIC HEARING – Proposed Amendments to Chapter 21 Freeport Zoning Ordinance**

The Board will hold a Public Hearing to discuss proposed amendments to the Freeport Zoning Ordinance related to municipal compliance with 30-A M.R.S. §§ 4364 – 4364-C (including LD 2003, “An Act To Implement the Recommendations of the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions”). The proposed amendments will potentially allow more housing in almost all zoning districts; add a new section, Section 536. Affordable Housing Density Bonus; and also include amendments to lower barriers to the development of Accessory Dwelling Units (Accessory Apartments). Additional non-substantive text amendments are also proposed.

Before we open the public hearing itself, Chair Kapala noted we are going to talk a bit on how we got here tonight, where we are, what the process has been so far and what the process will be moving forward to make sure everyone is up to speed and everybody understands why we are talking about what we are talking about and kind of what the next steps are as we go toward implementing all these changes as close to January 1<sup>st</sup> as we can possibly implement them he feels it is safe to say.

Ms. Smith displayed a slide and explained that LD 2003 is now called Public Law 2021, Chapter 672. It is the state’s response to the housing crisis so there are a couple of new rules that municipalities have to comply with. January 1<sup>st</sup> is when we should be complying with these rules. Otherwise, the state’s rules will supersede our rule. We have had several meetings on this with the Planning Board and we also had a workshop to inform the public. She will repeat some things just for you at home or on zoom and perhaps this is new to you and those of you who are here today and this might be new to you. We sent out almost 4,000 letters to notify the public and we also sent out an e-mail with an agenda to those who subscribe to the Planning Department. The process moving forward, the Planning Board will make recommendations after tonight’s public hearing to the Town Council. The Town Council holds its own public process and must take action to approve the recommendations before any of these amendments become effective.

Chair Kapala explained that there will be two Council meetings, assuming this Board votes to recommend these changes, the Council will meet to discuss, if they need to discuss the proposed changes, and they will set a public hearing for their hopefully next meeting and then there will be a public hearing and then they can adopt the changes so, counting this meeting, we are three meetings away from adoption potentially. Ms. Smith pointed

out that you will not receive a letter when the Town Council sets the meeting so do pay attention to the Town Council agenda because when the Planning Board makes zoning amendments, it notifies folks but the Town Council has meetings afterwards so there is no notification process.

Ms. Smith provided a brief overview of LD 2003. She is sorry if anyone has heard this a couple of times. The main elements of LD 2003 are the municipal role in fair housing and state-wide housing production. It clarifies that municipalities can regulate short-term rentals. It has provisions for an affordable housing density bonus and an extra dwelling unit allowance and accessory dwelling unit allowance.

Most of the changes in the amendments that you see before you are in the Zoning Ordinance, the Subdivision Ordinance and the Shoreland Zoning Ordinance have to do with these three last provisions: the affordable housing density bonus, the extra dwelling unit allowance and the accessory dwelling unit allowance. She offered to go into each one of them briefly in order to leave time for the Public Hearing and the public comments. The Affordable Housing Density Bonus is a state rule that says municipalities must give a bonus 2 ½ times the base density if someone comes and does an affordable housing development. Basically, if you were only allowed to build one house on a lot, now you would be able to build 2 ½ and, of course, you would multiply and get a full number. It says that we can't require more than two parking spots for every three units. More than half of the units need to be affordable and they need to be affordable for at least 30 years. This bonus is not applicable everywhere to every zoning district. They are only applicable to zoning districts that already allow multi-family dwellings. They also must allow multi-family dwellings but they also need to be in a designated growth area or served by Water and Sewer. She displayed a map of the multi-family district so folks can get an idea where they might be able to go. It mostly follows our designated growth areas with a few exceptions. We made a couple of amendments to comply with the Affordable Housing Density Bonus. Section 104 of the Zoning Ordinance we included a lot of amendments to the Definition Section. We added Affordable Housing Developments to all the zoning districts that allow multi-family zoning and we amended Section 514 which is the parking requirements for the Zoning Ordinance to comply with the maximum of two for every three units. There is also a new section in the Zoning Ordinance, Section 536 and that one has the Affordable Housing Development Density Bonus and that one will have the standards that they have to meet.

In the Subdivision Ordinance we did not have to do much. We did amend Article 3 and matched the definitions to the Zoning Ordinance so that they will have to have different definitions in different documents and added some submission requirements.

In the Shoreland Zoning, we made sure the definitions match. That is the summary of those changes we made for this particular element of LD 2003. The new Section 536 on Affordable Housing Development Density Bonus will clarify the location. Eligibility is tied to the location, and will state the affordability standards, mention it has to be connected to waste water and has the parking. It is a new section in the Zoning Ordinance. She offered to answer questions but none were raised.

Mr. Smith explained that the Extra Dwelling Units Allowance is the other big provision of LD 2003 that we need to make a lot of changes. This applies to all areas in town and it basically says that you can have up to four dwelling units on a lot if the lot is in a designated growth area. Otherwise, this is the most confusing part of LD 2003 she finds because the number of dwellings you can put has to do with the placement of the lot and other factors. With the Extra Dwelling Units Allowance, a lot that does not already have a unit on it, can have up to two units if it is not within as designated growth area or is served by Water and Sewer or in a municipality without a Comprehensive Plan. We have a Comprehensive Plan so we will go just by the growth area. You can have two if there is no house already on the lot or if you have a commercial property and no houses. Without a dwelling unit that is in a growth area, then you can have up to four. If you have a lot that already has an existing

dwelling, you may have up to two additional dwellings, either one attached or one detached or one of each. This one applies to any lot that already has a house. As she mentioned in previous meetings, you have to meet your density requirements, water and sewer, shoreland zoning, etc.

She provided a summary of the proposed amendments to incorporate that Extra Dwelling Units Allowance. We didn't have to do too much. For fairness, the Planning Board decided we should allow up to three dwelling units, or four dwelling units if you are in a designated growth area regardless of whether there is already a house there. The idea behind that is it wouldn't be fair because at the time you come for the permit, that is when you would get that additional dwelling. It wouldn't be fair for someone that builds one and plans to build one in a couple of years. They can't do it because they didn't build all three at once. The Planning Board thought for fairness, that that is how it would be. The main amendments that we had to do with this, and there were not many changes we had to do, we struck out Section 201.C that prohibited having more than two single-family houses on a lot. Now you will be able to have two or more separated single-family houses on a lot. That is a new change. There is a Section 201.L that talks about that dwelling unit allowances. They added to that sanitary and potable water standards and that actually applies to any new unit built in Freeport. They just realized that those standards should have been in there regardless and applied to any new house.

