

**PLANNING BOARD MEETING
TOWN OF CUMBERLAND
Cumberland Town Hall
290 Tuttle Road, Cumberland, Maine 04021
Tuesday, February 12, 2013
7:00 p.m.**

A. *Call to Order*

B. *Roll Call:*

Present: Chris Neagle, Chair, John Ferland, Vice Chair, Peter Bingham, Jerry Boivin, Ron Dillon, April, Caron

Absent: Peter Sherr

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

D. *Approval of Minutes of January 15, 2013 meeting.*

Mr. Bingham moved to approve the minutes of January 15, 2013 as amended.

Mr. Ferland seconded

VOTE: 5- 1

1 – Abstain (Caron)

E. *Minor Change Approvals: None*

F. *Hearings and Presentations:*

- 1. *Public Hearing: Major Subdivision Review for Morrison's Hill Subdivision for 18 single-family house lots at Gray Road,*** Tax Assessor Map U18, Lot 6 in the Village Office Commercial I (VOCI) district; as allowed by contract zone. Walnut Hill Investment, Inc., Owner, Al Palmer, P.E., Gorrill – Palmer Consulting Engineers, Representative.

Ms. Caron asked to be recused as she is a direct abutter to the project.

Ms. Nixon presented background information as follows: The applicant is Walnut Hill Investments, Inc. The applicant is proposing to develop a 16.46 acre site into 18 single family house lots, one of which will be retained by the current owner. A contract zoning agreement has been approved by the Town Council that allows for increased density. The contract zoning agreement also states that the purchase price shall not exceed \$225,000 and that purchasers must occupy the home as their principal residence. There are restrictions on resale for the first 2 years. The property is located on Route 100 in the Village Office Commercial 1 (VOC 1) zoning district, as shown on Tax Assessor's Map U-18, Lot 6. There is approximately 982 feet of frontage along Route 100.

The applicant is represented by Al Palmer, P.E., of Gorrill Palmer Consulting Engineers, Inc. This is the third review of this project. The applicant is seeking final approval at this meeting. All outside agency approvals have been received. In my memo there is one comment regarding clarifying the zoning side setback this was corrected by Council and recorded in the Registry of Deeds.

Mr. Dillon asked if there was a difference between principle and primary residence, and would people such as snow birds be able to go south.

Ms. Nixon stated she was not aware of any stipulation and this project is designed with young families in mind.

Mr. Al Palmer of Gorrill Palmer Consulting Engineers stated he was present with Ben Grover, a principle of Walnut Hill Investments. The applicant has addressed all comments since the last meeting in December. The applicant has received the DEP Stormwater permit and the DOT entrance permit. This includes re-stripping Route 100 and offsetting the entrance from Castle Rock. Both the DEP and NRPA permits have been received.

Mr. Neagle stated this is the third review by the Board of the project and most questions have been addressed.

Mr. Ferland asked for clarification on the location of the snowmobile trail.

Mr. Palmer reviewed the location of the snowmobile trail.

Mr. Ferland stated on the overall site map it shows a portion of the mapped aquifer, and asked if there would be any impact to the aquifer.

Ms. Nixon stated the aquifer is in the northeast area, the aquifer protection maps are not precise, and there are no lots close to the aquifer; the only thing with potential to affect the aquifer would be a private septic system.

Mr. Palmer stated all of the aquifer is located within the 50 foot perimeter buffer.

Mr. Neagle stated in previous reviews there was an agreement for the Martelle's to access Rooster Ridge and Bud's Trail, they should be given an easement for legal right to use the right of way. He will suggest this as a condition of approval.

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

The Board reviewed the proposed findings of fact.

Mr. Bingham moved to adopt the findings of fact as written.

Mr. Dillon seconded.

