

AGENDA TOPICS

TO: MAYOR & CITY COUNCIL
FROM: WAYNE MARSHALL, PROJECT PLANNER
DATE: JANUARY 30, 2023
RE: SECOND READING & PUBLIC HEARING PROPOSED ORDINANCE
AMENDMENTS RECOMMENDED BY BELFAST PLANNING BOARD

RECOMMENDED ACTIONS

The City Council, at its meeting of January 17, 2023, conducted the First Reading and an accompanying public hearing regarding a series of proposed amendments to the City Code of Ordinances recommended by the Belfast Planning Board. The Council, at its January 17 meeting, voted to schedule the amendments for Second Reading and public hearing at your meeting of February 7, with the exception of proposed amendments to Chapter 102, Zoning, Article III, Nonconformance (Tab 7 in your Notebook), which the Council chose to Table to a future date. I recommend the Council take the following actions at the February 7 meeting.

Recommended Action # 1: Provide me an opportunity to make an introductory presentation regarding the proposed amendments. I have now made presentations regarding these same amendments at the Council meetings of December 6 and January 17. I will endeavor to keep this presentation concise and focused on the more significant amendments.

Recommended Action # 2: The Council should conduct the scheduled public hearing. When I prepared this memorandum on Monday, January 30, the City had not yet received any new public comment since the First Reading. I will provide the Council any new public comment that is received via email and will have printed copies of all comments for you at the Council meeting.

Recommended Action # 3: Following the public hearing, the Council should ask any questions you may have and identify if you would like to make changes to any of the amendments.

- a. I note that the Planning Board, at its meeting of January 25, voted unanimously to support 2 changes to the amendments presented at the First Reading regarding the proposed Home Occupation standards (Chapter 102, Zoning, Article VIII, Supplementary District Regulations, Division 1.5 - Tab 11 in your Notebook). The changes were recommended by Department staff in response to a public comment offered by David August at the First Reading. The proposed amendments are attached to this memorandum. If the Council also supports the amendments, I am suggesting that you could proceed to adopt the Home Occupation standards at this Second Reading with these 2 changes.
- b. The Council, at the Second Reading, has the authority to adopt, reject, change, or table any or all of the proposed amendments. If the Council chooses to adopt the amendments, I have presented draft language for the potential motions at the end of this memorandum. I request that the Council adopt a series of motions rather than acting on the amendments in a single motion. I also suggest that the amendments take effect on February 15, 2023.

PLANNING BOARD RECOMMENDATION

The Planning Board initiated work on the amendments now presented at the Second Reading in April 2022, immediately after the Council adopted the initial 'Outside Rural' amendments recommended by the Board. I was contracted by the City to work with the Board to prepare the amendments now being presented for Second Reading, as well as the Outside Rural amendments adopted in April.

The Planning Board conducted a public hearing on all of the currently proposed amendments at its meeting of December 14. Immediately after the December 14 hearing the Board initiated its discussion of the proposed amendments. The Board separately voted on each amendment, and all were adopted by a vote of 5-1. The Board, at this same meeting, supported changes recommended by Department staff to the several of the proposed amendments. I note that the Council, at the January 17 First Reading, accepted the changes recommended by the Board to Chapter 102, Zoning, Article V, District Regulations, Division 16, Northwesterly of Bypass and Outside Rural Districts (Tab 4), to Chapter 66, General Provisions (Tab 15), and to Chapter 82, Shoreland (Tab 16). These changes have now been incorporated into the amendments that are being considered by the Council at the Second Reading.

As occurred at the First Reading, the Department has not produced new notebooks (Notebooks provided to you for the December 6 Council meeting) for the Second Reading because of the amount of information (size) in the Notebooks and because there are so few changes to the proposals that the Planning Board considered at its December 14 public hearing. The updated language for the Second Reading amendments, however, is posted on the City website. I also have attached the one additional document referenced earlier regarding potential changes to the Home Occupation standards.

