

**WESTBROOK PLANNING BOARD
TUESDAY, MARCH 6, 2018, 7:00 P.M.**

MINUTES

Present: Ed Reidman, (Chair) (Ward 5), Rene Daniel (Vice-Chair) (At Large), Rebecca Dillon (Ward 1), Dennis Isherwood (Ward 2), Joseph Marden (Ward 3), John Turcotte (Alternate)

Absent: Robyn Tannenbaum (Ward 4)

Staff: Jennie Franceschi, Rebecca Spitella

MINUTES MAY NOT BE TRANSCRIBED VERBATIM. SECTIONS MAY BE PARAPHRASED FOR CLARITY. A COMPLETE RECORDING MAY BE OBTAINED BY CONTACTING PLANNING AND CODE ENFORCEMENT at 207-854-0638 ext. 1220 and lgain@westbrook.me.us.

Ed Reidman explained the public hearing process.

PUBLIC HEARING

- 1. 2017.70 – Conditional Use/Home Daycare - 14 Glenwood Ave – Tatyana Nsankete Ekila – The applicant is proposing a 12-child home daycare in her residence. Tax Map: 29 Lot 14/159. Zone: Residential Growth Area 1.**

Public Hearing Opened

Project Description:

The applicant is proposing a 12-child home daycare in her residence. 14 Glenwood Ave is part of a 3-unit homeowners association where each (single family home) unit has designated rights to limited common elements on the lot. All features associated with the daycare (parking, play yard, etc.) are located on areas that are limited common elements attached to the Unit owned by the applicant. The applicant has provided a plan that outlines approximately 673 sf of outdoor area that will be used by the daycare and 8 parking spaces that are available to the home and the daycare.

Project History:

February 6, 2018 – Planning Board Workshop
February 24, 2018 – Site Walk
March 6, 2018 – Public Hearing

Staff Comments:

1. Fees due in the amount of \$516.40 in abutter and newspaper notices
2. The facility must provide at least 600 sf of fenced in area for outdoor recreation.
3. The proposed in-home daycare includes 2-employees and will require a total of at least 6 parking spaces
4. The applicant must ensure employees/caregivers do not park or drive on the portion of the parking area that is under the ownership of 16 Glenwood Ave.

Tatyana Nsankete Ekila presented aspect of her 12-child daycare.

*Unidentified speaker explained the fence

Ed Reidman comments from the Site Walk?

Rebecca Spitella there were no concerns.

Ed Reidman questions from the Board?

Public Hearing Closed

2. **2018.07 – Amendment to the Land Use Ordinance – Section 201 Definitions, 202 General Provisions - Accessory Dwelling Unit: Proposed renaming and enhancing of the standards the Accessory Apartments.**

Public Hearing Opened

Jennie Franceschi in working with added definitions to our ordinance, it was brought to Staff's attention that the definition of the accessory "apartment" needed to be amended to achieve the true intent of the definition. When the definition was added to the ordinance, it was to address the "In-Law" apartments that were allowed in structures for aging parents, but to follow up on these properties to have the units removed upon the parents leaving the unit was not a feasible task.

The definition for an accessory "apartment" allows for increased density but to fit in existing neighborhoods. The intent was allowing existing space in homes or additions to homes for these units to be created in.

Attached is an amended version of the ordinance that clarifies what these units are: "Accessory Dwelling Units". Also, the area where an accessory dwelling unit is permitted must be attached to the primary structure and providing parameters on the unit's size so that it is clearly accessory to the primary residence.

Additionally, the City Solicitor requested that the performance standards be removed from the definition section and placed in the General Provisions section of the ordinance, where they truly belong, thus why it appears to be a whole sale change as the language is moving into a different section.

This document has undergone significant review by City Staff and Legal counsel and thus why it has been placed on this meeting as Public Hearing.

Staff have reviewed this language with legal council and City Staff.

Staff have noticed the item in the newspaper as a public hearing which allows the Board to hear comments from the public.

Board Action:

- Consider public comments provided during public hearing
- Provide any further feedback on this ordinance

Chapter II General Provisions

201 Definitions

Accessory Apartment Dwelling Unit. *(Added per Ord. of 11/17/14) A secondary dwelling unit established in conjunction with and clearly subordinate to a primary dwelling unit. Accessory dwelling units apartments are a permitted accessory use in all Districts where residential units dwelling units are allowed and are subject to the approval of the Code Enforcement Officer. Accessory Dwelling Units are only permitted for single family dwelling units and subject to standards stated in Section 202. and adherence to the following standards:*

- A. The owners of the principal structure must reside in the principal structure or the accessory unit.*
- B. The number of occupants of the accessory unit is limited to two.*
- C. The accessory unit shall contain up to a maximum of 800 square feet of living space.*
- D. The septic system on the property in question shall be functioning properly at the time of application for building permit approval. In addition, the applicant must submit a new HHE-200 form as documentation that another area of suitable soil exists on the property to be used for septic system repair in the event of failure of the original system.*
- E. The parking requirements of the Westbrook Land Use Ordinance Section 505.1 shall be adhered to.*
- F. Proper ingress and egress shall be provided to the accessory unit. If this creates a third unit then an automatic sprinkler system shall be installed.*
- G. Should the owners of the principal structure be found in noncompliance with the standards contained in this section, the noncompliance shall be considered a violation of this code and subject to the fines and penalty section, and the accessory unit shall be discontinued, and the structure shall revert to single family use.*
- H. An accessory apartment which complies with the requirements of this subsection shall not be considered an additional dwelling unit when calculating Residential Density per Dwelling Unit under the space and bulk regulations of the Code.*
- I. Only one accessory apartment per principal structure shall be permitted on a lot.*
- J. The HHE-200 form, after review and approval by the Code Enforcement Officer, shall be recorded at the Cumberland County Registry of Deeds.*

