

**PLANNING BOARD MEETING
TOWN OF CUMBERLAND
Cumberland Town Hall
290 Tuttle Road, Cumberland, Maine 04021
Tuesday, January 21, 2014
7:00 p.m.**

A. *Call to Order:* The meeting was called to order at 7:00 p.m.

B. *Roll Call:*

Present: Chris Neagle, Chair, John Ferland, Vice-Chair, Teri Maloney-Kelly, Gerry Boivin, Josh Saunders, Peter Sherr

Absent: Jeff Davis

Staff: Carla Nixon, Town Planner, Pam Bosarge, Administrative Assistant

C. *Election of Chair and Vice Chair*

Mr. Sherr stated that both Mr. Neagle and Mr. Ferland had done a great job leading the Planning Board as Chair and Vice-Chair. He would recommend them both.

The Board discussed the roles of Chair and Vice Chair.

Mr. Ferland stated this is most likely his last year serving on the Board; typically a Vice-Chair is a training position for Chair, however due to time constraints he would not be able in the future to assume the role of Chair. He has gained valuable expertise as Vice-Chair, and if someone else would like to serve in the role he would be willing to step aside.

Mr. Boivin stated if Mr. Ferland is not willing to serve as Vice-Chair he would be happy to serve; stating that Mr. Ferland has done a great job.

Mr. Sherr moved to re-elect Mr. Neagle as Chair and Mr. Ferland as Vice-Chair.

Mr. Boivin seconded.

VOTE: 4 in favor (Boivin, Saunders, Maloney-Kelly, Sherr)

2 Abstain (Neagle, Ferland)

D. *Approval of Minutes of the December 17, 2013 meeting.*

Mr. Boivin moved to approve the minutes of November 19, 2013.

Ms. Maloney-Kelly seconded.

VOTE: Unanimous 4-0

D. *Staff Site Plan Approvals:*

1. Brian Gilbert Associates: To expand his business at 7 Corey Road, to 120 Longwoods Road, Tax Assessor Map U07, Lot 13 in the Highway Commercial District. This location is the former Heritage Tractor Museum on Noreen Ward's property.

Ms. Nixon stated that Brian Gilbert will remain at 7 Corey Road, but has received additional national accounts and requires more space.

F. Hearings and Presentations: Public Hearing:

1. ***TABLED TO THE FEBRUARY MEETING*** *Public Hearing: Major Site Plan for Integrative Health, a medical office building at Sky View Drive, Cumberland Foreside Village, Tax Assessor Map R01, Lot 11 -2; Dr. McCloy, Applicant, Tom Greer of Pinkham and Greer, Representative; Cumberland Foreside Village, LLC, Owner.*
2. *Public Hearing: Major Subdivision Amendment to Cider Mill Subdivision to adjust a lot line between Lots 3 & 4 and Lot 55B as shown on Tax Assessor Map R08; Cider Mill LLC, Owner, Applicant.*

Ms. Nixon stated this issue is to re-establish the boundary lines between lots 3 & 4 and the existing lot known as Lot 55B on Tax Assessor Map R08. To avoid creating a potential boundary conflict between lots 3 and 4 and the Voisine Little lot. Cider Mill would like to adjust the lot lines to correspond with the current location of pins. The slight adjustment reduces the area of Lot 4 by less than 100 square feet. The benefit however, is that Lots 3 and 4 on the amended plan will be marketable without a qualification or reservation and at some point the owners of lot 3, lot 4 and the Voisine /Little lot may exchange deeds to confirm the boundary lines as shown on the amended plan.

Mr. Neagle stated he has known Don Douglas for many years and respects his opinion.

Mr. Neagle opened the public portion of the meeting. There were no public comments. The public portion of the meeting was closed.

Mr. Sherr moved to approve the Major Subdivision Amendment to Cider Mill Subdivision to adjust lot lines between Lots 3 and 4 of the Cider Mill Plan and Lot 55B as shown on Tax Assessor Map R08; Cider Mill LLC, Owner, Applicant.

Mr. Boivin seconded.

VOTE: Unanimous 6-0

The Board took a five minute recess from 7:10p.m. to 7:15 p.m. to sign the revised Mylar for Cider Mill Subdivision.

