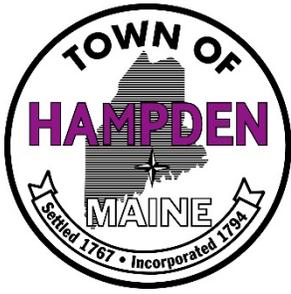


Town of Hampden
Planning Board Ordinance Committee
Tuesday February 28, 2017, 6:30 pm
Municipal Building Conference Room
Agenda

1. Zoning Ordinance Amendment – Accessory Apartments
2. Zoning Ordinance Amendment – Flexibility in Parking, Bufferyard, and Signage
3. Zoning Ordinance Amendment – Amendment Process
3. Adjournment



Town of Hampden
Planning Board Ordinance Committee
Tuesday February 6, 2017, 6:00 pm
Municipal Building Conference Room

Minutes

In Attendance:

Planning Board

Michael Avery*
Eugene Weldon*
Kelley Wiltbank

Staff & Others

Karen Cullen, AICP, Town Planner

* on Ordinance Committee

Chairman Avery called the meeting to order at 6:08 pm.

1. Zoning Ordinance Amendment – Home Occupations

Discussion of the modifications to the previous draft (version 3) as discussed and decided at the previous OC meeting. Other than missing one change from the last meeting, regarding signage for home businesses, the modifications in version 4 were as previously discussed. The committee made two additional changes to the draft:

- In §4.10.4.7, changed to allow the Planning Board (which is the permit granting authority for these cases) to set a condition for customary home occupations or home based contractors to allow the permit to be granted to the property (run with the land). Home businesses will always be granted to the owner or applicant (i.e. there is no option to run with the land). This change was made because the OC felt there would never be a home business where running with the property would be appropriate – modifications to the property for the business would not occur. Businesses where there is modification to the property are more likely going to be in the other two categories, e.g. beauty salon.
- In §4.10.6.4, strike the phrase “auto trips by” and make “customer” plural. What this does is to allow ten customers or clients to come to the property in any given day, whereas limiting by auto trips limits it to five customers or clients (each “auto trip” is one-way, so each customer would take up two auto trips).

In the amendments to other sections of the zoning ordinance, the committee discussed each proposed amendment and modified two:

- In §4.1.9.1, added Home Based Contractor to the title, to make it clear that applications for either Customary Home Occupations or Home Based Contractors would be required to prepare and submit a site sketch with their

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application for the Conditional Use Permit (which is done through the site plan review process).

- In §4.8.6.6, Add, in italics, “Use of a Residence for Business Purposes” to the beginning (to be consistent with the other paragraphs of that section), and add to the end: “Signs are not permitted for Home Businesses.” This clarifies that the intent of the committee is to not allow signs for home businesses, based on the premise that such use of a residence for business purposes is basically invisible.

Motion by Eugene Weldon to refer the proposed amendments to the Zoning Ordinance related to the use of a residence for business purposes to the Planning Board with a recommendation “ought to pass” with the modifications discussed tonight. Second by Kelley Wiltbank, so voted 3/0/0.

Planner Cullen mentioned there are two additional amendments that the Planning & Development Committee has considered and referred to Council for referral to the Planning Board, one on accessory apartments and the other on providing a means for flexibility in the parking, bufferyards, and signage requirements. Discussion on scheduling and grouping amendments for public hearing purposes, in an effort to reduce notice publication costs.

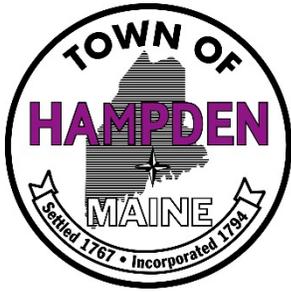
The meeting was adjourned at 7:24 pm.

