



Town of Hampden  
Planning Board Meeting  
Wednesday May 9, 2017, 7:00 pm  
Council Chambers

## Minutes

In Attendance:

Planning Board

Gene Weldon  
Kelley Wiltbank  
Jennifer Austin  
Jim Davitt  
Peter Weatherbee

Staff

Karen Cullen, AICP, Town Planner  
Myles Block, Code Enforcement Officer

Public

Darlene & Corey Webb  
Jim Kiser

The meeting was called to order at 7:00 pm.

1. Administrative

a. Minutes

- i. **Motion** by Member Wiltbank to approve the minutes for April 11 and April 23, 2018 as submitted, second by Member Davitt; carried 5/0/0.
- ii. **Motion** by Member Weatherbee to approve the revised minutes for March 21, 2018 as submitted, second by Member Wiltbank; carried 5/0/0.

2. Old business: None

3. Public Hearing – Proposed Amendments to the Zoning Ordinance. Chairman Weldon read the public hearing notice into the record. He summarized activity to date, the town planner started drafting amendments last fall with goal of creating a more user-friendly ordinance and updating outdated sections, the Planning Board started reviewing the draft amendments late December 2017, and continued for nine meetings ending in April 2018. Chairman Weldon then summarized the procedure for tonight's hearing, and noted it will be continued to Tuesday May 15. He then opened the public hearing at 7:06 pm.

Planner Cullen noted the table of amendments and table of contents have been reformatted.

**Article 2:** Planner Cullen noted the list of districts has been reorganized and the two village commercial districts have been combined into a new town center district, noting there is no change to the boundaries at this time. In addition, the "purpose" statements for the districts have been moved from Article 3 to Article 2. She noted that in regards to the town center district, the intent is to start the work on the town center plan and rezoning this summer, and during that process the boundaries will likely change, and the uses and dimensional requirements will also be reviewed for potential changes.

Chairman Weldon asked if there were any public comments. Jim Kiser asked if the end of Dewey Street would be rezoned to something other than Residential A; the answer was that would be examined during the town center project.

Planner Cullen noted she had a couple of further changes in the language in §2.5, the section should be titled “Parcels in more than one zoning district” to simplify it, and change “...in which said parcel is located...” to “...in which said use is located...” in the second sentence. Also, she said the examples given under this section are confusing and incorrect, and should simply be deleted.

**Motion** by Member Wiltbank to approve the proposed amendments to Article 2 as submitted, with the changes to §2.5 as described by Planner Cullen; second by Member Davitt; motion carried by roll call vote 5/0/0.

**Article 3:** Planner Cullen stated this is where the most significant changes are taking place to make the ordinance easier to use. Those changes are:

- Reworked uses into table format
- Assigned allowance designation (permitted, conditional use, or not permitted) for each use and each district, based on current ordinance but with some modifications to uses allowed where it made sense given the district and similar uses allowed
- Moved special requirements and reworked as needed
- Added a section on temporary uses
- Reworked dimensional standards into table format and added special provisions section, which was just moving the existing provisions from individual district sections.

Planner Cullen noted several additional modifications should be made to the proposed amendments:

- Delete §§3.2.1.6, 3.2.1.7, and 2.3.1.8 because they are also covered in §3.4.2.2, items 2 and 3.
- Corrections to fix transcribing errors in the use table:
  - change the old “S” (site plan review required) which is now “P” (permitted by right).
  - cluster development is supposed to be cluster housing (B-5).
  - home business (B-ACC-2) is supposed to be P, not N, in the Interchange district – this is because there are still residential uses in this district.
  - home based contractor (B-ACC-4) is supposed to be N, not C, in the Town Center district – this is because outdoor storage of materials and equipment is not appropriate in this district.
  - place of worship (F-1) is supposed to be P, not C, in the Business, Business B, and Commercial Service districts.
  - retail marijuana (G-3 & 4 and I-6, 7, & 8): change the terminology to “adult use” marijuana
  - restaurant, drive-in or drive-through (G-17) is supposed to be N, not C, in the Industrial 2 district.
  - retail sales as an accessory use (I-4) is supposed to be C, not N, in the Industrial 2 district.
- Agriculture in the Residential A and B districts – the current ordinance does not include agriculture in the list of uses (by right or conditional) and we had added that as an allowed use earlier in our review. However, there are no known agricultural operations in the Residential A district and it is recommended to make this a N in the table (prohibited). There is a large farm in the Residential B district, which is currently a pre-existing nonconforming use and it is recommended to allow agriculture in this district. The Board felt the ordinance should remain as it currently is for this (prohibited), and the possibility of changing it in the Residential B district should be taken up in the future.

- Corrections to terminology for multi-family to make consistent throughout ordinance.
- §3.4.2.1, item 6, regarding the height of an amateur radio antenna – the Town Attorney has advised that if there is legitimate concern about safety and the proximity of tall antenna structures in the Residential A and B zones, because the smaller lot sizes in those zones create concerns for property damage or personal injury, then including a requirement that the antenna structure be located such that it falls on the applicant's property would be reasonable. Planner Cullen suggested adding a provision to require the tower to be set back such that if it falls it remains on the applicant's property.
- §§3.4.2.1, 2, and 4, regarding setbacks for accessory structures – the Town Attorney noted that the wording is unclear, instead of saying “may be located within ‘x’ feet of” it should read “may be located no closer than ‘x’ feet to” so nobody can argue the structure can be an inch from the property line.

Chairman Weldon asked if there were any comments from the public. Corey Webb stated he and his wife are interested in opening a doggie daycare in the business park on Route 202 and simply wanted to confirm that the use would be allowed with the zoning amendments being made. Planner Cullen said that kennel is in the use table as a conditional use in the Industrial Park district where the business park is located.

**Motion** by Member Davitt to approve the proposed amendments to Article 3 as submitted, with the following changes: strike the language in §3.2.1.6, 3.2.1.7, and 3.2.1.8; correct the transcribing errors in the Use Table; leave agriculture in the Residential A and B districts as prohibited; add to the end of §3.4.2.1, item 6 “and provided the tower is set back from all property lines at least the distance of the fall zone for the tower.”; and change the language of §§3.4.2.1, 3.4.2.2, and 3.4.2.4 to read “...may be located no closer than ‘x’ feet to the side or rear property line.”; second by Member Wiltbank; motion carried by roll call vote 5/0/0.

**Section 4.1, Site Plan Review:** Planner Cullen noted the changes from the current ordinance:

- Created three tier system for review to streamline approval process for small projects
- Created a new staff review committee for middle tier
- Removed language regarding deadlines which are administrative and should be covered in Planning Board rules
- Kept same submission requirements for plan, added requirement for a narrative and language for traffic impact assessment for projects generating 100 peak hour trips
- Changed the objectives the permit granting authority (Planning Board or Staff Review Committee) uses to determine if a plan can be approved, simplifying and adding flexibility to the objectives but still covering the same issues as in the current ordinance
- Added sections for denial, appeal, lapse, and fees (which just allows the town to collect reasonable fees for administration and technical review; no changes to the fees which are covered by the Fees Ordinance are proposed).

Planner Cullen then noted several additional changes recommended by herself or the Town Attorney:

- §4.1.3, applicability: add a new sentence after the first sentence to read: “Site Plan review is not required for agricultural uses or structures which do not involve customers or the general public visiting the site on a regular basis, nor for accessory agricultural structures such as seasonal farm stands which do involve customers.” This would establish in the ordinance what

past practice has been. If this change is made, then delete §4.1.3.2, item 8 since it would be contradictory.