3. ***Public Hearing: Public Hearing: To recommend draft zoning amendments to Chapter 315-74 -. Non-Conforming Uses, Buildings, Structures and Lots of the Cumberland Code to be consistent with language in Chapter 226- 14 - Shoreland Zoning of the Cumberland Code.***

Mr. Shane, Town Manager presented background information as follows: In 2008, the Town Council was presented with a proposal to build a credit union on Main Street. As a result, a lengthy discussion commenced regarding uses in that zone, including those that were nonconforming. After review of the current zoning ordinance, the Council adopted amendments including a new definition and entirely redrafted the chapter related to nonconforming uses. Prior to this change the Ordinance allowed for expansion or infill of an existing nonconforming structure, as long as it did not increase its nonconformity. As an example if a dwelling had an L-shape to one side of the building, the owner was allowed to infill the area to meet that L-shape without extending any closer to the nonconforming setback line. This type of infill is allowed in the Shoreland zoning ordinance. Bill Longley, had a resident ask about expanding this type of structure in the Shoreland zone; and was told they were able to expand or

infill. Upon research into the ordinance the language had been changed; this amendment would again allow this type of expansion and be consistent with the Shoreland Zoning Ordinance.

Mr. Boivin asked if there was a limit to the amount that would be buildable.

Mr. Shane stated this change would allow a non-conforming structure to be expanded or in fill an area as long as it didn't become any more nonconforming.

Mr. Neagle suggested a text change in the proposed language.

D. Expansion of nonconforming residential use. A nonconforming residential building or structure may be expanded after obtaining a permit from the same permitting authority as that issues permits for a new structure, provided that the expansion does not increase the non-conformity of the structure or expand the area of a non-conforming use ~~meets all required setbacks of the underlying zone or the overlay, if applicable.~~ The expansion of a nonconforming residential use ~~located within an aquifer protection area shall be subject to the provisions of Chapter 315, Article V, Aquifer Protection, and Chapter 226, Article II, Shoreland Zoning, of this Code, where applicable.~~

Mr. Neagle opened the public portion of the meeting. There were no public comments. The public portion of the meeting was closed.

Mr. Sherr moved to recommend to the Town Council draft zoning amendments as amended by the Planning Board to Chapter 315-74- Non-Conforming Uses, Buildings, Structures and Lots of the Cumberland Code to be consistent with language in Chapter 226-14 – Shoreland Zoning of the Cumberland Code.

Mr. Ferland seconded.

VOTE: UNANIMOUS 6-0

4. Public Hearing: To recommend to Town Council draft zoning amendments to Chapter 315 of the Cumberland Code: regarding Registered Dispensaries of Medical Marijuana.

Mr. Neagle stated the Planning Board has discussed this item at workshop and at the September Planning Board Meeting.

Mr. Shane presented information as follows: Medical Marijuana has been legalized and regulated by State Statute which allows:

- Municipalities may enact reasonable regulations applicable to dispensaries, but may not adopt an ordinance that is duplicative of or more restrictive than the Act.
- Consider at least one zone or overlay where this is a permitted use – may not prohibit entirely.
- Upon adoption of this act, several communities' enacted moratoriums, but only South Portland and Windham have adopted further regulations.

Cumberland is proposing to add two new definitions to the Zoning Ordinance and to modify each definition for commercial uses; and to adopt a new section with general regulations regarding Registered Dispensaries.

The staff is recommending allowing Registered Dispensaries in the Office Commercial North (OCN) district.

Next Steps: The Planning Board can make a recommendation to forward these amendments to Council, amend these recommendations or chose to not go forward with any zoning recommendations.

The Town Council will advertise for the February meeting and hold a public hearing.

Mr. Neagle suggested the Board review this request in three steps.

1. Text (Ordinance language)
2. Location Office Commercial North district
3. Recommendation to the Town Council.

Mr. Saunders asked if the proposal was for Registered Dispensaries and Addiction Treatment Facilities.

Mr. Shane stated the proposal is only for dispensaries, not addiction treatment facilities, we are only adding the definition to the Ordinance.

Mr. Ferland asked if a farmer would be allowed to grow medical marijuana at a Registered Dispensary.

Mr. Shane stated no.

Ms. Maloney-Kelly asked about hours of operation would a Dispensary be allowed to be open seven days a week; language states hours of operation from 8:00 a.m. to 5:00 p.m.

Ms. Nixon stated the Planning Board can limit hours of operation when conducting site plan review.

Mr. Neagle stated he would support hours from 8:00 a.m. to 6:00 p.m. so that people can stop in after work.

- Location of proposed use.

Mr. Neagle stated this zone seems most appropriate; he supports recommending Office Commercial North (OCN) district.

Mr. Ferland asked why not recommend the three commercial zones.

Mr. Shane stated only one facility is allowed in town, so if we allowed all three commercial districts only one could have a Dispensary; we are recommending a district to avoid a moratorium and reactionary zoning.

Mr. Neagle stated waiting until an application is pending to decide location and zoning language is bad planning; he supports proactive zoning. There seems to be support on the Board, he personally will vote against the proposal because he is not sure why this is different than other drug store.