Mr. Rouda feels it is important to add that all other standards remain in place so setbacks, maximum density. You need to have a big lot to have four dwelling units in most areas of town. Ms. Smith agreed.

Ms. Smith displayed a map of the Designated Growth Areas. They are mostly along Route One and are pointed out in our Comprehensive Plan. When we update our Comprehensive Plan, it will be an opportunity for the community to say, hey, I think it would make sense for this area to be a growth area versus this one or I don't think this area should be a growth area. No questions were raised.

Finally, there is the Accessory Dwelling Units Allowance. Ms. Smith advised that this is also from the state. The state says that Accessory Dwelling Units are allowed where housing is permitted. The state only requires municipalities to allow one accessory dwelling unit on a lot that has a single-family house. The state does not require the town to allow an Accessory Dwelling Unit on a lot where there are already two houses or a duplex but it is optional. Towns can allow that and Freeport has chosen to do that. The state also says that we cannot require parking for accessory dwellings so that is also something we have to change. The accessory dwelling unit can be within an existing single-family structure attached or detached. Freeport already allows ADUs but we do allow only one on a lot with one single-family unit. If there are two dwellings and that is one change that you will see in the proposed amendments that the Planning Board thought we should allow them in cases where people already have two dwelling units or a duplex. The reasoning behind that is in order for you to have a duplex or two stand-alone single-family houses is because your lot had to be bigger. Accessory dwelling units are exempt from density requirements so no matter how big or small your land or lot is, you would be able to put one on according to the state. Freeport's ordinance does not have a density requirement for them so we already comply with that. Currently ADUs are not allowed in the Shoreland Zone unless it is connected to the public water and sewer so that is also something we are changing.

The Planning Board actually started working on ADUs before we got into the meat and potatoes of LD 2003 so altogether it was easier to understand. In the process we talked about whether it would be appropriate to make it easier to build ADUs because they are a form to increase housing and help people age in place. We revamped the whole section on ADUs to make them easier and we removed some barriers. The Planning Board gave direction to allow ADUs on lots that already contain two dwellings, a duplex or two single-family dwellings to increase the maximum size to 75% of the existing single-family house or up to 1,100 square feet, whichever is

less. The current standard is 40% of the current single-family house which can make it pretty difficult if your house is already small.

The Planning Board also thought it would be appropriate to remove the owner occupancy restriction and the restriction that ADUs should have only one bedroom. The last change to that section of the ADUs is to remove the requirement that says the ADU must be in general harmony with the neighborhood and the architectural style. However, if someone is proposing an ADU and it is in the Design District, they would still have to meet the design requirements but it did not make sense to require it in other places where people are building homes and we don't require that for a single-family house. For ADUs, the major change we made in terms of proposed ordinance amendments is in Section 104 for Definitions. In the Non-conformance Section, to just clarify that they are permitted even on non-conforming lots and usage. Also in Section 514, strike out parking requirements or exempt them from parking requirements. That is our Parking Requirement Section. Then we have that major amendment to Section 532 which is our Accessory Apartments Section of the Zoning Ordinance and is the standards for them.

Chair Kapala wanted to clarify some things about non-conformance. He thinks it is super complicated but is never 100% sure about these guidelines. It is his understanding that in the Non-conformance Section you could if you live in a non-conforming structure, whether it is over the setback but it is legally non-conforming, you could convert part of that structure to an ADU but the work that you do cannot increase the non-conformance of the structure. If your house is legally non-conforming, it doesn't mean that you can go and build something else that is non-conforming somewhere else on the property. Another example would be if you are over the maximum lot coverage and you wanted to build a detached ADU, you would not be allowed to do that because it would increase the non-conformity by covering the lot. He asked Ms. Smith if this is correct? Ms. Smith was not sure about the lot coverage but yes, so as long as you don't make the lot more non-conforming, you would be able to build an ADU there. Chair Kapala added that density does not apply but lot coverage is separate. He explained that he is always putting it in context with his own property. He has a small lot and the house and driveway. Just because the density does not apply, it doesn't mean there are other standards that are waived in a situation like that

Carol Wilkes-Smith wanted to ask a question so Chair Kapala advised that the podium and microphone are where they need to be and they don't need to be moved. Ms. Wilkes-Smith wanted to clarify the first line when an ADU already contains two dwellings, if there are two dwellings, are we going to call one of them an ADU? Ms. Smith advised that throughout Freeport most districts actually allow a duplex. A duplex is when you have a structure with two houses connected and there are actually a couple of lots in Freeport that have two single-family homes on the same lot. The state only requires municipalities to allow one ADU on a new lot that has one single-family house. It does not require municipalities to allow an ADU if you already have two units on a lot. We are going to allow them on a lot that already has two units because the lots that have two units had enough space to have two units. They were bigger lots to begin with so the Planning Board did not think it would be fair to punish those people. We had to make so many changes in our Zoning Ordinance including capitalizing Single-family throughout the whole entire document that she sometimes missed a few things. In Section 532 she noticed we crossed out the word *allow* that should stay there. We also needed to clarify Section 532.1 allowing one ADU and lots that already allow duplexes and lots already having two houses. These are small corrections that we need to do to that when you make a motion. For example, add the word either in 532.1.

Ms. Smith advised that they did receive a public comment asking about the Shoreland Zone. Unfortunately, if you are in the Shoreland Zone, for putting in an ADU you still have to meet those space standards of that lot frontage.

We did not go into much of the details of these three big pictured elements of the LD 2003 but the Shoreland Zone still is valid if you can meet the Shoreland Zone space requirements for lot frontage. Those Shoreland Zone dimensional standards still apply.

