

**PLANNING BOARD MEETING  
TOWN OF CUMBERLAND  
Cumberland Town Hall  
290 Tuttle Road, Cumberland, Maine 04021  
Tuesday, September 17, 2013  
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, Teri Maloney-Kelly, Gerry Boivin, Jeff Davis, Josh Saunders, Peter Sherr

**Absent:** John Ferland, Vice-Chair

**Staff:** Carla Nixon, Town Planner, Brenda Moore, Executive Assistant

**C. Approval of Minutes of July 17, 2013 meeting**

Mr. Saunders moved to approve the minutes of June 18, 2012 with one amendment.

Mr. Davis seconded.

VOTE: 4 in favor- Saunders, Maloney-Kelly, Neagle,  
Davis  
2 – Abstain (Boivin, Sherr)

**D. Staff Site Plan Approvals:**

1. J Bros. Variety: 42 Gray Road: Minor request was to replace the canopy and fuel dispensers.
2. Oceanview lawn Care: 261 Middle Road; the applicant is leasing space in a barn at the rear of the parcel for storage of equipment vehicles in association with a landscaping business. In the summer they do landscaping and in the winter they do snow plowing; the proposed use is classified as Contractor's space.

Mr. Sherr stated in light of discussions at the previous meeting he suggested receiving these documents in electronic form and receiving a summary from Ms. Nixon.

Mr. Neagle agreed and also suggested receiving smaller plans.

**E. Minor Change Approvals: None**

**F. Hearings and Presentations:**

Mr. Neagle explained that Item # 1 had been tabled and Item # 3 will be heard.

1. **~~Public Hearing~~ Tabled:** Site Plan Review to review a Slope Stabilization Plan to re-grade and vegetate existing slopes in gravel pit at 77 Blackstrap Road, Tax Assessor Map R07, Lot 53 in the Industrial Zone; BR Property, LLC, Owner, Thomas Greer, P.E., Pinkham and Greer Consulting Engineers, Representative.
2. **Public Hearing:** Minor Subdivision Amendment to subdivision plan of Sturdivant Island, Tax Assessor Map I08, Lots 7 & 8 in the Island Residential (IR) district, to amend lot lines between



***lots 7 & 8 and to split the remainder of Lot # 8 into two parcels; Lot 8 & 8A, Gerard Grondin, Owner; Charles Brown, Jr., PLS, Sebago Technics, Representative***

Ms. Nixon presented background information as follows: The owners of the property are Gerard and Betsy Grondin of Falmouth. The request consists of two parts: 1) An exchange of land to modify the common line between Lots 7 & 8 and; 2) to split the remainder of Lot 8 into 2 lots (Lot 8 and Lot 8A). The lots meet the minimum lot size requirement which is 1.5 acres. The owner's representative is present; and we may want to address the question that was raised prior to the meeting regarding lot frontage.

Mr. Neagle stated a question has come up as to whether there is the necessary lot frontage for a new lot. The code requires 150 feet of frontage in the Island Residential (IR) district, the 150 feet of frontage is the road frontage, which in your case is the fifty foot frontage on the thirty-three foot private road. I think there was 133' of frontage for lot # 8 which was Planning Board approved. The existing lot is fine; there is a question of whether you can create a new lot without a variance unless you have the required frontage. The Board can't change the frontage requirement.

Mr. Brown, representative stated they interpreted the frontage to be along the shore, where that is the actual public access to the island.

Mr. Neagle stated lot frontage is defined in the ordinance as being along the road; there is a term with a definition in the ordinance. I have seen plans where someone put a common right of way down the middle of the lot line as a private way. Mr. Neagle asked who owned lot # 7.

Mr. Brown stated Phil Grondin Sr., and Phil Grondin, Jr., own lot seven and they are in agreement to convey that portion around the camp such that the camp would then be on lot eight.

Mr. Neagle stated right, title and interest needs to be shown for a subdivision; so we need to see an agreement with them to convey the lot.