Respectfully submitted by Karen Cullen, Town Planner

Materials reviewed at the meeting:

- Draft language for home occupations, version 4

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Town of Hampden
Land & Building Services

Memorandum

To: Planning Board
From: Karen M. Cullen, AICP, Town Planner *KMC*
Date: February 8, 2017
RE: Amendments to Zoning Ordinance regarding Accessory Apartments and Flexibility in Site Design Standards

The Planning & Development Committee have discussed the following proposed amendments to the zoning ordinance, and referred them to Town Council on February 2, 2017. Town Council voted to refer them to the Planning Board for review and public hearing on February 6, 2017. Under §1.5.2.1 of the zoning ordinance, the deadline for returning these proposed amendments to Town Council is Thursday March 23 (technically it is Saturday March 25, but falling on a weekend I have gone back to the first day the town offices are open for the realistic deadline). As a practical matter, as long as there is progress (e.g. hearing date set) by the deadline, Town Council is likely to wait for the referral from the Planning Board. And the legal reality is that the Planning Board is required by law to hold a public hearing; I have no idea what happens if Council were to adopt an amendment without that having taken place. At any rate, I'd like to schedule an Ordinance Committee meeting as soon as possible. If we can do it next week (Feb 13, 14, 15, or 16) then we can hold the public hearings on these amendments at the same time as we do the one for home occupations (March 8th, regular PB meeting).

Accessory apartments:

Currently, accessory apartments are treated the same as a two family dwelling in the Zoning Ordinance. In all but the Residential A district they are not limited in size or appearance. In the Res A district they are only allowed as conversions of existing single family dwellings, although there is nothing to prevent someone from first building a single family house and then immediately applying for a conversion to a two family, which could be perfectly legitimate, e.g. parent needs a home. These conversions, based on the requirements of §3.7.6.2, 3.7.6.3, and 3.7.6.4, are essentially what is commonly referred to as an accessory apartment – subordinate to the main home and avoidance of the appearance of a two family structure. Staff recommendation is to delete those sections from the Res A provisions and add a new section (4.25) to establish clear permitting and performance standards for accessory apartments.

Note that “accessory apartments” are not a primary use and should not be included in the listing of permitted uses (or the future Use Table) as a primary use. When the ordinance is amended to add the Use Table, it is anticipated that a section of the table will list accessory uses.

Flexibility in site design standards:

Currently there is no opportunity for flexibility in off-street parking, drive-thru design, bufferyard, or signage requirements. The zoning ordinance limits variances to requirements for height, lot size, frontage, setbacks, lot coverage, size of structures, or size of yards or open spaces, thus an applicant cannot request a variance to anything else, including parking or signage requirements. These amendments would provide some flexibility when the requirements in the ordinance cause hardship.

Amend §3.7.4, Conditional Uses by deleting “two family dwelling” from the list.

- 3.7.4. Conditional Uses (Subject to Site Plan Review where applicable) - Church, nursing home, non-profit school, public schools, community building, government structure or use except storage or repair facility, ~~two family dwelling~~, congregate care facility, buildings necessary for essential services. Animals other than usual pets provided the premises consists of at least 2 1/2 acres, and animals shall be kept a minimum of 50 feet from any property line. (Amended: 8-22-94, 1-21-97)

Amend §3.7.6, Special District Regulation, by deleting sections 2, 3, 4, and 5.

- ~~2. Only existing single family dwellings may be converted to a two family dwelling through addition or division. This provision prohibits construction of new two family dwellings or complexes. Where a two family dwelling conversion is proposed the second dwelling unit shall be subordinate to the first or primary dwelling unit. The size of the primary dwelling unit shall not be regulated by this standard. The finished floor area of the subordinate dwelling unit shall be at least 500 sq. ft. so that all subordinate dwelling units constructed under this provision shall be adequate in size. For properties in which the finished floor area of the primary dwelling unit exceeds 1,000 sq. ft., the finished floor area of the subordinate dwelling unit shall not exceed 50 percent of the finished floor area of the primary dwelling unit. (Amended: 06-21-04)~~
- ~~3. Where a two family dwelling conversion is proposed the Planning Board shall determine that design features that distinguish two family dwellings from single family dwellings are avoided. Such designs may prohibit separate driveways, separate front door entrances, broken facades and other such distinguishing characteristics that call attention to the two family use of the building and site development. The Board shall encourage creative use of common driveways, side door entrances, and traditional single family architectural elements. (Amended: 06-21-04)~~
- ~~4. Where a two family dwelling conversion is proposed the Planning Board shall require a report from the Code Enforcement Officer making a determination that the proposed conversion meets applicable building codes and that the conversion is designed in such a way that the structure could easily be returned to a single family dwelling, and detailing what building alterations are required to do so. (Amended: 06-21-04)~~
- ~~5. In addition to the minimum lot area requirements found in 3.7.5. two family dwellings shall provide an additional 10,000 square feet in lot area.~~

