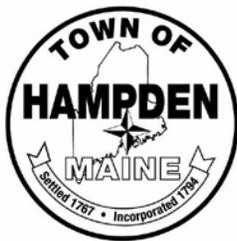




Town of Hampden
Planning and Development Committee
Wednesday April 5, 2017, 6:00 pm
Municipal Building Council Chambers
Agenda

1. Approval of March 1, 2017 Minutes (no meeting March 15)
2. Committee Applications: None
3. Updates:
 - A. MRC/Fiberight
 - B. Staff Report
4. Old Business:
 - A. Town Center – Status and projected timeline
5. New Business:
 - A. Streetlight Petition – Chickadee Lane – Referral from Infrastructure Committee
6. Zoning Considerations/Discussion:
 - A. Recreational Marijuana
 - B. Zoning Amendments – Accessory Apartments, Article 1 – General Administration, and Flexibility in Design Standards (PB Hearings 4/12/2017)
 - C. Zoning Amendment – Certificate of Compliance, Section 5.3.2
7. Citizens Initiatives
8. Public Comments
9. Committee Member Comments
10. Adjourn



Town of Hampden
Planning and Development Committee
 Wednesday March 1, 2017, 6:00 pm
 Municipal Building Council Chambers
Minutes - Draft

Attending:

Committee/Council

Ivan McPike-Chair
 Terry McAvoy
 David Ryder
 Dennis Marble
 Mark Cormier
 Greg Sirois

Staff

Angus Jennings, Town Manager
 Karen Cullen, Town Planner

Public

Danny Lafayette, Shelby Wright, Susan Starbird, Bill Boyington, Jim Kiser, Edie Smith (Senator King's office), Carol Woodcock (Senator Collins' office) Sarah Woodworth, W-ZHA, LLC

Chairman McPike called the meeting to order at 6:03 pm.

1. Approval of February 2, 2017 Minutes – **Motion** to approve as submitted made by Councilor McAvoy with second by Councilor Marble; carried 5/0/0.
2. Committee Applications: None.
3. Updates:
 - a. Staff Report:
 - i. Planner Cullen reported that the Planning Board's Ordinance Committee had met the previous evening and have passed the amendments regarding accessory apartments and Article 1 dealing with the amendment process forward to the Planning Board for public hearing. Those hearing will be held on April 12th. The committee also discussed the proposed amendments to allow flexibility in some of the design standards (parking, signage, etc.) and decided they need more work to add guidance for the permit granting authority in acting on such waiver requests.
4. Old Business:
 - a. Market Study – presentation of consultant report by Sarah Woodworth of W-ZHA, LLC.

Sarah Woodworth presented her report, which is available online in the P&D Committee packet for this meeting. After her presentation, there were comments, questions and answers, and discussion, including the following:

DRAFT

- There is a direct relationship between real estate taxes and services, including amenities such as recreation, the library, etc. Since the data presented suggest that industrial development is not going to solve the tax base issue, the town needs to look at better diversification of the housing stock, particularly in the high end multi-family type of product, and to retain current residents who may want to “age in place.”
- Based on feedback to the consultant from realtors and brokers, real estate taxes on the residential side do not appear to be an issue in regards to competitiveness with area towns, it is the industrial sector where that seems to be the bigger issue. Direct competition with Hermon is an issue; heard that multiple times in the focus group interviews.
- Need diversification in the housing stock, and waterfront is a prime location for providing a range of types. That particular area, given its proximity to Bangor and the river, has the potential to attract a diverse audience (i.e. young people, empty nesters, etc.) and could support multi-family as well as villa condo types of development – the key being smaller, high-end units and common ownership and care of the grounds, enabling the residents to have more freedom to travel and do other things besides yard maintenance. In addition, Hampden is well positioned for aging in place opportunities as well as continuing care communities for elderly residents.
- Bangor has been working for decades to improve their economy and despite the difficulties faced by outsiders to get there (weather, transportation), they continue to work toward a stronger economy. Once they reach the point where new multi-family construction is supported, rent levels will increase which will make redevelopment of the waterfront in Hampden more viable.
- Despite the inherent competitiveness among municipalities in the region due to the real estate tax structure, it is clear that Hampden’s success is tied to Bangor and their success. Many of the amenities and “third places” that people seek are found in Bangor.
- Amenities (recreation, library, café’s, etc.) are important to maintaining Hampden as a desirable place to live. These amenities can help boost economic development. Once the waterfront is developed, a walkway along the river would be such an amenity; this is being seen in other places in Maine. Work could be done to lay the groundwork for such a walkway.
- There is concern that the amenities Hampden has now are not up to the standards desired by those who use them. There is a need to reinvest in these community amenities to maintain our reputation as a good place to live.
- The town center was not the focus of this study, which took a broader approach. In the town center, and the waterfront area after that, staff’s key focus is on addressing the zoning issues to create the opportunity for new investment.
- Sporting venues and/or events, especially when there are tournaments involved, can bring in significant economic development dollars. Generally speaking you get a lot of bang for the buck.
- The cost of healthcare and taxes are driving the higher than national average cost of living in the Bangor Metropolitan Area (which is Penobscot County).

