

BRUNSWICK ZONING ORDINANCE REWRITE COMMITTEE MEETING

DECEMBER 3, 2014

MEMBERS PRESENT ZONING ORDINANCE REWRITE COMMITTEE: Charlie Frizzle, Chair; Margaret Wilson, Vice Chair; Richard Visser, Anna Breinich, Director of Planning and Development; and Jeremy Doxsee, Town Planner

MEMBERS ABSENT: Jeff Hutchinson, Codes Enforcement Officer;

CONSULTANT PRESENT: Don Elliott via ZOOM

Review and acceptance of meeting summaries:

A meeting summary was received for May 13, 2014. The Committee had no substantive changes for the minutes, just a few minor typos.

Carol Liscovitz, 11 Berry Street, asked about her question in the minutes, and Ms. Breinich replied that these were meeting summaries, and not expected to be extremely detailed. The Committee decided to table this summary to try to get a little more information added about Ms. Liscovitz's question on page 2.

Catherine Ferdinand, Bowdoin College, assumed these minutes were actually meeting summaries, and the recourse would be to go back to the meeting to hear the entire question. Ms. Breinich confirmed this.

Carol Liscovitz, 11 Berry Street, did not understand that this was the case, and with that issue being dealt with, the Committee moved to accept the minutes.

Charlie Frizzle moved, Margaret Wilson seconded, approval of the May 13, 2014, meeting summaries. The motion was approved unanimously by those present.

Project update:

Ms. Breinich stated that Ms. Wilson gave a detailed overview of the project at the last meeting. They have three more meetings scheduled, and are getting through quite a bit of the comments. There are 37 pages of comments, many of which have been addressed, which may be viewed online. Tonight's handout includes just those comments that the Committee will be dealing with at this meeting.

Project schedule/next meeting date:

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

Mr. Frizzle opened the meeting to people with general comments. Seeing none, he closed the comment period of the meeting.

Continue review of public draft general comments:

- **1.2.2.** – Staff has provided a response that recommends that the title remain as is, and the introductory sentence be revised to read: “*As stated in the Town Brunswick 2008 Comprehensive Plan, specific purposes of this Ordinance are to:...*” The reason for this change is to mention the Comprehensive Plan in the introductory statement. The Committee agrees.
- **1.7.2.** – waiting for staff work to be completed. Ms. Breinich mentioned that the work has been completed, but Mr. Hutchinson could not be at this meeting due to a training in Bangor. This will be discussed at a later meeting.
- **2.2** – Discussed at last meeting, with ZORC in agreement.
- **2.2.3.E.** – ZORC agreed with the staff’s response.
- **2.4.6.B.** – ZORC response given.
Jane Millett, 10 Franklin Street, believed the last part of the sentence should be “on-site water supply and septic disposal are adequate, instead of available. The Committee agreed.
- **2.4.9.A.** – waiting for this to be discussed by the Village Review Board at their next meeting.
- **2.4.9.A.2.** – waiting for this to be discussed by the Village Review Board at their next meeting. The next part of this comment deals with the Village Review Board, who is charged with design review, not land use review. The Committee agrees with the staff’s language.
- **3.1.E. and F.** – The Committee agrees.
Jane Millett, 10 Franklin Street, said the Committee was going through these too fast, and were looking for specific examples of ambiguities and developer complaints. Ms. Millett mentioned the Cleaveland Street boarding house, a neighborhood store on Jordan Avenue, and the CEI building. Ms. Breinich asked for the specific ambiguities or developer complaints for these projects, and Ms. Millett replied that one of the issues with Cleaveland Street was whether it was a multi-family or a boarding house. Ms. Breinich responded that it did go to court based on the Planning Board’s definition, and it was upheld. Although the neighbors believed it was a boarding home, the Town had a very clear definition that the Court agreed with. Ms. Breinich asked that going forward with the ordinance, if there are any developer complaints or problems, please let the Board know so they may make changes as they go through the ordinance, because unless they know what the complaints are, they are not able to address them. Ms. Wilson noted there had been comments from developers and there had not been anything in particular from the development community regarding ambiguities. Mr. Elliott replied that the job now was to get the definitions as clear as possible, but there is no zoning ordinance that doesn’t require staff to interpret it, even on a daily basis. There is an appeal process if needed.
- **Footnotes 208 and 210** – These were discussed at the last meeting and ZORC agreed with the staff’s recommendation. Clarion will be providing definitions.