Add to §7.2, Definitions:

Accessory Apartment: A separate housekeeping unit, complete with its own sleeping facilities, kitchen and sanitary facilities, that is contained within the structure of a single family dwelling or within a detached accessory structure on the same parcel as the main dwelling.

Proposed new section 4.25 [note, entire section will be underlined in final; left plain for readability]

- 4.25 Accessory Apartments. Notwithstanding the minimum lot size requirements of this Zoning Ordinance, construction of an accessory apartment is allowed upon the granting of a Conditional Use Permit either within or attached to a new or existing detached single-family dwelling subject to the requirements below:

4.25.1 The purpose of the Accessory Apartment section is to:

- 4.25.1.1 Provide homeowners with a means of providing relatives with housing, enabling the homeowner to provide care and companionship in a private home setting;
- 4.25.1.2 Provide homeowners with a means of obtaining, through tenants in accessory apartments, rental income, companionship, security, and services, and thereby to enable them to stay more comfortably in homes and neighborhoods they might otherwise be forced to leave;
- 4.25.1.3 Add inexpensive rental units to the housing stock to meet the needs of smaller households, both young and old; and
- 4.25.1.4 Protect stability, property values, and the residential character of a neighborhood by ensuring that accessory apartments are installed only in owner-occupied houses and under such additional conditions as may be appropriate to further the purposes of this ordinance.

4.25.2 Accessory Apartment Standards. The following standards must be met for a Conditional Use Permit to be granted:

- 4.25.2.1 Only one accessory apartment may be created within a single-family dwelling.
- 4.25.2.2 The owner(s) of the residence in which the accessory apartment is located must occupy at least one of the dwelling units on the premises.
- 4.25.2.3 The accessory apartment shall be clearly a subordinate part of the single family dwelling, designed so that the appearance of the building remains that of a single family residence. Where feasible, any new entrances should be located on the side or rear of the building.
- 4.25.2.4 An accessory apartment shall occupy no more than 40 percent of the living area of the structure and shall be no greater than 800 square feet nor have more than one bedroom. An addition to the original building is permitted provided that the addition is designed in such a manner as to retain the appearance of the building as a single family dwelling.
- 4.25.2.5 In order to provide for the development of housing units for disabled and handicapped individuals, the Planning Board will allow reasonable deviation from these limits to allow installation of features that facilitate access and mobility for the occupants in cases where an accessory apartment is designed or remodeled for such individuals.
- 4.25.2.6 There shall be at least one dedicated off-street parking space provided for the accessory apartment, and to the extent feasible it shall be located to the side or the rear of the structure.

Amend §4.7 Off-Street Parking, Loading, Drive-Thru Design and Bufferyard Requirements

4.7.1 Parking Basic Requirement - No use of premises shall be authorized or extended, and no building or structure shall be constructed or enlarged, unless there is provided for such extension, construction or enlargement, off-street parking spaces in accordance with the following parking requirements. No required parking space shall serve more than one use, unless approved under §4.7.1.7. Parking areas with more than five (5) parking spaces shall be so arranged that vehicles can be turned around within such area and are prevented from backing into the street.

4.7.1.5.5 Parking lots to serve newly constructed structures or additions shall be a level, uniform, dust free surface constructed of concrete, bituminous asphalt, brick or pavers, or other similar material. Parking lots to serve pre-existing (as of the date of adoption) structures, including new or expanded uses within said structures, may be constructed of alternate materials such as hard packed dirt or gravel upon a finding by the Code Enforcement Officer that this method of construction will not affect public safety and is otherwise in compliance with the provisions of this Ordinance.

