

BRUNSWICK ZONING ORDINANCE REWRITE COMMITTEE WORK SESSION

JANUARY 15, 2015

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

CONSULTANT PRESENT: Don Elliott via ZOOM

Chair Frizzle opened the meeting and stated that the purpose of the meeting was to continue to go over comments and questions pertaining to the proposed draft zoning ordinance. He then opened the meeting to anyone with general comments on subject matters not covered on today's agenda.

Mr. Frizzle closed the general public comment session.

Outdoor Storage Discussion:

Mr. Hutchinson has rewritten this section, and asks the Committee if they have any questions. He has added needed definitions, including watercraft and seasonal storage. Mr. Frizzle was not able to find a definition for motorized watercraft, which he assumed was ski-doo's and crafts of that nature. Mr. Hutchinson said the watercraft definition included motorized and non-motorized craft. Mr. Frizzle asked what he is going to allow people to park in the setbacks. He asked if a rowboat with a small motor is considered motorized watercraft, and Mr. Hutchinson replied that it is. According to the definition, virtually no boat with a motor in it or on it can be stored. Mr. Hutchinson stated he believed that the concern was long-term storage in the setbacks, and seasonal storage of motorized watercraft is allowed, as well as motor vehicles. The Committee had a discussion about the different aspects of this ordinance, including the relevance of a motor, the size of the watercraft, and revising section headings. It was suggested to allow watercraft less than 16 feet, with exclusions for kayaks, canoes, and rowing shells. Mr. Hutchinson will work on this and bring it back to the Committee. He will be removing the definition of motorized watercraft from motor vehicles because it is covered in watercraft.

Review comments from Conservation Commission:

- **4.1.4.C. –Open Space Development** – The Conservation Commission believes that “*land set aside as conserved open space*” should be additional, developable land the builder sets aside to generate density bonuses, not unbuildable, already protected land. Ms. Breinich believes this falls into a policy issue discussion, along with affordable housing outside the growth area and the thresholds, because they would be changing a long-term practice of acceptance. Although Mr. Doxsee stated that it could be viewed as less development-friendly, Ms. Wilson said this has been a complaint for a long time

from the Conservation Commission and other conservation groups. Ms. Breinich mentioned allowing no more than a given percentage, and Ms. Wilson added using a net site area as computations. Ms. Breinich believed they should develop the language for the next draft. Ms. Wilson read the applicable sections and discussed revised language, unclear language and language that needed to be deleted. Mr. Frizzle mentioned that just because land is undevelopable, that doesn't make it undesirable or without value. Ms. Wilson had a question about developable site area, and if it needed to be clarified. Mr. Frizzle talked about eliminating a density bonus for an undevelopable portion of land. Ms. Wilson agreed. Mr. Frizzle suggested basing their bonus on what part of the developable piece of property the builder is willing to set aside.

Carol Liscovitz, 11 Berry Street, thinks that providing a bonus for maintaining trees and the natural aspect of a site, as opposed to clearing the land first and then putting features in. Ms. Wilson replied that there is new buffer language in the ordinance, and she thinks that covers what Ms. Liscovitz is talking about.

Ms. Breinich asked for Ms. Wilson's assistance in this rewrite, especially keeping consistent with rural Brunswick's Smart Growth program, where a bonus is given for preservation. Mr. Visser asked about maintenance fees that the Conservation Commission commented about, and Ms. Breinich said that Mr. Doxsee has provided the Conservation Commission with a number of examples and new language just received from the Brunswick/Topsham Land Trust, and they are reviewing that information. The fee is another policy issue; if the Committee feels there should be a fee, it can just be referenced. Mr. Frizzle asked what fee were they talking about, and Ms. Breinich and Ms. Wilson replied that it's the stewardship fee, which covers staff time and legal requirements not necessarily incurred with fee property. Ms. Wilson noted that calculations of stewardship fees can be \$10,000 or more, because it is perpetual and has long-term costs.

Carol Liscovitz, 11 Berry Street, asked if the fee for an easement or dedication by a developer was offset by taxes, and Committee members replied that it could be.