Catherine Ferdinand, Bowdoin College, wanted clarification on the sentence about Table 3.2 having to do with special permit use, conditional use and supplemental use standards. She would like to see the tables cleaned up and clarified. Ms. Wilson admitted she raised a number of issues. Mr. Elliott explained that the supplemental use standards were a combination of the notes brought forward from the permitted use tables used now and things that affected these uses that were buried in the definitions. After a brief discussion, a table referencing error was found, and Ms. Breinich will correct it. There were also some asterisks that didn't correspond to a supplemental use standard, or had a reference but no asterisk. Mr. Elliott said the majority of codes do not put the asterisks in because of the difficulty of keeping them up to date. The Committee agrees on the cleaner approach of eliminating the asterisks, and to reference the table of standards that tells to which districts the standards apply. This will be part of the next draft.

- **3.2 Use Table** – the recommendation by the staff that “artisan industry” be permitted only in mixed use districts and not include artist studios, such as Spindleworks; keep artist studios as a conditional use in residential districts and permitted as an accessory use to a residential use in all districts. Mr. Frizzle asked the difference in definition between an artist studio and an artist industry. Spindleworks produces and sells its art. Ms. Breinich explained that an artist industry is an industry, not a studio, a gallery or an artist. An example of what they were using for artisan industry would be a micro brewpub, Frosty's or Gelato Fiasco, where it's more of a manufacturing process. Mr. Frizzle believes this definition needs more thought. Mr. Elliott believes Ms. Breinich's intended difference is selling the product you're making on the premises, and it's limited in size. He believes the two are clearly different, according to the definitions, but the question is if that's the difference the Committee wants it to be. The definition of studio could also be revised to allow incidental sales. Ms. Breinich and Mr. Elliott will confer on this item and come back to the Committee with a recommendation for further discussion at the next meeting.
- **3.2. Use Table** – many questions on uses. ZORC cannot respond without specific questions regarding uses.
- **3.4.1.G.** – Clarion to revise definition.
- **3.4.2.A.5. and 3.4.2.C.4.** – the question was does the provision violate the fire or safety code, and it has been determined that this existing ordinance does not violate safety code, and ZORC agreed.
- **Chapter 4 – relative to Maine Street sidewalks** – a question about outdoor dining on public sidewalks. This is not regulated through the zoning ordinance, but through licensing approved by Town Council and regulated by ADA standards. Staff will direct this comment to the Town Clerk, who oversees licensing for outdoor dining on public sidewalks. They will investigate the issue of allowing for pedestrian traffic flow on public sidewalks. The Committee agrees with the staff's response.
- **4.1.2. – Dimensional standards** – ZORC agreed with the staff's response. Further review as part of interim draft.
- **4.1.2., footnote** – ZORC agreed with the staff's response.
- **Table 4.1.2. – Dimensional Standards** – This issue was discussed. The actual maximum footprint in footnote 19 for multi-family dwellings is 10,000 sq. ft. rather than 5,000 sq. ft., so this may take care of part of the problem. Ms. Breinich states they need

to verify that footnote 19 is applicable to all districts with multi-family dwellings. Mr. Frizzle said they may need another some other plan for assisted living facilities, as one specific square footage does not satisfy all of the different definitions. Mr. Elliott stated that assisted living and congregate care facilities were combined. Most codes are allowing the smaller living spaces as essentially single family homes. He said if the building is significantly bigger than what is allowed, a conditional use permit could be required. Ms. Breinich suggested expanding footnote 19 to be inclusive of assisted living and multi-family.

Carol Liscovitz, 11 Berry Street, asked about assisted living being included in every zone, and Mr. Frizzle replied that because it covers the small houses, the government has required it to be included everywhere without discrimination. He states if they're going to be bigger than 10,000 sq. ft. they are going to require them to meet a conditional use permit. Ms. Liscovitz pointed out a maximum of 30,000 sq. ft., in R-1 and R-8, which Ms. Breinich believes covers an existing structure from TR-5, and asked Mr. Doxsee to check. Ms. Wilson agreed with Ms. Liscovitz, where a statute could require the living arrangement, but not something of 30,000 sq. ft. in a neighborhood where most lot sizes are 10,000 sq. ft. Ms. Breinich found the reference stating that it came from the R-4 district; with a boarding care facility, the Planning Board may, subject to special permit standards (now conditional use standards), allow a boarding care facility to exceed the 5,000 sq. ft. maximum footprint per structure standards provided that no building footprint exceeds 30,000 sq. ft. Ms. Wilson felt the note should not be in GR-2; it should not apply to R-1 and R-8, but it should apply to 3, 4, 5 and 6. Mr. Elliott was given instructions on the deletions, but in response to Ms. Breinich's question of it being an additional requirement and should it be there to begin with, replied that it could be a supplemental use standard and they could move it. Mr. Elliott agreed to move it over to a use-specific standard that applies in the GR-4 area. Mr. Frizzle stated that by combining three districts they put in a strange allowance in far more areas than currently exists. He asked why it was there in the first place, do we need it anymore and, if so, to what areas should it be restricted. This will be further researched.