DRAFT

Chairman McPike said the next step in this work is for the P&D Committee to review this data and decide whether it is worth doing phase 2 – more detailed analysis of specific sectors of the economy – or if this gives us enough information to allow Town Council to use the information to help guide their policy decisions. Town Manager Jennings added that the P&D has a very ambitious work plan and we are focusing on zoning work; there is a need to fix the problems in the zoning in order to attract businesses and industries to Hampden and remove barriers to investment presented by current regulations.

5. New Business: None.
6. Zoning Considerations/Discussion: None.
7. Citizen Initiatives: None.
8. Public Comments: None.
9. Committee Member Comments: Councilor Marble commented that between the work done by Sarah and staff, the Council is well positioned to use the information in their decision making going forward. Town Manager Jennings also thanked the many participants in the focus group sessions as well as those in attendance tonight for their input, which was valuable to the project.
10. Adjournment: **Motion** to adjourn at 7:36 pm by Councilor McAvoy; seconded by Mayor Ryder, carried 5/0/0.

*Respectfully submitted by
Karen Cullen, Town Planner*

DRAFT

Town of Hampden
 106 Western Avenue
 Hampden, Maine 04444



Phone: (207) 862-3034
 Fax: (207) 862-5067
 email: assessor@hampdenmaine.gov

Note: this memo was prepared in 2016; staff thought it appropriate to circulate FYI.

To: Angus Jennings, Town Manager
 From: Kelly Karter, Assessor
 Date: February 29, 2016
 Re: Commercial/Residential percentages

The total Billable Real Estate and Personal Property valuation for the Town of Hampden for the year beginning July 1, 2015 was \$619,461,300.

In order to calculate the commercial value (taxable) I used the Real Estate Assessment Analysis from Trio. That gives a breakdown of land and building types. I removed the Town owned properties to calculate the percentages below:

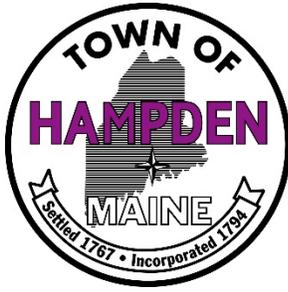
Commercial Real Estate (does not include exempt property)	\$ 93,791,110
Personal Property	\$ 21,841,300

Total Commercial Valuation	\$115,632,410
----------------------------	---------------

Divided by \$619,461,300 =	18.6%
----------------------------	--------------

Residential Valuation	\$503,828,890
-----------------------	---------------

Divided by \$619,461,300 =	81.4%
----------------------------	--------------



Town of Hampden
Land & Building Services

Memorandum

To: Planning & Development Committee
 From: Karen M. Cullen, AICP, Town Planner *KMC*
 Date: April 3, 2017
 RE: Streetlight Petition – Chickadee Lane

As you know, this petition was introduced at the Infrastructure Committee meeting on March 27th and was referred to P&D since there were some questions regarding what was required during the subdivision approval process and what was actually installed.

After searching through the records of the Planning Board, P&D Committee, and Town Council on this issue, staff could find nothing in the written record regarding streetlights on Chickadee Lane. The road plan and profile sheets of the subdivision plans do show streetlights, and there is a note on the plan stating the streetlights were to be installed according to Bangor Hydro standards.

The Planning Board approved the subdivision on December 14, 2011 and Town Council accepted the street and infrastructure on October 7, 2014. Again, there is no mention of street lights in any of the written record for the street acceptance.

Since the Town accepted the road and infrastructure, the town is responsible for any new street lights within the right-of-way. Staff has researched the cost for additional lights: for 70 watt HP sodium lights it is \$32.64 per year per light (which is the electricity charge); there is no installation fee. Removal of a light would be \$78.

The map on the following page shows the locations as shown of the approved subdivision plan (yellow dots) as well as the locations of the lights actually installed (green stars).



