

**BRUNSWICK ZONING ORDINANCE REWRITE COMMITTEE MEETING**

**NOVEMBER 20, 2014**

**MEMBERS PRESENT ZONING ORDINANCE REWRITE COMMITTEE:** Margaret Wilson, Vice Chair; Richard Visser, and Anna Breinich, Director of Planning and Development, and Jeff Hutchinson, Codes Enforcement Officer; and Jeremy Doxsee, Town Planner

**MEMBERS ABSENT:** Charlie Frizzle, Chair

**CONSULTANT PRESENT:** Don Elliott via ZOOM

**Review and acceptance of meeting summaries:**

Meeting summaries were received for November 5 2014 and November 12, 2014. There were some minor changes requested, but no substantive changes.

**Jeremy Doxsee moved, Richard Visser seconded, approval of the November 5, 2014 and the November 12, 2014 meeting summaries. The motion was approved unanimously by those present.**

Ms. Wilson explained the process the Committee was using in these work sessions. Comments relating to the proposed draft zoning ordinance are continually being added to the document the Committee is working on, and after meetings Ms. Breinich updates the response column. All of the comments will be reflected in the updated draft, due tentatively in January.

Ms. Wilson opened the meeting to public comments.

**Richard Fisco, 2 Lincoln Street**, thanked the Committee for the glossary. He is still concerned with the “*to be inserted*” sections, and wanted to know what they are.

Ms. Wilson replied they are sections of the ordinance, and they will be inserted for the next draft.

Ms. Breinich stated he would have the opportunity for comments when the next draft is available.

Ms. Wilson asked Ms. Breinich if they could provide the page number as well as the section reference for easier reference. Ms. Breinich responded that not all the pages had the same numbers.

**Continue review of public draft general comments:**

- **Section 2.2. – Growth Area Base Zone District Descriptions.** These have not been written yet. They will be included in the next draft.

- **Section 2.2.3.E. – Growth Aviation District purpose statement.** The question dealt with tax liability issues in the purpose statement. Ms. Breinich has discussed this with the Town Manager and there are no issues. The entire ordinance will be reviewed by the Town Attorney at a later date.

**Jane Millett, 10 Franklin Street,** felt that the zoning created tax exemptions, but Mr. Elliott and Ms. Breinich replied that land use and taxation are separate, and the Committee only works with the land use codes.

**Dan Harris,** thought something could be added to the effect that no use under this section shall affect the taxability of the property in question.

Ms. Wilson replied that that matter would be for the Town Council, and Councilor Millett said that she was going to pursue the alignment of the zoning and taxation codes.

Ms. Breinich has spoken to the Tax Assessor, Cathy Jamison, and they are both in agreement that taxation and zoning are separate. Mr. Elliott agreed, and stated that the Tax Assessor is always going to make their own determination whether land is going to be used for civic, nonprofit or taxable purposes. It is not going to be affected by what it is called in the zoning ordinance.

- **2.4.6.B. – Limited expansion of mobile home parks.** This question is similar to the previous question; taxation is not related to the zoning ordinance.

**Jane Millett, 10 Franklin Street,** said expansion of the parks is not in the Town's best interest.

Ms. Wilson replied that this section has been in the ordinance since 1995, and this is the only comment she's heard disagreeing with the ability of the mobile home parks to expand. Mr. Hutchinson stated that in the growth districts the only place that allows a mobile home is the Mobile Home Overlay District; single mobile homes on a single lot are not allowed. Ms. Wilson asked him if policy-wise he thought that was not a good idea, and Mr. Hutchinson responded that since he has been working for the Town it has worked well, and he doesn't believe any of the mobile home parks have been expanded. If they were proposing to expand their park, they would also have to have the Mobile Home Overlay District expanded before the Planning Board and the Council. Water and sewer would also be looked at carefully. Ms. Breinich asks whether the Town should continue to limit the expansion of these mobile home parks, and whether that would be discriminatory under the Fair Housing Act. Mr. Elliott responded that HUD is coming up with new guidelines on how they're going to evaluate fair housing and are going to be taking a much closer look at what housing is allowed in the community and what types of restrictions are used. Ms. Breinich and Mr. Elliott had a discussion about how an expansion would work now, and if a Town Council vote would be needed to expand the district, then the clause in question would not be needed. Mr. Hutchinson disagrees, stating that if that were the case, review by the Planning Board and the Town Council would be written. Ms. Breinich mentioned that any overlay change needed to go through that process, but Mr. Hutchinson feels that is unclear. Ms. Wilson believes the Committee is split, and they need to discuss further. Mr. Elliott asked if there was a reason for this to be in the code; if not, take it out. The Committee agrees that in order for mobile home parks to expand, they need to be rezoned, and that would go before Planning Board and then Town Council. The Committee also agreed to take out the paragraph on expansion and footnote it. In **2.4.6.C. 1.**, the Committee will take out the expansion language, and Ms. Breinich will look for other related examples that may need to be deleted in the draft