4.7.1.7 Shared Parking. Within the Village Commercial or Village Commercial II districts, abutting properties may share off-street parking spaces provided both owners sign a cross-access/shared parking agreement and the permit granting authority finds there will be no detrimental impact on abutting properties not involved in the shared parking agreement and no projected increase in on-street parking in the immediate area of the subject properties.

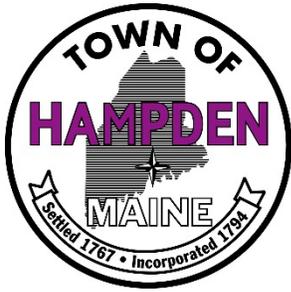
4.7.5 Waiver. Any of the requirements set forth in sections 4.7.1 (except Section 4.7.1.6 Handicapped Parking which cannot be waived), 4.7.2, or 4.7.4 may be reduced upon the granting of a waiver by the permit granting authority. The applicant shall submit all waiver requests in writing and shall provide sufficient evidence to assure the permit granting authority that there will be no detrimental impact on any abutters or the general public if the waiver is granted.

Correct ordinance cross-reference in §7.2 Definitions:

Parking space: An area exclusive of drives, aisles or entrances, fully accessible for the storage or parking of vehicles designed in accordance with the standards contained in Article 4.7:5 of this Ordinance.

Amend §4.8, Signs by adding a new section to allow flexibility in the standards:

4.8.11 Waiver. Any of the requirements set forth in §4.8.1, 4.8.2, 4.8.3, 4.8.5, 4.8.7, or 4.8.8 may be reduced upon the granting of a waiver by the Code Enforcement Officer, provided no deviation exceeds ten percent. For waiver requests with a deviation exceeding ten percent of the requirement, the Planning Board shall be the waiver granting authority. The applicant shall provide sufficient evidence with the request for the waiver to assure the waiver granting authority that there will be no detrimental impact on any abutters or the general public if the waiver is granted.



Town of Hampden
Land & Building Services

Memorandum

To: Planning Board
From: Karen M. Cullen, AICP, Town Planner *KMC*
Date: February 22, 2017
RE: Amendments to Zoning Ordinance regarding the Amendment Process (Article 1)

At the request of the Ordinance Committee, I have drafted the attached amendments to Article 1, General Administration, specifically to deal with the amendment process. While the initial request was to change the 45 day time period for the Planning Board to forward their recommendation on amendments, I took the opportunity to rework the entire section on amendments. The goal is to make the section clear, concise, and in compliance with state law.

I have attached two versions of this draft amendment, one showing the markups from existing and one that is clean. The latter is much easier to read, while the former shows you what the changes are. A few specific comments I want to make:

- Under 1.4, conflict with other ordinances, I have deleted the second paragraph which I suspect dates back to the original adoption of the zoning ordinance, and which makes no sense. If there were a new ordinance adopted at this point which is in conflict with the zoning ordinance, it should not be automatically repealed. The first paragraph of this section (which remains unchanged) provides for conflict situations and calls for the Zoning Ordinance to prevail where it is more restrictive.
- I have reorganized the sections dealing with text and map amendments to avoid duplication (thus have deleted the majority of the paragraph under 1.5.2) and to cover the three different scenarios of map amendment initiation (owner, petition, and town).
- I have split out the process language into a new section.
- I have changed references to the code enforcement officer to the planning office, since the CEO is not the person who handles these applications.
- I have corrected the public hearing notification language to be consistent with state law.
- I've changed the 45 day timeframe to 90 days, and added a new timeframe – 14 days after the completion of the planning board's public hearing – to account for amendments that are not initiated by the town council.
- I've removed reference to the town council's public hearing, as that is something in the charter that may be eliminated. State law requires that the planning board hold a public hearing, and it is redundant to also hold one at the town council level. Council always has the option to hold a public hearing if they believe it is necessary.
- I have deleted 1.6, effective date, as it refers to the original adoption of the zoning ordinance and means nothing at this point. If anything, it confuses people since it refers to

a referendum vote which could cause people to think such a vote is required to make an amendment effective.