Chickadee Lane Street Lights

*yellow dot = approved location
green star = actual location
numbers on lots are addresses*



Town of Hampden
Land & Building Services

Memorandum

To: Planning & Development Committee, Planning Board, Town Manager
 From: Karen M. Cullen, AICP, Town Planner *kmc*
 Date: April 3, 2017
 RE: Regulating Recreational Marijuana Uses

This memo provides a summary of the key points from the workshop I recently attended on some of the issues municipalities are now facing with the legalization of marijuana. There will be numerous other workshops on the subject geared toward specific groups (e.g. public safety, town managers) in the months ahead. This particular workshop gave some brief overviews of some subjects that will be covered in greater detail in these other workshops. The primary focus of this workshop was on regulation.

While 29 states have legalized medical marijuana, 8 have legalized “adult use” or “recreational” marijuana, and 14 states have decriminalized marijuana possession, it is still classified as a Schedule 1 substance under federal law. The position of the current administration in regards to enforcement is not clear at this time.

It is a significant industry: by 2020 it is projected that the cannabis industry in the US will exceed \$24 billion; in Maine the recreational marijuana industry is projected to be \$210 million. As a comparison, the lobster industry (in Maine) is currently worth about \$410 million and the potato industry is about \$200 million. The medical marijuana industry in Maine in 2015 was \$40.5 million and is projected to be \$49.3 million for 2016.

In 2013 the US Justice Department took the position that enforcement against cannabis operations in states with well regulated medical or recreational regimes should not be a priority unless certain federal areas of interest were involved, such as distribution to minors, use of violence, revenue flowing to gangs or organized crime, growing on federal land, etc. This position was put forth in the “Cole Memo” and was the bedrock for the industry, giving investors and operators some assurance they would not go to federal prison even when obeying the laws of the state in which they operated. In addition to this memo, an amendment to the Department of Justice Appropriations bill stated that the federal government will not take action against state or local officials who are doing their jobs in implementing the laws of their own states. This means that local officials are not at risk of arrest under federal law in regards to “aiding and abetting” the possession or use of marijuana.

While some municipalities have categorized marijuana cultivation as an agricultural use, the trend is toward categorization as an industrial use. Hampden’s zoning ordinance allows medical marijuana cultivation in the Commercial Service, Industrial Park, and Industrial zoning districts, and not in the

Rural district. My interpretation of this is that Hampden views marijuana growing as an industrial use rather than an agricultural one.

There are five categories of uses in the new law: cultivation, testing, manufacturing, retail sales, and social clubs. Testing will be a very important part of this industry, as purity, potency, the presence of heavy metals, etc. are significant. Maine currently has a large black market in marijuana and part of the thought process behind this law is that legalization can eliminate that (and the problems associated with it). As such, it is important to keep the end price to the consumer reasonable – if the regulatory scheme and tax structure keeps prices too high, the black market will continue to flourish.

The current law caps the total amount of “plant canopy” (amount of cultivation) to 800,000 square feet (18.37 acres) statewide. This includes all stages of the plant’s life, from cutting (akin to a seedling) through flowering. There is some concern that this is too low to eliminate the black market and it might be increased to as much as 1.2 million square feet. There are no limits on the number of establishments (statewide) for retail stores, social clubs, or processing facilities. Local municipalities do have the option to limit the number of such establishments if they so choose. Home growing is permitted and is not part of the 800,000 square foot plant canopy cap; however no more than 6 plants are allowed per person at a given time and they cannot be visible from public ways and must be secured to prevent unauthorized access. For state cultivation licenses, existing medical marijuana caregivers, who can grow up to 36 plants for themselves and their (maximum of five) patients, will have priority in the licensing process.

The typical lifecycle for a marijuana plant is about 4 months. In the marijuana industry, plants are not grown from seed, but are grown from cuttings (sometimes referred to as cloning) from “mother plants”. A typical cultivation facility will have multiple grow rooms for the various stages of the plant’s life; this way they can harvest flowers (the part of the plant with the most THC, the main compound in marijuana) multiple times a year.

The law as adopted by the voters has a number of flaws and the Legislature is currently working on numerous bills to deal with these. They have already adopted a statewide moratorium and no commercial activity can take place until 2/1/ 2018. In reality it will be mid-2018 before retail sales can begin, based on the ramp-up of cultivation and processing. When the state does begin taking applications it is expected they will open a “window” when they will accept them. It is also expected that the people submitting applications will have them ready and most will be submitted on the “opening day.” Thus it is anticipated that applicants will either try to get through the entire local approval process first, or at least get some sort of pre-approval from the municipality.