Mr. Saunders moved to recommend to the Town Council draft zoning amendments to Chapter 315 of the Cumberland Code regarding Registered Dispensaries of Marijuana and to recommend that Registered Dispensaries be allowed as a permitted use in the Office Commercial North (OCN) district, §315-12. A (3) Registered Dispensary subject to the provisions of §315 (New Section and Chapter 229 Site Plan Review of the Cumberland Code).

Mr. Sherr seconded.

VOTE: 4 in favor (Saunders, Ferland,
Sherr, Boivin)

2- Oppose (Neagle, Maloney-Kelly)

CHAPTER 315, Section 4:

REGISTERED DISPENSARY

A not-for-profit entity registered by the State of Maine in accordance with state statute that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana or related supplies and educational materials to qualifying patients and the primary caregivers of those patients. Registered dispensaries include the physical location of the dispensary and any other facility under common management and operating under the same state registration that cultivates marijuana for patients of the dispensary.

ADDICTION TREATMENT FACILITY

A facility for outpatient detoxification and treatment of narcotic-dependent persons which administers or dispenses drugs used to alleviate adverse physiological or psychological effects incident to withdrawal from continuous or sustained use of a narcotic drug.

BUSINESS AND PROFESSIONAL OFFICE

The place of business of individuals or groups providing professional services, including but not limited to doctors, lawyers, accountants, financial advisors, architects, surveyors, real estate and insurance businesses, psychologists, and counselors, or a place in which a business conducts its administrative, financial or clerical operations or provides services, including banks, credit unions and other financial services, excluding freestanding automated teller machines (ATMs). This shall not include registered dispensaries of medical marijuana or any other addiction treatment facility as defined in this ordinance and by applicable state statutes.

CLINIC

An office building used by members of the medical professions for the diagnosis and outpatient treatment of human ailments. This shall not include registered dispensaries of medical marijuana or any other addiction treatment facility as defined in this ordinance and by applicable state statutes.

RETAIL STORE

Any shop or store for the retail sale of goods or personal services, excluding any drive-up service, freestanding retail stand, gasoline service and motor vehicle repair service, new and used car sales and service, and trailer and mobile home sales and service. This shall not include registered dispensaries of medical marijuana or any other addiction treatment facility as defined in this ordinance and by applicable state statutes.

ASSOCIATED RETAIL

A subordinate use customarily incidental to, and located on the same lot with, the main building or use. This shall not include retail operations associated with registered dispensaries of medical marijuana or any addiction treatment facility as defined in this ordinance and by applicable state statutes.

AGRICULTURE

The use of a tract of land for commercial purposes for cultivation and the production of crops, truck gardening, nurseries or greenhouses, or any allied industry, but exclusive of animal husbandry and exclusive of private gardens less than 1/2 acre. This shall not include registered dispensaries of medical marijuana or other facilities used for the cultivation of marijuana in association with a registered dispensary.

WHOLESALE DISTRIBUTION FACILITIES

Establishments or places of business primarily engaged in selling merchandise to retailers, to industrial, commercial, institutional, or professional business uses, or to other wholesalers, or acting as agents or brokers in buying merchandise for, or selling merchandise to, such individuals or companies. This shall

not include registered dispensaries of medical marijuana or other facilities used for the cultivation of marijuana in association with a registered dispensary.

PERSONAL SERVICES

Businesses providing services of a personal nature, such as barber, hairdresser, beauty parlor, shoe repair, shoe shine, laundry, or photographic studio. This shall not include registered dispensaries of medical marijuana or any other addiction treatment facility as defined in this ordinance and by applicable state statutes.

LOW IMPACT INDUSTRIAL

Industrial activity involving the manufacturing, packaging, assembly, or distribution of finished products from previously prepared material, including but not limited to the following: bakeries, breweries, bottling, printing and publishing, pharmaceuticals, machine shops, precision instruments, tool and die shops and packaging of foods. This shall not include registered dispensaries of medical marijuana or any other addiction treatment facility as defined in this ordinance and by applicable state statutes.

ACCESSORY BUILDING OR USE

A subordinate building or use customarily incidental to, and located on the same lot with, the main building or use, including farm markets for the sale of agricultural and similar products where at least 60% of the gross receipts is derived from the sale of products produced or grown, or where some ingredients of products are grown or produced, on the lot. This shall not include registered dispensaries of medical marijuana or any other addiction treatment facility as defined in this ordinance and by applicable state statutes.

CHAPTER 315, Zone:

Add as permitted use, subject to new section

CHAPTER 315, New Section:

Section #. Registered Dispensaries.

Notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law to the contrary, these performance standards, when enacted, shall govern any proposed registered dispensary for which an application has not been submitted and acted on by the Board of Appeals or the Planning Board prior to January xx, 2014.

