



Town of Hampden

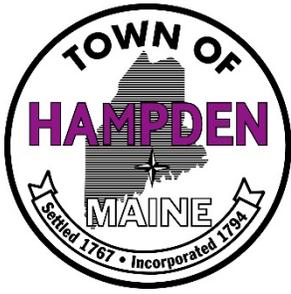
Planning Board – Workshop

Wednesday, March 13, 2019, 7:00 pm

Municipal Building Council Chambers

Agenda

1. Administrative.
 - a. Minutes – February 27, 2019
2. Zoning Ordinance proposed amendments
 - a. private event venue – discussed at January 9 meeting
 - b. miscellaneous amendments
3. Staff Report
4. Planning Board Comment
5. Adjournment



Town of Hampden

Planning Board Meeting

Wednesday February 27, 2019
(Postponed from Feb 13, 2019 due to snow)

Minutes

In Attendance:

Planning Board

Gene Weldon, Chairman
Kelley Wiltbank
Peter Weatherbee
Jim Davitt
Jennifer Austin
Tom Dorrity

Staff

Karen Cullen, AICP, Town Planner
Jim Chandler, Town Manager

Public

Jim Kiser, for Hampden Village
Curtis Marsh, for Hampden Village
Joan Tenney and Barbara Moody, abutter

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

1. Administrative:

- a. Minutes of January 9, 2019. **Motion** by Member Weatherbee to approve the minutes as submitted; second by Member Davitt; carried 5/0/1 (Member Dorrity abstained).

2. Old Business: None

3. New Business:

- a. **Public Hearing for Major Site Plan and Major Subdivision Final Plan – Bangor Realty Group LLC for Hampden Village Townhomes.** Request for a major site plan under the provisions of Section 4.1, Site Plan Review, of the Zoning Ordinance, and for a major final subdivision plan under the provisions of Section 332 of the Subdivision Ordinance. The proposal is to construct a multi-family cluster development with 30 townhome units on a 3.5 acre parcel located at 148 Mayo Road (parcel 35-0-01-A). The property is in the Residential B District.

Chairman Weldon opened the public hearing at 7:02 pm.

Jim Kiser presented the application:

- The trees were cut last year, leaving the trees along the perimeter.
- Proposing 30 cluster units on the 3.55 acre parcel.
- There will be three 4-unit buildings and three 6-unit buildings.
- Due to issues with the sewer pump station on Mayo Road, they have revised the design to have septic systems for the three 4-unit buildings, which will be built in phase 1; the three 6-unit buildings will be built in phase 2 and will be connected to the public sewer system.
- The applicant is hoping the sewer pump station issue is resolved by the time they are ready to build phase 2.
- The applicant may be amenable to making a contribution if necessary at that time to allow them to connect to the sewer system.

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- The Hampden Water District has said it is acceptable to them for the project to be on private wells, so they are proposing four drilled wells, since each well can only serve a maximum of ten units without becoming a public water supply.
- The parking has been located to reduce the impact on abutters.
- They are providing 82 parking spaces; 60 are required, and 66 are allowed at the 110% limit of the zoning.
- They need the additional spaces for guests and for winter vacation parking – an area where people leaving for vacation during the winter can park to avoid problems with plowing the parking lots (owners need to move cars for plowing).
- They have provided traffic estimates in the application.
- They have provided building plans for the 4-unit buildings, the 6-unit will be the same but with two more units.
- They have provided a stormwater management plan in compliance with the town's post-construction stormwater ordinance.
- Noted he inadvertently switched the percentages of impervious and developed areas in the table on the Stormwater Management report in the application package; the data on the Stormwater Treatment Worksheet is correct.