- §4.1.3.2 item 7 and §4.1.3.3 item 6, regarding projects subject to site plan review: change “development area” to “disturbed area” to keep terminology consistent.
- §4.1.8, appeals of decisions on site plans: the Town Attorney advises that all appeals go directly to the Board of Appeals. Recommend changing the item to read: “A decision of the Code Enforcement Officer, Staff Review Committee, or the Planning Board may be appealed to the Board of Appeals, pursuant to §6.2.1.”

Chairman Weldon asked if there were any comments from the public. Jim Kiser said he thought the proposed wording for the traffic impact might create inconsistencies with what is required by DOT. Member Davitt suggested just saying we want “whatever DOT wants”. CEO Block said we simply want to make sure we get information on traffic, since the Board needs to consider the safety of a proposed development in regards to traffic entering and existing the site. Member Wiltbank said he was concerned about changing the language tonight without any time to consider the consequences of the modification. The board directed Planner Cullen to review this language and suggest a change for the continued hearing on Tuesday.

**Motion** by Member Austin to approve the proposed amendments to §4.1 as submitted, with the following changes: add to §4.1.3 “Site Plan review is not required for agricultural uses or structures which do not involve customers or the general public visiting the site on a regular basis, nor for accessory agricultural structures such as seasonal farm stands which do involve customers.”; delete §4.1.3.2, item 8; change “development area” to “disturbed area” in §4.1.3.2, item 7, and §4.1.3.3, item 6; change §4.1.8 to read: “A decision of the Code Enforcement Officer, Staff Review Committee, or the Planning Board may be appealed to the Board of Appeals, pursuant to §6.2.1.”; and to revisit the submission requirements for a traffic impact assessment (§4.1.5.1 item 13) at the continued public hearing on Tuesday; second by Member Davitt; motion carried by roll call vote 5/0/0.

**§4.2, Conditional Uses:** Planner Cullen said this section has been largely replaced, with the addition of a purpose statement, separated the applicability and procedural provisions, revised the submission requirements to be clear on what is needed for review, reworked the approval standards, and made some editorial changes to the conditions section. There were no comments on this section from the board or the public.

**Motion** by Member Davitt to approve the proposed amendments to §4.2 as submitted; second by Member Austin; motion carried by roll call vote 5/0/0.

**§4.5, Nonconformities:** Planner Cullen said the proposed modifications from the current ordinance are to clarify the provisions and remove language related to shoreland zoning. She noted the following substantive changes:

- §4.5.4, Nonconforming Uses:
  - The period of time when a nonconforming use can be reestablished changed from one to two years
  - A provision was added to the reconstruction paragraph to exempt time spent dealing with legal or insurance issues from the time period for getting a building permit for the reconstruction.

- The change of use section was revised by removing the criteria the planning board considers in granting a conditional use approval and the review process since they are already in §4.2, conditional uses.
- §4.5.5, Nonconforming Lots:
  - Clarification that the provisions apply to all lots, whether vacant or not
  - Added provisions to deal with situations where there are two or more principal structures (e.g. houses) on a single lot, and when there are two or more contiguous lots in single ownership when one or more are nonconforming.

There were no comments on this section from the board or the public.

*Motion by Member Wiltbank to approve the proposed amendments to §4.5 as submitted; second by Member Davitt; motion carried by roll call vote 5/0/0.*

**§4.6, Cluster Housing:** Planner Cullen stated this section has been completely revised, primarily to consolidate all of the cluster provisions in the ordinance into this one section. The revisions include:

- Added list of uses allowed within a cluster housing development
- Created a table of dimensional standards:
  - Added minimum tract size, current ordinance specifies for rural district only and that size (20 acres) remained the same
  - Added minimum dimensions for the overall tract for frontage and buffers/setbacks
  - Open space requirement remains 30%
  - Maximum density for single family cluster developments:
    - Rural district stayed at 1.5 units/acre
    - Residential A changed from 3.146 to 3
    - Residential B changed from 3.146 to 4
    - Town Center set at 4
  - Maximum density for multi-family cluster developments:
    - Not applicable in the rural or Residential A districts (multi-family development is not a permitted use in the Residential A district, and multi-family development in the Rural district requires public water and sewer if available within 500’).
    - 8 units/acre for the Residential B and town center districts (currently 8 in the Residential B district)
  - Set dimensional standards for individual lots within a cluster development, only applicable (and is optional) for single family developments, most standards are lower than current standards to allow more flexibility in design.
- Clarified how the number of units are calculated for a cluster development and added additional provisions for density bonuses (added bonuses for providing public access to trails and for providing some units at costs affordable to people with lower incomes (80% of median household income, which translates to \$70,426 annual income)).
- Revised the common open space section to reorganize and clarify, and added provisions to:
  - Restrict the amount of land in open space that can be wetland (50%) or in the required perimeter buffer (30%)
  - Allow utilities (including septic systems) to be located in the open space areas
  - Require open space to be contiguous (i.e. many small areas of open space that have no connection with each other are not allowed)

- Deleted the sections on single family and multi-family clusters since these provisions are all included in the revisions or are not needed

Chairman Weldon asked if there were any comments from the public. Jim Kiser said the proposed amendments will make cluster development easier, but suggested the tract sizes should be reduced to 10 acres in the Rural district, and 3 acres in the other three districts. Planner Cullen supported the reduction in the Rural district, noting that 10 acres is a common tract size for cluster housing. After discussion the board directed Planner Cullen to review this and bring recommended changes to the continued hearing next Tuesday.

***Motion** by Member Weatherbee to approve the proposed amendments to §4.6 as submitted, except to revisit the minimum tract size at the continued hearing; second by Member Austin; motion carried by roll call vote 5/0/0.*

**§4.7, Design Standards:** Planner Cullen said this section has been reorganized and includes the following sections:

- **Parking:** reformatted listing of number of spaces requirement into a table, added a maximum number allowed, and reworded some provisions to clarify meaning (most provisions remain same as current).
- **Buffers and Landscaping:** added a purpose statement, clarified applicability and how applied when there is existing vegetation. Otherwise the provisions are the same as in current ordinance, some have been moved from special district regulations in the individual district sections of article 3.
- **Lighting:** this is a new section to provide standards on outdoor lighting for nonresidential and multi-family residential developments. The current ordinance requires lighting information to be provided with a site plan but there are no standards against which to measure it by.
- **Architectural Design:** these provisions are currently in the special district regulations for the Business B and two Village Commercial districts, and they only apply to the Business B and the Town Center districts.
- **Signs:** moved from §4.8, the only change is the addition of a provision currently in §4.20, Customary Rural Business, which is being deleted.
- **Stormwater Management:** this is a new section to provide standards for how stormwater is handled for sites that disturb less than one acre and are thus not required to apply to DEP. As with lighting, the site plan provisions require submission of stormwater information but without standards, there is no oversight of what happens with stormwater runoff.
- **Flexibility in Design Standards:** this provision was added to the ordinance in 2017 and allows the permit granting authority to grant waivers upon request.

Planner Cullen noted the parking table (§4.7.1.1) has an error in “place of worship” and “place of assembly” where the requirement should be “1 per 150 sq. ft. GFA if no seats” instead of “.33 per 150 sq. ft.”

Chairman Weldon asked if there were any comments from the public. Jim Kiser said he is concerned about inconsistency between the proposed language in §4.7.6, Stormwater Management, and the DEP Chapter 500 requirements. He said the modeling for stormwater (quantity) doesn’t work for small sites. He added that when you treat for water quality, you end up reducing the rate of runoff leaving the

site as well. Discussion on what other towns have for similar provisions, suggestion to review Ellsworth's regulation.