This proposed amendment is on the agenda for the ordinance committee meeting for February 28, since it was requested by the OC. My assumption is that once the OC has completed their review and any revisions to it, it will go to the Planning Board and the Planning & Development Committee prior to the public hearing. The PB would consider it at the March 8 meeting, and the P&D would consider it at their March 15 meeting. Assuming it is moved forward, that would put it on for public hearing on April 12, along with the amendments for accessory apartments and flexibility in design standards. Assuming no changes are made that would delay it moving forward from there, all three proposed amendments would go to TC April 17, with their public hearing May 1. Assuming the TC adopts them, they would become effective May 31.

ARTICLE 1 - GENERAL ADMINISTRATION

1.1 Title and Purpose

This Ordinance shall be known and may be cited as the "Zoning Ordinance of the Town of Hampden, Maine" and will be referred to herein as this "Ordinance". It is enacted by the inhabitants by dividing the Town into zones and regulating the use and construction of buildings and premises with a view to encourage the most appropriate use of land in the Town of Hampden, Maine.

1.2. Basic Requirement

All buildings or structures hereinafter erected, reconstructed, altered, enlarged, or moved, and all uses of premises in the Town of Hampden shall be in conformity with the provisions of this Ordinance. No building, structure, land or water area shall be used for any purpose or in any manner except as permitted within the district in which such building, structure, land, or water area is located.

1.3. Severability

Should any section of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

1.4. Conflict with other Ordinances

This Ordinance shall in no way impair or remove the necessity of compliance with any other rule, regulation, by-law, permit or provision of law. Where this Ordinance imposes a greater restriction upon the use of the land, buildings, or structures, the provisions of this ordinance shall prevail.

~~All ordinances or parts of ordinances now existing which are in conflict with the provisions or intent of this Ordinance are hereby repealed.~~

1.5. Amendment

1.5.1. *Initiation of Amendment* - An amendment to this Ordinance may be initiated by:

1. The planning board, provided a majority of the board has so voted;
2. Request of the town council to the planning board;
3. Written petition of ten (10) percent of the registered voters of the town; or
4. Written application from the property owner seeking a change of the zoning classification for the owner's property, or any portion thereof (i.e. a map amendment). Any person or entity with a legally binding interest in or to said property may make such an application, provided such person or entity submits satisfactory evidence of such interest and written documentation from the property owner authorizing such person or entity to make application for the change of zoning classification.

1.5.2. Proposed Text Amendments

~~1. Text Amendments—Any proposed amendment to the text of this Ordinance that has not been initiated by the planning board shall be referred to the planning board for its review and recommendation. The planning board shall make a recommendation of approval or denial for any proposed text amendment, and may make a recommendation of approval with proposed modifications for any proposed text amendment. Such recommendation(s) shall be returned to the council within forty-five (45) days after the next regularly scheduled meeting of the Planning Board following the date of referral of the proposed amendment to the board. Failure of the board to make a recommendation within the allotted time shall constitute a recommendation of denial for the purpose of this Ordinance.~~

2-1.5.3 Zoning District Amendments (Map Amendments)

- ~~e~~1. Owner Initiated: The owner of a property seeking a change in the zoning classification of his/her property. Any proposed amendment to the zoning classification of property initiated under (see Article 1.5.1(4)) shall be processed by the completion and filing of a form for such purposes file a zoning map amendment application with the code enforcement officer, together with payment in accordance with the Town of Hampden Fees Ordinance, with the planning office. (Amended: 11-17-03)
2. Petition Initiated: The person or entity who initiated a petition to amend the zoning classification of any property or group of properties shall be responsible for filing a zoning map amendment application, together with payment in accordance with the Town of Hampden Fees Ordinance, with the planning office.
3. Town Initiated: When a map amendment is initiated by the planning board, the board shall forward a memorandum fully describing the proposed amendment to the town council for information purposes only, prior to holding the public hearing. When a map amendment is initiated by the town council, the council shall refer the proposed amendment to the planning board for a public hearing as required by statute.

1.5.4 Process:

1. Public Hearing: b.—Upon receipt of such form and fees, the Code enforcement officer shall take all necessary action to an application, memorandum, or referral, the planning office shall schedule a public hearing to be conducted by the Planning Board on the request proposed map amendment. The planning board shall hold a public hearing within sixty (60) days of receipt of such application and fees by the code enforcement officer.