John Schwanda advised that he is confused in the Definitions under M.1 Sanitary and Potable Water Standards on Page 41 of the Zoning Ordinance where it says: The space and bulk standards including, but not limited to the minimum lot area and minimum land area per dwelling unit of the Zoning District in which the lot is located apply per dwelling unit. He is hearing two different things. 1. These can only be on bigger lots and meet area requirements and that is what this seems to say. Further along, it says you can even put an ADU on a lot that is non-conforming for area as long as it can be more non-conforming. Mr. Rouda added that it is related to those space and bulk standards. Mr. Schwanda asked if Mr. Rouda is saying you have to have a 5-acre lot to put an ADU on it? Mr. Rouda replied no ADUs ever affect the density. Mr. Schwanda noted this is not what it is saying. Ms. Smith advised that the language was mirrored after the state language for potable water standards. She did not draft this section and thinks it was just to clarify the state standards for potable water. Most likely it was written this way and has this language.

Mr. Rouda clarified that the issue is that there is two different dwelling units we are talking about. One is the additional dwelling units and the other is the Accessory Dwelling Units. The additional dwelling units is what this is referring to but Accessory Dwelling Units, except in Shoreland Zoning, affects no other standards except things like setbacks. He believes that is correct. Mr. Schwanda thanked him.

Ms. Smith mentioned that in Section 532, Accessory Dwelling Unit, on page 210, it says for the purposes of this section an ADU outside of the Shoreland Zone shall not be considered a dwelling unit for determining the required minimum lot area or net residential density. Mr. Rouda noted that thing on page 210 sort of discounts what Ms. Smith was reading. She agreed that that was a good question and Chair Kapala added that it is very confusing. Mr. Rouda mentioned that one wishes you could rewrite the whole thing from beginning to end. Chair Kapala mentioned the Board would have to meet twice a week for the next five years.

Ms. Pelletier offered to clarify this for the Board. In this case, an Accessory Dwelling Unit under M.1 outside the Shoreland Zone, would meet the space and bulk standards because it wouldn't require any additional land area thereby meeting that first portion. Mr. Schwanda advised that this answers his question.

Ms. Pelletier advised that you are correct if you have a non-conforming lot with regards to area, you could still apply to get an Accessory Dwelling Unit if you meet all the other standards that are in place such as impervious surface, lot coverage, setbacks, etc.

Ms. Smith explained that these are the main changes that have to do with LD 2003. She offered to take more questions before moving on to the Public Hearing and pointed out that the changes we made to the Subdivision Ordinance have nothing to do with LD 2003. Chair Kapala felt it made sense to pause here while this stuff is fresh in our minds. We will give the Board a chance to ask any questions and discuss and then we will give the public a chance to ask questions. He asked if he could make the clarification between questions that folks have about sections that might be confusing versus public comment about opinions about this which would come in the Public Comment section.

Mr. Jortner mentioned that in the various districts there is always a provision for the maximum number of units for a new development building. For some of them it is six and for some it is eight. He doesn't recall the rationale for limiting it to six when most of them are eight for multiple family or unless it is for an affordable housing development. Ms. Smith explained that for those districts they are districts that allow multi-family but it

actually kind of caps the number as you keep reading the document. Mr. Jortner mentioned the part he is asking about is why in the Medium Density Districts there is a maximum of six and in others it is a maximum of eight? Ms. Smith felt it was a good question and it has to do with whatever work the Planning Board was doing perhaps ten years ago as we look at the Comprehensive Plan, those are exactly what she mentioned when the idea was to have these mixed-use districts and increase density. That was language that was already there. Mr. Jortner's question is should we rethink that? Why not make it the bigger number since our goal is to increase housing? Ms. Smith advised that it is not an LD 2003 related question but in her personal opinion, we do need to take a closer look because all these districts are in growth areas and are close to downtown. She thinks we have to take a second look at the requirements that are there right now in terms of density. Mr. Jortner mentioned that those numbers are embedded in new red-line language and referred to page 63 at the end. It is a maximum of six when in all the other districts it is a maximum of eight. Mr. Jortner felt that only sixes were in the Medium and all the others in the village were eight. Chair Kapala added that he noticed they were different and looked for a couple. To him it said it made sense where you have the slightly lower number in the Medium Density and higher density you have a slightly higher number. He does not feel super strongly about it but it seems like the sort of thing we might tackle as part of the Comprehensive Planning Process. Mr. Jortner added that for this, we are changing that particular language so why not make the number the bigger number and have more housing allowed. We can make it eight or something bigger than eight. Mr. Rouda mentioned that the issue is that they are already limited to six elsewhere. His heart is in Mr. Jortner's place but his question is that this is a hearing and a change of the zoning about 2003 so if we are introducing something new that is restricted, he feels the Board should not do that today without discussing where else we might want to change it. His other point is that this is a part of the Comp Plan, speaking with the Housing Task Force hat on, he is concerned that the Comp Plan is two years off for making changes and he believes we should do the review in early-spring about immediate fixes of that type that we might find. Mr. Jortner explained that he is focusing heavily on the red-line language and this is all in the red-line language. Ms. Smith added that we wanted to exempt the affordable housing developments from that. Mr. Jortner mentioned that if we are creating language, why not change the number to be consistent with our ultimate goal?

Mr. Rouda asked Ms. Pelletier if she knew the issue we are discussing? Ms. Smith offered to clarify it and referred to Section 404 the Medium Density Residential District I. It allows multi-family but it goes down to page 61 and tells you the uses that are permitted, the uses that are subject to Subdivision Review and then it says the following uses are subject to Site Plan Review regardless of size. No. 10 is multi-family dwellings. Mr. Rouda pointed out that Ms. Smith just moved it from there to there so it is already there. Ms. Smith noted it used to say a maximum of six units per building so now we just say it is subject to Section 404.F2 so you have to go down the next and go to F and it is down there. Mr. Jortner feels there is an issue there but he doesn't know if this is the appropriate time and place but it seems to him that we have an arbitrary number limiting the size of a multi-family development. He wonders if we thought that through?