202 General Provisions

202.1.1 Accessory Apartment Dwelling Unit. *A secondary dwelling unit established in conjunction with and clearly subordinate to a primary dwelling unit, whether a part of the same structure as the primary dwelling unit or a detached dwelling on the same lot. (Ord. of 11/17/14) Accessory Dwelling Units are accessory uses and are only permitted for single family dwelling units and must adhere to the following standards:*

- A. The owners of the principal structure must reside in the principal dwelling unit or the accessory dwelling unit. This restriction shall be included in the Certificate of Occupancy.*

- B. The number of occupants of the accessory dwelling unit is limited to two.
- C. The accessory dwelling unit shall contain a minimum of 500 square feet and a maximum of 800 square feet of habitable (as defined by the building codes) floor area. The footprint of the dwelling unit shall not be less than 450 sq. ft. The floor to ceiling height of all habitable floor area shall be a minimum of 7 feet.
- D. The accessory dwelling unit must be attached to or part of the principal structure on the lot. For the purpose of this definition, "attached" means an enclosed habitable (as defined by the building codes) space.
- E. If on septic, the septic system on the property in question shall be functioning properly at the time of application for building permit approval. In addition, the applicant must submit a new HHE-200 form as documentation that another area of suitable soil exists on the property to be used for septic system repair in the event of failure of the original system. The HHE-200 form, after review and approval by the Code Enforcement Officer, shall be recorded at the Cumberland County Registry of Deeds.
- F. The parking requirements of the Westbrook Land Use Ordinance Section 505 shall be adhered to for each dwelling unit.
- G. Only one accessory dwelling unit per principal structure shall be permitted on a lot.
- H. Proper ingress and egress shall be provided to the accessory dwelling unit.
- I. An accessory dwelling unit which complies with the requirements of this subsection shall not be considered an additional dwelling unit when calculating Residential Density Factor under the space and bulk regulations of this Code.
- J. Should the owners of the principal structure be found in noncompliance with the standards contained in this section, the noncompliance shall be considered a violation of this code and subject to the fines and penalty section, and the accessory dwelling unit shall be discontinued, and the structure shall revert to a single-family dwelling unit.

DUE TO NUMBERING ISSUES IN THIS AREA OF THE ORDINANCE WE ARE INCLUDING THE FOLLOWING AMENDMENT AS WELL TO THE "NUMBER" FOR CLUSTERING.

~~202.1-202.1.4~~ **Clustering.**

Ed Reidman questions?

No questions

Public Hearing closed

REGULAR MEETING

3. Call to Order.

4. Approval of Minutes.

Rene Daniel moved to approve minutes as presented.

2nd by Dennis Isherwood

The vote is unanimous in favor 6-0

5. 2017.70 – Conditional Use/Home Daycare - 14 Glenwood Ave – Tatyana Nsankete Ekila – The applicant is proposing a 12-child home daycare in her residence. Tax Map: 29 Lot 14/159. Zone: Residential Growth Area 1.

Ed Reidman what will your hours of operation be?

Tatyana Nsankete Ekila 6:30 am to 5:00 pm

Rene Daniel, I have concerns of a Day Care in this location. Is it allowed within the condominium use? How much land is allotted to this condo? Also, on the site walk I noticed two types of fences. One appeared to be like a plastic animal fence, is this sufficient?

Jennie Franceschi Rick and Dave have said the fence is complying.

Rene Daniel the two different types of fences, one is white plastic around the shed and then an animal fence, like chicken wire.

Jennie Franceschi I will have David look at that to make sure it functions appropriately.

Rene Daniel Planning Board does not have teeth on this type of requirement.

Jennie Franceschi that is reviewed by the State of Maine, DHHS and Code Enforcement.

Rene Daniel what options do we have?

Jennie Franceschi deny the application.

Rene Daniel, I do not want to deny the application. I would like to have the ability to assign more restrictions. All the other Child Care sites we have reviewed, the play area was completely fenced in.

Jennie Franceschi prior to issuance to occupancy you can place a conditional of approval. DHHS does initial inspections and it meets their standards.

Rene Daniel I am concerned about the driveway, it does not look like even and might be on someone else's property. I am also concerned about the exit of house into the playground. I want to make sure that the abutter's comments are taken into consideration. I do not want to refuse the application, I just needed clarity.

Ed Reidman questions or comments?

Motion on page 2 – page 3 6:30 to 5:30

Rene Daniel move The Conditional Use application for Tatyana Nsankete Ekila to operate as a Home Daycare Provider at 14 Glenwood Avenue, Tax Map: 29 Lot: 14/159 Zone: Residential Growth Area 1 is **approved with conditions** and the following finding of fact, conclusions and

conditions as stated on pages 2 through 3 of this Staff Memo dated March 2, 2018 are adopted in support of that approval.

