

MINUTES

Cumberland Town Council Meeting

Town Council Chambers

MONDAY, May 11, 2009

6:00 p.m. WORKSHOP with the Ordinance Sub-committee re: revisions to the allowable uses under the Cumberland Fairgrounds Overlay District.

7:00 p.m. Call to Order – Chairman Turner, Councilors Copp, Storey-King, Perfetti, Porter, Stiles and Moriarty.

I. APPROVAL OF MINUTES

April 27, 2009

Motion by Councilor Moriarty, seconded by Councilor Stiles, to approve the minutes as amended this evening.

VOTE: UNANIMOUS PASSAGE 7-0

II. MANAGER'S REPORT

- The number in the Forecaster last week re: fair attendance should have been 16,000 rather than 62,000.
- Our new workers compensation carrier, MEMIC, recommended we perform Job Placement Assessments prior to employment to ensure our employees can perform a job safely. The town's policy is not to hire applicants categorized as 'red'. All of the recreation and seasonal Val Halla employees must complete the job placement assessment.
- Paving – Philip Street, Bea Lane, Karole Lane, Grove Street, and West branch Road, will receive a coat of pavement by the first of June. Forest Lake Road will also receive final paving.
- Luncheon held last Friday to honor Public Service Employees. Local community churches provided the food and beverages to thank the employees for their excellent winter services.
- Local church volunteer efforts saved us \$35,000 by providing landscaping services at Town Hall.
- Vernal Pool Survey project update provided. Vernal Pools are temporary to semi-permanent pools occurring in shallow depressions and provide breeding habitat for woody frogs, spotted and blue salamanders, fairy shrimp and numerous insects/spiders in fishless waters. The pools provide important feeding and resting areas for animals and are an important part of the food chain. The pools can be identified only during the months of April and May. DEP began regulating "disturbance around significant vernal pools" in 2007 and requires developers and landowners to identify potentially significant pools. A "limited amount of construction" can occur within 250' radius of the pool; however the impact applies only to the property on which the pool is situated. "Up to 25% impact is allowed in that 250 foot buffer. Every case is unique" and will be evaluated through the DEP. Through our volunteer survey effort, 185 potential pools have been identified in town, and "we hope a good number of these get eliminated." Approximately 20 residents opted out of the program. The Manager offered apologies for any confusion related to the survey process and visits onto the property of owners who chose not to participate. Conservation Commission will tabulate the data and report the results to the council in January 2010. Follow-up inspections will occur next spring and homeowners will be notified by letter in advance. Website containing further information at www.umaine.edu/vernalpools. DEP also has staff in Portland office that will visit property and identify vernal pools.

III. PUBLIC DISCUSSION

None. Chairman Turner reminded the public of the availability of absentee ballots for the June 9, 2009 election.

IV. LEGISLATION AND POLICY

09 – 067 To set a Public Hearing date (June 1st) to consider and act on sending a recommendation to the Planning Board re: amendments to Section 204.18 (Fairgrounds Overlay District) of the Cumberland Zoning Ordinance.

Councilor Moriarty indicated a workshop was held earlier this evening at which approximately seventeen residents attended. This item is not on the agenda for action this evening.

Councilor Stiles recommended item 09-069 be considered before a vote on this item. Chairman Turner moved directly to item 09-069. Upon conclusion of item 09-069, Chairman Turner returned to this item for action.

Motion by Councilor Moriarty; seconded by Councilor Perfetti, to set a public hearing date on June 1, 2009 to consider and act on sending a recommendation to the Planning Board regarding amendments to Section 204.18 in the Fairgrounds Overlay District of the Cumberland Zoning Ordinance.

VOTE: UNANIMOUS PASSAGE

09 – 068 To hold a Public Hearing to consider and act on a recommendation from the Planning Board to repeal and replace with new language, Section 501 (Non-Conforming Uses) of the Cumberland Zoning Ordinance.