Ms. Pelletier mentioned she feels the Board should flag that as a separate project. One of the things that is jumping out to her is the public utilities and private utilities in the area and she does not know the history of that number and if it is tied to lot requirements when you have an area on septic. She thinks it is a good flag but the Board should maybe put it in the post LD 2003. Mr. Rouda mentioned he is interested in what restrictions we should be looking at before the Comp Plan? Ms. Pelletier was glad he brought that up because there is a misuse of terminology here. In cases where you point that out that we added under Standards, and we have reference to that six or eight so at least it is on Page 63 and 67. The incorrect term was listed as multi-family development. As you know, multi-family development is something in a subdivision. It is different than a multi-family dwelling. On page 63.F.2 while you are talking about it, Wayne can let her know if she missed any on the fly. On page 67.F.2 that should actually read multi-family dwellings instead of development. Mr. Jortner told her that the other pages are 63, 67, 76, 96, 100 and 103. While the Board continues, Ms. Pelletier noted she would

go through and wordsmith and come up at the end when the Board reviews all its changes. Mr. Rouda asked why it is called multi-family dwelling and not multi-family building. Ms. Pelletier explained that we call them multi-family dwellings and we like to use consistency and she would keep that. Multi-family development is more like a condo and not in one structure. Multi-family dwelling means all in one building. More discussion followed. Mr. Jortner mentioned Page 60 of the Subdivision Ordinance there is the term outstanding river segment and he doesn't know what it means. Ms. Smith recalled a meeting in January when the Planning Board talked about adding the state standards to mirror the language of the state's subdivision review criteria. We kept that language there but we don't really have any outstanding rivers. She thinks it means very big rivers. Mr. Jortner noted it is part of the red-line language in our new ordinance. Mr. Jortner referred to Page 63 of the Subdivision Ordinance under the red-line language that says all farmland in the proposed subdivision *has been* identified. He asked if it should be *shall be* rather than *has been*? Ms. Smith advised that this was a copy and paste from the state standard which is the style we were going for. She offered to check because it has been several months and we might have changed it. Mr. Jortner noted it is the same thing on Page 67 where it says *has not been* in the past. He feels it is meant to be *shall not be*. He left it to Ms. Smith if she wants to change it.

Chair Kapala asked if anyone has any questions on the Zoning Section? Mr. Rouda commented that the Board has spent a lot of time reviewing every piece of this. He hopes there aren't errors. Ms. Smith advised that since the last meeting where we talked about this, it has gone forward for a legal review and our attorney had a brief time to look at it. It came back and there has been lots of iterations since the last draft you saw to the proposed amendment. It is okay if you have lots of questions because we have made lots of changes.

Chair Kapala mentioned he had a minor change on Page 42 of Zoning. It references the Zoning Board of Appeals and we just have a Board of Appeals. He suggested striking the word Zoning in Section 202.B.2. He mentioned that the Board had 6 or 8 meetings where we talked about this. It has been a big lift for Staff, for Cecilia doing a lot of the nitty-gritty, for Caroline, for Nick Adams, for the Town Attorney. It has been a lot.

Mr. Spiers pointed out that this is probably a good place to acknowledge that he has not been involved here in those conversation. He did want to let the Board know that he did some homework and reviewed several of the meetings leading up to this but he did not find the August 13, 2023 meeting that was referenced in the handout but did review all the other meetings. Ms. Smith noted it is a lot of homework. Chair Kapala thanked Mr. Spiers and mentioned that is an i that needs to be dotted.

Mr. Rouda mentioned that Ms. Smith talked about all the changes the legal team made and he presumes that it is consistency in language and terminology but asked if there was there anything substantive or policy related that we should flag? Ms. Smith advised that we went back and forth with the Codes Officer and then we had to change things around so that is where the Sanitary Water and Potable Water Standards were added and Nick was already enforcing that. When we added this, she believes some of the language also makes it so that it is required to test the potable water for things like PFAS where before it wouldn't have been. For Affordable Housing Density Bonus, we didn't really make much change. We are mostly just meeting the state's minimum requirements for that. For the Extra Dwelling Allowance, the Planning Board is being much more permissive than the state in not requiring someone to have a vacant lot, or be vacant of any housing units, or to build everything all at once or capping the number. Mr. Rouda clarified that he is asking in the legal review, Ms. Smith said there have been a lot of changes since all the work we have done. Mr. Rouda is trying to make sure that nothing was changed that would have affected the Board's policy decisions. That is all Mr. Rouda asked.

Ms. Pelletier clarified that at the last meeting, the Board made a lot of policy decisions that did impact the language and so ADU language changed slightly because the Board decided in cases where you had one structure, two single-family or duplex only, you wanted to allow one ADU per lot. That did allow for some

consolidation and one of the changes presented tonight was to clarify that if somebody had three single-family homes, you did not want to allow an ADU. There were some changes made in the last meeting. She thinks there was some confusion in the Non-conformance Section. That has been cleaned up a bit because the Non-conforming Section talks about non-conforming uses and not non-conforming structures because they are two entirely different things. The biggest change is actually more simplistic language in the section clarifying when you can add additional dwelling units. Before you were more mirroring LD 2003 in the growth area, out of the growth area with all these other scenarios and the Board kind of streamlined that with outside of the growth area, go up to three, in the growth area, go up to four. She feels this is cleaner condensed based upon those policy changes if that helps you. Chair Kapala mentioned that they tried to coalesce around the principle of fairness in trying to come up with a standard that could be applied as equally as possible across lots, acknowledging that every lot is different and there are more standards that we could possibly take into account here. In general, the principle was fairness and simplicity.

Ms. Pelletier advised that the Subdivision incorporates some of the changes the Board previously discussed like Cecilia said to mirror the state standard adding Freeport's standard. In the Shoreland, she kind of envisioned that we were going to make some additional changes but after some back and forth with DEP, one thing you will notice, based upon some feedback from the Codes Officer, how people in the shoreland are questioning the Accessory Dwelling Units because it was clarified in the Zoning Ordinance in the Accessory Dwelling Unit Section that you still need to meet those certain Shoreland Standards. Our Policy decisions are adequately reflected but it looks a little different.

Ms. Smith mentioned the last things to discuss are the changes in the Subdivision Ordinance that had to do with those state requirements that are different. We kind of snuck those in there because a while ago the Town Council wanted to get this back and have it already incorporated. She asked if anyone else has any questions? Chair Kapala mentioned the Subdivision stuff is pretty straight forward. Ms. Smith offered to show it on her screen and explained that a while ago we started cleaning up the Subdivision Ordinance and we had a lot of references to old documents and old names that do not exist anymore such as Aqua Maine. She ended up with the Maine Water Company. There was a lot of general updates and clean up but nothing related to LD 2003. They also added some state standards such as farmland and timber harvesting. They were copied and pasted from the state and they asked the Town Attorney to help and we were able to simplify it a bit. They cut one section from the state but the rest stayed the same.