SECOND READING OF AMENDMENTS

The Council had an opportunity to review, discuss, and ask questions regarding the proposed amendments at the December 6 Council meeting and at the January 17 First Reading. The Council should now decide if you are prepared to adopt the proposed amendments, or if you desire to make any changes. If you have any questions regarding any of the amendments and would like to discuss such in advance of the Council meeting, you can contact me via email, wmarshall@cityofbelfast.org, or on my cell phone, 207-930-9689.

I believe the Planning Board worked hard to present a series of amendments that continue to present expanded opportunities for housing development, that establish greater consistency among Ordinance provisions, and that help to implement the adopted Comprehensive Plan. I concur with the Board that the amendments warrant Council support and adoption.

I also have started to follow-through on direction provided by the Council regarding the proposed amendments to Chapter 102, Zoning, Article III, Nonconformance, that the Council tabled at the First Reading. I have worked with Ned Lightner to film a presentation on BEL-TV, and Department staff have separately met with the two parties who submitted comment to the Council, Bill and Donna Durkin, 73 Bayview St, and Morgan and Gabriel Cohen, 8 Pearl St, to

discuss their potential applications for a Type 2 Permit. This is a link to the video: <https://vimeo.com/793445966>. I will be sending the Council an email that includes the sketches/plans that I used for my presentation on Type 2 Nonconformities. I am suggesting that the Council consider scheduling the amendments to Article III, Nonconformance, for Second Reading and public hearing at the March 7 regular Council meeting.

The last section of this memorandum is a repeat of information that I included in my memorandums to the Council for the December 6 and January 17 Council meetings. It is a general overview of the proposed amendments and may be of value to people in the community who read the Manager's report for this Council meeting.

OVERVIEW OF AMENDMENTS RECOMMENDED BY THE PLANNING BOARD THAT ARE BEING CONSIDERED AT THE SECOND READING

Most amendments recommended by the Planning Board involve proposed revisions to numerous Articles of Chapter 102, Zoning, however, amendments also are proposed to Chapter 82, Shoreland, Chapter 86, Signs, Chapter 66, General Provisions (Definitions), and Chapter 30, Marine Activities. Each Councilor has a Notebook that includes all amendments recommended by the Board. The 'Notes to Public' provided at the beginning of each Ordinance amendment provides information regarding the purpose and key provisions of that amendment.

I offer several initial overall comments regarding the amendments:

- 1) On the whole, it is the opinion of the Board and Department staff that the amendments do not represent a massive change in current land use regulatory policy. For example, there are limited changes to the current boundaries of zoning districts or the uses that would be allowed/prohibited in the respective districts.
- 2) The amendments are generally consistent with policy direction identified in the Future Land Use Plan of the adopted Comprehensive Plan.
- 3) A key goal of the current amendments is to achieve consistency among City Ordinances, and to clean-up some provisions that warranted work.
- 4) The amendments to Article V, District Regulations in Chapter 102, Zoning, and Chapter 82, Shoreland, will result in establishing a common Use and Dimensional Table for the respective Zoning and Shoreland Districts.
- 5) The amendments incorporate opportunities for 'flex housing' and multi-family housing where the Board deemed appropriate.

In looking more closely at some of the specific amendments.

Tabs 2, 3, and 4, amendments to Chapter 102, Zoning, Article V, District Regulations, that result in the creation of the Southerly Zoning Districts, and the reorganization of the Eastside and Northwesterly of Bypass and Outside Rural Districts. The amendments represent an overhaul of the format of current Zoning District regulations. Common Use Tables and Dimensional Tables are established for each zoning district. The Southerly Zoning District involves the elimination of the former Residential II zoning district and the establishment of the new Residential 7 zone. The Southerly Zoning districts is the only area in which changes are proposed to zoning district boundaries. The proposals also involve establishing maximum lot coverage standards for both

residential and nonresidential uses for the first time in many of the zoning districts. I note that the Board considered detailed property information in establishing the proposed lot coverage standards.