On the local level, there are five classes of local powers: prohibition, limiting the number of local licenses, zoning, local licensure, and local regulation (outside of zoning, e.g. public safety, building code). While municipalities have quite a bit of leeway in dealing with recreational marijuana, they cannot prohibit personal use or personal cultivation. Municipalities can license any or all of the five use categories (cultivation, testing, manufacturing, etc.).

There are a number of decisions that Hampden needs to make in addressing recreational marijuana. The remainder of this memo is designed as a “decision tree” and discusses the issues involved with each step.

1: Does Hampden want to prohibit any or all of the five use categories?

- a) Cultivation – although some municipalities consider growing marijuana to be an agricultural use, most treat it as an industrial use. In reality, marijuana is grown in an industrial setting, with

tightly controlled indoor growing rooms to prevent contamination of the plants. There is no public access to cultivation facilities. Cultivation facilities will range in size depending on the state-licensed canopy size for the facility, measured in “unit blocks” of 10’x10’ or 100 square feet. The state will be issuing licenses in two classes: facilities with 3,000 square feet or less of plant canopy and those greater than 3,000 square feet. The law requires that 40% of the state licenses be issued to the smaller facilities. It should be noted that the actual size of a cultivation facility will be greater than the canopy size, as there will be need for storage space for fertilizers and other things needed for the cultivation itself, space for harvesting (people sitting at tables cutting the flowers off the mature plants), office space, etc. The primary issues to be dealt with include security, fire codes, odors, and waste disposal.

- b) Testing – facilities for activities related to acceptable testing and research practices, including but not limited to testing, standards, quality control analysis, equipment certification and calibration, chemical identification, and other research practices. Again, these are industrial type facilities and I do not envision them being large. No public access will be involved, and security is the primary concern with this use.
- c) Product manufacture – there are many different products that use THC, including baked goods, candy bars, soda, and “vaping” products, among many others. These facilities will have a wide range in size and utility needs (e.g. water and sewer), depending on what is being manufactured. There is no public access to these facilities, they are not permitted to sell directly to consumers. In addition to being licensed by the state under the recreational marijuana law, they are required to be licensed as commercial kitchens by the Department of Health and Human Services. Potential issues include security, infrastructure (utilities), building and fire codes, and odors.
- d) Retail sales – stores selling retail marijuana may not sell anything not directly related to marijuana (e.g. baked goods or candy that does not contain marijuana, alcohol, or general merchandise with no relationship to marijuana). They can sell anything related to marijuana, including apparel, paraphernalia, child-proof containers, etc. Municipalities cannot impose a local sales tax on recreational marijuana or products containing marijuana. Primary issues related to retail marijuana stores are security, proximity to certain land uses, signage, and fire codes.
- e) Social clubs – akin to a bar, but for the consumption of marijuana. Products for consumption that do not contain marijuana are allowed, such as baked goods or candy, but social clubs “may not sell or give away cigarettes or alcohol” [MRSA title 7 ch 417 §2448, paragraph 7A]. One of the issues the Legislature is dealing with is the ambiguity here, as the law does not expressly prohibit consumption of tobacco or alcohol in social clubs and there is concern that they may allow “BYOB” which creates potential health problems which could increase demand for emergency medical calls. As with retail sales, the primary issues related to social clubs are security, proximity to certain land uses, signage, and fire codes.

If the town decides to prohibit all five categories, then an amendment to the Zoning Ordinance can be processed immediately. This would either be done as a “special district regulation” in each of the 15 districts in Article 3, or as a new section in Article 4. In theory the uses would not be allowed anyway since they are not listed in any of our 15 districts, but I would not recommend leaving it to chance that someone could propose any of them under another use category (e.g. a retail marijuana store under our “retail sales”).

2: Based on the P&D Committee's policy direction on this after the referendum vote last November, if Hampden decides to prohibit retail sales and social clubs but allow the other three uses, then the next issue to deal with is zoning.

- a) Decision needed on which districts to allow these uses in. Since all are industrial in nature, my recommendation would be to allow them in the Industrial, Industrial 2, and Industrial Park districts. They would require a conditional use permit, with a public hearing before the Planning Board. Note that Hampden can require a wider net for abutter notification; the standard is 300 feet from the property line but for such potentially controversial uses, it could be increased to 500 feet or even more if felt necessary. If and when the time comes, I can create maps showing a variety of potential locations with various abutter notification distances so you can see the extent of the differences.
- b) Decision needed on what performance standards to impose regarding odor, security, setbacks from specific uses, setbacks and buffers from property lines, etc. These would be similar to those adopted for medical marijuana facilities in Hampden, but may differ if appropriate.