Councilor Moriarty explained this item “comes to us after a fairly lengthy procedural history which began last fall when we initially took up the proposal for a potential credit union on Main Street and we gave some consideration to uses which were permitted, and those which were not, and those which were considered to be non-conforming uses, and thereby permitted.” This prompted the Ordinance Subcommittee to review the current zoning ordinance as it deals with non-conforming uses. In early March, the town council referred to the Planning Board who at their April 21, 2009 meeting recommended including within the definitional section a definition of non-conforming uses, “which we lack currently,” as well as minor changes to the current Chapter 500 and the current language in Chapter 500 dealing with shoreland zoning be relocated temporarily to Section 423. “It will stay there for about a month and a half before we totally revise our shoreland zoning provisions in accordance with state statute.” Councilor Moriarty noted the Planning Board recommended the current one year of abandonment be extended across the board to two years, but that for non-conforming residential uses, the period is four years, without regard to district or location.

Chairman Moriarty introduced Planning Board member, Chris Neagle. Mr. Neagle reiterated comments he offered at the last Planning Board meeting related to this item. Non-conforming uses are “commonly what people refer to as grandfathered uses. There’s a policy in zoning that says if you have a non-conforming use it can continue to keep going, because that would be unfair” otherwise. The policy also states if that use stops for a period of time, it “can no longer resume being a non-conforming use. It has to start conforming. That’s what’s supposed to happen with non-conforming uses.” The Ordinance Subcommittee proposed that the period within which non-conforming uses lapse would be four years. His professional experience, however, suggests an “almost universal” lapse period of one year. The Planning Board four years was “far too long a period” because non-conforming uses can stay abandoned and “to have it sit there for four years doing nothing...is bad.” In response to the concerns raised with residential property in the newly-rezoned commercial areas of Route 100 and in deference to all existing residential properties in commercial zones, the Planning Board “rejected four years across the board as being too radical.” The Planning Board recommended a four year period for

“residences in a commercial zone...and two years” for all other abandoned property. “The shorter the period, the more quickly it’s going to happen.”

Chairman Turner responded that the current “paranoia over the economics of the times right now” undoubtedly contributed to the implementation of the four year number. Councilor Porter noted he does not “want to lose an existing business in this community.” The example of a gas station is “a very real possibility...To me that would be a loss for our community. “I want the message to be...there’s an opportunity for somebody else to come in and operate those businesses. Mr. Neagle responded to Councilor’s point about maintaining businesses by adding, “If the council in its wisdom likes business on Main Street I, think a more direct approach to that is to rezone Main Street to allow business and not to implement a non-conforming use policy.” Councilor Porter noted that the zoning changes are recommended for “town-wide” implementation.

Motion by Councilor Moriarty, seconded by Councilor Stiles, to amend Section 104 of the Zoning Ordinance to add new Section 104.95(A), titled *Non-Conforming Condition*, and including the following definition: “non-conforming lot, structure, or use which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendment took effect.”

VOTE: UNANIMOUS PASSAGE 7-0

Motion by Councilor Moriarty, seconded by Councilor Stiles, to repeal in its entirety current Section 501 of the Zoning Ordinance and to replace it with new Section 500 (the first Section is 501) which appears in our packet as Exhibit A with no red-lining and consists of a single page.

VOTE: PASSAGE 5-2 (Councilors Porter and Perfetti opposed)

Motion by Councilor Moriarty, seconded by Councilor Stiles, to add Section 423.3.2 to the Shoreland Zoning Ordinance to include non-conforming uses, buildings, structures and lots as shown in the attached Exhibit B and as hereby incorporated into the meeting minutes.

VOTE: UNANIMOUS PASSAGE 7-0

09 – 069 To consider and act on date changes to upcoming Town Council meetings:

- 1) May 25th (Memorial Day) – recommend cancellation**
- 2) June 8th (Election, June 9th) – recommend rescheduling to June 1st**
- 3) June 15th special Town Council Meeting @ 6:00 p.m. to swear in newly elected councilors**

Motion by Councilor Porter; seconded by Councilor Stiles, to approve the cancellation, rescheduling and addition of the following Town Council meetings: May 25th Memorial Day meeting to be cancelled; the June 8th council meeting to be rescheduled to June 1st; and a June 15th Special Town Council meeting to swear in newly-elected councilors.

VOTE: UNANIMOUS PASSAGE 7-0

09 – 070 To set a Public Hearing date (June 1st) to consider and act on a Victualer’s License for Sweet Fern Farm to operate at the Cumberland Farmer’s Market, for the period of June 1 to June 30, 2009.