Tab 7, Nonconformance. Chapter 102, Zoning, Article III, Nonconformance, is one that has often caused current and past Planning Board members and Department staff difficulties and concerns in interpreting. The Board and staff devoted significant time to discussing and deciding upon the amendments now proposed. The amendments result in numerous changes and significant additions to current policy regarding nonconforming structures and uses. I encourage the Council to review the example provided at the end of this amendment regarding how the proposal would affect a Type 2 Nonconforming Expansion for a residential structure.

Tab 9 and Tab 10, PUD's. The Chapter 102, Zoning, Division 1, Planned Unit Development (PUD), standards needed work, particularly with the City decision to require certain larger 'flex housing' projects to be reviewed as a PUD. The amendments will expand opportunities for a property owner to propose a residential development under the flexibility allowed through a PUD, and provide the Board better guidance in how to apply PUD requirements. Division 2, Rural Affordable Housing Communities, was initially adopted in 2008 to benefit the first Habitat for Humanity project on Oak Hill Road. These provisions have not been used since that date, but revisions were needed to ensure consistency with other changes to Chapter 102, Zoning.

Tab 11, Home Occupations. Chapter 102, Zoning, Article VIII, Supplementary District Regulations, Division 1.5, Home Occupations, represents the City's implementation of home occupation standards that are identified in the Future Land Use Plan of the adopted Comprehensive Plan, and a more comprehensive approach to regulating how many now use their home to earn a living. The Board and Department believe that these are much needed amendments.

Tab 13, Contract Rezoning. Chapter 102, Zoning, Article X, Contract Rezoning, Division 2, Route 3 Commercial, Office Park, and Searsport Avenue Commercial zones, involves a significant number of changes. First, the main purpose of these Ordinance provisions were to address the development of a larger retail use. The amendments do the following:

- Eliminates the 'floating zone' and use of contract rezoning established in 2001 for a retail use between 40,000 sf and 75,000 sf in size for the Searsport Avenue Commercial zone; a retail project of this size would now be reviewed by the Planning Board pursuant to the Chapter 90, Site Plan standards.
- In the Office Park zone, the contract rezoning provisions would be made consistent with amendments to the Office Park zone that were first adopted in 2019. Contract rezoning only applies to certain retail uses on Map 5, Lot 7, on Lincolnville Ave.
- In the Route 3 Commercial zone, amendments would eliminate the need for a Master Plan for the former Bahre property (now WaldoCAP), and would make it clear that a Comprehensive Community and Economic Impact Assessment, as well as a joint meeting between the Council and Planning Board, only is necessary for a project that involves a retail use greater than 75,000 sf in size. These revisions should make current requirements more clear if WaldoCAP submits a proposal to develop the property.

Tab 14, Contract Rezoning. Chapter 102, Zoning, Article X, Contract Rezoning, Division 4, Waterfront Mixed Use-1 and 2 zoning districts and Waterfront Development Shoreland District, involves revisions to make the contract rezoning provisions more consistent with changes to the Waterfront Mixed Use zones initially adopted in 2014. It also clarifies several issues that could arise if a proposal is submitted to redevelop the now vacant McCrum property.

Tab 16, Shoreland. The proposed amendments to Chapter 82, Shoreland, have several purposes, including:

- State law requires all Maine communities to adopt a Shoreland Ordinance, and the State has adopted Model Shoreland Regulations that all communities must use in preparing their Shoreland Ordinances. The State has adopted amendments to its Shoreland Regulations in the past 5 years that Belfast has not yet fully incorporated into its Shoreland Ordinance. The proposed amendments seek to make Chapter 82 more consistent with current State Regulations.
- The amendments incorporate the same Use Table identified in Chapter 102, Zoning for the Shoreland Ordinance, and a similar Dimensional Table. The goal is to achieve greater consistency between these two Chapters.
- The two minor amendments to the Official Shoreland Map will directly benefit two properties on City Point Road that have existing houses. I also note that the Planning Board discussed other potential amendments to the Official Shoreland Map but decided such were not warranted.

Tab 17, Signs. The amendments to Chapter 86, Signs, particularly address revisions needed to the Sign Ordinance to keep pace with changes to zoning district designations. There are a limited number of changes to the standards that apply to the size or lighting of signs, and there are new regulations regarding changeable message board signs.