The following standards apply to all registered dispensaries:

- A. Location criteria. No medical marijuana dispensary shall be sited within 500 feet of the lot lines of any of the following:
 - 1. Any juvenile or adult halfway house, correctional facility, or substance abuse rehabilitation or treatment center;
 - 2. A State of Maine licensed child care facility; or
 - 3. A State of Maine licensed family home child care facility.

The distance cited in this subsection shall be measured between the lot line of the proposed site for the registered dispensary and the lot line of the site of the use listed in subsections (1) through (3) above at their closest points.

- B. Hours of operation. Registered dispensaries may be open for business only between the hours of 8:00 a.m. and 5:00 p.m., locally prevailing time.
- C. Signage and advertising. All signage and advertising for a registered dispensary shall comply with all applicable provisions of this Code. In addition, no signage or advertising shall use the word “marijuana” or “cannabis,” or any other word, phrase or symbol commonly understood to refer to marijuana unless such word, phrase or symbol is immediately preceded by the word “medical” in type and font that is at least as readily discernible as all other words, phrases or symbols on the sign. Such signage and advertising must clearly indicate that the products and services are offered only for medical marijuana patients and primary caregivers.
- D. Security requirements. Security measures at a medical marijuana dispensary and any associated cultivation facility shall include, at a minimum, the following:
1. security surveillance cameras installed, recording and operating 24 hours a day, 7 days a week to monitor all entrances, along with the interior and exterior of the premises, to discourage and facilitate the reporting of criminal acts and nuisance activities occurring at the premises;
 - i. All security recordings shall be preserved for at least thirty (30) days by the medical marijuana dispensary. The medical marijuana dispensary shall provide the Police Chief or his designee with the name and functioning telephone number of a 24-hour on-call staff person to whom the Town may provide notice of any operating problems associated with the medical marijuana dispensary.
 2. door and window intrusion robbery and burglary alarm systems with audible and Police Department notification components that are professionally monitored and maintained in good working condition;
 3. exterior lighting that illuminates the exterior walls of the licensed premises and complies with applicable provisions of this Code; and
 4. deadbolt locks on all exterior doors and locks or bars on any other access points (e.g., windows).
- E. Cultivation. If there is both the cultivation and dispensation of marijuana occurring on the same site, the cultivation area shall not be greater than 25% of the total floor area of the portion of the building used for dispensation of marijuana.
- F. On-site consumption of medical marijuana. The consumption, ingestion or inhalation of medical marijuana on or within the premises of a medical marijuana dispensary or cultivation facility is prohibited; provided, however, that a medical marijuana dispensary employee who is a registered patient, as that term is defined in 22 M.R.S.A. § 2422(12), as may be amended, may consume medical marijuana within the enclosed building area of the premises if such consumption occurs via oral consumption (i.e., eating only). For purposes of this subsection, the term “premises” includes the actual building, as well as any accessory structures, parking lot or parking areas, or other surroundings within 200 feet of the medical marijuana dispensary’s entrance.
- G. Visibility of activities; control of emissions; disposal plan.
1. All activities of registered dispensaries, including, without limitation, cultivating, growing, processing, displaying, selling and storage, shall be conducted indoors.
 2. No marijuana or paraphernalia shall be displayed or kept in a dispensary or cultivation facility so as to be visible from outside the premises.

3. Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting a dispensary or cultivation facility must be provided at all times. Sufficient measures shall be provided for the proper disposal of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations.
 4. All medical marijuana dispensaries shall have in place an operational plan for proper disposal of marijuana and related byproducts.
- H. Sale of edible products. No food products shall be sold, prepared, produced or assembled by a medical marijuana dispensary except in compliance with all operating and other requirements of state and local law and regulation, including, without limitation, food establishment licensing requirements. Any goods containing marijuana for human consumption shall be stored in a secure area.
- I. Other laws remain applicable. A medical marijuana dispensary shall meet all operating and other requirements of state and local law and regulation. To the extent the State of Maine has adopted or adopts in the future any stricter law or regulation governing medical marijuana dispensaries, the stricter law or regulation shall control.
- J. Maximum number. The maximum number of medical marijuana dispensaries in the Town shall be capped at one (1).
- K. Application Submission Requirements. The applicant shall provide the Board of Appeals and Planning Board with documentation of any required state approvals for the operation of a registered dispensary.

F. Administrative Matters:

- *The Town Council will hold a workshop on February 3, 2014 from 6:00 to 8:00 p.m. with the Planning Board and Comprehensive Plan Update Committee to discuss the recommendation regarding the RR1 & RR2 districts.*
- *The February Planning Board meeting will be on February 11, 2014 instead of February 18, 2014. This change is due to the conflict with school vacation.*

I. Adjournment:

Mr. Neagle adjourned the meeting at 7:45 p.m.

A TRUE COPY ATTEST:

Christopher S. Neagle, Board Chair

Pam Bosarge, Assistant to the Board