Chair Kapala asked if anyone has a clarifying question from the public and he included the neighbors on zoom.

Heather Aguiar was looking at the state's guidelines and thinks it is reiterated here but, subdivisions that exist that have restrictive covenants, lot size and setbacks and a very restrictive area for building on each lot, the state law does not override any of that if you live in a 30-dwelling unit single-family subdivision that is not going to be affected.

Greg Shimberg advised that he lives on Beech Hill. He owns the old Libby place which is technically part of the Ten Penny Subdivision. He has three acres but has not been to the previous meetings. He did meet with Ms. Smith. For the ADU, he has three acres and a single-family house, he asked if he is permitted or not permitted to have a second unit on his property that is not attached? He knows that his deed might be separate effect which is separate. Chair Kapala advised that the Board cannot get into specifics on specific properties but he can say in the general sense an ADU is not going to count against his density standards as long as he can meet setback standards. For simplicity sake, most lots with a single-family home would be able to add an ADU or a two-family assuming there are no deed covenants and assuming that his space and bulk standards can be met. Mr. Shimberg clarified that he is asking about being able to add a second dwelling and would that fall under the



ADU? He has a small 1,400 sq. ft. house and is hoping to give it to his son who cannot afford Freeport and wants to build another 1,400 sq. ft. house up on the hill. Mr. Rouda advised that he could build a 75% home or whatever is less and if he would do that, he could. Mr. Shimberg mentioned he could build a 1,100 sq. ft. home for his second home. He knows there is some technical stuff he has to get. He also asked when the Board talks about the 1,100 sq. ft., does it include a garage or just the living space? Chair Kapala advised that it is in the Definition. Ms. Smith added that this is an area that has been in previous meetings really confusing for people. What is the difference between the additional dwelling and the ADU? Chair Kapala mentioned that the answer is it depends. Ms. Smsith added that the ADU can't be as big as the house. The ADU does not require you to have a larger lot. Chair Kapala mentioned that the garage could be an accessory structure. He read the definition for a gross floor area. Mr. Shimberg noted he more research to do and knows the Board has a lot of meetings so he did not want to take up any more time. Chair Kapala pointed out that it is a distinction that keeps coming up again and again so it is helpful for the Board to think about the difference from an ADU and another dwelling unit. Mr. Shimberg thanked the Board.

Chair Kapala pointed out that the Board will be limiting comments tonight to three minutes for anyone who wishes to comment in the room or on zoom. Cecilia has the button for the clock. Chair Kapala made the disclosure that he recently went back to work for a company and his role is primarily related to the production of ADUs. It wasn't on his radar for most of the first meetings but it is now since he went back to work last Monday officially. Since it is an employee-owned company, he owns a very small stake of the company. He wanted to put that out there. If anyone has an issue with that, he does not feel that it in anyway impairs his ability to make a judgment about these regulations we are imposing but he does want to be by the book and say he technically has a very small stake in ADUs. He asked if anyone has an issue with that? No one voiced any issues.

Kathy on zoom noted she has a clarifying question. He is wondering how the Board came up with the 1,100 sq. ft. for the maximum ADU square footage? That is the maximum. Kathy explained that when her mother returned to work, her daughter lived with her occasionally to take care of her. She feels 1,100 sq. ft. seems pretty small to have caregivers help an elderly person who wants to die in her home. Ms. Smith advised that back in the day when Freeport was ahead of its time did have an ADU Ordinance, the maximum size was 800 sq. ft. 800 sq. ft. is actually a common size for Accessory Dwelling Units. She believes it might have been 40% or 800 sq. ft. so at some point after the previous Comprehensive Plan it was noted that 800 sq. ft. was a bit restrictive so they kept it at 40% but when they did that, they may have inadvertently made it difficult for people who live in an 875 sq. ft. house as she does, so she would not have been able to do that unless she got to 40% of that which would have been extremely tiny. Chair Kapala added that the intent was for the Board to be fairly permissive. 1,100 sq. ft. is fairly large if you look at all surrounding communities, Accessory Dwelling Units. It is a balance and 1,100 sq. ft. is not huge but it is a large 2-bedroom apartment. It is always a balance of lowering barriers but doing it in a way that respects not just property owners' rights but also what he thinks of as abutters' rights and balancing those two perspectives. Ms. Smith advised that an ADU does not require the property owner to have a larger lot. It is intended to be a low-key and accessory to your primary house. It is supposed to be a smaller size. The Planning Board also gave direction to remove the one-bedroom maximum. Our current Ordinance says you can only have one bedroom so the Planning Board was much more permissive in giving direction to Staff to remove that condition. You will still have to meet your subsurface waste water disposal requirement and that will be hard for some people just as the high construction costs. Mr. Rouda repeated that the goal was to make them larger than the standard so 1,100 sq. ft is a large two-bedroom. We are sensitive to not wanting to call all single-family zoning in the town two-family zoning and enable you to build two houses on a single-family lot because this does not affect other restrictions. Ms. Smith added that the goal was to keep the neighborhood character. She clarified that it is not a maximum of 1,100 sq. ft. of the existing structure. It is 75% of the existing structure or 1,100 sq. ft.

Chair Kapala referred the Board to Page 210, Section 532 which is the renamed Accessory Dwelling Unit formerly Accessory Apartments. Mr. Jortner feels the way it is written seems slightly ambiguous. Mr. Rouda added that it should read that an ADU should be no more than the lesser of 1, 2, or 3. Ms. Smith advised that this was at the recommendation of the Codes Officer. Mr. Rouda noted it looks like it is part of 3 but it is really part of A. Chair Kapala suggested changing it to read, the gross floor area of an ADU may be no more than 1,100 sq. ft. nor more than. He agrees it is not super clear. Ms. Pelletier offered to craft a solution and Mr. Rouda felt that would be perfect. Ms. Pelletier suggest changing 7.A to read the gross floor area of an ADU may be the lesser of; then have 1,2,3 but in No 3 put a period after area and strike whatever is less. Mr. Rouda felt it was much simpler.