Chairman Weldon asked if there were any more comments from the public. Jim Kiser said he thought §4.7.1.2 which caps the maximum number of parking spaces at 110% of the required number, would be a problem for restaurants. It was noted that §4.7.7 allows the permit granting authority to waive this provision when the applicant provides documentation to show there is a need for the additional spaces and that there won't be an adverse impact. The board felt this was sufficient to address situations where more parking is needed.

***Motion** by Member Davitt to approve the proposed amendments to §4.7 as submitted, with the change to the parking table as described, and to revisit §4.6, Stormwater Management at the continued hearing; second by Member Austin; motion carried by roll call vote 5/0/0. The Board requested Jim Kiser to submit suggestions on the stormwater section to Planner Cullen prior to the hearing.*

**§4.9, Filling and Grading of Land and Stockpiling of Materials:** Planner Cullen said the only amendment in this section is to change "lot coverage" to "extent" to clarify terminology used throughout ordinance (§4.9.9.6 and §4.9.10). There were no comments on this section from the board or the public.

**§4.10, Use of Residence For Business Purposes:** Planner Cullen said there was a minor change in the procedure provisions, and the addition of a couple of size provisions to addresses businesses in the Rural district that would have otherwise been Customary Rural Business (§4.20) which is being deleted. There were no comments on this section from the board or the public.

***Motion** by Member Wiltbank to approve the proposed amendments to §4.9 and to §4.10 as submitted; second by Member Austin; motion carried by roll call vote 5/0/0.*

**§4.13, Mobile Homes:** Planner Cullen said the amendments include modified standards in §4.13.2.2 to eliminate contradictory language regarding skirting, and delete incorrect language on the building code and language regarding modifications. Also modified §4.13.3.7 to clearly state the open space requirement, which is currently 20% in districts where mobile home parks are allowed. She added that the Town Attorney had advised that if the town wanted to, they could prohibit mobile homes, but not modular homes, in specific districts. She noted the board had previously discussed the possibility of prohibiting mobile homes on individual lots in the Residential A and Residential B districts, and had requested the attorney's advice on the legality of doing so. Planner Cullen said she suggested that if the board decided to do this, then a new item could be added under §4.13.2.2 to read "No certified mobile home may be located within the Residential A or Residential B district." After discussion the board agreed with this change.

***Motion** by Member Wiltbank to approve the proposed amendments to §4.13 as submitted, with the change to add the new provision to prohibit mobile homes from the Residential A and B districts as described; second by Member Davitt; motion carried by roll call vote 5/0/0.*

**§4.17, Lots and Planned Group Development:** Planner Cullen said this section is proposed to be deleted since the provisions are covered elsewhere in the ordinance, except for the first sentence of 4.17.1 which has been moved to the new dimensional section (specifically §3.4.2.11).

**§4.19, Day Care Provisions:** Planner Cullen noted the changes: the hours of operation for Home Day Care and Day Care Facilities is proposed to be 6:00 am to 7:00 pm, increased the size allowed for signage and allowed a sign for Home Day Care, and deleted the site plan review exemption for Child Care Centers operated accessory to a church or community building (since the site plan review section has changed to simplify the process for existing buildings where no site changes are proposed).

**§4.20, Customary Rural Business:** Planner Cullen said this section is proposed to be deleted, because the uses are handled in the Use Table and other provisions that are needed have been moved to §4.7, Signs or §4.10, Use of Residence For Business Purposes.

**§4.21, Structures Necessary For Access For Person With Disabilities:** Planner Cullen noted this section is also proposed to be deleted, since the ADA (Americans with Disabilities Act) applies regardless of local zoning ordinances, and when necessary, the provisions in §6.2 on Variances allows the CEO to approve setback encroachments in the building permit approval process.

**§4.24, Medical Marijuana:** Planner Cullen said the only change in this section is to fix the setback provisions that were inconsistent with state law and were preempted in 22 M.R.S.A. Section 2428 (10).

