

Town of Hampden

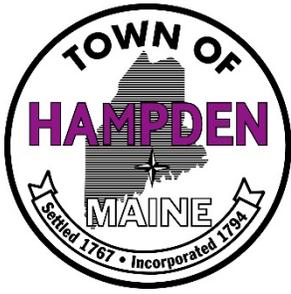
Planning Board

Wednesday March 8, 2017, 7:00 pm

Municipal Building Council Chambers

## Agenda

1. Administrative
  - a. Minutes – February 8, 2017
2. Old Business – None
3. New Business
  - a. Public Hearing: Proposed Zoning Ordinance Amendment to Sections 3.4.2, 3.5.2, 3.6.2, 3.7.3, 3.8.3, 3.9.2, 3.13.2, 3.14.3, 4.1.9.1, 4.2.3.9, 4.8.1, 4.8.3.6, 4.8.3.7, 4.8.6, 4.10, and 7.2, all related to the use of a residence for business purposes (home occupations).
  - b. Zoning Amendments – Report from the Ordinance Committee on:
    - i. Accessory Apartments
    - ii. Flexibility in Parking, Bufferyard, and Signage Standards
    - iii. Article 1, General Administration
4. Planning Board Comments
5. Adjournment



Town of Hampden

Planning Board

Wednesday February 8, 2017, 7:00 pm

Municipal Building Council Chambers

## Minutes

In Attendance:

Planning Board

Eugene Weldon, Chair  
Kelley Wiltbank  
Michael Avery  
Peter Weatherbee

Staff & Others

Karen Cullen, AICP, Town Planner

Jim Kiser, for Coral Reef Realty Trust  
Toni Philbrick (Keeping Room)  
Brad Rand (Subway)  
Tom Dorrity

Chairman Weldon called the meeting to order at 7:00 pm.

1. Administrative
  - a. Minutes of December 14, 2016 meeting: Motion by Member Weatherbee to approve as submitted; second by Member Wiltbank, carried 4/0/0.
  - b. Minutes of January 11, 2017 meeting: Motion by Member Weatherbee to approve as submitted; second by Member Wiltbank, carried 4/0/0.
2. Old Business: none.
3. a. Public Hearing: Site plan review application for Coral Reef Realty Trust for a 2800 square foot addition to the Hannibal Hamlin Place shopping center on Main Road North.

Chairman Weldon read the hearing notice into the record and confirmed with Planner Cullen that the proper notice for the hearing had been given. He then opened the public hearing at 7:01 pm.

Jim Kiser presented the application for the owner, Coral Reef Realty Trust. The following is a summary of his presentation:

- The proposal is to build a 2,800 square foot addition to the building on the site formerly occupied by a dilapidated house which was torn down shortly after Coral Reef purchased the property. The site is south of the current shopping center.
- There will be two parking areas, one in front of the new addition with five spaces (one ADA) and the other in back of the addition, with 21 spaces. The latter is accessible from the back of the site, around the buildings.
- MDOT has said the direct access in front of the building where the bank and insurance agency is needs to be closed off.

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- The proposal (revisions shown tonight) includes a five foot wide sidewalk with six inch curbs on both sides, as an extension of the existing sidewalk from the south. The existing parking spaces in front of the bank/insurance building will remain.
- Traffic through this area and the new parking lot in front of the addition will be one way from north to south (exiting from the new curb cut).
- There will be 21 to 22 feet between the parking spaces (designed at 90 degree) and the sidewalk.
- If they use angled parking, the existing parking would be reduced from 5 to 4 spaces (in front of the bank/insurance building).
- The new addition will have access into the building from both the front and the rear; it could be built to accommodate either one or two tenants.
- At present, there are no tenants for the space.

Chairman Weldon asked if anyone else wished to speak on the application. Toni Philbrick, owner of the Keeping Room (adjacent to the proposed addition, in the bank/insurance building) spoke:

- She believes angled parking would be safer and better in front of the existing building.
- She is happy to see the catch basin will be replaced and will no longer be lower than the pavement (currently it is in a hole).