**MOVED AND SECONDED:** To open the public comment period. (Rouda & Burwell) **VOTE:** (6 Ayes)  
(1 Excused: Myles) (0 Nays)

Gary Laughlin mentioned the 1,100 sq. ft and mentioned he saw in the *Portland Press Herald* that Cape Elizabeth has decided on 1,100 sq. ft. as their setting for an ADU. He also appreciates that the Planning Board has tried to be really responsive to the citizens of Freeport in making adjustments to the ADU opportunities that will hopefully benefit the town and its residents.

Heather Aguiar wanted to comment on the Comprehensive Plan. She grew up in Maine and is excited to see Freeport grow. She didn't make it to a workshop. She has noticed that the amount of light pollution in Freeport has increased. In Freeport you cannot see anything but sky glare in the direction of Brunswick. As the town is growing, it would be great if we could have provisions to decrease light pollution. She has been out west where there are beautifully lit streets and tons of lighting but it is directed downward. She is certain that it is a lot easier to do that while you are building than to go back afterward when these become important. She noted we are the gateway to Katahdin and it would be nice to have that quality of life living in Maine. Ms. Smith added that she feels it would be great to bring this up during the Comprehensive Plan. We do have some standards for the downtown with Design Review but if the town wants to further explore adding some provisions trying to minimize that, we can look into that in the future. Ms. Aguiar mentioned when the town replaced all the street lights with LEDs, she was nervous because those can be quite bright but whoever did that, did such a nice job and made sure the ones downtown are the full cut offs. The ones out of town that do not have the full cut off, she would prefer that they have some sort of cut off but they chose a nicer warmer bulb so you are not blinded driving under them so it can be done. We can have beautifully lit streets and still see the stars. Chair Kapala explained how the community chose the warmer bulbs. Mr. Rouda added that the Comp Plan process will involve a lot of reach out. Everybody will be hearing about it and it is super important that everybody try to help where they can particularly in the spring. What we learned tonight is that the first few months most of the work will be around inventorying what exists today and not too much work and then as we get towards April and into the summer, there will be a lot of public comment periods and workshops.

Char Kapala opened the public session to people on zoom. No one raised their hand.

Dave Knipper advised that he lives on Wolfes Neck and has a small non-conforming lot so setbacks are a problem but his neighbor is the State Park where he is really not encroaching on anybody. That part of the park is never going to be developed according to the last two rangers because it is too wet back there. What he is hearing over and over again is no exceptions to these setbacks. He thinks they need to be looked at on an individual basis because there is nothing there but trees and swamp. Chair Kapala noted that he thinks it would be really hard to get a variance for that but he doesn't know enough about that process. His understanding of the variance process is that you have to basically show hardship. You would have to show that you have no use of your property. Mr. Knipper advised there is an existing small cottage which he would like to expand but he

can't do because of the setbacks that are there. Chair Kapala mentioned that the whole district has the same setbacks so it is a district-wide setback. Mr. Knipper agreed but noted that not everyone in that district is surrounded by forest and an unusable area of the State Park. He feels the Board needs to look at things individually. Ms. Smith added that it would get tricky if the Board looked at things individually because the whole purpose of having zoning is to have fairness so once you start having a discrepancy over yes, you can do it because you are next to a forest or no, you can't do it because it might raise flags for a lot of people. Mr. Knipper advised that each piece of property does not fit into the box and Chair Kapala agreed. He noted that part of the challenge is writing good zoning language. It is something the Board can explore but there might or might not be legal ways to approach that. He honestly does not know. Ms. Smith asked if he talked to the Codes Officer and Mr. Knipper advised that he had but he said the Board has not approved any variant over two years and probably would not. Mr. Jortner added that the process is clear and the variance process is the only way to go and Mr. Knipper should try it. More discussion followed.

Leeanne Sargent noted she lives on East Street and wanted to comment that she would like to see some zoning revisited in Freeport. There are places zoned for rural that are outdated and areas that should be commercial or Village I or Village II that would be ideal places for affordable housing or changing the zoning so a 2 ½ or 5-acre lot could be more accessible for affordable housing in the area. Specifically, on South Street, there are three homes built right next to each other and they all look alike. It is rural but it doesn't even qualify to be developed or added to. On either side of West Street, there are other places she feels the zoning is out of date and it should be revisited so we can apply some of these new amendments to many different areas. Ms. Smith mentioned those were great comments and she hopes Miss Sargeant will participate on the Comprehensive Plan because it is an opportunity the residents have to say, hey I don't think our existing zoning may not be working. Let's revisit that. Mr. Rouda added that that is what we will be looking at and we need your input. Chair Kapala added that it is all on the table in a way it hasn't been for quite a while.

**MOVED AND SECONDED:** To close the Public Hearing. (Jortner & Speirs) **VOTE:** (6 Ayes)  
(1 Excused; Myles) (0 Nays)

#### **ITEM II: PUBLIC HEARING – Proposed Amendments to Chapter 25 Freeport Subdivision Ordinance**

The Board will hold a Public Hearing to discuss proposed amendments to the Freeport Subdivision Ordinance. The majority of the changes are related to municipal compliance with 30-A M.R.S.A. §§ 4364 – 4364-C (including LD 2003, “An Act to Implement the Recommendations of the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions”). Additional proposed amendments include adding and/or amending standards to comply with State subdivision approval standards (M.R.S. 30-A § 4404) and as previously discussed by the Planning Board); several non-substantial text amendments to update reference documents used throughout the Ordinance; and non-substantial text amendments for clarification purposes.

Chair Kapala advised that the Board has already talked about what these changes are. Unless somebody has questions, he feels it would make sense to go ahead and open this Public Hearing and see if anyone has had a change of heart.

**MOVED AND SECONDED:** To open the Public Hearing. (Jortner & Burwell) **VOTE:** (6 Ayes)  
(1 Excused; Myles) (0 Nays)

Chair Kapala asked if anyone has any public comments? There were no comments provided.