Motion by Councilor Stiles, seconded by Councilor Copp, to set a public hearing date of June 1st to consider and act on a Victualer’s License for Sweet Fern Farm to operate at the Cumberland Farmer’s Market, for the period of June 1 to June 30, 2009.

VOTE: UNANIMOUS PASSAGE 7-0

09 – 071 To set a Public Hearing date (June 1st) to consider and act on a Victualer’s and Retail with Malt & Vinous License for Express Mart Cumberland, 174 Main Street.

Councilor Porter noted the attendance of the new co-owners of the Express Mart, Mr. Adnan Ahmed and Nick Singh. Mr. Ahmed indicated they had recently purchased the store, their second in Maine. They also have a store on Congress Street in Portland and “hope to get more stores in the near future.” Born and raised in India, the friends lived in New York for the last fifteen years. Mr. Sings moved to Brownfield six years ago. They plan to “convert that store to a supermarket for the community” and encourage and welcome customer feedback regarding their products and service. “We would love to hear” your feedback. The co-owners in tend to work in the store. The council offered their welcome to Cumberland.

Motion by Councilor Stiles, seconded by Councilor Perfetti, to set a Public Hearing date of June 1st to consider and act on a Victualer’s and Retail with Malt & Vinous License for Express Mart Cumberland, 174 Main Street.

VOTE: UNANIMOUS PASSAGE

09 – 072 To set a Public Hearing date (June 1st) to receive a year end report from the Finance Committee and to authorize the Town Manager to transfer inter-departmental operating funds.

Motion by Councilor Stiles, seconded by Councilor Copp, to set a public hearing date of June 1st to receive a year end report from the Finance Committee and to authorize the Town Manager to transfer inter-departmental operating funds.

VOTE: UNANIMOUS PASSAGE 7-0

The Finance Subcommittee will meet Tuesday, May 19th at 8:00 am. The meeting will be noticed to the media and placed on the town’s web site.

09 – 073 To authorize the Town Manager to submit an application for stimulus grant funding for construction of a new Central Fire Station.

The Town Manager introduced Chief Small to present the plan for grant application, who stated, “While this is a long-shot” it requires town council endorsement to proceed. Deputy Chief Darryl Rawnsley mentioned the committee members involved in the grant application proposal for substation improvement/replacement. “We’ve put a lot of thought” into the planning which began as late as four years ago. The improvement/replacement has been part of the town’s capital improvement program for the last three years. The subcommittee has toured several surrounding community stations. The project cost is estimated at \$2.8 million, excluding architectural and engineering fees. At this time, there are no matching funds required, and if that were to change the town “can turn it down.” Existing condition concerns include non-ADA compliant, outdated wiring, inoperable floor drains, heating system out-dated, extensive asbestos throughout, and lack of energy efficiency. Deputy Chief St. Clair address the building/site design conceptual schematic, which showed a five-bay station. A fifth-bay adds storage at the apparatus level. The first floor plan incorporates the five bays, administrative offices and a meeting/training room. The room can be open to the general public as available. There are seven bedrooms incorporated for sleeping and fitness areas. The site plan takes into account the existing parcel as well as the “Whitman” parcel and would add forty-seven feet to the building footprint. The proposed southerly parking allows administration staff and daily visitors’ safe access to the building. A playground is incorporated as well on site for access to children within the community. The department hopes to submit the proposal within the next month. There was discussion between

the Chief and the council regarding local approvals necessary to get the project “shovel ready. There’s a lot to make that happen.” While the Chief indicated, “Concept plans like these...would have zero shot,” the council and manager expressed doubt that zoning or building review could occur as suggested.

Chief Small suggested the guidance is still being developed “as we speak.” The intent is that the “shovel ready” projects not be subjected to prolonged community debate. “They want it to be a quick turn-around” and “We want to be sure we hit the ground running.” It’s a two step process involving the Board of Adjustments and Appeals and Planning Board, clarified the Town Manager. “I don’t see any obstacles from either board; it’s just part of the process.” Councilor Porter is supportive of the project and moving forward but agreed that pre-approval by a board “isn’t going to happen. It’s not a question of whether this is needed or not. They want it to be a quick turn-around ... we want to be sure we hit the ground running.” Councilor Storey-King made it “very clear that we’re not moving forward” to build the station. “We’re just applying for a grant that allows us to move in that direction.” Councilor Stiles supported the “tremendous presentation” and asked about a flat roof design. “It’s a minimum pitched roof.” The parking capacity is 28 additional spaces. Councilor Moriarty questioned the impact to the Whitman house. This proposal includes “losing the house. It’s a lot more valuable” to have our personnel in one building rather than spread out over two buildings. The Chief indicated the home is “in tremendous shape” and could be relocated.