ordinance. Ms. Wilson felt the Committee could satisfy the Sewer District’s concerns also by eliminating the expansion language. Mr. Hutchinson pointed out that only one mobile home park is serviced by public water and sewer; the others are private, but it would be a good idea to add the word adequate for any expansion. The Committee agreed.

- **3.1.E. and F.** – Ms. Breinich was uncomfortable with the new language as written, and suggested a replacement of a new **E.** That language, read by Ms. Breinich, is included on page 14 of the comment document. A discussion was held over the use of the word “department”, and it was agreed that the Committee would look at this and possibly use the generic term “staff” instead.

**Jane Millett, 10 Franklin Street**, asked for clarification of unclassified or omitted use in that section, and Ms. Wilson directed her to section **5.2.3.**, which explains those particular uses.

**Carol Liscovitz, 11 Berry Street**, asked a question about determining eligible uses by staff, and Ms. Breinich replied. Mr. Hutchinson added that they would clean up the language.

**Dan Harris** asked a question about an omitted use, and Ms. Wilson and Mr. Hutchinson replied that it was in the draft zoning ordinance.

**Jane Millett, 10 Franklin Street**, had a question about what she called a boarding house, and Mr. Hutchinson explained that 17 Cleaveland was not a boarding house and it was unconstitutional to treat it as a boarding house.

Ms. Wilson and Ms. Breinich discussed conditional use and special permit uses, and the steps needed for a special permit, including possible Town Council approval if a Councilor brings it up at a Council meeting. It is not on the agenda, and the Council is notified by mail. Language needs to be added to the proposed zoning ordinance to clarify this process with omitted and unclassified uses.

- **5.2.3.C.** – Ms. Wilson suggested changing the title of that section to “*Review of expansions of legally non-classified and omitted uses.*” Ms. Breinich would like to wait until the Committee reaches that section.

**Carol Liscovitz, 11 Berry Street**, had a question about the 30 day ratification for special permits, which Ms. Breinich answered.

Mr. Elliott had briefly left the meeting when his power source was depleted, but rejoined and Ms. Breinich gave him a brief summary of what the Committee had discussed.

- **Footnotes 208 and 210 for Section 3.1.** – The question is what is required in the current ordinance. Ms. Wilson explained what the Committee was trying to do in the conditional use section is to say that there are certain uses specified in the use table that would be permitted if the review authority could determine that do not have more impact on the neighborhood than the existing uses. There are few standards in the current ordinance, so the Committee has tried to add standards for clarity. The Committee is recommending that basic definitions be provided for terms used.
- **3.4.1.G.** – There is only one district in Brunswick (highway commercial) that would allow adult entertainment establishments, and the question is why would Brunswick allow any. Mr. Elliott confirmed that they do need to be allowed; it is a free speech issue. Ms. Breinich asked Mr. Elliott to view their definition to make sure it is clear what an adult entertainment establishment is.

- **3.4.2.A.5. and 3.4.2.C.4.** – the commenter wondered whether the Committee’s statement that no front façades can be altered, either when building an accessory apartment or creating a home occupation, violates the fire and safety code. Ms. Wilson responded that there is nothing inherently within the front façade that interfaces with the fire or safety codes that the Committee is aware of.
- **4.1.2. – Dimensional standards** – a number of comments are specific, and deal with minimum lot size, specifically downtown, density requirements, and then some deal with dimensional standards in general. The Committee had prepared a table comparing maximum density in districts all over town, and there is quite a variety, as there is also with front setbacks and lot sizes. As the Committee consolidated districts, their rule was to take the more conservative measurement in the residential areas to allow for neighborhood protection, and less conservative in the commercial or mixed use areas to allow for more flexibility with existing lot sizes. Ms. Wilson said the exception to that rule is that, in order to follow the Comprehensive Plan’s suggestion, they have made a general recommendation, throughout residential and some other areas of town, to recommend 7500 sq. ft. instead of 10,000 sq. ft. lot size.