3: If any of these uses are allowed, then a decision is needed on whether or not to issue local licenses.

- a) It is not clear if municipalities can impose licensing fees, since one-half of the fee collected by the state (which is an annual fee) is passed on to the municipality.
- b) The licensing process can be used to place limits on the number of establishments (in each category) that will be allowed in the town, as well as things like hours of operation. Note, while the medical marijuana provisions place a limit on the number of establishments in the zoning regulations, it might be better to place a limit on the number of recreational marijuana establishments, if they are allowed at all, through a licensing ordinance. But if Hampden decides not to issue licenses then the zoning regulations can deal with this.
- c) One benefit of licensing is that it can be a way to do an annual review of these operations; such periodic reviews that are required as part of a Planning Board decision are much more difficult to enforce.

4. If Hampden does decide to limit the number of establishments, then a process for selecting licensees will be needed.

- a) How many establishments will be allowed in each category?
- b) How do you come up with that number, and on the basis of what objective criteria? Any such limitation should be supported by evidence on the record so it would withstand potential challenge.
- c) Options for selecting licensees include issuing an RFP, first-come-first-served, or holding a lottery.
- d) An RFP process would be aimed at issuing licenses to the best qualified businesses, and might consider things such as evidence of tax and legal compliance, capital reserves to fund start-up, criminal background check, security plans, management experience, technical capacity, plans for odor mitigation and other issues, and local support. Some of these are things that the municipal staff could review, others may require third party review.
- e) But an RFP process has its risks: applicants will have spent some money and time submitting their proposal, and assuming there are not enough licenses to accommodate all applicants, those that don't get awarded a license will not be happy, and could litigate. Thus it's recommended that if Hampden were to go this route, we consider hiring a consultant to help with the process as it will be easier to defend against litigation if it were to come to that.

And finally, the question of whether a municipality should adopt a moratorium was discussed at the workshop. There are some compelling arguments both pro and con on this question:

Reasons why a moratorium is not needed or useful:

1. State licenses will not be issued for about a year at the least, so no recreational marijuana activity other than personal use and personal growing is legal until that time.
2. A moratorium is only good for 180 days (however, see additional info under other notes below).
3. If a municipality is planning to ban all five use categories, then there is no reason not to just amend the zoning ordinance to accomplish that right now.
4. A public statement could be issued to let people know what the town's intentions are (e.g. prohibit retail stores and social clubs but allow the other three uses).

Reasons why a moratorium could be useful:

1. It could be easier for staff to address any inquiries regarding recreational marijuana.
2. If anyone wanted to submit an application, staff could easily reject it without consequence provided the moratorium specifically prohibited submission of applications.
3. It can prevent people from submitting an application in the absence of regulations, which can inadvertently lead to an appeal of either denial or inaction by the Planning Board.
4. It can provide support for Code Enforcement to deal with any illegal establishments that are started by people who either don't understand the permitting and licensing process or who start a business without regard to the law.

Other notes on moratoriums:

1. There has to be a need for the moratorium, and the ordinance must clearly state what the need is. This is pretty straightforward – the town can't adopt either zoning regulations or licensing regulations before the state issues its rules, to ensure there is no conflict between the local and state regulations.
2. The town needs to be actively working on how they will handle recreational marijuana while the moratorium is in place.
3. A moratorium can be extended by vote of Town Council after a public hearing, and there is no statutory limit on the number of times it can be renewed, as long as the municipality is still actively working on addressing the issues creating the need in the first place.

At this point, I respectfully request that the Planning & Development Committee, as the body tasked with making recommendations to Town Council on setting policy on land use issues, review this and be prepared to discuss the issue of adopting a moratorium. If Hampden decides to take such action, it may be prudent to do so sooner rather than later.



Town of Hampden
Land & Building Services

Memorandum

To: Planning & Development Committee
 From: Karen M. Cullen, AICP, Town Planner *KME*
 Date: April 3, 2017
 RE: Amendments to Zoning Ordinance regarding Accessory Apartments

The Ordinance Committee met on February 28, 2017 to discuss the proposed amendments dealing with accessory apartments, among other things. They decided to move the accessory apartment forward for public hearing with the Planning Board for April 12, 2017.