Mr. Brown asked if they could be co-applicants.

Mr. Neagle stated yes.

Mr. Neagle stated he has no problem dividing these lots; there are just some technical issues to address. The document easement on lot 8A is that to benefit lot # 8.

Mr. Brown stated it benefits the Grondin's in general; Phil Sr., Phil Jr., and Frank Grondin.

Mr. Neagle stated he saw the list of names; it is unusual to have easement to people instead of owners of property.

Mr. Brown stated Phil Sr., owns lot # 9; Gerard owns lot #8; Phil Jr., and Phil Sr., own lot # 7.

Mr. Neagle asked if is fair to say your goal is whomver owns those lots today to have the rights to access the docks.

Mr. Brown stated yes.



Mr. Neagle suggested the applicant consult an attorney regarding the easement language; whether they are to specific lots and not people. Mr. Neagle also stated he was not clear what was the trail; it is not labeled. You need an easement deed to create easements.

Mr. Brown stated they are working with Don Fowler and he is aware of what is needed.

Mr. Neagle stated if Mr. Fowler had any questions, send him an e-mail and copy the Planner at town hall.

Mr. Neagle asked for background information on the plan.

Mr. Brown, representative from Sebago Technics reviewed the proposed request as follows:

1. An exchange of land to modify the common line between Lots 7 and 8 by transferring a portion of land from lot 7 around the existing Grondin camp creating a new property line 35' off the face of the existing camp. A second strip of land of equal area would also be conveyed from lot 8 to lot 7, and would be located adjacent to the northerly corner of the original lot 8.

2. The second change is to split the remainder of lot 8 into two lots; 8 and 8A as shown on the amended plan. Lot 8A is currently intended to be transferred to a family member. A dock easement would also be created over a portion of the new lot 8A in the area adjacent to the existing wharf for the benefit of the Grondin's. The new lot is intended to be accessed from the existing easements as created and shown on the original subdivision plan noted above, and as also shown on the amended plan. As stated before we thought the lots had 150 feet of frontage along the shore.

Mr. Brown continued there is a test pit shown on the plan with acceptable soils.

Mr. Neagle summarized that for the next meeting the applicant needs to straighten out the easements and road frontages for the lots and receive right title and interest from the Grondin's.

**Mr. Neagle opened the public portion of the meeting.**

Mr. Tom Hay, brother-in-law of the applicant stated he is the former treasurer of the Sturdivant Island Community Association. My question is the definition of frontage is the 150 feet on a public way.

Mr. Neagle reviewed the Ordinance §315-4 definitions: Lot Frontage: For residential uses, the distance measured along a street or public right-of-way; for all other uses, the distance measured along a street.

Street definition: -Any vehicular right-of-way that is:

- A. An existing Town, state or county road;
- B. Shown upon a subdivision plat approved by the Planning Board;
- C. Accepted or laid out and taken through action of the Town Council;
- D. A private right-of-way approved by the Town in accordance with the provisions of §315-61 of this chapter; or
- E. A street shown on a subdivision plan in which the Town has reserved rights under the provisions of 23 M.R.S.A. §3032.

Mr. Hay stated there are no public ways on the island, they are all private, thank you that answers my questions. Mr. Hay thought the only public access was from Casco Bay. Is there precedent to this on other islands?

Mr. Neagle stated these easements would remain private right-of-ways. Mr. Neagle stated the Board does not set precedent it applies the requirements of the Ordinance.



Mr. Sherr stated the applicant has some options to fix the problem.

Mr. Gerry Grondin, owner of the property asked about protocol, do we re-apply next month.

Mr. Neagle stated you don't have to re-apply; have Mr. Fowler address the frontage issues.

Ms. Nixon stated she would need information back two weeks prior the October Planning Board meeting.

Ms. Nixon asked if the Board wanted to review the requested waivers.