Ms. Breinich mentioned that only one monitoring visit every three years was required by law, and it tends to take most of the Town Planner's time during the summer months, because it takes 1-2 trips per easement and the Town has 15 easements. Council asked several years ago that this be a staff function rather than a Conservation Commission function, because of concerns raised by property owners that it becomes a public meeting with 3 or more Commission members present. Easements were discussed by the Committee.

Mr. Doxsee brought up the fact that at last meeting, Charlie Wiercinski disagreed with adding roads that the developer is planning to build to net site area. Mr. Doxsee researched this using surrounding communities and found that they all include roads in their calculations, and Ms. Breinich agreed with this. Ms. Wilson feels if other communities calculate this the same way, then the Committee should leave it alone, but they should include that comment by Mr. Wiercinski in their spreadsheet with their response. The Committee agreed.

Ms. Breinich stated that the last comment by the Conservation Commission, recommending that the Table 4.1.4.C.6. columns be combined, has already been recommended by ZORC, so they are in agreement. Ms. Wilson asked if anyone could clarify the comment from the Conservation Commission that the unbuildable land

language should go in 8.5, which doesn't exist. Mr. Doxsee will attempt to clarify this. He believes what they're saying is that the language about unbuildable land should be stated earlier in the section so that it's very clear from the outset. Ms. Wilson doesn't believe the policy they desire – fee vs. easement – can be put into the ordinance.

Continue review of public draft general comments/questions:

- **1.7.2. – Outdoor Storage** – The Committee clarified that it wasn't necessary to specify Bowdoin's outdoor storage use as an accessory; it was an accessory use, thus permitted.
- **2.1 District Summary Table R-1 and R-8** – the staff has begun research on this item.
- **2.1 District Summary Table** – The Committee requested staff to research origins of CU-1 and CU-2 and revisit consolidations of districts with Clarion. ZORC agreed that "College Facility Not Listed" as a listed use will be deleted and such uses will be handled by Special Permit, if and when unlisted uses are proposed, as any other unlisted or omitted use would be treated in Brunswick. ZORC confirmed its agreement with this process.
- **2.4.3.** – The comment asserts that the Shoreland Protection setbacks are too restrictive. The setbacks are mandated by the Maine Shoreland Protection Law. The Committee recognizes and confirms this. The Committee discussed the difference between the Town of Brunswick and the State's definition of stream. Mr. Hutchinson replied that it was coming from the State Natural Resource Protection Act, not the State Shoreland Zoning, and they're both state standards. Mr. Frizzle stated that unless someone could come up with a compelling reason to deviate from the Shoreland Zoning Protection, he's comfortable with it. Mr. Hutchinson said ultimately, locally, we need to mirror the Shoreland Zoning definition of stream, but we are not obligated to mandate it to include the definition of stream as per NRPA.
- **2.4.2.F.2.g. and 2.4.3.i.ii.** – There is no definition for scarified or unscarified vegetation in the NRPZ section of the zoning ordinance, so the staff is suggesting that we leave the regulations alone and provide a definition for scarified. The Committee agrees. There is similar language in the timber harvesting regulations under the Shoreland Zoning, so Mr. Frizzle suggested they also provide a definition for scarified.
- **2.4.5. – Wildlife Protection Overlay; 4.2.2. – Protection of Significant Plant and Animal Habitat** – ZORC confirms its agreement of support for wildlife protection standards, with no changes being proposed to lessen existing protections.
- **2.4.6.B.** – This item is on the to-do list.
- **2.4.9.A., 2.4.9.A.2., 2.4.9.B.1.a.i.(D)** – VRB will be discussing at their meeting tomorrow.
- **Footnotes 208 and 210** - This item is on the to-do list.
- **3.2 Use Table** - This item is on the to-do list.
- **3.2 Use Table** – The question deals with whether a music studio would be permitted in GR-3. Ms. Breinich stated that the person who had submitted the question was afraid they would not be able to continue their business. Ms. Breinich explained that there is nothing in the current ordinance that would prevent this resident from running her business. The Committee answered questions from the audience on home occupations and studios. The Committee endorses this response. Ms. Breinich did mention that currently home occupations are allowed only in single and two-family dwellings. She

asked if the Committee would like to expand that to multi-family dwellings. Mr. Hutchinson added that they would need more stringent guidelines. Mr. Frizzle said if no one has asked for it, then leave it alone. Ms. Breinich said there were some preexisting examples.