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.

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.

Proposed new section 4.25

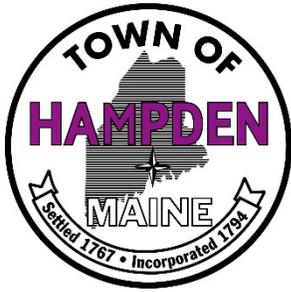
4.25 Accessory Apartments. Notwithstanding the minimum lot size requirements of this Zoning Ordinance, construction of an accessory apartment is allowed upon the granting of a Conditional Use Permit either within or attached to a new or existing detached single-family dwelling subject to the requirements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



Town of Hampden
Land & Building Services

Memorandum

To: Planning & Development Committee
 From: Karen M. Cullen, AICP, Town Planner *KMC*
 Date: April 3, 2017
 RE: Amendments to Zoning Ordinance regarding the Amendment Process (Article 1)

At the request of the Planning Board's Ordinance Committee, I 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:

- 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 in the future. 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, which may be advisable for controversial proposals.

- 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.

The town's attorney has reviewed these amendments and has opined that they are fine; he had no suggestions for edits. The Ordinance Committee reviewed these amendments on February 28, and forwarded them to the Planning Board for consideration and public hearing. The public hearing has been set for April 12. I am providing this to you at this point for your information.

More recently, we have had a property owner inquire as to amending the text of the zoning ordinance, and upon further reflection, staff recommends changing the requirement for a written petition (see §1.5.1.3) from ten percent of the registered voters of the town to fifty registered voters. That is still a fairly high bar, but not unreachable. Ten percent of the voters would be about 530. This potential change will be brought up at the public hearing.

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)

- ~~e1. 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 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.~~

~~3. 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.

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.

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 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.

1.5.3 Zoning District Amendments (Map Amendments)

1. Owner Initiated: The owner of a property seeking a change in the zoning classification of his/her property (see Article 1.5.1.4) shall file a zoning map amendment application, 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: Upon receipt of an application, memorandum, or referral, the planning office shall schedule a public hearing to be conducted by the Planning Board on the proposed amendment within sixty (60) days of receipt.
2. 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. The notice shall include, but not be limited to, the date, time and place of the hearing, a short description and, for proposed map amendments, a map showing the boundaries of the current and proposed zoning districts, and the location where the proposed amendment can be viewed.
 - a. Publishing Requirements: 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.
 - c. Abutter Notification Requirements: For proposed map amendments, said notice shall be sent by U.S. Mail to all persons initiating the proposed map amendment, to all persons owning property within the boundaries of the proposed map amendment, and to all persons owning property within three hundred (300') feet of the exterior boundaries of the area affected by the proposed change. 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.
3. Planning Board Recommendation: The planning board shall make a recommendation of approval or denial for any proposed amendment, and may make a recommendation of

approval with modifications for any proposed amendment. To constitute planning board approval 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. Failure of the board to make a recommendation within the allotted time shall constitute a recommendation of denial for the purposes of this Ordinance.

1.5.5. Adoption of Amendment

1. Text 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. Map amendments 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.
3. 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)*
4. The Department of Environmental Protection shall be notified by the municipal clerk of zone changes (map amendments) in areas impacted by the Shoreland Zoning Ordinance within thirty (30) days of the effective date of such amendments.



Town of Hampden
Land & Building Services

Memorandum

To: Planning & Development Committee
From: Karen M. Cullen, AICP, Town Planner *KMC*
Date: April 3, 2017
RE: Amendments to Zoning Ordinance regarding 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 proposed amendments would provide some flexibility when the requirements in the ordinance cause hardship.

The Planning Board's Ordinance Committee met on February 28, 2017 to discuss the proposed amendments dealing with several issues including flexibility in design standards. They had concerns with the flexibility in design standards proposal, and met again on March 21 to discuss it. Their concern was that the draft lacked sufficient language to provide guidance for the permit granting authority (CEO in some cases, PB in others) in determining whether to approve a waiver request. Working with staff, the committee came up with language that we feel will work; basically we reviewed the criteria for variances and used some of those concepts for this section, but did not make the criteria so onerous that getting a waiver would be impossible.

This amendment has been set for public hearing on April 12, 2017 with the Planning Board.

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 a single development. Within the Village Commercial or Village Commercial II districts, developments with multiple uses may share spaces among the uses to the extent reasonable (e.g. parking demand times differ between uses), provided the permit granting authority finds there will be no detrimental impact on abutting properties and no projected increase in on-street parking in the immediate area of the subject development.