VOTE: Unanimous 5-0

PROPOSED FINDINGS OF FACT - Subdivision Ordinance, Section 1.1

The purpose of these standards shall be to assure the comfort, convenience, safety, health, and welfare of the people, to protect the environment and to promote the development of an economically sound and stable community. To this end, in approving subdivisions within the Town of Cumberland, Maine, the Board shall consider the following criteria and before granting approval shall determine that the proposed subdivision:

1. Pollution. The proposed subdivision will not result in undue water or air pollution. In making this determination, it shall at least consider:
 - A. The elevation of the land above sea level and its relation to the flood plains;
 - B. The nature of soils and subsoil and their ability to adequately support waste disposal;
 - C. The slope of the land and its effect on effluents;
 - D. The availability of streams for disposal of effluents; and
 - E. The applicable state and local health and water resource rules and regulations;

The applicant has provided a soils report prepared by Richard Sweet Associates, Inc. describing the soils as they relate to the design for the proposed septic systems. There are passing test pit locations for each of the proposed lots. A 75' setback from a stream located on the site has been shown on the plan.

Based on the information provided, the standards of this section have been met.

2. Sufficient Water. The proposed subdivision has sufficient water available for the reasonable foreseeable needs of the subdivision;

The proposed subdivision will utilize public water. A letter dated 10/29/12 from the Portland Water District is on file that states there is an adequate supply of clean and healthful water to serve the needs of the proposed subdivision.

Based on the information provided, the standards of this section have been met.

3. Municipal Water Supply. The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be used;

The proposed subdivision will utilize public water.

A letter dated 10/29/12 from the Portland Water District is on file that states there is an adequate supply of clean and healthful water to serve the needs of the proposed subdivision.

Based on the information provided the standards of this section have been met.

4. Erosion. The proposed subdivision will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results;

An erosion and sedimentation control plan was provided. The Town Engineer has reviewed and approved the plans.

Based on the information provided, the standards of this section have been met.

5. Traffic. The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed;

The applicant has provided a traffic study. The applicant states that 180 peak hour trip ends will be generated by the project. An MDOT Entrance Permit dated 12/31/12 is on file.

Based on the information provided, the standards of this section have been met.

6. Sewage disposal. The proposed subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services, if they are utilized;

The project will utilize private septic systems. Sweet Associates has located passing test pit locations for each of the proposed lots.

Based on the information provided, the standards of this section have been met.

7. Municipal solid waste disposal. The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be utilized;

The Town provides curbside pickup of household trash. The Town is currently under contract with Pine Tree Waste for the collection and hauling of residential solid waste with

disposal at Eco-Maine. The amount of household trash estimated to be generated by the new homes is 742 pounds per month.

Based on the information provided, the standards of this section have been met.

8. Aesthetic, cultural, and natural values. The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;

A letter on file dated 9/26/12 from Department of Conservation states that there are no rare or botanical features documented specifically within the project area.

A letter is on file from the Department of Inland Fisheries and Wildlife states that there are no known significant wildlife habitats or threatened or endangered species in the vicinity of the project.

A letter on file dated 9/18/12 from the Maine Historic Preservation Commission states that this project will have no effect on historic resources.

Based on the information provided, the standards of this section have been met.

9. Conformity with local ordinances and plans. The proposed subdivision conforms to a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans;

The plans have been reviewed by the Town's peer review engineers and town staff. All outstanding issues have been addressed.

Based on the information provided, the standards of this section have been met.

10. Financial and technical capacity. The subdivider has adequate financial and technical capacity to meet the standards of this section;

Technical capacity is evidenced by professional engineers, surveyors, and soils evaluators.

A letter dated 9/25/12 from People's United Bank states that "both A.H.Grover, Inc/ and the partners of Walnut Hill Investments, LLC have the financial ability and credit worthiness to complete the Morrison's Hill Neighborhood subdivision".

Based on the information provided, the standards of this section have been met.

11. Surface waters; outstanding river segments. Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38 chapter 3, subchapter I, article 2-B, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of the body of water;

The parcel does not appear to fit into any of the above protected areas.