Home Daycare Provider – Finding of Fact:

Uses specific to this section are: Home Daycare Provider

- A minimum of fifty (50) S.F. of dedicated outdoor play area shall be required for each child and such play area shall not be located in the front yard facing a public right-of-way; - *Adequate – will be verified by Code Enforcement prior to Certificate of Occupancy.*
- All play areas shall be enclosed by a minimum of four (4) foot fencing; - *Applicant will confirm with Code Enforcement Officer prior to issuance of a certificate of occupancy.*
- When a facility is located in a two (2) family dwelling then at least an equal amount of outdoor play area shall be maintained for the second unit, also not located in the front yard facing a public right-of-way; - *N/A*
- One (1) off street parking space shall be provided for each employee or volunteer, and one (1) off street parking space for every six (6) children shall be provided; - *Adequate*
- The parking area shall be in a safe location, shall include an area for snow storage, and shall permit the parent to move directly to the entrance for the loading and unloading of children without affecting the movement of other vehicles; - *Adequate*
- The proposed facility shall not burden on-site septic or offsite waste disposal; - *Adequate*
- There shall be toilet facilities on every floor of the facility. Where the facility is a Home Day Care Provider separate toilet facilities shall be provided for the residential and facility uses; - *Adequate*
- All facilities shall demonstrate that they meet the requirements for licensing by the state and shall provide proof of state licensure prior to issuance of a Certificate of Occupancy and shall meet all sanitary, plumbing code, fire code, and building code requirements, as identified by the Code Enforcement Officer, - *Condition of approval to be inspected and signed off by Code Enforcement*
- Based on location, area traffic, and neighboring uses, the Code Enforcement Officer or Planning Board may set the hours of operation; and Requesting *Monday - Friday 6:30AM – 5:30PM*
- If the operator of the facility is not the owner of the property on which the facility will be located, the operator shall provide evidence of the property owner's consent to the facility. The operator shall also provide proof of interest in the property, such as a deed or lease. – *Operator resides on property.*

Conclusions:

1. The proposed site plan **will not** result in undue water or air pollution.

2. The proposed site plan **has** sufficient water available for the reasonably foreseeable needs of the site plan.
3. The proposed site plan **will not** cause an unreasonable burden on an existing water supply.
4. The proposed site plan **will not** cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.
5. The proposed site plan **will not** cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed.
6. The proposed site plan **will** provide for adequate sewage waste disposal.
7. The proposed site plan **will not** cause an unreasonable burden on the municipality's ability to dispose of solid waste.
8. The proposed site plan **will not** have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.
9. The proposed site plan **conforms** to the duly adopted site plan regulation or ordinance, comprehensive plan, development plan, or land use plan.
10. The developer **has** adequate financial and technical capacity to meet the standards of this section.
11. The proposed site plan **is not** situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, Chapter 3, subchapter I, article 2-B M.R.S.A.
12. The proposed site plan **will not** alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.
13. The proposed site **is not** situated entirely or partially within a floodplain.
14. All freshwater wetlands **have** been shown on the site plan.
15. Any river, stream, or brook within or abutting the site plan **has** been identified on any maps submitted as part of the application.
16. The proposed site plan **will** provide for adequate storm water management.
17. The proposed plan **will not** negatively impact the ability of the City to provide public safety services.

Conditions:

1. Approval is dependent upon, and limited to, the proposals and plans contained in the application dated December 27, 2017 and supporting documents and oral representations submitted and affirmed by the applicant, and conditions, if any, imposed by the Planning Board, and any variation from such plans, proposals and supporting documents and representations are subject to review and approval by the City Planner or the Planning Board. Monday 6:30 AM to 5:30 pm
2. Prior to any permits being issued for the project:
 - a. Staff comments need to be addressed.
 - b. Code Enforcement sign off of outstanding items list provided to the applicant.
The applicant shall comply with the requirements of local and state authorities for life and safety requirements.

2nd by Dennis Isherwood

The vote is unanimous in favor 6-0

6. 2018.07 – Amendment to the Land Use Ordinance – Section 201 Definitions, 202 General Provisions - Accessory Dwelling Unit: Proposed renaming and enhancing of the standards the Accessory Apartments.

Chapter II General Provisions

201 Definitions

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- L. The number of occupants of the accessory unit is limited to two.
- M. The accessory unit shall contain up to a maximum of 800 square feet of living space.
- N. The septic system on the property in question shall be functioning properly at the time of application for building permit approval. In addition, the applicant must submit a new HHE-200 form as documentation that another area of suitable soil exists on the property to be used for septic system repair in the event of failure of the original system.
- O. The parking requirements of the Westbrook Land Use Ordinance Section 505.1 shall be adhered to.
- P. Proper ingress and egress shall be provided to the accessory unit. If this creates a third unit then an automatic sprinkler system shall be installed.
- Q. Should the owners of the principal structure be found in noncompliance with the standards contained in this section, the noncompliance shall be considered a violation of this code and subject to the fines and penalty section, and the accessory unit shall be discontinued, and the structure shall revert to single family use.
- R. An accessory apartment which complies with the requirements of this subsection shall not be considered an additional dwelling unit when calculating Residential Density per Dwelling Unit under the space and bulk regulations of the Code.
- S. Only one accessory apartment per principal structure shall be permitted on a lot.
- T. The HHE-200 form, after review and approval by the Code Enforcement Officer, shall be recorded at the Cumberland County Registry of Deeds.