Motion by Councilor Stiles, seconded by Councilor Porter, to authorize the Town Manager to submit an application for stimulus grant funding for the construction of a new Central Fire Station.

VOTE: UNANIMOUS PASSAGE 7-0

09 – 074 To re-appoint Susan McGinty as Cumberland’s representative to the ECOMaine Board for the term of July 2, 2009 – July 1, 2012.

After expressing gratitude for Ms. McGinty’s year of service on the ECO Maine Board, the councilor approved the appointment.

Motion by Councilor Porter, seconded by Councilor Perfetti, to re-appoint Susan McGinty as Cumberland’s representative to the ECO Maine Board for the term July 2, 2009 to July 1, 2012.

VOTE: UNANIMOUS PASSAGE 7-0

V. NEW BUSINESS

Councilor Copp – stop sign on Blanchard and Mill Road needs adjusting.

Councilor Storey-King – comprehensive plan committee met Thursday night and are nearing a conclusion; information coming to the council very soon; work to date is posted on the town’s web page; the MSAD 51 District meeting of 5/21 will include a paper ballot vote; voter registration begins at 6:15; there will be preferential parking for senior citizens; first budget validation referendum is 5/26 – absentee ballots are available now at Town Hall but the clerk can not accept absentee ballots before May 22nd; received a flyer in the mail supporting the Main Street credit union- I stand by my decision to move that forward; town will hold a Memorial Day Parade.

Councilor Porter – he and Planner Carla Nixon attended Habitat For Humanity development meeting re: teaming with developers to be a portion of a subdivision; reinforced Councilor Storey-King’s comments urging residents to vote on the Main Street item - it’s an opportunity to increase revenue to the town; Lions Club named Chris Bolduc as Citizen of the Year for his

service with rescue, police and administration over the last 20 years; asked the Town Manager to explain the changes to the Greely Graduation Parade. The Manager explained there were injuries caused during the “water throwing” portion of last year’s parade and the school and police department determined it is necessary to end the water balloon portion of the event. “It’s getting a little bit out of control.” The injury last year was a “wake up call.” Councilor Perfetti noted he did not receive a notice; asked that information be reported to MMA for inclusion in their monthly magazine.

Chairman Turner – reminder that absentee ballots are available now for the June 9th election; exercise your right to vote.

Councilor Stiles – bulky waste pick-up is over; anything still on the side of the road at this time is the responsibility of the property owner; asked Town Manager for an update on the Route 100 and Range Road projects - contractor will finish Route 100 this month and move to Range Road in the first part of June.

Town Manager- Golf Superintendents Assoc of America notified the town of Toby Young’s achievement of Class A membership status; we are very proud of his accomplishment; provided a copy of the IAAO’s magazine article written by Town Assessor Bill Healey and featuring the town’s own recent assessment update - hopefully other communities can benefit from our experience; Finance Committee will meet on 5/19 re: annual year-end transfers; absentee ballots are available now at Town Hall.

VI. ADJOURNMENT

Motion by Councilor Moriarty; seconded by Councilor Storey-King, to adjourn.

VOTE: UNANIMOUS PASSAGE 7-0

TIME: 8:37 p.m.

Respectfully submitted,

Nadeen Daniels, CMC

Exhibit A

SECTION 500 -NON-CONFORMING USES, BUILDINGS, STRUCTURES, AND LOTS

Sec. 501 The use of any building, structure or land which is made non-conforming by reason of the enactment of this Ordinance, or which shall be made non-conforming by reason of a subsequent amendment, may be continued subject to the following provisions.