**Dan Harris** mentioned that he was happy to hear Mr. Elliott say he would like to have single family housing outside of the core, which would contain multi-family housing of greater density.

**Carol Liscovitz, 11 Berry Street,** asked about changing minimum lot size or density, to which Ms. Wilson replied they changed the lot size, which was what the Comprehensive Plan suggested.

**Dan Harris** suggested the Comprehensive Plan is a guide, not a bible.

Ms. Wilson disagreed with Mr. Harris and stated that in conversation she’s had with people throughout Brunswick, they expressed to her that they appreciated the fact that there were single family homes interspersed throughout the districts, and Brunswick is perceived as too restrictive at times. There will be some major policy decisions that will need to be made in the future, and this issue will come up again for discussion.

- **Table 4.1.2., footnote** – the footnote appears incorrectly in the dimensional use table under the College Growth 3 zone. It will be removed, as it only applies to Cook’s Corner. The language for the Cook’s Corner district has not been changed from the current ordinance.
- **4.7.4. – Parking Alternatives** – this question dealt with the Review Authority and who is making decisions for the functioning of the downtown. Ms. Wilson stated that the Review Authority is a technical term in the ordinance and it can apply to the Codes Enforcement Officer, the Staff Review Committee, or the Planning Board, depending on the size of the project coming forward. Ms. Breinich believes the term should be defined for clarity, so Mr. Elliott suggested for consistency just putting in a definition referring to the table, because the table states which entity is the reviewer.
- **4.7.4.B.1. – Parking in lieu** – this allows businesses, especially in the downtown area, to make alternate arrangements for shared parking or arrangements for a fee in lieu of parking. The Committee would be happy for any feedback on this subject. If they were going to use a fee, it would have to reasonably reflect the cost in order to be statutorily acceptable. This is one way municipalities have tried to deal with inadequate parking. A parking garage structure was discussed, and earmarking the fee for a facility, leased lot, or the leasing of spaces privately.

**Allison Harris** mentioned including recognition of an ongoing fee for parking spaces or facility to include maintenance.

- **4.12. – Performance Standards** – dealing with odors, noise, dust and fumes, and vibrations. The question dealt with the proposed railroad maintenance facility, and Ms. Breinich’s response was that Brunswick’s zoning ordinance does not apply to that project as they are exempt from local zoning. The Committee discussed wording and accuracy of this section.

**Carol Liscovitz, 11 Berry Street**, asked if there was another document of the town that defines limitations of particulate matter. There is not; one would need to look in the state and federal codes.

Ms. Wilson stated that the only item that was new in this section was vibrations. Ms. Breinich mentioned to Mr. Elliott that in the noise section of the ordinance, the temporary activities that are exempt are listed, but it doesn’t mention, and it wasn’t in the current ordinance, those that are transportation-related exempt, such as the railroad and aircraft. Ms. Wilson clarified that Ms. Breinich wanted all the exemptions listed under 4.12.1.A.1. and the second sentence eliminated.

**Dan Harris** asked a question about fireworks, and was told they are not allowed in Brunswick.

- **5.1.1.A.2.a and b – Administration of Development Review** – the questioner wondered why the Planning Board was delegating its authority to the Staff Review Committee. Ms. Wilson stated it is done currently and has been done for years. The Town Council has to approve this zoning ordinance, so they will approve this delegation of responsibility to a slightly less formal body, which happens frequently in almost all levels of government. If someone disagrees with the judgment of the less formal body, there is a provision for appeal up to the Planning Board.
- **5.1.1.D. – Staff Review Committee** – same issue as previous question. The Committee recommends no change in procedure. Page 34 has another comment, and Ms. Breinich has addressed that comment. The Committee will discuss this when they reach page 34.
- **5.1.1.E.1.a. and b.** – Ms. Wilson believes the phrase “*or related materials*” should be eliminated, and Ms. Breinich agreed.
- **5.2.2. – Conditional Use Permit** – this question deals with footnote 616 and a new review and approval procedure for uses listed as conditional uses, as long as additional criteria are met. The conditional use permit replaces the special use permit.