- **4.7.1.B.2. – In-lieu fee structure** – Mr. Frizzle stated that impact fees are used to accumulate funds to widen roads and practices like that, but we don't use the fees to maintain those roads, and he feels this fee structure should be in the same category. Ms. Breinich mentioned that generally any kind of impact fee or rec fee is used for new, and is not used for maintenance.

Allison Harris mentioned that this would shift the burden for maintenance to the Town in perpetuity, but if there is no basis or precedent for this, then the Committee may not want to do this. Mr. Frizzle responded that it would be inconsistent with other fees charged, which are primarily for new improvements.

Jane Millett, 10 Franklin Street, said a situation is being created where people do not have to provide their own parking, so it then falls to the Town. Mr. Frizzle said the possible new fee agreement is included for feedback, and they would appreciate any. Mr. Elliott and the Committee discussed parking solutions and incentives. This will be discussed further at another time. Mr. Elliott also stated that he doesn't believe that this would be interpreted as an impact fee, so there are a lot fewer restrictions on how it is calculated, and whether some number could be rolled in for capitalized maintenance expenses over time.

- **4.7.2.B. – Bike Parking** – Mr. Frizzle stated there is nothing the Committee can do about the examples provided in the question (along Maine Street, Post Office) because these are existing structures and are grandfathered. They have been requiring bike racks for virtually every project that they’ve looked at. Ms. Wilson said they can look at the sliding scale, but she thinks it should begin small, less than the two bike rack spaces per ten spaces as it is currently. Mr. Doxsee will work on this.
- **4.7.4. – Parking Alternatives** – ZORC is requesting a definition of “review authority”, so it is clear who needs to review.
- **4.7.4.B.1. – Parking in lieu** – ZORC will consider fees.
- **4.9.2.B. – Corner properties** – the question dealt specifically with the Pleasant Street façade of the UU Church, which was deemed not as aesthetically pleasing and a disappointment to the questioner. Ms. Wilson asked if it would make a difference saying that new structures shall be oriented toward all adjoining public streets, but Ms. Breinich says this is unclear. Mr. Elliott said the solution lies in the Village Review Board standards, if it should be broadened. The norm would be that corner buildings would be reviewed for their presence on both streets unless there’s some reason not to. Ms. Wilson asked if this could be a question for the Village Review Board to discuss as part of their requirements, and see if there’s any way they could align more with what has been talked about. They have design elements that deal with Maine Street – perhaps they could think about the same for Pleasant Street. The Committee agrees with the staff’s response, but requires further discussion at VRB.
- **4.10.1. and 4.10.2.C. – Neighborhood Protection Standards** – In progress. An audience member had a question about roof-mounted heating, air conditioning and ventilation, and whether standards were applied anywhere along the approval process by the Planning Board as far as decibels. Mr. Frizzle and Ms. Breinich answered that there is a sound ordinance in the existing ordinance and the proposed ordinance. There is a decibel range that is acceptable and is measured by a sound meter. He will talk to Jeff Hutchinson about it, as he is not present at today’s meeting.
- **4.11.3.E.1.** – Banner signs are being addressed separately as part of the staff rewrite of the sign section.
- **4.11.4.H.** – Sign section being rewritten by staff as above.
- **4.12. – Performance Standards** – Clarion is working on this item, and further review will be completed by the Codes Enforcement Officer.
- **4.12.1.A.1.** – Staff recommended a text revision and the Committee agrees.
- **4.12.2., 4.12.4., 4.12.5** – Staff recommended a text revision and the Committee agrees.
- **4.14.2. A-B. – Alternative Equivalent Compliance 4-56** – some inconsistencies present. Mr. Elliott explained that the intent is not to have alternative equivalent compliance always go to Council unless the Committee decides that’s what they want to do. Ms. Wilson believes it should be the Review Authority, and Mr. Elliott and the Committee agree. This appears in A. and B. Section B seems to end prematurely, but Mr. Elliott will fix this section. The intent is to meet all of the conditions.
- **4.8. – Outdoor Lighting** – Mr. Frizzle agrees with staff to require avoiding a “disability glare”, and if something can be written into the ordinance to that effect that would be fine. Ms. Breinich will work with Mr. Hutchinson on a definition for “disability glare”. There was a discussion and an audience question about neighborhood lighting, since one and two family homes were exempted in the ordinance. The Committee would like them