**MOVED AND SECONDED:** To close the Public Hearing. (Arsenault & Rouda) **VOTE:** (6 Ayes)  
(1 Excused; Myles) (0 Nays)

**ITEM III: PUBLIC HEARING – Proposed Amendments to Chapter 65 Freeport Shoreland Zoning Ordinance**

The Board will hold a Public Hearing to discuss proposed amendments to the Freeport Shoreland Zoning Ordinance related to municipal compliance with 30-A M.R.S. §§ 4364 – 4364-C (including LD 2003, “An Act to Implement the Recommendations of the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions”). The intent of the proposed changes is to keep consistency with the proposed amendments in the Freeport Zoning Ordinance and to clarify that Accessory Dwelling Units are still subject to Shoreland Zoning Space Standards.

Chair Kapala advised that the Board has already talked about these changes. Ms. Smith explained that we mainly wanted to make sure that the Definitions match the Zoning Ordinance and there are some minimalist changes in terms of capitalizing Single Family and saying duplex instead of Two Family.

**MOVED AND SECONDED:** To open the Public Hearing. (Spiers & Jortner) **VOTE:** (6 Ayes) (1 Excused; Myles) (0 Nays)

From zoom, Kirk advised that he has a large parcel that has a small piece in the Shoreland. His house is in Shoreland but he has quite a bit of land outside the Shoreland that is part of this lot. If he was going to do an ADU, is the dwelling unit considered Shoreland? Ms. Smith suggested that he talk to the Codes Officer. Kirk noted he would like clarification because he has two acres abutting the shore and seven acres that are not abutting the shore at all. His house is considered Shoreland but how does he determine ?????

There needs to be clarification so the Codes Officer can say no, this is not Shoreland. Specifically, he has a barn and even if it is 800’ from his house, he wants to verify that that will not be considered Shoreland despite the fact that his house is.

Ms. Pelletier advised that although we are not answering property-specific questions, generally speaking, there are some cases in the Shoreland Zone for people that have oversize lots. If the Accessory Dwelling Unit itself is in the shoreland portion, you need to meet the frontage and land area requirements. If you are an individual and your lot is big enough that you can meet all the standard and have that ADU outside of that Shoreland Zoning area, then it would not apply. She added that she went back and forth with DEP on the language. The guidance from the state and DEP are that no amendments are required to Shoreland Zoning. They already interpret an ADU as an accessory structure under the table of land uses. They already consider that you need to meet any applicable standards including the shore frontage and the lot area which is why we just tried to add that section to 532. The biggest change for the Shoreland property is the removal of the municipal requirement for the water and sewer connection and the separation from the main dwelling. She is happy to have property specific questions. She knows some people had questions tonight. If they can’t answer them, they can reach out to them. She encouraged them to come do that between now and when it goes to Council, if it goes forward tonight which she expects to be sometime in January. Kirk asked if he could get that in writing so he would know for certain that he is all set? Ms. Pelletier noted she would be happy to set up a time with him and go over it. If a clarification is needed, they are happy to meet with individuals and go through site specific situations and if an amendment needs to be brought forward to the Council, we can do that.

No other comments were provided.

**MOVED AND SECONDED:** To close the Public Hearing. (Rouda & Speirs) **VOTE:** (6 Ayes) (1 Excused; Myles) (0 Nays)

Chair Kapala asked Ms. Pelletier to collate the Board’s suggested changes today. It is 7:40 p.m. Ms. Pelletier mentioned that if the Board is going to make a motion tonight on what is in front of you, she thinks the Board

can simply clarify as amended at the meeting. There are a couple of other typos that came up. On page 42 in Section 202.B.2 striking the word Zoning in the Zoning Ordinance. On page 63 under F.2 multi-family developments should be changed to multi-family dwellings. On page 67 F.2 at the top, multi-family development should be changed to multi-family dwellings. The other pages that Mr. Jortner referenced did not have the inconsistency of terminology so further amendment was not required there. Under Accessory Dwelling Units, the first paragraph about half way down it should read, these standards are intended to allow one ADU so that is keeping the word allow. Under 532.1 to reflect the intent of the Planning Board that in no case would allow an ADU to have more than three units on it. That sentence would be slightly amended to read, no more than one ADU may be created on any lot containing (insert either 1 or strike more and change it to 2) existing or proposed single-family dwellings. Before duplex we want to add a little No. 2 or one duplex dwelling and dwelling should be singular. On Page 210, 7.A the gross floor area of an ADU we are striking *no more than* and changing it to *the lesser of*. Under A.3 adding a period under area and striking whatever is less. On Page 211 there is notice of an incorrect cross reference. On Page 211, No. 10 the second part of the sentence where it references Section 201 referencing back to the potable water standards Mr. Schwanda mentioned earlier. It should be 202.M.2. Those are the changes Ms. Pelletier had. She did not have any changes to the Subdivision Ordinance or the Shoreland Zoning Ordinance noted tonight. Mr. Rouda asked if that reading will serve as the amended at the meeting and read by Town Planner, Caroline Pelletier at 7:41 p.m.

Ms. Pelletier advised that if the Board takes action on this to recommend it, on the version that comes out of the Planning Board we switched the title to **As recommended by the Planning Board** and it will have these changes incorporated into it. We will continue to do another review. If there are other typos and someone is reading this for fun and they know some, we can make non-substantive changes between now and Council.

Mr. Arsenault mentioned that some of the numbers aren't right in the Table of Content. Ms. Pelletier advised that track changes messes up so it will be corrected. Chair Kapala called for a motion to recommend this to the Council and find it consistent with the Comprehensive Plan. It is quite clear that the guidance focuses on housing. We would need to reference the changes as amended at the meeting and read by Caroline and also reference the Comprehensive Plan and the ways in which these recommendations are consistent.

#### **ITEM I: PUBLIC HEARING – Proposed Amendments to Chapter 21 Freeport Zoning Ordinance**

**BE IT ORDERED:** that the Freeport Planning Board recommends that the Freeport Town Council adopt the proposed amendments to the Town of Freeport Zoning Ordinance pertaining to the implementation of the State of Maine's LD 2003 (Public Law 2021, chapter 672) requirements and pertaining to reducing barriers to the development of Accessory Dwelling Units, and additional non-substantive language clean-up and amendments made and read at this meeting.