501.1 Nonconforming Uses, Buildings, or Structures

- .1 Repairs and Alterations: A nonconforming building or structure may be repaired, altered, improved, or reconstructed. A nonconforming building or structure may be added to or expanded within the established setbacks for the underlying district after obtaining a permit from the same permitting authority as that for a new structure.
- .2 Rebuilding: A nonconforming building or structure which is damaged or destroyed by fire, explosion, or act of God may be rebuilt at any time. At the option of the owner, the building or structure may be rebuilt upon the original footprint of the destroyed building or structure. Otherwise, the rebuilt structure must be constructed within the established setbacks for the underlying district.
- .3 Expansion of nonconforming use: The number of square feet of floor space area devoted to a nonconforming use may be increased upon application to the Board of Adjustment and Appeals, but only if the Board finds that the proposed expansion of the nonconforming use will have no greater adverse effect upon other property in the same district and neighborhood and that the granting of such approval will not substantially depart from the intended purpose of this ordinance.
- .4 Change of Use: A nonconforming use of a building, structure, or lot of land may be changed to another nonconforming use upon application to the Board of Adjustment and Appeals and in accordance with the standards of Section 501.1.3 of this ordinance.
- .5 Abandonment: A nonconforming use of any building, structure, or lot of land which has been abandoned shall not thereafter be resumed. For purposes of this subsection, a nonconforming use shall be considered abandoned:
 - .1 When it has been replaced by a conforming use;
 - .2 When it has been discontinued for a period of two (2) years ~~four (4)~~ years; provided that a nonconforming commercial use which is not open and operating for at least five (5) days per week during traditional business hours for a period of at least three (3) months in any twelve (12) month period during the prescribed two-year (2) ~~four-year~~ period shall be deemed to have been abandoned.
 - .3 For any residential use that is nonconforming the discontinuance period shall be four (4) years.

Exhibit B

Sec. 423 **Shoreland Areas** [Adopted, effective 12/10/91]

.1 **General**

All land use activities within the shoreland area shall conform with the following provisions, as applicable. When there is any conflict between the performance standards in this section and the standards of this Ordinance or of the Town of Cumberland Subdivision Ordinance, the more restrictive standard shall prevail.

.2 **Minimum Lot Standards**

<u>Lot Area and Frontage:</u> <u>Minimum Shore</u>	<u>Minimum Lot Area</u> <u>(sq. ft) Frontage (ft)</u>	
<u>Residential per dwelling unit</u>		
a. Within the Shoreland Zone Adjacent to Tidal Areas	That of the underlying district or 30,000, whichever is greater	150
b. Within the Shoreland Zone Adjacent to Non-Tidal Areas	That of the underlying district or 40,000, whichever is greater	200
<u>Lot Area and Frontage:</u> <u>(sq. ft)</u>	<u>Minimum Lot Area</u> <u>Frontage (ft)</u>	<u>Minimum Shore</u>
<u>Non-residential per principal structure</u>		
a. Within the Shoreland Zone Adjacent to tidal areas exclusive of those areas Zoned for Commercial Fisheries and or Maritime Activities	That of the underlying district or 40,000 whichever is greater	200
b. Within the Shoreland Zone Adjacent to Tidal Areas Zoned for Commercial Fisheries and Maritime Activities	NONE	NONE
c. Within the Shoreland Zone Adjacent to Non-Tidal Areas	That of the underlying district or 60,000, whichever is greater	300
<u>Public and Private Recreation Facilities</u>		
a. Within the Shoreland Zone Adjacent to Tidal and Non-Tidal Areas	That of the underlying district or 40,000, whichever is greater	200

Land below the normal high-water line of a water body or upland edge of a wetland and land beneath roads serving more than two (2) lots shall not be included toward calculating minimum lot area.

.3 Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was

established by the owner of land on both sides thereof after September 22, 1971.

- .4 The minimum width of any portion of any lot within one hundred (100) feet, horizontal distance, of the normal high-water line of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.
- .5 If more than one residential dwelling unit or more than one principal commercial or industrial structure is constructed on a single parcel, all dimensional requirements shall be met for each additional dwelling unit or principal structure.

.3 Principal and Accessory Buildings and Structures

- .1 All new principal and accessory buildings and structures shall be set back at least one hundred (100) feet from the normal high-water line of great ponds, and seventy-five (75) feet from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland, except that in the General Development District the setback from the normal high-water line shall be at least twenty-five (25) feet, and in the Commercial Fisheries/Maritime Activities District there shall be no minimum setback.