**§5.3, Permits:** Planner Cullen said a requirement has been added for an as-built plan to be submitted for any project that had a site plan, sketch plan, or subdivision plan. This will help the town and future owners and others by documenting where things are and what was approved.

There were no comments on these sections from the board or the public.

**§6.2.2, Variances:** Planner Cullen said this section has been updated to be consistent with state law and to clarify the provisions. Specifically:

- General variances apply to building height, conditional lot dimensions, use of residence for business purposes, and essential services
- Dimensional variances apply to lot area, frontage, building coverage, impervious surface coverage, and setbacks, regardless of the amount of variance needed
- Disability variance for Vehicle Storage, applies to the construction of a garage or similar structure when needed for a vehicle needed by a disabled person; this is a new section based on state law, and applications are acted on by the Board of Appeals
- Disability variance for Dwelling Accessibility, applies to the construction of ramps or similar structures to provide access to a home; this is based on state law and allows the CEO to approve a building permit without need for a variance to be approved by the Board of Appeals.

Planner Cullen reported that the Town Attorney provided advice on item 1 under §6.2.2.3 regarding disability variances for vehicle storage. While the property owner needs to be the applicant, the variance can be for the benefit of any person with a disability who lives in or regularly uses the dwelling. He provided suggested language to replace the first sentence.

***Motion*** by Member Wiltbank to approve the proposed amendments to Sections 4.17 through 4.24, Section 5.3, and Section 6.2.2 as submitted, with the change to modify the first sentence in §6.2.2.3, item 1 to read "The Board of Appeals may grant a variance to an owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling

for the construction of a place of storage and parking for a noncommercial vehicle and for no other purpose.”; second by Member Davitt; motion carried by roll call vote 5/0/0.

**Article 7, Definitions:** Planner Cullen noted that many of the definitions have changed, with new ones added and some deleted. She noted several additional changes that are recommended by herself or the Town Attorney:

- change the terminology for “retail” marijuana to “adult use” marijuana, and add or edit definitions to be consistent with the newly enacted state law
- delete the term “multi-unit development” since it is not used in the ordinance
- change “automotive graveyard” to “automobile graveyard” to be consistent with state law
- delete the term “enclosed recreational center” since it is not used in the ordinance.

There were no comments on this section from the board or the public.

**Motion** by Member Austin to approve the proposed amendments to Article 7 as submitted, with the changes noted by Planner Cullen; second by Member Weatherbee; motion carried by roll call vote 5/0/0.

Chairman Weldon asked if there were any other comments. CEO Block said he just discovered that the new building code includes provisions for swimming pool barriers, and to avoid inconsistency he recommended deleting §4.15.2, Barrier Requirements. The board felt this was reasonable.

**Motion** by Member Davitt to approve the proposed amendment to delete §4.15.2; second by Member Wiltbank; motion carried by roll call vote 5/0/0.

Chairman Weldon reviewed the issues remaining to be resolved at the continued hearing on Tuesday May 15: §4.1 regarding the traffic study, §4.6 regarding the minimum tract size for cluster housing projects, and §4.7.6 regarding stormwater management.

**Motion** by Member Weatherbee to table the public hearing on the proposed zoning amendments to Tuesday May 15, 2018 at 7:00 pm; second by Member Austin; motion carried 5/0/0.

4. Staff Report: None
5. Planning Board Comments: Member Weatherbee said he can't stress enough how much time and effort Karen has put into this, reworking an ordinance that had many problems that we didn't even recognize. She has done an excellent job. Other members agreed. Chairman Weldon thanked her for her organization, noting it made this hearing go very smoothly. Member Wiltbank and Planner Cullen noted for the public that the materials are online and the modifications will be online by the weekend. Planner Cullen also thanked the Board for the time and effort they have put into this project, with the nine work sessions and all the time reviewing the materials at home.

**Motion** by Member Davitt to adjourn the meeting at 9:23 pm; second by Member Wiltbank; motion carried 5/0/0.