Abutter comments:

- Barbara Moody spoke for her mother, Joan Tenney, who was in the audience and lives at 146 Mayo Road just south of the entrance and in front of the proposed development.
 - How much traffic will there be? Jim Kiser answered: total daily traffic = 176 vehicles; peak morning = 13, and peak afternoon = 16.
 - They would like an explanation of the buffer issues raised at the Nov. 2018 meeting (on the sketch plan). Jim Kiser answered the applicant is requesting a waiver to the buffer distance along the northern boundary; in the area where Ms. Tenney lives they are providing a setback of about 45 feet from the property line. Planner Cullen explained the buffer issue in regards to the amount of perimeter buffer allowed to be counted toward the open space requirement (30%); the proposed plan is for all of the buffer to be counted towards the open space requirement.
 - What type of housing is it? Jim Kiser answered it will be high end rental, not low income. He stated the applicants screen potential tenants to ensure they are appropriate for their developments.
- Planner Cullen spoke for an abutter, Frank Campbell, who abuts the entrance driveway on the north side (152 Mayo Rd) and was unable to attend the hearing tonight.
 - He said that ever since the access way was put in, every time it rains he gets water in his basement. Prior to the access way being there his basement was always dry. He would like to know if the drainage system for the project will correct this problem. He said he is not opposed to the development, he just wants his basement to remain dry.
 - Jim Kiser said he is not sure how water would be getting into his basement. He said they were planning to install the sewer and water lines in that area but otherwise were not planning on a ditch or anything since they did not think it was a need in that area. Planner Cullen suggested the applicant contact Mr. Campbell directly to go see what the situation is and maybe they can figure out whether there is something on their site that is causing the water problem on his property. Jim Kiser said they can do that.

Discussion on the application:

- The applicant considers the buffer requirement in the cluster provisions to be an increased distance from the property line to the buildings and is not required to include screening.
- The applicant believes that for small lots like this one (3.5 acres) the buffer requirement in the cluster provisions is excessive; for this proposed design 38% of the site is within the perimeter buffer.

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- The applicant noted that 1.35 acres of the site is within the buffer and 0.46 acres are in open space outside of the buffer, for a total of 51% of the site as open space.
- During the logging operations trees were removed from the 40 foot buffer area; they tried to prevent that but some areas within the 40 feet were logged.
- The applicant is seeking a waiver to the 40 foot distance of the required buffer on the northern boundary line, to 31 feet, to allow decks and patios for the two 4-unit buildings in that location to extend into the 40 foot area. It was noted the buildings are at the 40 foot line.
- The Board noted the purpose of a vegetated buffer is to minimize the impact on abutters.
- Waiver requests regarding the buffers are for the distance from 40 feet to 31 feet along the northern boundary and to 12 feet by the dumpster, which was located to be as far away as possible for both the tenants and the abutters.
- Town Manager Jim Chandler addressed the sewer system issue:
 - Staff doesn't feel it is appropriate for a developer to pay for maintenance of the public system in regards to this pump station and the wet weather events that cause inadequate capacity and potential overflow conditions.
 - The problem seems to stem from sump pumps in basements within this area which pump clean (ground) water into the sewer system during certain wet weather conditions, usually when the ground is frozen and we get a lot of rain.
 - We recognize that any storm event could exceed the capacity of the pump station.
 - One thought for this project was for the developer to put up an escrow account to help cover the cost for pumping during these wet weather events, while we work on identifying and correcting the inflow/infiltration (I/I) problems.
 - We are working with consultants to determine costs for doing the necessary study.
 - Staff is asking the town council on Monday to agree to address this through the establishment of an escrow account by the town to help cover the cost of these wet weather pumping events. [Ed. note: Town Council has agreed to this.]
 - Staff feels this development should be on public sewer and that the developer should not have to put up the escrow account to deal with what is an existing condition that they have not caused.
 - We will be working with the homeowners on Mayo Road to address these problems, and the Sewer Ordinance allows us to do that.
- Jim Kiser stated that the Code Enforcement Officer told them that they could use septic systems and they can have 12 units on septic on this parcel.
- Planner Cullen pointed out that in regard to sewer and water, just because another authority (the CEO or the HWD) says an alternative to connection is acceptable, that doesn't negate the zoning requirement under section 3.2.1.1 that multi-family development is to be connected to the public system if it is within 500 feet of the property boundary.
- Construction timetable is about 18 months per phase, for a 3 year buildout; depending on market conditions.

Consensus of the Board is that the project should be connected to both the public water and public sewer systems.