**Mr. Neagle closed the public portion of the meeting.**

The Board reviewed the waiver requests as follows:

1. Scale 1" = 40': A plan that is drawn to a 50' scale is enclosed that clearly shows the lot split, line adjustment and other associated revisions.
2. 2' Contours:
3. Surface drainage patterns, channels and watershed areas:
4. Surface drainage plan:
5. ~~Plan submitted to CCSWCS~~ – **No longer required by Ordinance.**
6. On-site public sewer and water shown horizontal. And vertical (Hydro-geology study).
7. Electrical facilities.

Mr. Sherr stated these appear to be minor requests with no significant impact.

Mr. Sherr moved to approve the six waiver requests.

Mr. Saunders seconded.

VOTE: Unanimous

3. **Public Hearing: To recommend to the Town Council draft zoning amendments to Chapter 315-4 of the Cumberland Code- Definitions- Business and Professional Office:** *The place of business of individuals or groups providing professional services, including but not limited to doctors, lawyers, accounts, 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 facility in the operation to provide treatment for a dependency-related drug as defined by applicable state statutes.

Ms. Nixon stated Alyssa Tibbetts, Assistant Town Manager has drafted this language and had discussions with the Town Attorney and is present this evening to discuss the item.

Ms. Tibbetts stated this is most likely the first in a few changes related to this topic. The Council Ordinance committee discussed this topic and was looking to address the issue of registered dispensaries as they are outlined in the state statute "The medical marijuana act". Our existing ordinance doesn't address the use at all and Council is interested in being pro-active on the issue; As opposed to wait for the issue to come up and create the need to enact an emergency moratorium and determining what the appropriate regulations are at that time. This is one potential use in our zoning ordinance that the Council felt someone could come forward and claim as a business or professional office as a medical use. This use is permitted in anyone of our commercial zones. Eliminating the use in the definitions effectively eliminates the use in the commercial zones. However, there are additional uses, agriculture for grow



facilities or retail that we need to continue to consider further. The recommendation for this evening is to move forward with this particular change; the Council Ordinance sub-committee is going to consider additional regulations and consult with the Town Attorney on what else we need to consider in terms of this type of regulation to be consistent with the state statute. The recommendation is to move forward with this language tonight to forward to the Council for this language and for the Ordinance Committee to consider additional changes in the Code to address this particular issue.

Mr. Neagle stated whatever these medical marijuana facilities are; in his opinion are closest to a pharmacy where you go to get lawful drugs with a prescription. As I understand it a pharmacies are not currently allowed in this zone.

Ms. Tibbetts stated a pharmacy use would be very close to this particular use in that we don't address it specifically in the ordinance. There is no definition of pharmacy or registered dispensary.

Ms. Neagle stated if it is a medical use, and I agree it is; that is not allowed in this zone other than Doctors.

Ms. Tibbetts stated the business and professional use definition is the only use for medical offices; we don't have a specific definition; all of our Doctor offices come under this definition.

Mr. Neagle asked if he were a pharmacy could he open a pharmacy in this zone as it is related to the Doctors.

Ms. Tibbetts stated if it was classified as a Professional and Business Office or a retail use as defined in the Ordinance.

Mr. Neagle stated he doesn't think there is any reason to not allow medical marijuana dispensaries if we allow pharmacies. This use appears to be a type of pharmacy; I am not in favor of restricting a type of pharmacy because I don't like the drug they are selling. I am going to vote against recommending this change to Council.

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

Mr. Sherr stated this is the first of many amendments regarding this use and is there a way of changing the definition as opposed to changing the zones.

Ms. Tibbetts clarified this is a recommended change to the definition.

Mr. Sherr asked if future items coming to the Board would also be definition related.

Ms. Tibbetts stated yes, most likely; the definitions of agriculture or retail are other uses that might be impacted by this use.

Mr. Neagle stated we had discussed allowing restaurants and sandwich shops in this district along Route One.

Ms. Tibbetts stated this isn't district specific; Route One happens to be one of the zones that allow Business and Professional Offices.