**Carol Liscovitz, 11 Berry Street**, believes the concept has significantly changed from special use permit to conditional use permit, and is not sure this change can be justified simply because there have been a few instances where this works. In response to some of the Committee members’ agreement that this was needed, she said she would rather see it rectified in the use table, rather than go too far in allowances. She believes the burden is on the adjacent property owners, but Ms. Breinich and Ms. Wilson read from the ordinance that the burden lies with the applicant, and Ms. Wilson asked Ms. Liscovitz if it is the criteria that she believes is inadequate. Ms. Wilson asked if the criteria are adequately protective of the neighborhood. The Committee and Mr. Elliott discussed permitted uses and conditional uses.

**Dan Harris**, would suggest that a more general term encompassing a neighbor’s perceived damage to their property be used, because besides, noise, traffic, etc., there are still intangible things that cause a property to be devalued. Ms. Breinich read the

ordinance, stating that it covers the intangibles, and the language is general. Mr. Elliott stated that the language clearly puts the burden on the applicant, and it's up to the Planning Board to make the decision. Ms. Wilson asked the Committee to make sure there are no other specifics that they have overlooked. Ms. Breinich said if citizens are concerned with some conditional uses, the Committee may want to evaluate the permitted use table to see whether some of the conditional uses should be non-permitted uses.

- **5.2.2.A.3. – Conditional use permit notice** – the question deals with who gets notice in case new owner is not on the tax rolls as of April first. Ms. Breinich replied that the ownership data is updated every 2-3 months through the Assessing Department.
- **5.2.3.C.** – this question deals with special permits and the Town Council ratification, and the Committee has already discussed this. Ms. Wilson will provide language for this section to Ms. Breinich.
- **5.2.5.D.1.b.** – this question deals with disability variance and requirements from the Zoning Board of Appeals. Mr. Hutchinson has reviewed the variance section to make sure it was compliant with State Law.
- **5.2.5.E.2.** – this question deals with eliminating a structure added because of a disability variance, and Ms. Wilson responded that if the Zoning Board of Appeals imposes it as a condition of approval, otherwise they do not have jurisdiction to remove it.
- **5.2.6.C. – Village Review Board section** – Ms. Breinich mentioned that this section will be discussed by the Village Review Board and their recommendations given to the Zoning Ordinance Rewrite Committee. There is an incorrect reference to the Secretary of State, which has been corrected. Ms. Breinich will devise a table with the “*to be discussed*” items by other committees, so one can easily find out the recommendation made to ZORC.
- **5.2.6.C.4.a. and b. – Demolition and Relocation** – the question dealt with 28 and 30 Federal Street’s inclusion on the listing Contributing Structures before being demolished. There was an error in listing these buildings as Contributing Structures.
- **5.2.7.B. – Tables for Development Review Authority Threshold Criteria-** this newly created table attempts to simplify content and better define review authority responsibility. Ms. Wilson stated that they what was changed the threshold was new floor areas from 5,000 to 10,000 sq. ft., change of use, new impervious and cumulative, and multi-family to follow the changes made for Brunswick Landing. Ms. Breinich said they have now had 2 years of experience using these thresholds and have not had any problems. This is a delegation of authority to the Staff Review Committee over some projects that the Planning Board would have seen under the existing ordinance. There have been no objections thus far.

**Carol Liscovitz, 11 Berry Street,** asked for clarification and Ms. Wilson replied that in the appendices of the current ordinance, when they dealt with Brunswick Landing, all Development Review Standards had to be developed. They allowed the Staff Review Committee to handle more projects than in the rest of the town. That has worked well, and they would like that responsibility extended to the rest of the town. Depending on the nature of the project, some have been sent to Planning Board after Staff Review. Ms. Liscovitz questioned the visibility of a project going to the Staff Review versus the Planning Board, including daytime meeting rather nighttime meeting, and televised versus taped. The Committee will continue to take feedback on this aspect of the ordinance.

**Project schedule/next meeting date:**

**December 3, 2014, 7:00 pm - Town Hall, Council Chambers**

**December 9, 2014, 3:00 pm – Town Hall, Room 206**

**December 17, 2014, 3:00 pm – Town Hall, Room 206**

**January 8, 2014, 2:00 pm – Town Hall, Room 206**

Ms. Breinich has started on the next set of responses for the December 3, 2014 meeting.

Ms. Wilson adjourned the meeting.

Attest

Debra Blum  
Recording Secretary