202 General Provisions

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- P. The parking requirements of the Westbrook Land Use Ordinance Section 505 shall be adhered to for each dwelling unit.
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- R. Proper ingress and egress shall be provided to the accessory dwelling unit.
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- T. Should the owners of the principal structure be found in noncompliance with the standards contained in this section, the noncompliance shall be considered a violation of this code and subject to the fines and penalty section, and the accessory dwelling unit shall be discontinued, and the structure shall revert to a single-family dwelling unit.

DUE TO NUMBERING ISSUES IN THIS AREA OF THE ORDINANCE WE ARE INCLUDING THE FOLLOWING AMENDMENT AS WELL TO THE "NUMBER" FOR CLUSTERING.

~~202.1-202.1.4~~ **Clustering.**

Ed Reidman have had public hearing and we have a motion to send to the Council.

John Turcotte move to recommend the proposed ordinance amendment for adoption by the City Council.

2nd by Rene Daniel

The vote is unanimous in favor 6-0

WORKSHOP

Rene Daniel move to go to workshop

2nd by Dennis Isherwood

The vote is unanimous in favor 6-0

7. 2018.08 - Land Use Ordinance Amendment – Chapter VIII Penalty Provisions - New Section 805 – Stop Work Order – Discussion on codifying the process the Codes Office utilizes to address site non-compliance.

Jennie Franceschi this language is to clarify the process by which the Codes Office would administer Stop Work Orders as they pertain to work outside of a structure. The CEO has language in building codes that applies to work within the structure, but Staff felt we needed to look at adding language to address deficiencies in site work around a structure that could warrant Stop Work Order action.

Project History:

March 6, 2018 – Planning Board Workshop

Staff Comments:

Staff and Legal have reviewed the attached language.

Potential Board Actions for discussion:

Consider public comments provided

Provide Feedback on the ordinance

Consideration of a public hearing on the proposed language - Staff would suggest holding a public hearing on April 3, 2018.

Section 805 Stop work order.

In addition to any other enforcement action authorized by this Chapter, the Code Enforcement Officer shall have the authority to issue a stop work order when the Code Enforcement Officer determines that there has been a violation of this Ordinance or any other provision of this Code of Ordinances or statute that is enforced by the Code Enforcement Officer. A stop work order will not be issued until either the owner of the property or the contractor has been issued a verbal notice and given an opportunity to correct the violation. A stop work order is subject to the appeal provisions of Section 703.1, but the stop work order will remain in effect during the appeal period unless the violation is resolved during that time.

Ed Reidman public speaking

Joseph Marden are there fines associated with the Stop Work Order?

Jennie Franceschi this process initially is that the work is stopped. There are court proceedings depending on the number of notices of violations that a project receives that we would then have to take legal action against the project. Only through legal action can you institute fines. This will motivate the contractor to come into compliance.

Joe Marden is it really the Code Enforcement Officer going to the site?

Jennie Franceschi he will placard the site.

Rebecca Dillon is there any reason or need to somehow define the timeframe between the verbal notice and the timeframe when the contractor or owner starts to fix the problem? Or should it have some language within a reasonable time?

Jennie Franceschi there are instances where the contractor is actively causing an impact to the Storm Water system, making a terrible mess on our roads and it is getting into our storm water system. We are potentially going to be fined for that. There are instances that we call the contractor and let them know we are coming over and you will stop until there is an effort to put appropriate BMP on the site immediately. If we allow this to go on, we the City are going to take on the liability. We would stop the work and want to see all the workers fixing the issue. Once the issue is fixed you can go back to work. There are times that it can be that quick of a turn around.

John Turcotte if I can piggyback on Rebecca's comment. I represent people on the other side of stop work orders. I had the same item that I looked at where there was no time limit. But from the side of the City, for the reasons that you stated, you probably do not want a stated time in there because you might have to immediately shut it down. Because it is the discretion of the City that is going to be upheld. That would be virtually impossible to be overturned because the Ordinance gives the Code Enforcement Officer the discretion of it. From the City's side of things, I like the fact that there is no deadline set, for that reason.

Ed Reidman if you have other comments you can communicate them to the Staff. I urge you not to blanket everyone on it because if three of us are on an e-mail that means it is a public record. I just caution you.

Any other comments?

**Editor's Note no comments

8. 2018.09 - Land Use Ordinance Amendment – Chapter II Section 201 Definitions - Service Business – Discussion on amending the language to clarify the definition of Service Business.

Jennie Franceschi to reduce the confusion in the definition of a Service Business. The examples stated in the definition, although meant to provide examples of Service Businesses, end up causing confusion to the public on what a service business can be. By elimination of the examples, this would address the confusion.

Project History:

March 6, 2018 – Planning Board Workshop

Staff Comments:

City Staff have reviewed the attached language and support the amendments.

Potential Board Actions for discussion:

Consider public comments provided
Provide Feedback on the ordinance

Consideration of a public hearing on the proposed language - Staff would suggest holding a public hearing on April 3, 2018.

Chapter II General Provisions

201 Definitions

Service Business. *A business whose principal use is the provision of services including, but not limited to, barber shop, beauty salon, shoe re: Service Business pair, laundry service, or tailor shop.*

Ed Reidman rather simple thing. Questions or comments?