Consensus of the Board is that the requested reduction in the distance of the buffer from 40' to 31' along the northern boundary and 12' at the dumpster is acceptable provided the majority of the remaining buffer remains wooded, noting the importance of minimizing impacts on the abutters.

Consensus of the Board is that it is acceptable to allow all of the perimeter buffer to be counted toward the open space requirement of the cluster provisions.

Consensus of the Board is that exceeding 110% of the required parking is acceptable provided there are creative alternatives (e.g. pervious surfaces, basketball hoops). Member Austin stated this

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will need to be very creative, as she doesn't think they really need that many (82 vs 66) spaces. Chairman Weldon noted the Board needs some way to justify granting this request for so many extra parking spaces.

Consensus of the Board is that allowing smaller spaces than required (9x18 vs the required 9x20) is acceptable; a waiver under section 4.7.7 needs to be requested.

Discussion on the conservation easement requirement for the open space:

- Applicant feels they will not be able to find anyone to take a CE on this open space.
- Possibly do a deed restriction instead; concern about whether that would have any teeth.
- Any changes to the site will require Planning Board approval through the subdivision ordinance and the site plan regulations of the zoning ordinance.
- Can put a note on the plan (both site plan and subdivision plan) stating no additional development permitted and no structures can be placed in the open space without Planning Board approval (not eligible for minor revision or minor site plan processes).
- Idea raised to use "in lieu of" language to allow an alternative way to protect the open space area, given the realities of the difficulty of finding an entity to accept conservation easements on this type of open space.
- Concern regarding legality of this given the language of section 4.6.4.3.

Consensus of the Board is to allow the open space to be protected through the addition of a note on the plans (subdivision and site plan) and a deed restriction, which ties any changes to the site to a requirement for Planning Board approval, in lieu of the requirement for a conservation easement.

It was noted that the cluster provisions in the zoning ordinance should be revised to handle multi-family cluster developments differently. Two particular issues raised were adding visitor parking spaces for multi-family developments in the parking section and providing an alternative to conservation easements for the protection of open space (§4.6.4.3).

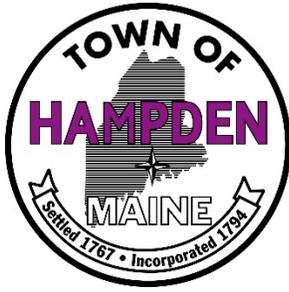
Motion by Member Wiltbank to table this to the next meeting, second by Member Davitt. After discussion the motion was amended to continue the public hearing to the April 10, 2019 Planning Board meeting. Members Wiltbank and Davitt agreed to this amendment and the Board voted in the affirmative 6/0/0.

Motion by Member Wiltbank to adjourn the regular Planning Board meeting at 9:09 pm, second by Member Dorrity; so voted 6/0/0.

Given the time, the Board decided to hold the zoning workshop meeting on March 13, 2019.

Respectfully submitted by Karen Cullen, Town Planner

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Town of Hampden
Land & Building Services

Memorandum

To: Planning Board
From: Karen M. Cullen, AICP, Town Planner *KMC*
Date: March 6, 2019
RE: Miscellaneous Amendments to Zoning Ordinance

As you know we've been discussing the cluster provisions of the zoning ordinance as we've been reviewing the proposed project on Mayo Road. After last week's public hearing on the project, I did more analyses to try to figure out a better way to write the language so it is not so open to interpretation.

One issue is whether to increase the minimum tract size for eligibility for cluster housing developments. The primary concern seems to be the amount of buffer required and how much that impinges on the area left for development. Wrapped into this is the buffer issue of how much of the buffer can be counted toward the open space requirement.

Before going further, I want to step back to describe what the language of the ordinance means. §4.6.4.1 states in part: "A maximum of 30% of the common open space acreage may be within the perimeter buffer..." That means that if the requirement is 30% of the tract, and the tract is 5 acres, then 1.5 acres is the required open space acreage. 30% of 1.5 acres is 0.45 acre – this is the maximum amount of the perimeter buffer that can be counted toward the 1.5 acre open space requirement. Using the Mayo Road proposal as an example, their requirement is 50% of the tract since they want the 2 unit density bonus. The site is 3.55 acres, so the open space requirement is 1.775 acres. 30% of that is 0.53 acres – that is the maximum amount of perimeter buffer that is allowed to be counted toward open space. According to their plan, they have 1.34 acres in the buffer (note 7 on site plan). They are requesting, through the remaining language in that sentence, an increase from 30% to 76% of the required open space to be allowed to be within the perimeter buffer.

