



TOWN OF BRUNSWICK

PLANNING BOARD

85 UNION STREET
BRUNSWICK, ME 04011

**PLANNING BOARD
WORKSHOP AGENDA
BRUNSWICK TOWN HALL
85 UNION STREET
COUNCIL CHAMBERS
TUESDAY, April 12, 2016, 7:00 P.M.**

1. **WORKSHOP:** The Planning Board will hold a workshop to review the Maine Department of Environmental Protection (DEP) Rule, Chapter 1000: Guidelines for Municipal Shoreland Zoning Ordinances (06-096, Ch. 1000), and offer comment regarding an amendment to Brunswick's Zoning Ordinance for filling and earthmoving activities within the Natural Resource Protection Zone (NRPZ).
2. **Other Business**
3. **Adjourn**

It is the practice of the Planning Board to allow public comment and all are invited to attend and participate.

Please call the Brunswick Department of Planning and Development (725-6660) with questions or comments. Individuals needing auxiliary aids for effective communications please call 725-6659 or TTY 725-5521. This meeting will be televised.



TOWN OF BRUNSWICK, MAINE

INCORPORATED 1739

DEPARTMENT OF PLANNING AND DEVELOPMENT
85 UNION STREET
BRUNSWICK, ME 04011

ANNA M. BREINICH, FAICP
DIRECTOR OF PLANNING & DEVELOPMENT

PHONE: 207-725-6660
FAX: 207-725-6663

April 8, 2016

To: Brunswick Planning Board
From: Anna Breinich, FAICP
Subject: Zoning Ordinance Amendment Request: Chapter Four (Development Review), Sections 401 (Applicability) and 402 (Development Review Classifications and Thresholds, and Section 211 (Natural Resource Protection Zone [NRPZ]) to Require Review of Filling and Earthmoving Activities within the NRPZ

SHORELAND ZONING BACKGROUND: Pursuant to 38 M.R.S.A. sections 435-449, the *Mandatory Shoreland Zoning Act*, requires all municipalities to adopt, administer, and enforce ordinances which regulate land use activities within 250 feet of great ponds, rivers, freshwater and coastal wetlands, including all tidal waters; and within 75 feet of streams as defined. The Act also requires the Board of Environmental Protection to establish minimum guidelines for such ordinances. Accordingly, the Department of Environmental Protection (DEP) Rule, *Chapter 1000: Guidelines for Municipal Shoreland Zoning Ordinances*, adopted by the Board on February 14, 1990 and amended July 14, 1992, August 7, 1994, February 6, 1999, February 13, 2000, May 1, 2006 and January 26, 2015 contains those guidelines for municipal shoreland ordinances. The Act requires that municipalities adopt shoreland zoning ordinances consistent with, or no less stringent than, those minimum guidelines.

EMERGENCY MORATORIUM: A review of the Town of Brunswick's shoreland zoning ordinance for activities within the so-called, *Natural Resource Protection Zone (NRPZ)*, revealed an inconsistency with Chapter 1000, specifically, that the requirement for town review and approval of activities involving filling and earthmoving within the NRPZ is not part of Brunswick's zoning ordinance.

As a result, during their March 21, 2016 meeting, the Brunswick Town Council, by a 5-4 vote, approved an emergency moratorium on new development within the Natural Resource Protection Zone (NRPZ) involving filling and earthmoving. The moratorium is enclosed.

PROPOSED AMENDMENT: On April 4, 2016, staff from the Department of Planning and Development (and Codes) discussed draft NRPZ language regarding filling and earthmoving with DEP staff within the Shoreland Zoning unit. The following thresholds for filling and earthmoving activities were considered acceptable by DEP staff pending town acceptance, and formal review and approval by the DEP: *≤10 cubic yards of filling and earthmoving Code Enforcement Officer (CEO) approval; >10-100 cubic yards of filling and earthmoving Minor Development Review (Staff Review Committee); >100 cubic yards of filling and earthmoving Major Development Review (Planning Board)*. The draft amendment to Section 211 (NRPZ), Section 401 (Applicability), and Section 402 (Development Review Classifications and Thresholds) is enclosed.