Board members had questions; points of discussion included:

- The back parking lot is meant to be for employees of all of the tenants, leaving the more obvious spaces in front of the buildings for patrons.
- There is no connection (driveway) from the back parking lot to the new exit around the south side of the building.
- A new catch basin will be installed to catch the runoff.
- The Zoning Ordinance requires a 24 foot wide aisle for 90 degree parking; this area has less than that. However, it was noted that 24 feet is a normal requirement where there is two way traffic, in this case where there is one row of parking and one way traffic, 21 or 22 feet may be sufficient.
- The one-way traffic pattern will be noted through signage and markings on the pavement.

There being no other speakers on the application, Chairman Weldon closed the hearing at 7:20 pm.

Town Planner Cullen reviewed her report on the application. She noted that in the draft Board Order, she could not come up with appropriate language for Finding #4. With the modification to the plan for the parking and one-way traffic in that area, she has drafted the following for that finding: "The proposed project provides for safe on-site circulation for vehicles and pedestrians, given that the sidewalk on Main Road North is being

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extended northerly past the existing building and access to the parking spaces in front of that building and the new addition will be one-way.” The Board noted that made sense.

Discussion on several points ensued:

- Stormwater runoff from the new parking lot in the rear will sheet flow off the site to a wet area on the abutting property. There is no agreement with the property owner for this, however the area is already too wet for development.
- There is runoff flowing from the same abutting property to this site; it will be picked up by a catch basin and will enter the drainage system in Main Road North.
- There is about a ten foot area with a row of trees between the property to the south and this site.
- The abutting property owner, who had been given notice of the hearing, has not contacted the Town to provide any comments.
- Angled parking would lessen the potential for people to exit the wrong direction, or to hit the sidewalk as they backed out of parking spaces in front of the existing building.
- Construction of the building may start in the spring or may be delayed until there is a tenant for the space.
- Construction of the new parking lot to the rear may be done this spring/summer.
- Question whether MDOT would approve the change to angled parking; Mr. Kiser said yes, they’ve been working together to resolve the problem.
- Since the site work is under the threshold for stormwater permitting, there is no requirement for pre- and post analysis.
- Lighting on the site will be limited to porch type lights installed in the ceiling of the doorways; will be downcast.

**Motion** by Member Weatherbee that the application for Coral Reef Realty Trust meets the standards under §4.1 of the Zoning Ordinance, Site Plan Review, and to approve the application and Planning Board Order as amended, including the findings which are detailed in the Order, subject to the following condition:

1. That a plan showing angled parking in front of the existing building with one-way traffic and extension of the sidewalk on Main Road North as presented tonight, be submitted to Town staff for their review and approval.

The motion was seconded by Member Wiltbank; passed by unanimous roll call vote (4/0/0).

- b. Report from the Ordinance Committee on the proposed amendment to the Zoning Ordinance regarding the use of a residence for business purposes: OC Chairman Mike Avery gave a brief report; the committee met twice on these amendments and have agreed on the language as presented. [Note, Planner Cullen handed out the final version of the amendments which will go to public hearing March 8<sup>th</sup> at the Planning Board meeting.]

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4. Town Planner's Report: Two more proposed zoning amendments have been referred from Town Council after the Planning & Development Committee referred them to Council. One is on accessory apartments and the other is to provide flexibility to the design standards for parking, bufferyards, and signage. Discussion on the 45 day deadline given in Section 1.5.2.1 of the ordinance; it is not sufficient time for review and hearing by the Planning Board.

Motion by Member Wiltbank to refer these two proposed zoning ordinance amendments – accessory apartments and flexibility in design standards – to the Ordinance Committee for review; seconded by Member Avery; motion carried 4/0/0.

Motion by Member Avery to instruct the Ordinance Committee to look into changing the 45 day deadline in section 1.5.2.1; seconded by Member Weatherbee; motion carried 4/0/0.

Planner Cullen said she will send out an email to find a date for the next OC meeting. She also noted the Board is invited to attend the meeting of the P&D Committee next week, at which out consultant on the market study will be here to give a presentation.

Planner Cullen also introduced Tom Dorrity, who is expected to be appointed as an alternate member of the Planning Board by the Town Council at their meeting on February 21.

5. Planning Board Comments: Discussion regarding the two Planning Board committees. Decision to add this to the agenda for the March meeting.

The meeting was adjourned at 8:03 pm by motion of Member Weatherbee with second by Member Wiltbank; motion carried 4/0/0.