Catherine Ferdinand, Bowdoin College, asked about exterior alterations for a home occupation, and members of the Committee answered.

Carol Liscovitz, 11 Berry Street, asked for clarification for studio use and daycares. Committee members responded that studios are permitted in mixed-use districts and will be conditional in all residential zones. Small daycares are permitted in all residential districts; large daycares are conditional in all residential districts.

- **3.2 Use Table, 4.1 Dimensional Standards** – This question addressed concerns from Katherine Street area residents, and staff had responded that no residential districts surrounding that area were going to be changed, and also there were going to be very little change in the existing uses. ZORC agreed with staff’s response. They are confirming that endorsement today.
- **3.2 Use Table** – ZORC confirmed their agreement with staff’s recommendations for the GC-1, GC-2 and GC-3 districts dealing with aviation uses.
- **3.2 Use Table, 3-2 – Residence Hall** – ZORC confirmed its agreement with Bowdoin-designated residence halls being allowed where they are permitted, as either multi-family dwelling units or residence halls per ordinance definition.
- **3.4.1.U.** – Ms. Breinich explained that Clarion took the Small Wind Energy Systems (SWES) provisions and renamed it Renewable Energy Generating Systems, which is what we wanted it to address, but it still only addresses Small Wind Energy Systems. This was meant to be for supplementary standards for permitted uses, and these are principal uses. The provisions as written are for accessory uses. What staff did in 2009 was very carefully crafted through a large amount of research to deal with the negative impacts, and there were no concerns raised by the public at that time. They are currently having no problems with the ordinance as written. There is a huge difference between the size of what could be installed as an accessory in the growth area districts versus the rural area districts, and we have one installation now in Brunswick. It was added because there are changes in technology, there are changes in the types of turbines that are coming out that have less flicker, and they may also have capacity for being able to capture more wind. In response to Ms. Wilson’s question about the Renewable Energy Generating Facility, Ms. Breinich said the intent was to cover by the name, the REGF. That was to be as a principal use. They used only what was in our present ordinance, the SWES, for an accessory use. Ms. Breinich said what we need is supplemental standards for Renewable Energy Generating Facilities with principal use and accessory use standards under one heading.

Carol Liscovitz, 11 Berry Street, asked why REGF would be allowed as an accessory use but not conditional, because the change in technology is fluid, and there is the chance for negative impacts on neighbors. Mr. Frizzle understood that she was advocating for eliminating REGF as a permitted use, even as an accessory, and make all REGF conditional uses. Ms. Breinich does not agree, because the REGF now includes solar panels, and is someone expected to go through a conditional use for solar panels. Mr. Frizzle also disagrees with Ms. Liscovitz. He believes the restrictions they have in place now are certainly adequate, with respect to windmills, and they do not restrict things like

solar panels as an accessory use. Restrictions on windmills as an accessory use were discussed, and the Committee was comfortable with those. Ms. Wilson asked if any specific protections were needed for abutters for geothermal applications. Mr. Frizzle said no more so than you would have to restrict well drilling, because that's all geothermal is. Ms. Breinich's idea is to, as an accessory, we differentiate, and just say for small wind energy systems it's an accessory, and these supplemental standards apply. For the larger REGFs, that would be a principal use. Mr. Frizzle asked what they were going to do about the solar panels. Ms. Breinich replied that if they're serving other buildings or selling back, that is a principal use. A question about wood boilers was discussed. Mr. Frizzle stated that what they need is a section that deals with renewable energy as a primary use, and a secondary section that deals with accessory small wind systems. Ms. Breinich says they have that now; they just need to refine it. Mr. Hutchinson believes they may have to further define terms for clarification. Mr. Frizzle mentioned a section defining free-standing solar units; still an accessory use, but with some restrictions with the setbacks and impervious surface.

Carol Liscovitz, 11 Berry Street, asked about the noise ordinance, height and reflection in regards to these systems. Mr. Frizzle said the questions with respect to noise and windmills have all arisen from the large installations, and the noise is a low level droning sound, which is unpleasant, but you don't get that from small, accessory uses. Ms. Breinich adds that we are requiring that they cannot exceed a height of 80 feet, and they would have to have 80 feet of lot if they were 80 feet in height. Mr. Frizzle suggested they try to define reflection to deal with Ms. Liscovitz's concern, and appropriately incorporate some sort of limit on it in our standards, possibly by the use of a nonreflective surface. Clarion will draft new language, and this item will be continued.