The Board finds that the proposed amendments are in general harmony with the Comprehensive Plan and consistent with the Plan's Vision that Freeport allow a variety of neighborhoods and housing types at a variety of prices ensuring that workers in Freeport can afford to live in Freeport. (Rouda & Burwell) **VOTE:** (6 Ayes) (1 Excused: Myles) (0 Nays)

#### **ITEM II: PUBLIC HEARING – Proposed Amendments to Chapter 25 Freeport Subdivision Ordinance**

**BE IT ORDERED:** that the Freeport Planning Board recommends that the Freeport Town Council adopt the proposed amendments to the Subdivision Ordinance pertaining to the

implementation of the State of Maine's LD 2003 – Public Law 2021, chapter 672 requirements and pertaining to the implementation of the State's subdivision approval requirements under Maine revised Statute title 30-A subsection 4404, and additional non-substantial language clean-up.

The Board finds that the proposed amendments are in general harmony with the Comprehensive Plan and consistent with the Plan's Vision of Freeport allowing a variety of neighborhoods and housing types at a variety of prices protecting natural and historic resources ensuring that workers in Freeport can afford to live in Freeport. (Burwell & Spiers) **VOTE:** (6 Ayes) (1 Excused: Myles) (0 Nays)

### **ITEM III: PUBLIC HEARING – Proposed Amendments to Chapter 65 Freeport Shoreland Zoning Ordinance**

**BE IT ORDERED:** that the Freeport Planning Board recommends the Freeport Town Council adopt the proposed amendments to the Shoreland Zoning Ordinance pertaining to the implementation of the State of Maine's LD 2003 – Public Law 2021, chapter 672 requirements in keeping consistency with the proposed amendments in the Freeport Zoning Ordinance.

The Board finds that the proposed amendments are in general harmony with the Comprehensive Plan and consistent with the Plan's Vision that Freeport allow a variety of neighborhoods and housing types at a variety of prices ensuring that workers of Freeport can afford to live in Freeport and protect natural resources. (Speirs & Arsenault) **VOTE:** (6 Ayes) (1 Excused: Myles) (0 Nays)

**ITEM IV:** Persons wishing to address the Board on non-agenda items.

John Schwanda noted he is a land surveyor and he has been dealing with the definitions of high water for nearly 40 years and he would like the Board to review the various definitions we have, some of which are conflicting within themselves and confusing. One of his biggest pet peeves is when an ordinance takes a phrase such as normal high water which historically has always been mean high water and give it a definition that is different than that. Typically, spring high tide or something to that effect and he would love to see one definition. He looked at all these ordinances as he was looking at this ADU stuff and just finding the problems and in between and how many times you have to jump from one ordinance to another to get a definition. He was particularly looking at the definition for shore frontage which uses the phrase shoreline in the Zoning Ordinance, Page 20 and the Shoreland Ordinance on page 8. The problem is he can't find where he found the definition of shoreline. He is working with a particular project and he is trying to figure if the shoreline is what he always thought it used to be which was mean high water which is really a legal term. Most ordinances have gotten away from that and use something like spring high tide, that is the most common, easily-definable term but that makes a big difference. In some places it could 20, 30 or 40 feet horizontally and in some cases, it is 2 feet if there is a steep bank. He was in an area this week where there was a huge shoreland grassed area that went in probably 40 or 50 feet from the normal high water and he is trying to figure out how

does he mention the shoreline or what is the shoreline? He doesn't have any answers but he would like the Board to take a look at that. There is one thing in here where there is a definition that says normal high water or. He feels there should not be an or. It should be one definition and from a zoning standpoint he understands that typically highest annual tide or spring high tide, whatever you want to call it is the standard nowadays. You don't want to have a setback from mean high water that could mean 20, 30 or 40 feet away from spring high tide. You still have a section in here that calls for 4.9 elevation which is essentially mean high water but then it says in the same paragraph 7.2 which is the elevation of spring high tide. He thought that went out of the ordinance 20 years ago. 20 years ago, nobody ever talked about spring high tide and there was a thing in the ordinance that said if it is difficult to determine where the high-water line, use the elevation. As a surveyor, elevation is the easiest thing. He can do elevations any day. He can't determine shoreland vegetation. That is not his expertise but he can always determine spring high tide. The other thing that is confusing in here is in the Subdivision Ordinance where it talks about high water mark for elevation on Page 10. It says normal high water tidal, the shoreline elevation at which vegetation changes from predominantly aquatic to predominantly terrestrial, that definition is typically what is termed as highest annual tide because upland vegetation cannot survive two or three inundations a year. In the case where it is difficult or impossible to determine, who decides if it is difficult? 20 years ago, he had a homeowner say it is difficult, use 4.9. 4.9 often times puts you way further out than you should be and that particular case that he remembers, they probably could never have built at all but they used 4.9 because it was an option. That talks about the 4.9 which is mean high water where in every other definition it has been eliminated and turned into something like spring high tide. The DEP has an on-line map where you can pick a spot and it will tell you the elevation of the highest annual tide. He does not know how they update it but our ordinance talks about using NOA and NOA does their own predictions but it might make more sense to do what most other towns are doing using the DEP thing. It is a lot easier for people to access that and it is our own people. He would be interested in having the Board put this on an agenda. He does not know how Nick deals with this. He scratches his head and he has been doing this for 40 years. Every time he reads a different ordinance, he comes away more confused as to what really is the definition. For different uses we have different definitions and that is probably not the best way to go. He thanked the Board.

Ms. Smith asked Mr. Schwanda to send her an e-mail. She feels it will be interesting to talk to the Codes Officer about his concerns. Ms. Pelletier advised that the Zoning Ordinance and the Shoreland Zoning Ordinance should mirror each other and should mirror DEP. The Subdivision Ordinance may have gotten missed and was not around for clean up. She would love to have Mr. Schwanda's notes. Zoning and Shoreland were reviewed and approved by Staff fairly recently. He can get them off the town's website. Mr. Schwanda mentioned that he loves the fact that in some of your definitions they say go to the Zoning Ordinance for the definition rather than repeating it. Chair Kapala noted it is a process for sure and it is always the most fun part.

**ITEM V:** Adjourn

**MOVED AND SECONDED:** To adjourn at 7:59 p.m. (Arsenault & Jortner) **VOTE:** (6 Ayes) (1 Excused: Myles) (0 Nays)

Recorded by Sharon Coffin