



Town of Hampden

Planning Board

Wednesday May 10, 2017, 7:00 pm

Municipal Building Council Chambers

Minutes

In Attendance:

Planning Board

Gene Weldon, Chair
Peter Weatherbee
Michael Avery
Jim Davitt

Staff & Others

Karen Cullen, AICP, Town Planner
Myles Block, CEO

Dennis Marble, Town Councilor
Allison Berube

Chairman Weldon called the meeting to order at 7:00 pm. He noted that the meeting is not being televised tonight due to the AV staff being absent.

1. Administrative

- a. Minutes of April 12, 2017 meeting: **Motion** by Member Avery to approve as submitted; second by Member Davitt, carried 4/0/0.
- b. Recommendation to Town Council on filling the vacant seat on the Board. Discussion on attendance record of the two alternates and the Board's rules which state that failure to attend three consecutive regular meetings or six meetings in a year without being excused by the Board is to forfeit their seat on the Board. **Motion** by Member Avery to recommend to Town Council that Alternate Member Tom Dorrity be appointed as a full member of the Planning Board; second by Member Weatherbee; carried 4/0/0.

2. Old Business:

- a. Zoning Amendment – Accessory Apartments.

Planner Cullen gave an explanation of why this amendment is before the Board again, and a summary of the staff recommendations at this point:

- A public hearing, duly noticed in the Bangor Daily News and Hampden's website, was held by the Planning Board on April 12, 2017. The Board voted unanimously to refer to Town Council for hearing and adoption with a recommendation of "ought to pass." No one from the public was present.
- Town Council had a public hearing on May 1, 2017, at which testimony was presented by CEO Block and by Allison Berube, requesting several changes to the amendments under consideration. This prompted the Council to continue their hearing to May 15, 2017. Since the Planning Board was meeting between these two dates, Council requested the Planning Board to take a look at it and offer their suggestions regarding the potential changes to the amendments.

- There are three changes being sought: allow accessory units in detached accessory structures, eliminate the 800 square foot maximum size of an accessory unit, and allow two bedrooms instead of just one.
- Reasoning for allowing in detached structures: make use of underutilized space, several such requests are made each year, and no evidence these units create nuisance problems in a neighborhood.
- Reasoning for eliminating the 800 square foot limit: using the 40% rule will ensure the unit remains subordinate to the primary dwelling, allows larger unit (than 800 square feet) where the single family house is over 2,000 square feet in size.
- Reasoning for allowing two bedrooms: more practical for elderly couples to allow sleeping in separate rooms when one becomes ill, or to allow for 24 hour care during the end stages of life.
- Potential ramifications: accessory unit becoming a nuisance to the neighborhood, but this should be rare since most property owners will not allow problem tenants to remain and risk their investment; in cases where the single family home is very large (e.g. 3000 sq. ft.), the accessory unit can be as large as a "standard" house (e.g. 1200 sq. ft.), giving the appearance of a two family property and not a single family property. In such cases, the Planning Board has the authority to set conditions on the conditional use permit to limit the potential for nuisance problems.

Discussion of proposed change to allow in detached accessory structures:

- Member Weatherbee noted this was in the original draft of the proposed amendments. The Board agreed there was no strong opposition but they thought it would be more difficult to maintain the appearance of a single family home if they are allowed in detached structures.
- CEO Block noted that the Board will need to ensure any proposals maintain the appearance of the garage or whatever accessory structure the unit is proposed in.
- Planner Cullen reiterated the property owner must live in one of the two units, and she added the Board should make that a condition of approval for all such permits, to enable Code Enforcement to enforce the provision should problems arise.

Motion by Member Weatherbee to recommend to Town Council that they accept the modifications suggested by CEO Block in his April 25, 2017 letter regarding allowing accessory dwelling units in accessory structures; second by Member Davitt; carried 4/0/0.

Discussion of proposed changes to §4.25.2.4, to eliminate the 800 square foot limit and to increase the number of bedrooms from one to two:

- The Board is in agreement that the 800 square foot limit can be eliminated as long as the 40% limit remains; the unit will still remain subordinate to the single family unit. The Board also has no objections to allowing two bedrooms, noting the reasoning given by Planner Cullen makes sense.

- Ms. Berube offered her opinion that this violates the Fair Housing Act because it discriminates against families. The Board disagreed; Member Weatherbee said the FHA prohibits discrimination against a class of people such as group homes. He said the accessory apartment amendment is not discriminating against anyone, it is offering an opportunity to homeowners.
- The Board felt it might be useful to have the Town Attorney review the proposed amendment in light of the Fair Housing Act to ensure there are no violations.

Motion by Member Avery to recommend to Town Council that section 4.25.2.4 be modified to strike out “and shall be no greater than 800 square feet” and to change one bedroom to two bedroom, and furthermore to recommend that the Town Attorney review the proposed amendments in relation to the Fair Housing Act; second by Member Davitt; carried 4/0/0.

Motion by Member Avery to refer these amendments on accessory apartments back to Town Council as modified above with a recommendation “ought to pass”; second by Member Weatherbee; carried 4/0/0.

3. New Business

- a. Zoning Ordinance Amendment - §5.3, Permits; in relation to Certificate of Occupancy and Certificate of Compliance.

Planner Cullen gave a brief summary of the proposed amendments, stating that it came to light recently when it was found that a business moving into a commercial space vacated by another business was required to obtain a Certificate of Compliance. The current language is confusing and inconsistent with the Building Code and standard practice. Normally a Certificate of Compliance is issued at the end of the process of creating a new development that required a site plan, while a Certificate of Occupancy is issued at the end of the process of constructing a new building (residential or non-residential). The proposed amendments strive to draw that distinction and make it clear what the process is for each type of certificate.

CEO Block agreed and said this will streamline the process and clear up confusion. The Board agreed that this makes sense and the language is clear.

Motion by Member Avery that the Board, acting as the Ordinance Committee, refer the proposed amendments to the Planning Board for public hearing for the June 2017 regularly scheduled meeting; second by Member Davitt; carried 4/0/0.

Planner Cullen noted she will search the entire Zoning Ordinance to search for all references to certificate of occupancy or certificate of compliance.

4. Staff report: Planner Cullen noted that the Town Council has adopted a resolution on recreational marijuana stating their intention is to prohibit retail sales and social clubs, and to allow the three other uses (cultivation, manufacture of products, and testing). She noted there is a timeline in it; in July staff will bring forth their recommendations on how to deal with the various issues (zoning and licensing), and in October regulations will be proposed. Since the state rules will not be done by

then, she noted the amendment process will take a number of months to be certain what Hampden adopts is consistent with the state rules.

Planner Cullen noted there will be an Ordinance Committee meeting on Tuesday the 16th to review amendments being drafted for Article 3, primarily the use table and a dimensional table. These are precursors to eventual amendments for a town center district. In addition, there is an amendment dealing with definitions that will be reviewed by the Committee.

5. Planning Board Comments: Several Board members noted that Planner Cullen is doing an excellent job with the zoning ordinance amendments.

The meeting was adjourned at 8:20 pm by motion of Member Davitt with second by Member Avery; motion carried 4/0/0.

Respectfully submitted by Karen Cullen, Town Planner

Materials reviewed or handed out at the meeting:

- Proposed zoning amendment for accessory apartments, with additional modifications
- Proposed zoning amendment to §5.3, Permits