Table 18, Marine Activities. The purpose of the proposed amendments to Chapter 30, Marine Activities, is to ensure greater consistency between the standards in Chapter 30 and those identified in Chapter 82, Shoreland, and Chapter 102, Zoning, regarding the wharf line and use of contract rezoning.

Tabs 1, 6, 8, 12, 15 and 19. I did not provide any specific overview comments regarding these amendments because they do not involve any significant policy direction. That said, all of these amendments are needed.

Tab 21, Other Information. I have provided one of the charts that the Board reviewed to illustrate the type of information the Planning Board considered in its discussion of lot sizes and potential lot coverage requirements for the current commercial districts,. In the future, this Tab will be used to include any public comment that the Planning Board receives at its December 14 public hearing.

PROPOSED MOTIONS FOR PROPOSED AMENDMENTS

Motion # 1: The Council adopts the following amendments to Chapter 102, Zoning, Article V, District Regulations, as such were presented at the February 7 Second Reading; said amendments to take effect on February 15, 2023:

- Amendments to revise Division 1, Generally, including adoption of the updated Official Zoning Map;
- Amendments to establish Division 11, Eastside Districts;
- Amendments to establish Division 14, Southerly Districts;
- Amendments to revise Division 16, Outside Rural Districts, and to establish such as Division 16, Northwesterly of Bypass and Outside Rural Districts; and
- Amendments to revise Division 7, Residential II District, and to establish such as the Residential 15 District.

Motion # 2: The Council adopts amendments to Chapter 102, Zoning, Article V, District Regulations, to repeal the Divisions identified in the amendments presented at the February 7, Second Reading, said amendments to take effect on February 15, 2023.

Motion # 3: The Council adopts the following amendments to Chapter 102, Zoning, as such were presented at the February 7 Second Reading; said amendments to take effect on February 15, 2023:

- Amendments to revise Article I, Districts;
- Amendments to revise Article IV, District Descriptions;
- Amendments to revise Article VI, Planned Unit Development, Division 1, Residential Planned Unit Development, and Division 2, Rural Affordable Housing Planned Unit Development;
- Amendments to revise Article X, Contract Rezoning, Division 2, Route 3 Commercial, Searsport Avenue Commercial, and Office Park Districts; and
- Amendments to revise Article X, Contract Rezoning, Division 4, Waterfront Mixed Use-1 and Waterfront Mixed Use-2, and the Waterfront Development Shoreland District.

Motion # 4: The Council adopts the following amendments to Chapter 102, Zoning, Article VIII, Supplementary District Regulations, as such were presented and amended at the February 7 Second Reading; said amendments to take effect on February 15, 2023:

- Amendments to establish Division 2.5, Adult Use Marijuana, which was previously identified as Division 10;
- Amendments to revise Division 9, Solar Energy Systems; and
- Amendments to establish Division 1.5, Home Occupation, including two amendments introduced at the February 7 Second Reading.

Motion # 5: The Council adopts the following amendments to the Code of Ordinances to revise the following Chapters, as such were presented at the February 7 Second Reading; said amendments to take effect on February 15, 2023:

- Amendments to revise Chapter 66, General Provisions;
- Amendments to revise Chapter 86, Signs; and
- Amendments to revise Chapter 30, Marine Activities.

Motion # 6: The Council adopts the following amendments to revise Chapter 82, Shoreland, including revisions to the Official Shoreland Map, as such were presented at the February 7 Second Reading; said amendments to take effect on February 15, 2023.

AMENDMENTS TO HOME OCCUPATION STANDARDS (TAB 11)
COUNCIL CONSIDERATION AT SECOND READING

Department staff recommended the Planning Board support 2 changes to the Chapter 102, Zoning, Article VIII, Supplementary District Regulations, Division 1.5, Home Occupation standards (Tab 11 in Notebook) that were presented at the January 17 First Reading. The Planning Board, at its meeting of January 25, voted 6-0 to support the proposed amendments. Both the Board and the Department ask that the Council support the 2 changes that are identified below.