No comments

Ed Reidman we will see it at a public hearing then we can make a recommendation to Council

2018.10 - Land Use Ordinance Amendment – New Private Way Ordinance: Discussion on establishing standards and a review process for New Private Ways within the City.

Jennie Franceschi currently the ordinance we have a definition and within that definition it provides a few components of what the private way review process currently is, which isn't a lot.

What we are seeing when people come in for private ways, there are things we absolutely need as part of the process. We need a full survey plan, we need an engineering plan, we need road maintenance agreements, we need an association to own the right of way.

It is not stated anywhere clearly, and it is frustrating when an applicant comes in and says I do not see that anywhere in the Ordinance. We want to make sure we are crystal clear with what our process is.

We need a performance guarantee provided with the work before that a lot is divided, a building permit is issued, these are all the same components we would review and expect of a subdivision plan, and so we should have the same provisions here. We need to codify the process and have it clearly stated for the public to utilize in their application.

We would have a staff committee review the private way as it will mimic a typical site plan review or subdivision review. We would also have public interaction that could request the private way review be heard by the Planning Board level. There is that provision within the draft definition.

Project History:

March 6, 2018 – Planning Board Workshop

Staff Comments:

Staff have utilized other municipalities' processes to pull together a draft document for the Board's consideration.

Potential Board Actions for discussion:

Consider public comments provided

Provide Feedback on the ordinance

Consideration of a public hearing on the proposed language - Staff would suggest holding a public hearing on April 3, 2018.

201 Definitions

~~*Private Right of Way; Private way – A strip of land at least fifty feet wide, meeting the minimum standards for the construction of a gravel base for a public road, over which abutters may pass over. When abutting lots are held in other than single ownership, a road maintenance agreement must be established at the time of creation of the right of way, or at the time of the most recent sale of abutting land. Lots with no access to the private right of way are exempted from participating in the road maintenance agreement. A private way shall provide frontage for no more than three lots. Private ways in existence prior to May 1, 2007 shall continue to be able to build the number of lots allowed per the zoning district in which they are located. Private ways created or improved to serve lots developed with a principal structure for the first time after (date of passage) must meet the construction standards for private ways in Section 502.5C. (Ord. of 8-6-12) A privately owned and maintained right-of-way meeting the City's road construction standards as stated in Section XXX and/or Chapter V Subdivision and Site Plan Standards (regardless if the lots being served are part of a subdivision or not).*~~

205 Review of Private Ways and Roads

205.1 Purpose A person seeking a permit for the construction or improvement of a private way shall provide to the City a submission containing the items in this section.

205.2 General Standards

A. Building Permits.

- i. No building permit shall be issued to erect a structure on a lot lacking frontage on a public way unless a private way meeting the following criteria has been approved and constructed within a deeded right-of-way, no less than 50 feet in width.
- ii. Prior to any Building Permits being issued on a private way, copies of all required recorded documents must be submitted to the City and the road must be constructed or a performance guarantee is provided in the full amount of all associated road work.
 - a. Recorded documents include but are not limited to:
 1. Survey Plan
 2. Homeowners Association (Private ways shall be owned by a homeowner's association if more than 1 lot is served.)
 3. Maintenance agreement
 4. Deeds for lots associated with the private way
- iii. No City permits shall be issued if fees due under this section are unpaid.

B. Lot Number Constraint/Construction Standards.

- i. A private way shall provide frontage for no more than three lots.
- ii. Private ways in existence prior to May 1, 2007 shall continue to be able to build the number of lots allowed per the zoning district in which they are located. (without upgrade?) (allowed when they were built or currently?)
- iii. For New Private ways, an extension to an existing private way, land is to be divided with access to an existing private way built after May 1, 2007, or a

dwelling unit is added to an existing private way built after May 1, 2007, the Private Way must meet the construction standards for private ways in Section 502.5C.

For new private ways, an (the?) extension to an existing private way, land divisions with access to an existing private way built after May 1, 2007, or a dwelling unit added to an existing private way built after May 1, 2007, the Private Way must meet the construction standards for Private ways in Section 502.5C

C. Area of Land/Ownership.

- i. The land within the right-of-way of an approved private road shall not be used to meet the area requirements of any lot obtaining its frontage from the private road. The creation of a private road shall not reduce the frontage, lot area, or other dimensional requirements of an existing conforming lot below that required by the zone in which it is located nor reduce the frontage, lot area or other dimensional requirements of an existing nonconforming lot.

D. Maintenance.

- i. A road maintenance agreement must be established at the time of creation of the right of way, or at the time of the most recent sale of abutting land.
- ii. Lots with no access to the private right of way are exempted from participating in the road maintenance agreement.
- iii. Extent of maintenance of the Private Way - The road beginning from the edge of the traveled way of a public road and all associated sub roads that spur off from this road. Maintenance of this right-of-way area shall be the responsibility of the homeowner's association.

E. Driveways. Driveways to corner lots shall gain access from the street of lower classification when a corner lot is bounded by streets of two different classifications. The restriction shall appear as a note on the plan and as a deed restriction. Also, the lots legal frontage shall be determined by this requirement. Roads that do not have different classifications?