Enclosures: Moratorium; Draft Zoning Ordinance Amendment: Section 211, 401 and 402

**ADOPTED MORATORIUM ON NEW
DEVELOPMENT IN THE NATURAL RESOURCE
PROTECTION ZONE (NRPZ)**

Public Hearing – 03/21/2016

Adopted – 03/21/2016

Effective – 04/20/2016

WHEREAS, two (2) shoreline stabilization projects that involve filling and earth moving of 10 cubic yards or more are currently underway within the Town of Brunswick's Natural Resource Protection Zone (NRPZ) as defined at Section 211 of the Brunswick Zoning Ordinance; and

WHEREAS, it has been determined that land use standards for filling and earth moving activities within the NRPZ that are required under State law affecting shoreland zoning within the Town of Brunswick have inadvertently not been included in the Brunswick Zoning Ordinance despite approval of the Ordinance by the State of Maine Department of Environmental Protection; and

WHEREAS, the Brunswick Zoning Ordinance is currently inadequate to meet minimum State law requirements for shoreland zoning; and

WHEREAS, additional filling and earth moving activities within the NRPZ is anticipated; and

WHEREAS, allowing additional filling and earth moving activities to go forward within the NRPZ without adequate regulations affects life, health and property in the Town of Brunswick; and

WHEREAS, the Brunswick Zoning Ordinance is inadequate to prevent serious public harm from new filling and earth moving activities; and

WHEREAS, the Brunswick Town Council adopted an "Emergency on Moratorium on New Development in the Natural Resource Protection Zone" on March 7, 2016, with an immediate affective date;

NOW THEREFORE, be it ordained by the Town Council of Brunswick that no filling and earth moving activity within the NRPZ shall be reviewed, allowed or permitted by Town Staff, the Planning Board or under any other authority pursuant to the Brunswick Zoning Ordinance unless the activity is currently underway and approved by the Maine Department of Environmental Protection, or associated with an activity that is currently subject to Development Review pursuant to Section 402 of the Brunswick Zoning Ordinance, or within areas where principal and accessory structures are allowed with a building permit from the Town of Brunswick unless located within 125 feet, horizontal distance, of the normal high water line of a river or within 125 feet, horizontal distance, of the upland edge of a coastal or fresh water wetland or 75 feet, horizontal distance, of the normal high water line of a stream. This does not prevent the Code Enforcement Officer or Planning Board from allowing such activities if necessary to prevent immediate and irreparable environmental harm.

This Moratorium shall be in effect for 90 days from the date from its effective date. (which will be July 19, 2016)

CHAPTER FOUR: DEVELOPMENT REVIEW

Development review includes Subdivision and Site Plan review, and certain changes of use and other procedures as outlined in Section 402. No development shall be approved unless it complies with all review criteria and findings indicated in Section 411.

All time frames for development review expressed in this chapter are maximums. The Town's staff and reviewing entities shall make every effort to conduct reviews as expeditiously as possible.

401 Applicability

401.1 The following outlines the applicability for Development Review:

A. Development review does not apply to:

- 1) A single or two family dwelling.
- 2) Uses or structures that are accessory to a single or two family dwelling.
- 3) Agricultural land management practices, including farm and woods roads developed in accordance with "Maine Erosion and Sedimentation Control Handbook for Construction: Best Management Practices", as amended (Amended 9/3/02 R)
- 4) Unpaved trails and paths developed in accordance with Maine Erosion and Sedimentation Control Handbook for Construction: Best Management Practices, as amended. (Groups or individuals planning such trails and paths are encouraged to consult with the Planning Department prior to construction) (Amended 9/3/02 R)
- 5) Filling and earthmoving activities of less than or equal to 10 cubic yards on a lot within the Natural Resource Protection Zone (NRPZ), and otherwise reviewed and approved by the Code Enforcement Officer pursuant to Section 211.2.E.