In addition:

- .1 The water body or wetland setback provision shall not apply to buildings and structures which are functionally water-dependent uses. [Amended, effective 9/28/98]
- .2 The first floor elevation or openings of all buildings and structures including basements shall be elevated at least two feet above the elevation of the 100 year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood plain soils.
- .3 The total area of all buildings and structures, parking lots and other non-vegetated surfaces, within the shoreland zone shall not exceed twenty (20) percent of the lot or a portion thereof, located within the shoreland zone, including land area previously developed, except in the General Development District adjacent to tidal waters and rivers which do not flow to great ponds, and in the Commercial Fisheries/Maritime Activities District, where lot coverage shall not exceed seventy (70) percent.
- .4 Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided; that the structure is limited to a maximum of four (4) feet in width; that the structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland, (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, Title 38, Section

480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.

.2 Non-Conforming Uses, Buildings, Structures, and Lots in the Shoreland Area: Expansions, relocations and reconstruction or replacement of non-conforming buildings or structures in shoreland areas are governed by the following: [Adopted, effective 12/10/91] [amended, effective March 2009]

- .1 Expansions: A non-conforming building or structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure, provided further that:
 - .1 If any portion of a building or structure is less than the required setback from the normal high-water line of a water body or upland edge of a wetland, after January 1, 1989, that portion of the building or structure shall not be expanded in floor area or volume; by thirty percent (30%) or more, during the lifetime of the building or structure without a variance from the Board of Adjustment and Appeals for a substantial expansion. A "substantial expansion" is an expansion which increases by thirty percent (30%) or more the portion thereof that is less than the required setback from the normal high-water line or upland edge of a wetland.
 - .2 Construction or enlargement of a foundation beneath the existing building or structure shall not be considered an expansion of the building or structure provided; that the building or structure and new foundation are placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified Section 501.1.3.2, Relocation, below; that the completed foundation does not extend beyond the exterior dimensions of the building or structure; and that the foundation does not cause the building or structure to be elevated by more than three (3) additional feet.
 - .3 No building or structure which is less than the required setback from the normal high-water line of a water body, tributary stream, or upland edge of a wetland shall be expanded toward the water body, tributary stream, or wetland.
- .2 Relocation: A non-conforming building or structure may be relocated within the boundaries of the parcel on which the buildings or structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules, or that a new system can be installed in compliance with the law and said Rules. In no case shall a building or structure be relocated in manner that causes the structure to be more non-conforming.

In determining whether the building or structure relocation meets the setback to the greatest practical extent, the Planning Board shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other buildings and structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

- .3 Reconstruction or Replacement: Any non-conforming building or structure which is located less than the required setback from the normal high-water line of a water body, tributary stream, or upland edge of a wetland and which is removed, or damaged or destroyed by more than fifty percent (50%) of the market value of the building or structure before such damage, destruction or removal, any be reconstructed or replaced provided that a permit is obtained within one year of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water setback requirement to the greatest practical extent as determined by the Planning Board in accordance with the purposes of this Ordinance. In no case shall a building or structure be reconstructed or replaced so as to increase its non-conformity.

Any non-conforming building or structure which is damaged or destroyed by fifty percent (50%) or less of the market value of the building or structure, excluding normal maintenance and repair, may be reconstructed in place with a permit, from the Code Enforcement Officer.

In determining whether the building or structure reconstruction or replacement meets the water setback to the greatest practical extent the Planning Board shall consider in addition to the criteria in Section 501.1.3.2 above, the physical condition and type of foundation present, if any.

- .4 Change of Use of a Non-conforming Structure: The use of a non-conforming building or structure may not be changed to another use unless the Planning Board after receiving a written application determines that the new use will have no greater adverse impact on the water body or wetland, or on the subject or adjacent properties and resources than the existing use. [Amended, effective 11/25/02]

In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant regarding each of the criteria listed herein and shall determine whether the proposed use has a greater adverse impact upon the public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, flood plain management, archaeological and historic resources, and commercial fishing maritime activities, and other functionally water-dependent uses than the existing use.