As was suggested at the meeting, perhaps the minimum tract size is too small, since the buffer and setback requirements take up so much of the land. In order to come up with some way of understanding how the 30% provision discussed above impacts tracts of different sizes, I did an analysis using the current minimum size and a larger size, for each of the districts where cluster housing is allowed. This was done mathematically and is not based on actual parcels, as I couldn't

readily find any that fit the need. Each analyzed “parcel” is a square with an existing road along one side (the buffer requirements are different for the front and sides/rear). The following table shows the results.

Zoning District	Current Tract Size				Potential Tract Size				Mayo
	Rural	Res A	Res B	TC	Rural	Res A	Res B	TC	
Tract (ac)	10	2	2	1	20	5	5	2	3.55
OS (ac, at 30%)	3	.6	.6	.3	6	1.5	1.5	.6	1.07
Total acres in buffer	2.05	.45	.44	.24	3.15	.84	.80	.38	1.0*
% of OS in buffer	68.3	74.7	74.1	79.7	52.5	56.1	53.3	63.0	56.3
Max units w/o bonus	20	6	16	8	40	15	40	16	28
Max units w/max bonus	24	7	19	9	48	18	48	19	34
Units/acre w/max	2.4	3.6	9.6	9.6	2.4	3.6	9.6	9.6	9.6

* This info is not included in the application or on the plan, and was estimated by K Cullen.

This illustrates a couple of things: first, the tract sizes we currently have are probably too small, given that the amount of land taken up by buffer is a high percentage of the open space required (68.3 to 79.7 percent). Second, the limit of 30% of the required open space acreage allowed to be within the buffer may be too low, given that with the larger tract sizes the actual amount of open space within the buffer is still fairly high (52.5 to 63 percent). Nevertheless, since part of the reason for requiring open space in cluster housing developments is to provide space for outdoor amenities (playground, trails, etc.), I do not recommend increasing the limit on the amount of open space that may be within the perimeter buffer.

The attached draft (version 5) of the proposed amendments to “miscellaneous sections” includes additional amendments to the cluster housing section of the ordinance to address some of the issues raised during the review process for the Mayo Road multi-family project. Additional discussion will be needed at the meeting on March 13 to decide if more changes are needed, for example whether to increase the minimum tract size for cluster developments.

TOWN OF HAMPDEN

The Town of Hampden Hereby Ordains
Proposed Amendments to the Zoning Ordinance

Deletions are ~~Strikethrough~~ Additions are Underlined

Amend §2.5 Parcels in More Than One District

To correct an error in wording, switch the words “use” and “parcel” in the second sentence:

“...any portion of such a ~~use~~ parcel of land shall be...in which said ~~parcel~~ use is located...”

Amend § 3.1.3, Use Table

Add a new category under A - Agricultural/Recreational Uses, A-14: agricultural diversity uses, with the following designations for the districts:

- **C** (conditional use) in the Rural and Residential B districts
- **N** (not permitted) in the Residential A, Seasonal, Rural Business, Business, Business B, Town Center, Commercial Service, Waterfront, Interchange, Industrial Park, Industrial, and Industrial 2 districts

Amend §3.2.1.5, in Multi-family development

To allow flexibility in design, add language to the end of the sentence:

- 3.2.1.5 All parking areas for multi-family dwellings must be located to the side or rear of the building unless the Planning Board makes a finding that a different location would be beneficial to the development and to the abutters.

Amend §3.4.1, Table of Dimensional Requirements

Add a footnote to the table for “Max Gross Density” to read: For single family and two-family structures, which are to be treated as a single unit; for multi-family development refer to §3.4.2.2.