4.7.1.8 Shared Parking between developments. Within the Village Commercial or Village Commercial II districts, abutting properties (separate developments) may share off-street parking spaces, provided both property 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, and no projected increase in on-street parking in the immediate area of the subject properties will occur.

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. To grant a waiver, the permit granting authority must find that the applicant has submitted sufficient evidence to show that the granting of the waiver will not produce an undesirable change in the character of the neighborhood, will not unreasonably detrimentally affect the use or market value of abutting properties, and that the requested waiver is not the result of action taken by the applicant or a prior owner. The permit granting authority shall consider the impact of the requested waiver(s) on public safety, public health, and the minimization of nuisances in making its decision.

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. To grant a waiver, the waiver granting authority must find that the applicant has submitted sufficient evidence to show that the granting of the waiver will not produce an undesirable change in the character of the neighborhood, will not unreasonably detrimentally affect the use or market value of abutting properties, and that the requested waiver is not the result of action taken by the applicant or a prior owner. The permit granting authority shall consider the impact of the requested waiver(s) on public safety, public health, and the minimization of nuisances in making its decision.



Town of Hampden
Land & Building Services

Memorandum

To: Planning & Development Committee
 From: Karen M. Cullen, AICP, Town Planner *KMC*
 Date: April 3, 2017
 RE: Amendment to Zoning Ordinance – Certificate of Compliance

It has recently come to my attention that whenever there is a new tenant occupying an existing business space in Hampden, Section 5.3.2 of the Zoning Ordinance requires that a Certificate of Compliance be issued by the Code Enforcement Officer. The practice in Hampden has been that the applicant (business person) fills out a form (attached) and pays a \$100 fee, then the CEO and Life Safety Inspector visit the site to conduct their inspections. The life safety inspection is to ensure the smoke detectors and any fire suppression (e.g. sprinklers) required by code are installed and in working order. The CEO portion of the inspection basically consists of verifying that the use stated on the application is the use in fact, and that it complies with the Zoning Ordinance.

In my experience, a Certificate of Compliance (C of C) is not used to verify that a use complies with zoning, as that determination is typically made before a tenant moves into a space (most business people check with the town prior to renting or buying a space to ensure their business is a permitted use in that location). Rather, a C of C is used to verify that a new development is in compliance with the approved site plan. Towns normally handle this C of C inspection in a couple of different ways, depending on staffing:

1. The code enforcement staff perform the inspection of the site and the building (in the case of new construction or additions to buildings), checking the site against the approved site plan; or
2. The code enforcement staff (building inspector, life safety inspector, health inspector) inspects the building for code issues and the planning staff (town planner) inspects the site for compliance with the site plan. In this case, the C of C is issued by the planning staff after the code enforcement staff signs off on their final inspections.

After discussing the issue with Code Enforcement Officer Myles Block, he is in agreement that it would be wise to amend the zoning ordinance to eliminate the need for a C of C for situations where there is no new construction, no changes to a structure (interior or exterior), and no changes to a site (e.g. additional parking). The life safety portion of the current C of C inspection process

is actually already covered in the town's Life Safety Code Ordinance (see Section 4.3, copied below).

“In cases where new construction or change of use of an existing building is proposed, the authority having jurisdiction shall require plans prepared and certified by a registered State of Maine Architect or registered State of Maine Professional Engineer, be submitted to the Office of State Fire Marshal for review. Once reviewed by the Office of State Fire Marshal the applicant shall submit a copy of said plans bearing the stamp of the Office of State Fire Marshal with application for either a building permit or certificate of compliance. The requirements of this section shall not pertain to one- and two-family dwellings.”

This Section 4.3 raises an issue with the level of regulation for situations where a business is simply moving into an existing space. Using a black and white interpretation of Section 4.3, a business person moving into an existing space would be required to hire an architect or engineer to prepare a plan, have it submitted to the State Fire Marshall's office, and then submit that to the town along with the application for a C of C. Chief Rogers asked the State Fire Marshall's office to see what their definition of “change of use” is; they don't have one. In their discussion on the case that brought this whole issue to our attention last week, the Fire Marshall said that if the space is under 3,000 square feet, he would not review anything anyway.

Leaving the life safety code issue out of it for the moment and only dealing with the zoning ordinance, it occurs to me that one of the main problems is that the term “change of use” is not defined. While it might be reasonable to require a C of C when a building's use is changing from one use category to another (e.g. commercial to industrial, institutional to commercial), it really doesn't make sense to require it for a change from an office space to retail or especially one retail business to another.