- **Chapter 4 (relative to Maine Street sidewalks)** - This item is on the to-do list.
- **4.1.2 Dimensional Standards** - This item is on the to-do list.
- **4.1.2. Dimensional Standards 4-3/4-4** – ZORC confirmed their agreement to this section.
- **Table 4.1.2. Dimensional Standards** – This will be discussed at the 1/27/15 meeting.
- **Table 4.1.2. Dimensional Standards - (added 1/13)** – ZORC confirmed its response and staff will complete additional follow up work on this item.
- **Table 4.1.2. Dimensional Standards** – ZORC confirmed its agreement with staff that they are supportive of smaller lot sizes.
- **4.1.4.D., 4.1.4.D.2. and 4.1.4.E. – Bonus Density Units** – Mr. Frizzle and Mr. Visser agreed with most of the staff's recommendations, but Mr. Frizzle is not sure he wants to restrict density bonuses to the growth area for affordable housing. He believes they ought to be able to look at density bonuses for that particular use, no matter where it is located in town. It is not an easy task to build affordable housing, and lots are difficult to find, so when they need more density, they should be able to take a look at that. Ms. Breinich could not find anything in the Comprehensive Plan limiting affordable housing bonus densities to the growth area, however, the way the overall vision is presented, even discussing limiting the overall building permits for new construction within the rural area, gave her the indication that they should be targeting as much growth and development within the growth area rather than the rural area. That is why the only bonus densities currently in the rural areas are to promote open space development, conservation of land and Rural Brunswick Smart Growth. Mr. Frizzle agrees, but believes

if a lot is found for affordable housing in the rural area that might work, perhaps the bonus density would help them out with the extra cost of sewer and water. He understands, as Ms. Breinich pointed out, that this is deviating from current case. Mr. Frizzle is recommending a change to that, which would allow affordable housing to be considered for a density bonus regardless of its location in town, and not be restricted to the growth area. He doesn't feel this is going to be a common occurrence because of the expense. Ms. Breinich would agree if it is done as part of an open space development. Ms. Wilson said the point is to keep sprawl from the rural areas. Mr. Frizzle said a developer would not be able to come up with the open space requirement because they typically use every bit of the development for houses.

Carol Liscovitz, 11 Berry Street, asked if there was a definition of affordable housing, and the Committee told her there was a very specific and strict definition in the ordinance. She also asked a question about the density bonus with affordable housing, which members of the Committee answered.

Ms. Breinich states she still has an issue with density outside the growth area, as suggested by the Comprehensive Plan, and mentions that they have increased the density in developments for open space in the rural areas as an incentive to get that kind of development without sprawling. Ms. Wilson would like to look back at the affordable housing section of the Comprehensive Plan. The Committee agrees that this is a policy issue, and would like to think about it and discuss it again at a later meeting. Ms. Breinich discussed a possible middle ground, and stated that the whole section of density bonus needs to be reviewed. Ms. Wilson said the town had an excess of available affordable housing and because of this does not care for the idea of offering incentives to build outside of the growth area. The Committee discussed affordable housing and decided to bring this item up again.

- **4.2.1.** – Ms. Wilson feels this needs to be clarified; identify what the scenic resources are that need to be referenced. Mr. Frizzle said they needed to make reference to the applicable documents and standards.
- **4.2.5., 4.4.2., Appendix D** – Mr. Frizzle explained that this item deals with the many deed restrictions that have been built into the conveyances from the Navy to MRRA, MRRA to landowners, Navy to Bowdoin College, etc. All of these deeds have very specific restrictions with respect to what can be done on the property in the areas with concern about water quality, plumes, etc. At one time, it was proposed that we regulate this by means of an overlay system. He and Ms. Breinich met with representatives of the Navy, MRRA and EPA and discussed this issue. The problem with an overlay zone is that these restrictions are not consistent from one property to the next. They are consistent in terms of meeting the EPA requirements, but they are different depending on how far away from the plume you are, or what the concern is in that area. That cannot be captured in one overlay zone. They felt the best way to make sure those deed restrictions are met in perpetuity was to require that any development process on Brunswick Landing provide us with copies of all of the applicable deed restrictions associated with that property. The Town has gotten deed restrictions from the Navy and from MRRA, and believes Bowdoin would be willing to provide theirs, so they will compile a library in case a developer doesn't know what the restrictions are. Part of the review and approval process for any development in Brunswick Landing will be to confirm that the developer is aware of the restrictions and will agree to comply. Mr. Frizzle believes that this the