*Respectfully submitted by Karen Cullen, Town Planner*

Materials reviewed or handed out at the meeting:

- Application, Report from Planner Cullen, and draft Planning Board Order, Coral Reef Realty Trust site plan for addition at Hannibal Hamlin Place
- Memo from Planner Cullen regarding proposed zoning amendments for accessory apartments and flexibility in the design standards

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Town of Hampden  
Land & Building Services

Memorandum

To: Planning Board  
From: Karen M. Cullen, AICP, Town Planner *KMC*  
Date: February 27, 2017  
RE: Amendments to Zoning Ordinance – Use of a Residence for Business Purposes

These proposed amendments to the Zoning Ordinance will replace the current §4.10 with new language which creates three categories of businesses that are commonly run from the business owner's home:

1. Home Business – this includes businesses that have no impact on a neighborhood, such as people who telecommute or run small consulting businesses with no clients coming to the site
2. Customary Home Occupation – this includes businesses with a small amount of business related traffic, such as an individual lawyer or a hairdresser with a small number of clients visiting the site (home).
3. Home Based Contractor – this includes people in the construction trades who do their work off-site but run the business from their home and store materials and/or equipment on site.

Each category has a different level of regulation to ensure that they do not have a detrimental impact on the neighborhood. Home businesses do not require Planning Board approval, the other two categories are allowed by conditional use permit in all zoning districts.

In addition to the proposed changes to §4.10, there are related amendments proposed to numerous other sections of the zoning ordinance:

- Since the use of a residence for business purposes is, by definition, an accessory use, each of the sections in Article 3 where “home occupation (subject to Article 4.10)” is proposed to be amended to eliminate that language; each of those sections is listing primary uses of a property and should not have accessory uses mixed in.
- Several housekeeping edits to ensure consistency of the terminology used (“Use of a Residence for Business Purposes” versus “home occupation”).
- Several amendments to address signage for the three categories of such businesses.
- Modifications to the definitions.

The intent of these proposed amendments is to both streamline the process for those businesses that have little or no impact on the neighborhood and to create reasonable requirements for those that have a higher likelihood of creating impacts on abutters and the neighborhood.

Amend §4.10 by replacing the section in its entirety:

**4.10. Home Occupation Permits**—A home occupation permit shall be granted to a person or corporation and is not granted to run with the land nor is the permit transferable to a subsequent owner or renter. Applicants shall demonstrate that they have adequate right, title and interest in a property in order to apply for a home occupation. Where home occupations are expressly prohibited by deed restriction, lease, subdivision covenant and or subdivision plan condition the Planning Board shall find that the applicant lacks adequate right, title or interest to grant a home occupation permit. Application for a home occupation permit shall include a plan in accordance with Article 4.1.9, *Site Sketch*. If new construction is proposed the requirements of Article 4.1., *Site Plan Review* shall be met in addition to the requirements of Article 4.10 *Home Occupation Permits*. All home occupations shall be planned, operated and maintained according to the following standards: ~~(Amended: 03-21-05)~~

**4.10.1. Employees**—A home occupation shall be conducted by a member or members of the immediate family occupying the dwelling unit. There shall be no more than one person employed who does not reside on the premises.

**4.10.2. Incidental and Subordinate**—To insure that the character of the neighborhood is not transformed from one which is primarily residential, the home occupation shall be clearly incidental and subordinate to the use of the dwelling place as a place of residence. The home occupation shall be carried on wholly within the principal residential or accessory structure on the premises. If carried on within the principal residential structure, it shall not occupy more than thirty (30%) percent of the floor area. If the home occupation is carried on within an accessory structure the total floor area dedicated to the home occupation use shall not exceed fifty (50%) percent of the total finished floor area of the principal residential structure. Home occupations shall not utilize outdoor storage or display. ~~(Amended: 02/06/84, 03-21-05)~~