Mr. Boivin moved to recommend to the Town Council draft zoning amendments to Chapter 315-4 of the Cumberland Code (Definitions – Business and Professional Office) to add *“this shall not include registered dispensaries of medical marijuana or any other facility in operation to provide treatment for a dependency related drug as defined by the applicable state statute”*.

Mr. Saunders seconded.

Discussion:

Ms. Maloney-Kelly stated she was confused in regard to the pharmacy aspect and asked how would a methadone clinic fit in this; is it another gray area.

Mr. Neagle stated as he understands it today it could be argued it is a use defined as a business or professional office; clearly this amendment is written to address a methadone clinic. It would be ban by this language; it was well written to ban all types of uses for people with chemical dependencies.

VOTE: 5 in favor (Boivin, Davis, Maloney-Kelly, Saunders, Sherr)  
1 opposed (Neagle)

***4. Public Hearing: To recommend to the Town Council draft zoning amendments to Chapter 315-§315-52 of the Cumberland Code – To change the building height from 35 feet in all districts to 40 feet. §315-52 Height limitations for all districts shall be ~~35~~40 feet .....***

Ms. Nixon stated Ms. Tibbetts provided a succinct memo to the board stating the 35’ height limit that has been in the ordinance for a long time with speculation that ladder trucks and fire trucks had height limits. We are finding as Cumberland becomes more commercial we have a need architects are designing buildings that cannot meet the 35’ height limit. In the case of the Friends School which brought up this issue; they have a solar fixture that is above the roof line and to get the correct angle have to be higher than 35 feet. We looked at several options and Bill Longley; the Code Officer suggested we consider increasing the limit for residential and commercial uses. He is the one who reviews building plans on a daily basis and sees the difficulty people have in designing homes to meet the 35 foot height standard. Mr. Longley and Ms. Tibbetts are both present for any questions or comments.

Mr. Neagle asked if either wished to supplement Ms. Nixon’s summary.

Mr. Longley stated he would refer to his memo in the packet. This issue does come more often than in recent years; it is difficult to achieve a second or third story with a 35 foot height maximum. The slight increase shouldn’t have a significant impact on anyone; if this was an increase of fifteen or twenty feet that might have an impact. This does not affect the shoreland zone; it is all of the zones in ordinance; the Shoreland Zoning Ordinance is a standalone ordinance; which has a state limited 35’ maximum height in the shoreland zone. If someone is on the Foreside, is within 250’ of the water this change will not apply to them.

Mr. Neagle asked about the language of the amendments; he asked about the change to meet the undue hardship standard for a variance which is a more difficult standard to meet.

Ms. Tibbetts stated the original language implied the Board of Appeals may grant a variance based on the finding is would not adversely affect other property in the district. If the Board grants a variance it would need to meet the state definition and criteria for an undue hardship as defined by state statue.



Mr. Neagle agreed with the change, but didn't think we needed the words unnecessary and undue; he felt we could remove the words unnecessary and.

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

Mr. Saunders moved to recommend to the Town Council draft zoning amendments to §315-52 of the Cumberland code (Height Regulations), to change the building height from 35 feet in all districts to 40 feet, and to strike the words "unnecessary and" (...a literal enforcement of this section would result in unnecessary and undue hardship as defined by state statute and this chapter).

Mr. Sherr seconded.

VOTE: Unanimous

***5. Public Hearing: To recommend to the Town Council draft zoning amendments to Chapter 118 Growth Management of the Cumberland Code.***

Mr. Longley, Code Enforcement Officer stated things are very busy we currently have a Growth Ordinance that limits growth permits to no more than 45 of which five of those are for affordable housing units. Currently we have issued somewhere in the order of 42 growth permits for the year and we just completed August. We are steadfastly approaching the magic number of 45 permits, with three months left in the year. The reason this is proposed is to allow Cumberland to grow a little bit more; and as the words in front of you are from the Council Ordinance sub-committee. I raised the red flag stating we are approaching the magic number; I fully support allowing the increase in numbers.