Amend §3.4.2.2, Multi-family developments, item 3 to read:

5. In the Residential B district, the other yard setback requirement is increased by 2 feet per unit over 4 units, counted and measured by each building.

Amend §4.1.5.2, Minor Site Plans

Correct a reference in the first sentence to read:

4.1.5.2 Minor site plans shall include all of the information required by §4.1.4.1 with the following exceptions, and waivers may be granted as provided in ~~§4.1.4.3~~ §4.1.5.4.

Amend §4.5.1, Nonconformities, General

Add a new item 4 to read:

4.5.1.4 When a nonconformity is created by action of a public body for a taking by eminent domain or a conveyance in lieu thereof, the nonconformity is considered to be legal and is allowed to continue subject to the provisions of this §4.5.

and amend §4.5.5.4 to read:

~~4.5.5.4 Reduction in lot size. Except as expressly provided in this ordinance or for a taking by eminent domain or a conveyance in lieu thereof, no lot shall be reduced in size...~~

Amendments to §4.6, Cluster Housing

Amend §4.6.2, Dimensional Requirements by splitting setback and buffer requirements and adding a footnote for setbacks of accessory structures:

	<i>Rural</i>	<i>Res A</i>	<i>Res B</i>	<i>Town Center</i>
min setbacks & buffers (feet):				
<u>setback (front/all others)¹:</u>	100/75	50/50	50/40	100/40
<u>buffer (front/all others)</u>	<u>85/60</u>	<u>40/40</u>	<u>40/30</u>	<u>80/30</u>
Footnotes:				
1. <u>Accessory structures must be setback from the tract boundary a minimum of 30 feet in all cases.</u>				
2. Only applicable in developments where there are individual lots proposed for each residential structure, restricted to single family developments.				

[Note, the remainder of the table remains unchanged.]

Amend §4.6.4, Common Open Space in the following ways:

Amend §4.6.4.1 to read:

4.6.4.1 Area: A maximum of 50% of the common open space acreage may be wetland that counts toward the common open space requirement; applicants are encouraged to include additional wetland areas in the open space for long term protection of the resource. A maximum of 30% of the required common open space acreage may be within the perimeter buffer, unless the Planning Board finds that due to the unique physical characteristics of the tract, including size and shape, a higher percentage would provide a more desirable design. In no case shall the Board allow more than 75% of the required open space acreage to be located within the perimeter buffer.

Amend §4.6.4.2 to read:

4.6.4.2 Utilities: stormwater drainage, water supply, or on-site sewage disposal systems, whether shared or not, are permitted within the common open space area. If needed, easements must

~~be established to ensure maintenance of the utility. Roads may be located within the tract buffer provided no portion is closer than 25 feet to the tract boundary and the amount of roadway within the buffer is minimized. The intent is to allow flexibility to account for tract configuration and the location of natural features on the site.~~

Amend §4.6.4.3 to read:

4.6.4.3 Ownership and restriction of future development: common open space areas may be owned by the homeowners association for the development, the Town of Hampden, a land trust, or another similar organization that will provide permanent protection. In all cases, either a conservation easement or a permanent deed restriction which includes language to require Planning Board approval for alteration or removal of the deed restriction must be recorded and referenced on the plans and applicable deeds to prohibit future subdivision of the common open space and to prohibit any development other than accessory structures for permitted recreational uses, infrastructure elements, or maintenance facilities. For developments where there are no individual lots, at least 50% of the required open space must be undisturbed land (i.e. not used for development and the existing terrain and vegetation remain undisturbed).

Amend §4.6.4 by adding a new section 4.6.4.6 and renumber the existing section 4.6.4.6 to 4.6.4.7;

4.6.4.6 Amenities: Every cluster development must include at least one recreational amenity within the open space area, such as but not limited to a walking trail, playground, picnic area, ballfield or court. Amenities should serve the needs of the residents of the development and may be open to the general public (e.g. a cluster development marketed toward older residents should have walking trails as opposed to ball fields).

Add a new §4.6.5 to deal with buffers to read:

§4.6.5, Tract Buffers

4.6.5.1 All cluster housing developments are required to provide a buffer along all tract boundaries per the table in §4.6.2.