**4.10.3. Appearance and Performance Standards**—In no way shall the appearance of the structure or the premises be altered or the occupation within the residence be conducted such that the structure or premises differs from its residential character by use of colors, materials, premises layout, construction or and a tarpaulin like canvas or vinyl cover do not satisfy the requirements of this section. The proposed home occupation shall not be overtly evident from beyond the property line of the subject premises except for the presence of a sign and customer or client parking. Home occupations shall not cause sound, noise, odors, dust, gas, fumes, smoke, light or other dangerous emissions discernable or detectable from beyond the property line of the subject property. In addition, no home occupation shall be allowed which creates a fire hazard to the premises or neighboring premises or which creates electrical interference such that it causes visual or audible interference in any radio or television receivers off the premises. The applicant shall demonstrate that the proposed home occupation will not interfere with the peaceful use and enjoyment of residential properties located in the area of the proposed use. ~~(Amended: 03-21-05)~~

**4.10.4. Signs and Advertising**—Permitted: one (1) unlighted, unreflective sign no greater than four (4) square feet located on premises only. Off premises Official Business Directional Signs, as defined in 23M.R.S.A. section 1903, are prohibited. Newspaper, radio, T.V. or telephone listing advertising may be used to the extent that Articles 4.10.5 and 4.10.6 are not violated. ~~(Amended: 11-05-90, 03-21-05)~~

**4.10.5. Traffic and Parking**—The proposed site layout shall provide for safe ingress and egress to and from public and private roads by providing adequate sight distances and minimal turning conflicts with roads and driveways. Provision shall be made available for vehicles to turn around on the premises. Off street parking which includes no more than three (3) spaces located in the front yard shall be provided for all expected customer/clients of the home occupation. No home occupation shall be approved or allowed to operate if it generates more than ten (10) auto trips by customer/clients in any one day. ~~(Amended: 03-21-05)~~

~~**4.10.6. Commercial Vehicles**—No commercial vehicles in excess of three-quarter (3/4) ton capacity shall be used by a home occupation for the delivery of materials to and from the premises and no commercial vehicles in excess of three-quarter (3/4) ton capacity shall be parked on or about the premises.~~

~~**4.10.7. Utilities and Public Facilities**—There shall be no use of utilities or community facilities beyond that normal to the use of the property for residential purposes. (Amended: 03-21-05)~~

~~**4.10.8 Additional Conditions Necessary for Approval of Home Occupations.**—If in the judgment of the Planning Board additional improvements or safeguards are necessary in order to make a proposed home occupation safe, sanitary or less intrusive in a neighborhood the Board may place conditions on the approval of the home occupation that further limit the operation of the business, provide for screening or bufferyards or improve traffic safety. (Amended: 03-21-05)~~

~~**4.10.9. Alterations to Land and Buildings of Previously Approved Home Occupations.**—If additions or alterations have been constructed, or are proposed for construction to primary use residences or to accessory use buildings which in the opinion of the Code Enforcement Officer significantly alter a Planning Board approved home occupation the Code Enforcement Officer shall require that the home occupation use seek a revision from the Planning Board. In order to determine if the alterations or additions alter the approved Home Occupation the Code Enforcement Officer shall review the municipal documents on file including the minutes of the Board meeting at which the Home Occupation was approved. The Code Enforcement Officer shall not issue a building permit or certificate of compliance for such additions or alterations that have not received Planning Board Home Occupation permit approval unless the applicant surrender the home occupation permit and or conditional use/site plan home occupation use approval in writing. (Amended: 03-21-05)~~

~~**4.10.10. Discontinuation and Abandonment of a Legacy Home Occupation.**—If a home occupation, created under the provisions of the Ordinance prior to January 1, 2005, has been discontinued or abandoned for a period of 12 months the home occupation use may not be re-established without first receiving a Home Occupation Permit under the provisions of Article 4.10 of this ordinance. The Code Enforcement Officer shall have authority to issue a determination that the use has been discontinued or abandoned for a 12-month period. (Amended: 03-21-05)~~

4.10 Use of Residence for Business Purposes. There are three categories of businesses (including professions and trades) that may be conducted in or at a residence (dwelling) as an accessory use: a home business, a customary home occupation, and a home based contractor.

4.10.1 Home Business — A business, profession, or trade which is conducted by a resident of the premises entirely within the residence or an accessory building, and does not involve more than occasional business vehicular traffic to the property. Examples include but are not limited to artists, desktop publishers, software developers, craftsmen, contractors who only operate an office at the home, and people who work at home and conduct business by mail or electronic communication (including employees who telecommute). Home businesses are subject to the provisions of §4.10.4 and §4.10.5 below.