Section 4.1, site plan review, states that site plan review and approval is not required for a change in use from one permitted use in a zone to another provided it is limited to occupancy of an existing structure, there is no increase in floor area of the structure, there is no change in exterior site improvements, and the number of parking spaces required under the zoning ordinance is not greater than the number required for the previous use. While this is not technically a definition of “change of use,” this interpretation could be applied for the C of C issue in the interim until the zoning amendments are adopted and become effective.

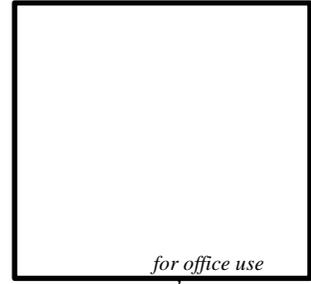
I believe the simplest way to correct this in the zoning ordinance is to require a C of C for anything that requires a building permit or site plan review. The primary concern with a tenant moving into an existing space is life safety, which is handled via the Life Safety Code Ordinance. In situations where someone moves into a space and the business they are conducting is not permitted in that district, then it is an enforcement issue and the CEO has the authority to deal with such situations.

We are currently working with the Town Attorney on this issue and I will be drafting proposed amendment language in the near future. I expect to advance it through the amendment process as soon as possible.

TOWN OF HAMPDEN

CODE ENFORCEMENT OFFICE

Certificate of Compliance Application



Application Date ____/____/____

This application covers Section 5.3.2 *Certificate of Compliance* of the *Town of Hampden Zoning Ordinance*. This Certificate of Compliance application applies to: 1. The change of use of a lot or structure (i.e. change from retail sales to business or professional office); 2. The change in or resumption of use in a structure which has been abandoned for a continuous period of one year.

SECTION 1. OWNER/APPLICANT INFORMATION

Applicant or Agent's Name: _____ Phone # _____

Mailing Address:

Address *Town/City* *State* *Zip Code*

Land Owner's Name: _____ Phone # _____

Mailing Address:

Address *Town/City* *State* *Zip Code*

SECTION 2. PROPERTY INFORMATION

Street Number: _____ Street Name: _____

Tax Map & Lot # _____ Zoning District(s): _____

Square Footage of Portion of Building to be Utilized: _____

SECTION 3. PROJECT EVALUATION

1. Are you proposing any exterior changes to the site development? (i.e. building additions, parking lot expansion, etc.)

- Yes → Please consult with Town Staff regarding what may be required.
 No → Go to # 2

2. Are there any alterations planned for interior spaces of the building? (i.e. moving interior walls, creating new rooms, etc.)

- Yes → **STOP**, Apply for alterations permit instead of COC
 No → Go to # 3

3. Existing Land Use(s): _____

- Permitted → Go to # 4
 Conditional → Go to # 4
 Non-conforming → Please consult with Town Staff regarding what may be required.

4. Proposed Land Use(s): _____

- Permitted → **STOP**, Go to Section 4.
- Conditional → Go to #5
- Non-conforming → Not allowed

5. Conditional Land Use:

- Existing Site Plan → Go to # 6
- No Existing Site Plan → Site plan review required
- Non-conforming → Not allowed

6. Is the proposed use in conformity with the approved site plan?

- Yes → **STOP**, Go to Section 4.
- No → Please consult with Town Staff regarding what may be required.

SECTION 4. PROJECT DESCRIPTION

Describe the proposed use of the site development/structure. Be thorough to avoid delays in the review of the project. Please attach a copy of a building sketch, site sketch & any other information you feel may be helpful in the evaluation of the project.

SECTION 5. CERTIFICATION

I hereby certify that I have been authorized by the owner of record to make this application as his/her authorized agent. I further certify that the information provided on this application and any supporting data submitted as an attachment is accurate to the best of my knowledge. I agree to comply with all applicable laws, rules, regulations, ordinances, etc.

Signature _____ Date ____/____/____

Signature of Owner _____ Date ____/____/____

For office use only

Application Fee: per Fees Ordinance TRIO Permit #: _____ TRIO Account #: _____

Payment Type: Cash Check Money Order Debit Card Double Fee Charged, Authorized by: _____

Check or Money Order #: _____ Town Receipt #: _____ Date Received: _____ Received by: _____

Action:

Action Taken By: _____

Notes: _____