Sec. 102-927 Home Occupation Class 2.

A Home Occupation Class 2 shall have very low impacts on the property on which the activity occurs or on neighboring properties. Occupations might include any uses allowed in a Home Occupation Class 1, as well as the offices of a single physician, realtor, insurance broker, accountant, artisan, craftsman, beautician, lawyer, or other professional. There may be one (1) employee on-site at any one time who is not a member of the immediate family-in-residence. Clients may come to the home for face-to-face interaction, however, only incidental sales of products produced on the site shall be allowed.

The following performance and use standards shall apply:

PROPOSED AMENDMENT RECOMMENDED BY THE BOARD ON 12/14 AND CONSIDERED BY THE COUNCIL AT THE JANUARY 17 FIRST READING

- a. The home occupation shall be limited to twenty (20) percent of the combined gross floor area of the principal and accessory structures, except that the Planning Board may allow a greater amount of use, a maximum of forty (40) percent of the combined gross floor area, for a children's or adult home day care facility.

CHANGE RECOMMENDED BY DEPARTMENT AND SUPPORTED BY THE PLANNING BOARD AT ITS JANUARY 25 MEETING.

- a. The home occupation shall be limited to fifty (50) percent or 800 square feet, whichever is less, of the gross floor area of any residence on the property, and the total amount of usable space (as measured in square feet) located in any accessory structure, including a garage or barn that is attached to a residence. In the case of a children's or an adult home day care facility, the 800 square feet limit referenced above shall not apply.

Sec 102-928. Home Occupation Class 3.

A Home Occupation Class 3 shall have moderate impacts of use. Occupations might include any uses allowed in Home Occupation Levels 1 and 2, including ones that are larger in scale, as well

as small production facilities, service facilities (excluding automotive that is a specifically regulated use), a small restaurant, including take-out (about 12 seats) and the like. There may be up to three (3) employees on-site at any one time who are not members of the immediate family-in-residence. Clients may come to the home for face-to-face interaction, and the sale of products may include those produced on site as well as products that are associated with those produced on site. For example, a person who makes clothing who sells clothing produced by others.

The following performance and use standards shall apply:

PROPOSED AMENDMENT RECOMMENDED BY THE BOARD ON 12/14 AND CONSIDERED BY THE COUNCIL AT THE JANUARY 17 FIRST READING

- a. The home occupation shall be limited to forty (40) percent of the combined gross floor area of the principal and accessory structures.

CHANGE RECOMMENDED BY DEPARTMENT AND SUPPORTED BY THE PLANNING BOARD AT ITS JANUARY 25 MEETING.

- a. The home occupation shall be limited to fifty (50) percent or 800 square feet, whichever is less, of the gross floor area of any residence on the property, and the total amount of usable space (as measured in square feet) located in any accessory structure, including a garage or barn that is attached to a residence. In the case of a children's or an adult home day care facility, the 800 square feet limit referenced above shall not apply.

WHY MAKE THIS PROPOSAL

One of the three public comments the Council received at the First Reading regarding the proposed Ordinance amendments addressed how the size limits proposed for a home occupation could unnecessarily restrict a property from being used for a home occupation. For example, a 1,500 square foot house that had a 672 sf garage (24' x 28 '), or a total gross floor area of 2,172 sf, could only use a total of 20% of the 2 structures, 435 sf, for a Class 2 home occupation. This is less than the amount of square footage available in the garage. For a Class 3 home occupation, 40% of the 2 structures would be 870 sf. In short, the comment that was offered made sense, particularly in considering the City's stated policy to encourage home occupations.

The proposed language would continue to place some restriction on the amount of the residence that could be used for a home occupation, but would allow the total square footage of any accessory structure to be used for the home occupation.

While the proposed language could greatly expand the total amount of the structures on the property that could be used for a home occupation, the Department believes that the other performance standards, particularly the number of employees permitted for the home occupation and limits on the amount of on-site parking, can be effective tools to manage potential adverse impacts associated with the home occupation.