4.10.2 Customary Home Occupation — A business, profession, or trade which is conducted by a resident of the premises entirely within the residence or an accessory building, and involves an increase in traffic for clients, customers, patients, associates, or employees. Examples include but are not limited to lawyers, accountants, beauticians, professional consultants (such as mental health, design, and real estate), and small retail businesses not exceeding 300 square feet GFA. Customary Home Occupations are subject to the provisions of sections 4.10.4 and 4.10.6 below.

4.10.3 Home Based Contractor — A business which is conducted by a resident of the premises accessory to a residential use, but not entirely enclosed within the residence or one or more accessory buildings. Examples include but are not limited to building, plumbing, electrical, cabinetry, landscaping, and other similar contractors who perform their work off-site but use the residence as a base of operations including an office and small scale storage of equipment and materials. This category is meant to serve the needs of small businesses with limited space needs, with the expectation that once the business has grown to a larger size it will be moved to a more appropriate location in a commercial or industrial district. Home Based Contractors are subject to the provisions of sections 4.10.4 and 4.10.7 below.

4.10.4 General Requirements.

4.10.4.1 The activity must be operated by residents of the dwelling unit.

4.10.4.2 The activity must be clearly incidental and secondary to the primary use of the premises as a residence.

4.10.4.3 There shall be no window displays or other features not normally associated with residential use.

4.10.4.4 If carried on within the principal residential structure, the activity shall not occupy more than thirty (30%) percent of the floor area. If carried on within an accessory structure the total floor area dedicated to the business use shall not exceed fifty (50%) percent of the total finished floor area of the principal residential structure.

4.10.4.5 The activity shall not cause sound, noise, odors, dust, gas, fumes, smoke, light or other dangerous emissions discernable or detectable from beyond the property line of the subject property, beyond that which is normally associated with residential use. In addition, no business activity shall be allowed which creates a fire hazard to the premises or neighboring premises or which creates electrical interference such that it causes visual or audible interference in any radio or television receivers off the premises. The applicant shall demonstrate that the proposed business activity will not interfere with the peaceful use and enjoyment of residential properties located in the area of the proposed use.

4.10.4.6 No commercial vehicles in excess of 34,000 pounds gross vehicle weight (GVW) shall be used for the delivery of products, foods, or materials to and from the premises.

4.10.4.7 A permit shall be granted to the property owner or applicant; however in cases where a Customary Home Occupation or a Home Based Contractor business is the subject of the application, the Planning Board shall have the option to set a condition allowing the permit to be granted to the property (i.e. "run with the land") when the Planning Board finds that the continuation of the use after the transfer of property ownership, and without further permitting, will comply with the requirements in Sec. 4.10.4 of this ordinance.

4.10.4.8 Approved permits shall be recorded at the Penobscot County Registry of Deeds within 30 days of issuance or prior to any related building permit being issued.

4.10.5 Home businesses are permitted in all zoning districts without need for a conditional use permit, but must conform to the following provisions in addition to those listed in section 4.10.4 above:

4.10.5.1 The business must be conducted entirely within the residence or an accessory building.

- 4.10.5.2 The activity must not change the character of the premises or surrounding neighborhood.
- 4.10.5.3 No non-resident employees are permitted on site.
- 4.10.5.4 There shall be no exterior display of products, no exterior storage of materials or equipment used solely for the business, no exterior parking of business vehicles or equipment, and no other variation from the residential character of the premises other than a sign in conformance with §4.8, Signs. This section shall not prohibit the exterior parking of personal vehicles or equipment (not used for the business).
- 4.10.5.5 The business shall not generate traffic that is inconsistent with the traffic associated with a residential use, either in quantity or type.
- 4.10.6 Customary Home Occupations are permitted in all zoning districts by conditional use permit, if in compliance with the following provisions in addition to those listed in section 4.10.4 above:
- 4.10.6.1 The business must be conducted entirely within the residence or an accessory building.
- 4.10.6.2 Not more than one non-resident person shall be employed in the business at the site.
- 4.10.6.3 There shall be no exterior display of products, no exterior storage of materials or equipment used solely for the business, no exterior parking of business vehicles or equipment, and no other variation from the residential character of the premises other than a sign in conformance with §4.8, Signs. This section shall not prohibit the exterior parking of personal vehicles or equipment (not used for the business).
- 4.10.6.4 No home occupation shall be approved or allowed to operate if it generates more than ten (10) customers/clients in any one day.
- 4.10.6.5 The business shall not necessitate more than three parking spaces for clients, customers, patients, non-resident employees, or other business related demands. Required parking must be accommodated off-street, and new parking areas must be screened from the view of abutters and from public ways (streets or pedestrian ways) utilizing vegetation, fencing, and/or topography. To the extent practical, parking areas should be located at the side or rear of the residence or accessory buildings.
- 4.10.6.6 No commercial vehicles in excess of 34,000 pounds gross vehicle weight (GVW) shall be used for the delivery of products, foods, or materials to and from the premises.
- 4.10.7 Home Based Contractors are permitted by conditional use permit, if in compliance with the following provisions in addition to those listed in section 4.10.4 above:
- 4.10.7.1 The parcel on which the business is operated is within one of the following districts: Rural, Rural Business, Business, Business B, Commercial Service, Interchange, or Industrial.
- 4.10.7.2 The parcel must be a minimum of two acres in size.
- 4.10.7.3 Not more than eight vehicles associated with the business (maximum of four construction equipment such as loader/backhoe, skidder, etc.) shall be parked at the site at any given time, including employee vehicles and construction vehicles, but excluding personal vehicles not typically used for the operation of the business.

4.10.7.4 The activities related to the business may be conducted in part outdoors, but all such activities, equipment, and storage shall be substantially and permanently screened from the view of abutters and from public ways by buffers such as vegetation, fences, and/or topography.

4.10.7.5 No more than 25% of the parcel, exclusive of areas covered by buildings, shall be used for business activities, including outdoor storage or parking.

4.10.7.6 The total square footage of buildings used for storage or garaging of vehicles or equipment associated with the business shall be no greater than 2,000 square feet. This shall not be construed to mean that a greater number of vehicles may be parked at the site than is permitted above.

4.10.7.7 The Planning Board shall take into consideration the road network serving the proposed business location in regard to safety of the residents of the vicinity and the types of vehicles to be used by the business, including delivery trucks, and the projected number of trips to and from the site each day.

#### 4.10.8 Application Procedure

4.10.8.1 Applicants for a Home Business shall submit a request to the Land & Building Services office on the form provided, for review by the Code Enforcement Officer. If the he/she determines that the proposed business meets the criteria of this category, then he/she shall sign the form stating that the proposed home business does not require approval under sections 4.10.6 or 4.10.7 (i.e. a conditional use permit is not required).

4.10.8.2 Applicants for a Customary Home Occupation or a Home Based Contractor shall submit an application for a conditional use permit to the Land & Building Services office. A sketch plan as described in section 4.1 shall be submitted along with the application form.

4.10.8.3 Applicants shall demonstrate that they have adequate right, title and interest in a property in order to apply for a Home Business, Customary Home Occupation, or Home Based Contractor.

4.10.8.4 Conditions Necessary for Approval of Customary Home Occupation or Home Based Contractor. If in the judgment of the Planning Board additional improvements or safeguards are necessary in order to make a proposed business safe, sanitary or less intrusive in a neighborhood the Board may place conditions on the approval that further limit the operation of the business, provide for screening or buffer yards, or improve traffic safety.

#### 4.10.9 Previously Approved Home Occupations

4.10.9.1 If additions or alterations have been constructed or are proposed for construction to residences or accessory buildings, which in the opinion of the Code Enforcement Officer significantly alter a Planning Board approved Use of a Residence for Business Purposes, the Code Enforcement Officer shall require that the owner of the business seek a new permit from the Planning Board. In order to determine if the alterations or additions alter the approved business the Code Enforcement Officer shall review the municipal documents on file including the minutes of the Board meeting at which the Use of a Residence for Business Purposes was approved.