F. Performance Guarantee.

- i. Prior to the commencement of any construction related to the private street development or the issuance of any building permits associated with the private street development, the developer shall file a performance guarantee with the City.
- ii. The performance guarantee shall be a certified check payable to the City, a performance bond running to the City, or a letter of credit from a financial institution in an amount and form acceptable to the City.
- iii. The check, bond or letter of credit must equal at least to the total cost of furnishing, installing and completing the private street construction and all related improvements within 2 years of its date. At the discretion of the Planning Department, a phased release of the performance guarantee can be implemented.
- iv. Before the City releases a performance guarantee, the developer shall obtain the following:

- a. A statement by the Public Services Department that all streets and storm drain systems have been constructed and completed in conformance with the approved plan.
- b. A statement by the City Engineer that all sewer lines and connections in the street have been constructed and completed in conformance with the approved plan.
- c. A statement by the Superintendent of the Portland Water District that all water mains and hydrants have been installed and completed in conformance with the approved plan.
- d. A statement by a land surveyor, registered in the State of Maine, that all permanent boundary monuments on street and lot lines have been installed in the locations designated on the approved plan. (New section?) The applicant shall be responsible for the cost of obtaining this statement.

205.3 Reviewing Authority

- A. The City Planner, Code Enforcement Officer, Director of Engineering and Fire Department shall review and may approve the use of a private way in accordance with table xx requirements in order to provide access and frontage to no more than three lots provided that the project does not entail a subdivision review. If staff members are not unanimous in their approval of the proposed private way, the Planning Board shall review and may approve the proposed private way.

205.4 Submission Process

- A. **Application** Submit a filled-out application form.
- B. **Submission Requirements**
 - i. Summary letter on the proposal.
 - ii. Applicant shall submit a street name to the 911 coordinator to determine if the street name is acceptable for the 911 system. Name of street shall be stated on the Plan of a Private Way. Prior to final approval, the name must be approved by the 911 coordinator.
 - iii. Homeowners Association Agreement & Maintenance Agreement: If the private way is to provide access to two or more lots, a Homeowners Association (HOA) will need to be created for the lands contained within the Private Way Right of way, as well as a maintenance agreement for the private way shall be required as part of the application process. Deeds for lots served by the private way must reference the HOA/Maintenance agreement. Prior to issuance of any permits or conveyance of lots on the private way, these documents must be recorded in the Cumberland County Registry of Deeds, and a copy of the recorded documents provided to the City.
 - a. The maintenance agreement shall specify the rights and responsibilities of each lot owner with respect to the maintenance, repair and plowing of the private way.
 - b. If the road is not in good condition in the judgment of the Fire Department, the parties to the maintenance agreement may be notified that the road needs repair and that the City may discontinue emergency services.

- C. **Survey Plans:** A plan or plans labeled “Plan of a private way”, signed and stamped survey of the land showing the entire parcel, extent of the lots created, and the right of way by a State of Maine licensed surveyor.
- i. The name of all owners of property abutting the portion of the private way or road proposed to be developed or improved.
 - ii. Scale, date, north point, and delineation of the entire area proposed to be developed or improved. (specify scale?)
 - iii. Location map to same scale as tax map on a separate sheet if necessary; assessor’s map and lot number
 - iv. The location of all existing and proposed monuments for the private way(s) proposed to be developed or improved; Monumentation of the roadway is required.
 - v. The names of the developer of the street or streets, the engineer preparing the plan and the surveyor, together with the professional registration numbers of those who prepared the plan. Any plan submitted shall also bear the signed stamp of the professional who prepared the plan
 - vi. Accurate dimensions of rights of way, length and bearing of lot lines, and length or radii of horizontal curves.
 - vii. A copy of the signed standard boundary survey of the roadway shall be included in the package.
- D. **Engineering Plans:** A plan or plans labeled “Plan of a private way” prepared by a professional engineer, registered in the state of Maine. The plan shall delineate the proposed way and each of the lots to be served by the private way and showing the following information:
- i. The names of the developer of the street or streets, the engineer preparing the plan and the surveyor, together with the professional registration numbers of those who prepared the plan. Any plan submitted shall also bear the signed stamp of the professional who prepared the plan
 - ii. The location of all proposed improvements, the width of paving and rights-of-way, profile, cross-section dimensions, curve radii of all existing and proposed streets; profiles of centerlines of proposed streets, of a horizontal scale of one (1) inch equals fifty (50) feet and a vertical scale of one (1) inch equals five (5) feet with all elevations referred to U.S.G.S. data and appropriate GIS references as set for in Section 502.4. subsection B.24.
 - iii. Type, location, profile and cross-section of all existing and proposed stormwater drainage systems including best management practices, both within and adjacent to the area of any street construction or improvement, and a description of stormwater management plan
 - iv. Location of features, natural and man-made, affecting the street, such as water bodies, streams, swamps, wetlands, vegetation, ditches, and areas of soils with severe or very severe limitations
 - v. Location of existing and proposed utilities including but not limited to water, stormwater/sanitary sewer, street lights, hydrants, electrical lines/poles and telecommunications lines and profiles of all underground facilities
 - vi. Adequate light shall be provided on all streets. The number and location of all streetlights shall be installed according to the following guidelines: in urban areas, the lights shall be located at all intersections and on every other pole, in non-urban areas lights shall be located at all intersections and to service three

homes. For overhead power, type and size of streetlights to be determined by public works. If underground power is used, the applicant needs to coordinate with the Director of Engineering for City standard light fixtures and poles.

a. A note on the plan shall state “The City of Westbrook shall not be responsible of the cost of materials, installation, maintenance, or power for the street lighting. The homeowner’s association shall assume all costs associated with the lighting system.”