Mr. Bingham, Town Councilor stated it is important to get some context and history as to why it is more comfortable to make this change. Back in the late 1990s we had a major influx of students into the school system and we were concerned about the impact of growth on the school system and the impact on town services. The Council conducted an extensive analysis of the impact per household would have on the school system. As a result this Growth Ordinance was developed using a ten year average of growth, affordability and Chebeague Island. The circumstances have changed currently we have a decreased school population and have conducted extensive studies by the University of Maine and at this point in time we need to encourage growth for two reasons. One being that with the school funding formula we need additional students in the system; increasing the population will enhance the revenue to the Town. And secondly, we have determined there will not be significant impact on town services. The Town is in a position where there is really no need to impose the growth limitations that were necessary in the 1990s.

**The public portion of the meeting was opened.**

Mr. Brad Hilton of 51 Blanchard Road stated with respect to the changes this is an interesting Ordinance, there are two ordinances the Growth Ordinance and the Impact Fee Ordinance; they are separate ordinances and tonight we are just talking about the Growth Ordinance; and they can work independently. The Growth Ordinance after written in 1990 became obsolete; my simple solution is to delete this Ordinance. There is no justification for the new numbers other than to be in compliance. My solution is to eliminate this ordinance and make changes so that the Impact Fee Ordinance is viable and works.

Mr. Neagle stated his solution makes a lot of sense; however, I was on the Growth Ordinance Committee a few years ago when it was amended. I learned that you cannot have an Impact Fee Ordinance unless you have a Growth Ordinance.

Mr. Hilton stated he felt the Town could come up with a solution.



Ms. Tibbetts stated we do not have to have a Growth Ordinance but in order to have an Impact Fee Ordinance we are required to have a Growth Ordinance.

**The public portion of the meeting was closed.**

Mr. Sherr clarified that if some of the Growth Permits were not issued this year they can be carried to the following year; this will allow flexibility.

Mr. Boivin asked if there might be any unintended consequences if we reach a number of 85 new housing units what will be the impact.

Mr. Longley stated in August there were fourteen new housing permits issued. I think the number will be 65 plus ten from a prior year; the maximum could be 75 this year.

Mr. Boivin stated this could change the feeling of Cumberland with more residences.

Mr. Neagle stated he had attended meetings with the Council and hearing messages if there were more students in the school it will help state funding figures. Adding growth is a theme I have heard consistently for the last few years. Maine's population is aging, economists tell us we have to grow; I defer to the expertise of town staff on recommendations.

Ms. Nixon stated a lot of these permits are a result of newer subdivisions which are being built out quickly. I don't think we will see these numbers without newly approved subdivisions.

Mr. Saunders moved to recommend draft zoning amendments to Chapter 118 Growth Management Ordinance §118-7A to increase the maximum number of new growth permits issued annual from 45 to 65 plus an additional 7 permits for affordable housing units, as required by Statute; and to allow the town to carry forward up to ten permits from a prior year and borrowing up to ten permits from a subsequent year as needed, not to exceed 85 permits total in any one calendar year.

Mr. Sherr seconded.

VOTE: 5 in favor (Neagle, Sherr, Saunders,  
Davis, Maloney-Kelly)  
1 opposed (Boivin)

**G. *Administrative Matters: October 3, 2013 Jensen Baird – Client Seminar***

Ms. Nixon wanted to remind the Board that Jensen Baird Gardner Henry is holding a free client seminar which is being held at the former Sheraton across from the Mall. All are invited there will be refreshments and review of the land use law changes that have occurred during the past year.

Mr. Neagle confirmed our law firm is excellent and gives good advice. Mr. Neagle stated in previous years we have had a representative from Jensen Baird come out and give training. We have several new members who would benefit from this training.

Ms. Nixon stated she would contact Natalie Burns to set up a time for free training.

**H. *Adjournment:*** Mr. Neagle adjourned the meeting at 8:11 p.m.



A TRUE COPY ATTEST:

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Christopher S. Neagle, Board Chair

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Pam Bosarge, Clerk to the Board