**Amendments to other sections of the zoning ordinance related to Use of Residence for Business Purposes:**

**Amend §3.4.2, permitted uses in Business District**

3.4.2. Permitted Uses (Subject to Site Plan Review) - Retail sales, service business, business or professional office, take-out restaurant, small restaurant, community facility, ~~home occupation (subject to Article 4.10)~~, essential service, single family structures, multi-family structures limited to four (4) units maximum, accessory uses or structures. (Amended 12-6-04, 03-21-05)

**Amend §3.5.2, permitted uses in Rural Business District**

3.5.2. Permitted Uses (Subject to Site Plan Review) - Grocery/superette, drug store, self service laundromat, business or professional office, ~~home occupation (subject to Article 4.10)~~, essential service, and wireless telecommunications facilities (subject to Article 4.22). (Amended: 10-01-01, 03-21-05)

**Amend §3.6.2, permitted uses in Interchange district**

3.6.2. Permitted Uses (Subject to Site Plan Review) – Any retail or service business, hotel, motel, take- out restaurant, small restaurant, sit-down restaurant, automobile and truck service station and repair facility, gift shop, truck terminal, business or professional office, indoor recreation, single family dwelling in existing principle structures on Old Coldbrook Road, ~~home occupation (subject to Article 4.10)~~, accessory uses or structures, essential services, and wireless telecommunications facilities (subject to Article 4.22). (Amended: 03-08-99, 05-21-01, 10-01-01, 12-6-04, 03-21-05, 1-17-12, 07-15-13).

**Amend §3.7.3, permitted uses in Residential A district**

3.7.3. Permitted Uses (Subject to Site Plan Review where applicable) - Single family dwelling, (including modular homes), home day care (subject to Article 4.19), accessory uses and structures, non-commercial park or playground, ~~home occupation (subject to Article 4.10)~~, essential service. (Amended:8-22-94, 03-21-05)

**Amend §3.8.3, permitted uses in Residential B district**

3.8.3. Permitted Uses (Subject to Site Plan Review where applicable) - Single family dwellings, certified manufactured homes, home day care (subject to Article 4.19), accessory uses and structures; non commercial parks or playgrounds, essential service, congregate care facility, public schools, multifamily structures, multi-family attached structures, elderly housing, mobile home parks (subject to Article 4.13.3) ~~home occupation (subject to Article 4.10)~~. (Amended: 8-22-94, 1-21-97, 03-21-05)

**Amend §3.9.2, permitted uses in Rural District**

3.9.2. Permitted Uses (Subject to Site Plan Review where applicable) - Agriculture, forestry, single family dwelling, certified manufactured home, two family dwelling, three or four family dwelling when serviced by public sewer and water, home day care (subject to Section 4.19), accessory use, golf course or other outdoor recreational facilities, ~~home occupation (subject to Article 4.10)~~, cluster subdivisions, essential service, and wireless telecommunications facilities (subject to Section 4.22). (Amended: 9-19-83, 8-22-94, 12-18-95, 10-01-01, 6-3-02, 03-21-05)

**Amend 3.13.2, permitted uses in Business B district**

3.13.2. Permitted Uses (Subject to Site Plan Review) - Business and professional offices, retail and service businesses, take-out restaurant, small restaurant, single family dwelling, ~~home occupation (subject to Article 4.10)~~, accessory uses or structures and essential service. (Amended: 12-6-04, 07-14-14)

**Amend 3.14.3, permitted uses in Village Commercial District**

3.14.3. Permitted Uses - (Subject to Site Plan Review) - No permitted commercial use shall exceed six thousand (6000) square feet in floor area within a building. One (1) and two (2) family dwellings, home

day care (subject to Article 4.19), any business office or professional office, retail sales, service business, ~~home occupation (subject to Article 4.10)~~, take-out restaurant, small restaurant, accessory uses or structures. (Amended: 8-22-94, 11-3-97, 12-6-04, 03-21-05)

**Amend §4.1.9.1, Site Plan Review, Site Sketches, by changing the title of the illustration:**  
Site Sketch of John Q. Public Customary Home Occupation or Home Based Contractor (For Illustration Purposes Only)

**Amend §4.2.3.9, under Standards Governing Conditional Use Permits**  
The proposed use, if a ~~home occupation~~Use of a Residence for Business Purposes, shall meet the standards contained in Article 4.10 of this Ordinance. (Amended: 10-17-88)