- vii. Existing and proposed location, size, profile and cross section of sanitary sewers proposed to be located within the street construction or improvement area
- viii. Topography with contours at elevation intervals of not more than 2 feet
- ix. Location of all existing trees and vegetation within the proposed area of improvements and on any lots proposed to be developed in conjunction with the street and a delineation of which trees and vegetation will be retained and which, if any, will be removed
- x. Grading, erosion control, and landscaping plan; proposed finish grades, slopes, swales and ground cover or other means of stabilization
- xi. Location of stop sign and street name sign meeting City specification at the intersection with the public street.
- xii. An approval block for signatures of the reviewing authority.
- xiii. A plan note stating the City of Westbrook will not be responsible for the maintenance, repair, or plowing of the private way and that further lot divisions utilizing the private way are prohibited without prior approval of the City.

E. Fees:

- i. Notification of all property owners within a five hundred (500) foot radius of the proposed private way construction or improvement. The names and addresses of such owners shall be determined by use of the most current records of the Assessor’s Office.
- ii. See schedule of fees (located Appendix B) for associated costs for development. Fees are required for review of plans and inspection of work. (Fee based on number of lots served)
- iii. Site Inspection - 2% inspection fee – (To be further clarified in subsequent drafts) (included with Appendix B?)

F. Review Standards

- i. Any street that will have a dead end shall provide a turnaround approved by the City Engineer and the Fire Chief for adequacy to support and accommodate maintenance and emergency vehicles. (strike “for adequacy...”)
- ii. The road shall be constructed such that a grade of +/-3.0% from the existing edge of pavement will allow the generated stormwater flows to be handled by the drainage system.
- iii. Private ways need to be inspected by the City’s engineering staff during the construction process.
- iv. Open Space: (Not sure if we want to include or not) Where the proposed construction or improvement of a private way or streets shall exceed one hundred fifty (150) feet in total combined length, the applicant shall set aside as open space an area that is at least ten (10) percent of the total area of the lots fronting on the private way or streets being constructed or improved, excluding

the area of the lots fronting on the first one hundred fifty (150) feet. Such land either shall be set aside within the area of those lots or shall be in close proximity to those lots. For the purpose of the section "close proximity" shall mean land that is located within two thousand two hundred fifty (2,250) feet from those lots and that is not separated from those lots by a street that is more than two lanes in total width or that has a posted speed limit of more than thirty-five (35) miles per hour. Land to be set aside as open space shall either be deeded to an organization or an entity that is authorized as a holder of conservation easements as defined in 33 M.R.S.A. & 476, or it shall be protected by deed restrictions, which shall be reviewed and approved by the City for compliance with the requirements set forth herein. No structures other than small structures accessory to the recreational use shall be permitted on the open space land and no pavement shall be allowed, except for the creation of trails. Any open space provided off-site shall be usable for active or passive recreation purposes or shall include areas that are identified by the Department of Inland Fisheries and Wildlife as significant wildlife habitat. Wetland areas as defined in 38 M.R.S.A. & 436-A shall not be included in open space under this section. An applicant may elect to pay a fee in lieu of provision of open space. That fee shall equal \$1,500.00 for every fifty (50) feet of private street that is constructed or improved, excluding the first one hundred fifty (150) feet.

- v. Where the proposed construction or improvement involves the extension of public water or public sewer, the applicant shall demonstrate that the existing service is adequate to support the proposed extension of the service or shall upgrade the existing facilities as required to provide the service.
- vi. The proposed private street development will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed.
- vii. Stormwater Design - A statement from a licensed engineer as to the adequacy of the stormwater management program to serve the watershed area within which the project is listed.
- viii. Erosion Control - For roads and driveways within Shoreland and Resource Protection Areas, additional design standards apply to these projects. See Section xxx, Shoreland Zoning for requirements.

205.5 Review Process

- A. Upon receipt of any application for construction or development of a private street, the Planning Department shall indicate upon the application the date of its submission.
- B. Within twenty-one (21) days of the date of submission of the application, the Planning Department shall mail, by first class mail, postage pre-paid, notice to all residents and property owners within a two hundred (200) foot radius (above (E. Fees) require 500-foot) of the proposed private street construction/improvement or from the perimeter limits of the lot as determine by the reviewing authority.
 - a. The notice shall include a brief description of the application and will notify the recipient of the right to request Planning Board review under section xxx and that comments concerning an application must be made in writing to the City Planner. In addition, the notice may include the date and time of any neighborhood meeting that is scheduled by the applicant.
 - b. The Planning Department shall keep a list of persons notified and shall indicate on the list the date that the notice was mailed.