Notice Requirements:—Prior to said public hearing, and in accordance with the requirements of this Ordinance and the laws of the State of Maine, notice of said hearing shall be given.—Said The notice shall include, but not be limited to, the following information:

- i) Dthe date, time and place of the said hearing, a short description and, for proposed map amendments, a

~~2. ii) A summary map of the proposed zone change showing the boundaries of the current and proposed zoning districts, and the location where the proposed amendment can be viewed.~~

~~—Publishing Requirements:~~

~~a. Said notice shall be published twice in a daily newspaper of general circulation in the Town of Hampden, the first at least twelve (12) days and the second at least seven (7) days in advance of said hearing.~~

~~b. Posting Requirements: Said notice shall be posted in the Town Offices at least thirteen (13) days prior to the hearing.~~

~~—Abutter Notification Requirements: For proposed map amendments, in a daily newspaper of general circulation in the Town of Hampden and said notice shall be sent by U.S. Mail to all persons initiating the proposed zone change map amendment, and to all persons owning property within the boundaries of the proposed map amendment, and to all persons owning abutting property and/or within three hundred (300') feet of the exterior boundaries of the real estate to be area affected by said the proposed zone change.~~

~~c. For purposes of the notices required under this section, the owners of property shall be considered to be those against whom taxes were assessed on the prior April 1. Failure of any person owning property within said three hundred (300') feet to receive notices provided herein shall not necessitate another hearing or invalidate any action by the planning board or the town council.~~

~~e3. Planning Board Recommendation: The planning board shall make a recommendation of approval or denial for any proposed zone change amendment, and may make a recommendation of approval with proposed modifications for any proposed zone change amendment. To constitute planning board approval of such a proposed amendment, the amendment and any proposed modifications thereto must receive at least four (4) affirmative votes from the board. In all cases, the planning board shall forward their recommendation to the town council; this shall be done within 14 days of the completion of the public hearing and, when the proposed amendment was referred to the planning board from town council, within ninety (90) days of the date of said referral. Such recommendation(s) shall be returned to the council in writing within forty-five (45) days of the public hearing. Failure of the board to make a recommendation within the allotted time shall constitute a recommendation of denial for the purposes of this Ordinance.~~

~~d. After receipt of the planning board's recommendation, or after expiration of the time allotted for such recommendation, the town council shall hold a public hearing on the proposed amendment within sixty (60) days. Notice of said hearing shall be given as provided in Article 1.5.2(2)(b).~~

~~e. Any proposed amendment to the zoning classification of property initiated pursuant to Article 1.5.1(1) – (3) shall be processed in accordance with Article 1.5.2(2)(b) – (d).~~

~~1.5.35. Adoption of Amendment~~

- ~~1. Text Ordinance~~ amendments not involving the zoning classification of property may be adopted by a majority vote of the town council members present and voting, if the amendment is recommended by the planning board, or by a two-thirds majority vote of the town council members present and voting, if the amendment is not recommended by the planning board.
- ~~2. Ordinance Map~~ amendments involving the zoning classification of property may be adopted by a vote of five (5) town council members present and voting, if the amendment is recommended by the planning board, or by a vote of six (6) town council members present and voting, if the amendment is not recommended by the planning board.

~~43. Amendments adopted by the town council shall become effective thirty (30) days after the date of adoption. (Amended: 5-5-86, 3-2-87, 4-6-87, 2-4-91)~~

- ~~43.~~ The Department of Environmental Protection shall be notified by the municipal clerk of zone changes (map amendments) in shoreland areas impacted by the ~~or amendments to Shoreland Regulations Zoning Ordinance~~ within thirty (30) days of the effective date of such amendments.

~~4. Amendments adopted by the town council shall become effective thirty (30) days after the date of adoption. (Amended: 5-5-86, 3-2-87, 4-6-87, 2-4-91)~~

~~**1.6. Effective Date** – The effective date of the ordinance shall be thirty (30) days after it is adopted by referendum vote of the town.~~