4.6.5.2 Any existing vegetation which provides a dense buffer is to be retained.

4.6.5.3 Any area of the required buffer area which has no existing buffering vegetation must be planted with trees or shrubs to provide a dense buffer.

4.6.5.4 Notwithstanding the above, roads and associated utilities (water or sewer lines, electric or communications cables, or other linear utilities) may be located within the tract buffer provided no portion of the physical improvement, easement, or right-of-way is located within 25 feet of the tract boundary and the encroachment area is minimized. The remaining buffer in these locations must have permanent dense vegetation, whether existing or planted or both. However, an entrance road may be located in any portion of the tract buffer when either the Hampden DPW or Maine DOT requires such a location for the intersection with the existing public road, from the intersection into the site to the shortest distance necessary to move the road out of the buffer. The intent of this provision is to allow flexibility to account for tract configuration and the location of natural features on the site.

4.6.5.5 The required buffer area must be protected from development and from removal of vegetation by either:

1. including the entire buffer with the common open space under §4.6.4.3, ownership and restriction of future development, or
2. by deed restrictions on the buffer area where included in individual, privately owned lots within a single family cluster development. In such cases, the required minimum lot size for individual lots per §4.6.2 must be outside of the buffer area.

4.6.5.6 Notwithstanding the above requirements, the Planning Board has the option, upon the written request of the applicant, to reduce the depth of the buffer up to a maximum of 50 percent of the requirement for a distance along the boundary up to a maximum of 20 percent of the total length of the perimeter buffer (i.e. the entire perimeter of the tract, not just the boundary line in question). The Board must make a finding that such a reduction would result in a design that would provide some public benefit, such as but not limited to additional housing units targeted for moderate income households, or more land included in the useable common open space, or an increase in the buffer depth in other locations adjacent to developed areas of the proposed cluster development.

Amend §4.7.1.1, table of parking requirements, by adding to the comments box for Residential use:

Multi-family development may add up to 0.25 parking space per unit for guest parking.

Amend §4.7.5.3.9, political signs, to read:

9. Political Signs – Signs bearing political messages relating to an election, primary or referendum may be placed per 23 MRSA §1913-A and Maine DOT Department Regulations, ~~as follows:~~
 1. ~~May be erected on private property outside the Right of Way limits of public ways at any time prior to an election, primary or referendum, limited in size to a maximum surface area of 50 square feet.~~
 2. ~~May be erected within the Right of Way limits of public ways no sooner than six weeks prior to an election, primary or referendum and must be removed no later than one week following that date of the election, primary or referendum. Provided, however, that political signs may not be located within the right-of-way limits of any Controlled Access Highway (Route 202 from I 395 to Western Avenue) or within any right-of-way of the Interstate Highway System.~~

Amend §4.25, Accessory Apartments

§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 or within or attached to a new or existing detached accessory structure subject to the requirements below. It should be noted that properties within any zoning district that allows two-family dwellings by right have the option of considering a second unit that is within the single family house to be a two-family dwelling as opposed to an accessory apartment.

Amend §7.2, Definitions

Agricultural Diversity Uses: activities on active farms that will diversify the income generated on the property, such as farm-stay vacations, public events for education and enjoyment that directly relate to agricultural products, services, or experiences (e.g. horse show or competition, sheep shearing event).

Buffer: An area of land along with natural vegetation, landscaping, berms, walls, or fences, that is located between land uses to mitigate visual and sound impacts of one land use on abutting properties.

~~*Buffer strip:* An undisturbed area or belt of land that is covered with trees or other vegetation.~~

Buffering vegetation: Shrubs or trees which provide a screen that is opaque or nearly opaque year-round from the ground to a height of at least ten feet at maturity. Where existing vegetation is present which is not opaque year-round, but where the depth of the vegetated area is large enough to provide a similar effect, such vegetation will be considered consistent with this definition.

Multi-family development: A development that consists of three or more dwelling units in one or more buildings on a single parcel of land. This includes developments with two or more two-family buildings on a single parcel, except for those that can meet the provisions of §3.4.2.12.