6) The *initial* non-military re-occupancy of a building in the BNAS Reuse District existing as of the July 20, 2009 adoption of this provision provided all of the following are met:

- a) The new use is a permitted use in the Reuse Land / Use District in which it is located, per the BNAS Reuse Master Plan, approved December 2007,
- b) The re-occupancy maintains the pre-existing pattern of use of the site including the general location of the building and parking and service areas,
- c) The usable floor area of the building is not increased by more than two thousand (2,000) square feet, within the existing building footprint,
- d) The amount of impervious surface on the project site is not increased by more than two thousand (2,000) square feet,
- e) There is adequate parking available for the new use in accordance with Section 512,
- f) The re-occupancy of the building will not change the primary use of the

Comment [JW1]: Revise Section 211.2.E.1 as follows:

Activities which involve filling and earthmoving of less than or equal to 10 cubic yards on a lot shall require approval by the Code Enforcement Officer (CEO).

~~Activities which involve filling, grading, excavation or other similar activities and earthmoving which result in unstabilized soil conditions and which require a permit shall require a written soil erosion and sedimentation control plan. The plan shall be submitted to the Planning Board or Codes Officer review entity in accordance with this ordinance Section 401 for approval and shall include, where applicable, provisions for:~~

building from residential to non-residential or from non-residential to residential,

g) The *initial* non-military re-occupancy of a building shall not be considered a change of use even if it does not meet the vacancy time limits of Section 702.1. All subsequent re-occupancy of buildings in the BNAS Reuse District shall be subject to the change of use review requirements of Sections 402 and 702 of this ordinance as applicable, and (Amended 7/20/09R)

76) The change of use of a building in the BNAS Reuse District with less than 10,000 square feet of floor area following its initial non-military occupancy provided that the new use does not significantly intensify the use of the property compared to its previous use. A new use that increases the required off-street parking in accordance with Sections 512.1 or 512.2 by more than twenty percent (20%) or that increases the number of peak hour vehicle trips based upon the current edition of the ITE Trip Generation Manual, as amended, by more than twenty percent (20%) or that meets any of the review thresholds of Section 702.3 shall be considered to significantly intensify the use. If the Codes Enforcement Officer determines that there will be a significant intensification of the use, the activity shall be deemed to be a minor development subject to development review in accordance with Section 402.1. (Amended 7/20/09R)

- B. Activities not subject to development review still require appropriate permits issued by the Codes Enforcement Officer and/or the Village Review Board if the property is in the Village Review Zone.
- C. All activities listed in Section 402 shall be subject to Development Review.
- D. Projects subject to development review shall be divided into two classes, Major and Minor. Minor projects shall be reviewed by the Staff Review Committee. Major projects shall be reviewed by the Planning Board.
- E. Thresholds for development review apply only to new, or “add-on” construction, except as indicated in Section 402. Floor area and impervious surface area are calculated on a net basis. The floor area and the impervious surface area (roof) of a building each contribute separately to the cumulative total of the two. (Amended 6/19/00 R)
- F. If development is proposed on two or more lots and the Director of Planning and Development finds that the development functions as a single project, thresholds for development review shall be applied to the project as though the lots on which it is located were single lots. (Amended 9/4/01 R)

402 Development Review Classification and Thresholds

402.1 Activities Subject to Minor Review

The following activities shall be subject to Minor Development Review by the Staff Review Committee:

- A. Any development activity or combination of activities that, within any five year period results in the construction of the following:
 1. In all zoning districts except for those indicated in Sections 402.1 A.2 and 402.1 A.3: (Amended 7/20/09R)
 - a. Between 1,000 and 4,999 square feet of new floor area; (Amended 6/19/00 R)
 - b. Between 1,000 and 4,999 square feet of new impervious surface, or
 - c. A cumulative total of between 1,500 and 7,499 square feet of floor area and impervious surface. (Amended 6/19/00 R)
 2. In the MU4 (Fox Run), CC (Cook's Corner Center), I2 (Church Road Industrial Park), I3 (Bath Road Industrial), I4 (Exit 22), HC2 (Inner Bath Road):
 - a. Between 2,000 and 9,999 square feet of new floor area; (Amended 6/19/00 R)
 - b. Between 2,000 and 9,999 square feet or more of new impervious surface; or
 - c. A cumulative total of between 3,000 and 14,999 square feet or more of floor area and impervious surface. (Amended 6/19/00 R)
 3. In the BNAS Reuse District:
 - a. Between 2,000 and 9,999 square feet of new floor area;
 - b. Between 2,000 and 9,999 square feet of new impervious surface; or
 - c. A cumulative total of between 3,000 and 19,999 square feet of new floor area and impervious surface. (Amended 7/20/09R)
- B. Any use that involves the construction of one drive-up window.
- C. Marine Activities that involve the creation of less than 5,000 square feet of new impervious surface.
- D. Construction of a multi-family dwelling unit in all zoning districts except the BNAS Reuse District, containing between 3 and 5 units that does not create a subdivision. In the BNAS Reuse District, activities involving the construction of multi-family dwellings with up to ten (10) units that do not create a subdivision are classified as Minor Projects. (Amended 7/20/09)
- E. Development subject to Special Permit (Section 701) that results in the creation of less than 5,000 square feet of new impervious surface.
- F. Construction within the Natural Resources Protection Zone subject to the provisions of section 211.2.A.3, 304.6.D.4., 304.4.B or 304.7 (Amended 9/4/01 R, 10/15/01 R)
- G. Establishment or expansion of a Neighborhood Store. (Amended 7/5/05 R)
- H. Change of use of a building within the BNAS Reuse District that affects 10,000 to 19,999 square feet of floor area, pursuant to Section 702. (Amended 7/20/09 R)
- I. Filling and earthmoving activities greater than 10 cubic yards and less than or equal to 100 cubic yards on a lot within the Natural Resource Protection Zone (NRPZ), subject to the provisions of Section 211.2.E.

402.2 Activities Subject to Major Review

The following activities shall be subject to Major Development Review by the Planning Board:

- A. The creation of a Subdivision as defined by 30-A M.R.S.A. Section 4401, as amended.
- B. Any development activity, or combination of activities that, within any five year period results in the construction of the following:
 - 1. In all zoning districts except for those indicated in Sections 402.2 B.2 and 402.2 B.3: (Amended 7/20/09R)
 - a. 5,000 square feet or more of new floor area; (Amended 6/19/00 R)
 - b. 5,000 square feet or more of new impervious surface, or
 - c. A cumulative total of 7,500 square feet or more of floor area and impervious surface. (Amended 6/19/00 R)
 - 2. In the MU4 (Fox Run), CC (Cook's Corner Center), I2 (Church Road Industrial Park), I3 (Bath Road Industrial), I4 (Exit 22), HC2 (Inner Bath Road):
 - a. 10,000 square feet or more of new floor area;(Amended 6/19/00 R)
 - b. 10,000 square feet or more of new impervious surface; or
 - c. A cumulative total of 15,000 square feet or more of floor area and impervious surface. (Amended 6/19/00 R)
 - 3. In the BNAS Reuse Zoning District:
 - a. 10,000 square feet or more of new floor area;
 - b. 10,000 square feet or more of new impervious surface; or
 - c. A cumulative total of 20,000 square feet or more of new floor area and impervious surface. (Amended 7/20/09R)
- C. Any use that involves the construction of 2 or more drive-up windows.
- D. Changes of use that affect 10,000 square feet or more of floor area, pursuant to Section 702, or 20,000 square feet or more of floor area in the BNAS Reuse District. (Amended 7/20/09R)
- E. Changes of use that involve conversion of a single or two-family home to any other use in Town Residential and Residential Districts.
- F. The development or expansion of a Mobile Home Park, pursuant to Section 212.
- G. Development subject to Special Permit (Section 701) that involves creation of 5,000 square feet or more of new impervious surface.
- H. Mineral Extraction, pursuant to Section 306.6.
- I. The addition or expansion of a canopy for a gasoline sales station, pursuant to Section 306.14.
- J. Any activity in the BNAS Reuse District that is located within two hundred (200) feet of the district boundary that would otherwise be classified as a minor project. (Amended 7/20/09R)
- K. Any activity in the BNAS Reuse District that generates more than one hundred (100) peak hour vehicle trips, based upon the current edition of the ITE Trip Generation Manual, as amended, unless the activity is part of an approved subdivision or common development plan in which traffic was addressed as part of the approved plan. (Amended 7/20/09R)

L. Filling and earthmoving activities of greater than 100 cubic yards on a lot and located within the Natural Resource Protection Zone (NRPZ), subject to the provisions of Section 211.2.E.