to follow lighting standards but not have to go through Development Review. Mr. Elliott likened lighting to a sign code – not everything is going to be reviewed, but the applicant is still responsible for meeting the standards and, if not, it becomes an enforcement issue. Mr. Elliott suggested rather than exempting one and two family homes, to write the lighting standards so they are not triggered by Development Review. They are just general standards that apply to everyone. At the property line between owners, a light level is needed, rather than a “disability glare” or a “nuisance glare”. Reference to one and two family homes will be deleted, and light level will be added in.

- **5.1.1.** – Staff is recommending that it would be appropriate for Town Council to be added to the list as a Review and Decision Maker, as this was just an oversight, and the Committee agrees.
- **5.1.1.A.2. a and b** – Staff recommendation is to insert a new section reference, and the Committee agrees.
- **5.1.1.A.2.** – the question asked if issuing a building permit requires approval of the Planning Board, and the Committee answered that it does not. The Committee decided to leave this section and language as is.
- **5.1.1.D.** – This is the same process as the existing one, and the staff recommended leaving it alone. The Committee agrees.
- **5.1.1.E.1. a. and b.** – the question is unclear, but has to do with the powers and duties for the Director of Planning and Development and the Codes Enforcement Officer. No changes are proposed from the existing ordinance. Ms. Wilson did notice a clause that needs to be deleted; otherwise, the Committee will not change this section.
- **5.1.4.** – The Committee is in agreement with the Planning Board’s request that the determination of completeness of application be delegated to the staff prior to review by any board or committee.
- **5.1.9.D.** – the question asks if another section needs to be added to deal with an appeal process, but the appeal process is already stated in a previous section. The Committee agrees with staff that another section does not need to be added.
- **5.2.6.B.6.c.iii** – this question about why the Town Council is forwarded notices for proposed demolition, and Mr. Frizzle stated that it is for information purposes only, and it is forwarded to a list of other entities. The Committee will not change this action.
- **5.2.2. – Conditional Use Permit, footnote 616**
- **5.2.2.I.3. – Notice to property owners based on tax records**
- **5.2.3.C. – Review of Legally Non-Conforming Special Permit Uses**
- **5.2.5.D.1.b. – Disability variance**
- **5.2.5.E.2. – Disability variance**
ZORC agreed with staff recommendations on the above sections.
Carol Liscovitz, 11 Berry Street, had a question about 5.2.2. and Conditional Use permits, and Ms. Wilson said the Committee needed to review all conditional uses regarding compatibility and appropriateness with the permitted uses in the Use Table.
- **5.2.6.C. – Review Standards**
- **5.2.6.C.2.b. viii. and xii**
- **5.2.6.C.4.a. and b.**
ZORC agreed with the staff’s response for the above sections. They will be discussed by the VRB at their 12/16 meeting.

- **Table 5.2.7. B. – Review Authority** – as the Committee gets additional feedback, this item will be discussed at other times. Ms. Wilson thought that some of the larger and more substantive items for discussion rise to the level of general notice to the public and should be brought up to the agenda level after the general comments are dealt with.
- **5.3.2.B.** – the question deals with the Code Enforcement Officer and if an appeal can be taken to the Zoning Board of Appeals if the CEO declines to take action on a complaint. Mr. Frizzle asked Ms. Breinich to clarify the staff’s answer, and Ms. Breinich stated that if someone disagrees with the CEO’s decision, they may complain to the Councilors, the Director of Planning and Development, or the Town Manager, but it becomes a personnel matter. There is no appeal process. Mr. Elliott explained that this is standard throughout the country. There is no citizen right to force the city to enforce the zoning ordinance in a particular way.

Other business:

Ms. Breinich stated the next meeting is December 9, 2014.

Mr. Frizzle adjourned the meeting.

Attest

Debra Blum
Recording Secretary