best the Committee can do to in terms of making sure people stay aware of these standards in the future. The Committee then discussed where to put this information, probably in the Property Development Standards, and any references. Ms. Breinich will discuss this with Mr. Elliott, and Ms. Breinich will procure a map of the CERCLA sites. ZORC agrees with that approach.

- **4.2.7. – Historic Resources** - This item is on the to-do list.
- **4.5.2.B.1. – Street Trees** – ZORC, with Mr. Hutchinson objecting, confirmed their agreement of their response of 1/8/15.
- **4.7.1.B.2.** - This item is on the to-do list.
- **4.7.2.B.** - This item is on the to-do list.
- **4.7.4.B.1. – Parking in Lieu** - This item is on the to-do list as a policy discussion issue.
- **4.10.1., 4.10.2.C. – Neighborhood Protection Standards** - This item is on the to-do list as a policy discussion issue.

Mr. Visser had asked Ms. Breinich yesterday whether they had gotten any updates from Rec on the Rec impact fees. Ms. Breinich had requested an update but hasn't gotten it yet, and she is going to follow up before the next meeting.

- **4.11.3.E.1. –** Waiting for staff rewrite. Mr. Hutchinson will make this available next week as a draft, and it will be presented at the next meeting.
- **4.11.4.H. –** Waiting for staff rewrite. Mr. Hutchinson will make this available next week as a draft, and it will be presented at the next meeting.
- **4.12. – Performance Standards** - This item is on the to-do list.
- **4.8 – Outdoor Lighting** - This item is on the to-do list.
- **5.2.2. – Conditional Use Permit and 5.2.3. – Special Use Permit** – The Committee discussed changing the language. Ms. Breinich has been looking at other ordinances for guidance, and will also ask Mr. Elliott about more standards and clarification for Conditional Use Standards and Special Permits.
- **5.2.6.C. – Review Standards** – This item will be addressed by VRB at their next meeting.
- **5.2.6.C.2.b. viii. and xii.** - This item will be addressed by VRB at their next meeting.
- **5.2.6.C.4.a. & b.** - This item will be addressed by VRB at their next meeting.
- **5.2.7. –** The staff recommendation is to include the Marine Resource Committee in any pertinent development review, and staff would also like to add the Conservation Commission, the Bicycle & Pedestrian Advisory Committee, and the Recreation Commission. They would like to state when such reviews are needed to better inform the applicant and the public. With those additions, ZORC agrees with the staff recommendations.
- **Table 5.2.7.B. – Review Authority** – This item will be further reviewed by ZORC at a later date.
- **Access points** – ZORC confirmed their agreement that the zoning ordinance does not identify future access points, regarding a general comment about limiting access points to Rossmore Road.

At the next meeting, Ms. Breinich would like to have a basic presentation and discussion on the sign chapter by Mr. Hutchinson, VRB comments, affordable housing and the development threshold. The meeting after that (January 29) will be to catch up on everything else.

In response to a question from Ms. Liscovitz, Ms. Breinich expects the next draft to be available in late March. The Committee will still be meeting to draft language and work on mapping, but they will still also be addressing any additional comments they receive.

ZORC work session meeting schedule:

January 22, 2015, Work Session, Town Hall, Room 206, 3:00 pm – 6:00 pm – revised time/location

January 27, 2015, Work Session, Town Hall, Council Chambers, 6:00 pm – 9:00 pm

January 29, 2015, Work Session, Council Chambers, 5:30 pm – 8:30 pm – revised time

Other business:

None.

Mr. Frizzle adjourned the meeting.

Attest

Debra Blum
Recording Secretary