**Amend §4.8.1, Off-Premises Signs**

Off-Premises Signs - No off-premises signs shall be erected or maintained in the Town of Hampden except in conformity with 23 MRSA section. 1901-1925 the Maine Traveler Information Services Law. Off-premises official business directional signs may be located in the Town of Hampden in such locations and in such a manner as allowed under 23 MRSA sections 1901-1925 and under the rules and regulations of the State of Maine Department of Transportation. Provided, however, that off-premises official business directional signs for ~~home occupations~~Use of a Residence for Business Purposes are prohibited. Authorization for official business directional signs shall be obtained from the Code Enforcement Officer. (Amended 01/21/03) (Amended 2-4-16)

**Amend §4.8.3.6, under Permitted Signs Not Requiring a Permit**

Customary Home Occupation or Home Based Contractor sign - In place of the sign allowed in Article 4.8.3.3. above, approved customary home Occupations or home based contractors may display a single sign, not over four (4) sq. ft. in area, relating to the ~~home occupation~~business.

**Amend §4.8.3.7, under Permitted Signs Not Requiring a Permit**

For sale signs - In addition to the sign allowed in Article 4.8.3.3. above, residential users may display a single temporary sign, not over four (4) sq. ft. in area, relating to goods or services for sale on the premises, if such sale does not constitute either a business, a customary home occupation, a home based contractor, or a yard sale. Examples of sales falling under this provision are the sale of a used vehicle, the sale of a used appliance, or other occasional sales.

**Amend §4.8.6, Signs in Residential Districts, by adding a new §4.8.6.6**

Use of Residence for Business Purposes: Signs for customary home occupations or home based contractors are permitted under §4.8.3.6. Signs are not permitted for Home Businesses.

**Amend §7.2, Definitions**

Commercial Use: The use of lands, buildings, or structures, other than "~~home occupations~~Use of a Residence for Business Purposes", as defined, the intent and result of which activity is the production of income from the buying or selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units.

~~Home occupation~~Use of a Residence for Business Purposes: The subordinate use of a dwelling unit or structure accessory to a dwelling unit for gainful employment involving the manufacture, provision or sale of goods and/or services. There are three categories of such use, which are defined in §4.10 of this ordinance: home business, customary home occupation, and home based contractor.



Town of Hampden  
Land & Building Services

## Memorandum

To: Planning Board  
From: Karen M. Cullen, AICP, Town Planner *KMC*  
Date: March 1, 2017  
RE: Amendments to Zoning Ordinance regarding Accessory Apartments, Flexibility in Site Design Standards, and Article 1 (Process); report from Ordinance Committee

The Ordinance Committee met on February 28, 2017 to discuss the proposed amendments dealing with accessory apartments, flexibility in design standards, and Article 1 of the zoning ordinance. They decided to move the accessory apartment and Article 1 amendments forward for public hearing with the Planning Board for April 12, 2017. There were concerns with the flexibility in design standards proposal and we will continue working on that prior to moving it forward in the approval process.

### **Accessory apartments:**

The only change to version 3, which I believe you have all received, is to delete the word “inexpensive” from proposed §4.25.1.3. As an aside, I remind you that this section (4.25.1) is a statement of the purpose for these provisions, and they are not regulations unto themselves. Rather, they are meant as general guidance to potential applicants as well as to the Planning Board as the permit granting authority. The Ordinance Committee recommended this proposed amendment move forward through the process for adoption with a recommendation of “ought to pass”.

The following two paragraphs are from the February 8 memo and are repeated here for your convenience.

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.

Upon review by the Ordinance Committee on Feb. 28, it was decided that additional language is needed to provide some guidelines for the permit granting authority (CEO in some cases, PB in others) to use in determining whether to approve a waiver request. Staff will work on this and bring it back to the OC in the near future and we'll go from there.

***Article 1, General Administration:***

The Ordinance Committee discussed this proposed amendment and had no changes to it; the members present felt it was a significant improvement over the current language. They recommend it move forward through the process for adoption with a recommendation of "ought to pass".

Please see the memo dated February 22, 2017 for additional information on the proposed amendment. In a nutshell, it eliminates outdated language which is no longer needed, reorganizes the provisions to clarify the process, corrects inconsistencies with state law, and deletes reference to a public hearing at the town council level.

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 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.

## 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.