- c. Failure of a person to receive notice under this section will not invalidate any decision made by the Planning Department or the Planning Board and will not require any rehearing of the application.
- C. A person who receives notice under section xxxx may request that the Planning Board review the application under the provisions of section xxxx. The request must be made in writing and must be received by the City within thirty (30) days of the date of the City's mailing of notice under Section xxx. In the event that an application is determined to be incomplete under section xxx, any request for Planning Board review shall remain valid until there is a complete application. (Move final sentence to D. below)
- D. After the receipt of an application, the City Planner shall commence review of the application under the standards set forth in section xxx. The City Planner shall determine within twenty-one (21) days whether the application is complete and shall notify the applicant of any additional required information or submissions. This twenty-one (21) day period may be extended by mutual agreement in writing by the City Planner and the applicant.
- E. Once the application is determined to be complete, the City Planner and the City Engineer shall complete review of the application within thirty (30) days of the date of determination of completeness. The review shall be made under the standards and requirements set forth in section xxx. This thirty (30) day period may be extended upon mutual agreement in writing by the City Planner and the applicant.
- F. When no one has requested a Planning Board review under section xxx, the City Planner shall issue a written decision. Any approval granted may be subject to conditions required to ensure compliance with section xxx. Any conditions will be included in the written decision.
- G. When a person has filed a request for Planning Board review under section xxx, the City Planner will forward to the Planning Board proposed findings and any proposed conditions of approval.
- H. Review and approval under this section 205 are in addition to any other review and approval required under State law, federal law or any provision of the City Code. Where there is any inconsistency between such review standards, the more stringent standard shall control.

Jennie Franceschi looking for feedback on private ways.

Ed Reidman how many lots did you say?

Jennie Franceschi primarily looking at two and three lots on a private way.

Ed Reidman, I have a little problem with mixing titles. I have read the Ordinance and the City Engineer is the Director of Engineering. The proper title in my mind, having been one is the City Engineer.

Jennie Franceschi Eric is the Director of Public Services and Engineering. Whether that remains the same, who knows. If you want to call out that it is the City Engineer that does the review that can be changed.

Ed Reidman if you go into the base part of the Ordinance and read them, there are definitions for certain Department Heads. We ran into an issue when a department head was relieved of his position. The Ordinance calls for to be reviewed by the Council and there is another section that says the Mayor has the authority. The Director of Public Services is in the same situation and I also believe the Police Chief is. The rest of the Department Heads may come and go every January. That is my problem that someone says they do not have the authority and I will differ to my Legal Board Member whether that title definition could make a difference on a decision.

John Turcotte if the City Engineer is not defined in the Zoning Ordinance and someone looks to it and uses the everyday ordinary meaning language, now you are in a gray area. If you are going to use a term, then we should be specific.

Ed Reidman this is a lot to digest and can I ask that you all take it home and read through it. I am sorry we have lost one of our engineers, but we have gained a legal person.

Jennie Franceschi if you have comments or markups please send them to Rebecca and I and we will compile a document and show specific edits.

Joseph Marden do you want input on open space right now?

Jennie Franceschi yes

Ed Reidman on page five of seven it defines open space under review standards. I think you have a special concern and that is why it is highlighted.

Jennie Franceschi, I do not think the setup of the paper street formulas is going to work for a private road. Understanding that these are much smaller homes and it also does not work with our open space percentages that we have set up in subdivision. The main homestead could be on a fifty-acre parcel. We would not want to use fifty acres of the parcel to tell them you have to provide us 3% of the fifty acres in open space. There has to be a middle ground and if the Board felt strongly that they want to have open space requirement part of this then we could come up with a formula that would meet the intent or an equivalent of fee in lieu of. It will be very clearly stated and not a vague percentage.

That is where we are struggling. We do not want to penalize the private way folks, but we want to similarly treat private ways like subdivisions.

We will take direction from the Board.

Rebecca Dillon, I agree

Joseph Marden I am torn, I understand what you are saying. I do not want to disagree, but I feel we should be encouraging smaller use of land that does not need subdivision but can use a private way to develop two or three lots that will help the housing crunch and increase density that we want to be increased. I do not want to put another burden on someone trying to do that. I would be interested to see the language you come up with and what numbers you come up with.

Rebecca Dillon, I do not know if there is another prescriptive way of doing it. I think one of the challenges is getting density but getting density in a planned way. Since I have been on the Board, I have seen poor responses to density and it impacts the existing neighborhood and the City as well. It should be meaningful and respond to how those buildings will lay out in the surrounding neighborhood. That is why I support the open space because it might push people to be more thoughtful. I think we have been really lacking that.

Ed Reidman have you looked to other communities to see how they handle that?

Rebecca Spitella not specifically for open space.

Jennie Franceschi one of the communities that we have borrowed this from does not have an open space requirement at all. We can check with other communities and research that a little more.

Ed Reidman the open space does not bother me, a subdivision can be accomplished over a period of years to cut the lots up, every five years on an existing road.

Jennie Franceschi our Ordinance has a provision on a three-lot max on an 800 feet dead end length. It does limit what private ways do. It does sort of force a developer to build a public road. – We want to make sure that we are being equitable across all of the housing classifications. We did not know how far we wanted to push this particular one. The premise of the whole Ordinance we really feel strongly that we codify how we move forward on the private ways.

Ed Reidman questions or comments? We will all take this home for homework.
Other comments

Rene Daniel do you have enough feedback on Open Space?

Jennie Franceschi we are going to do more homework on other communities that have open space requirements and see what they do with their private ways. And provide the Board with more feedback and craft a spreadsheet with formulas for open space or in lieu of fee.

Ed Reidman any further business for the Board?

No business

ADJOURN

THANK YOU, respectfully submitted by Linda Gain lgain@westbrook.me.us

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