Based on the information provided, the standards of this section have been met.

12. Ground water. The proposed subdivision will not, alone or in conjunction with existing activities, adversely affects the quality or quantity of ground water;

The proposed 18 lot residential subdivision will not adversely affect the quality or quantity of groundwater.

Based on the information provided, the standards of this section have been met.

13. Flood areas. Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries

within the subdivision. The proposed subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation;

The parcel is located in Zone C- Area of Minimal Flooding as depicted on FIRM #230162 0015B.

Based on the information provided, the standards of this section have been met.

14. Storm water. The proposed subdivision will provide for adequate storm water management;

A stormwater management plan dated September 2012 was prepared by Gorrill Palmer Consulting Engineers. An MDEP Stormwater/NRPA permit is on file. The plan has been reviewed and approved by the Town Engineer.

Based on the information provided, the standards of this section have been met.

15. Freshwater wetlands. All potential freshwater wetlands, as defined in 30-A M.R.S.A. §4401 (2-A), within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district.

Wetland areas are shown on the plan. There is a total impact of 1,374 sf. There are no natural vernal pools on the site. The applicant has designed the project so as to minimize the amount of impact to wetland areas.

Based on the information provided, the standards of this section have been met.

16. River, stream or brook: Any river, stream, or brook within or abutting the proposed subdivision has been identified on any map submitted as a part of the application. For purposes of this section, "river, stream, or brook" has the same meaning as in Title 38, Section 480-B, Subsection 9. [Amended; Effective. 11/27/89]

A brook called "Small Brook" is shown on the plan. The required 75' MDEP setback has been provided.

Based on the information provided, the standards of this section have been met.

SECTION 300 – AQUIFER PROTECTION (if applicable)

The small portion of land in the northeasterly area of the parcel appears to be located in the Aquifer Protection District. This area is within the 50' perimeter buffer of the subdivision. There are passing test pit locations for each parcel, so the effect of the 18 lot residential subdivision should not adversely affect the aquifer.

Mr. Bingham moved to grant Final Major Subdivision approval for Morrison's Hill Subdivision for 18-single-family house lots at Gray Road; Tax Assessor Map U18, Lot 6 in the Village Office Commercial I (VOCI) district; as allowed by contract zone. Walnut Hill Investment, Inc., Owner, Al Palmer, P.E., Gorrill-Palmer Consulting Engineers, Representative. This approval is subject to the Standard Conditions of Approval, Limitation of Approval and the six (6) recommended conditions of approval.

Mr. Ferland seconded.

VOTE: Unanimous 5 – 0 (Caron recused)

STANDARD CONDITIONS OF APPROVAL

This approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from the plans, proposals and supporting documents, except de minimus changes as so determined by the Town Planner

which do not affect approval standards, is subject to review and approval of the Planning Board prior to implementation.

LIMITATION OF APPROVAL

Construction of the improvements covered by any site plan approval must be substantially commenced within twelve (12) months of the date upon which the approval was granted. If construction has not been substantially commenced and substantially completed within the specified period, the approval shall be null and void. The applicant may request an extension of the approval deadline prior to expiration of the period. Such request must be in writing and must be made to the Planning Board. The Planning Board may grant up to two (2) 1 year extensions to the periods if the approved plan conforms to the ordinances in effect at the time the extension is granted and any and all federal and state approvals and permits are current.

RECOMMENDED CONDITIONS OF APPROVAL

1. Legal documents to be reviewed and approved by Town Attorney prior to release of the plat for recording.
2. Statement of values for required improvements for all lots to be submitted prior to releasing the plat for recording.
3. A performance guarantee in a form and amount acceptable to the Town Manager shall be provided prior to the pre-construction conference.
4. Clearing limits shall be flagged and approved by the peer review engineer prior to the preconstruction conference.
5. A pre-construction conference is required prior to the start of work.
6. An access easement is provided to Peter and Suzanne Martelle for access over the private roads adjacent to their property until / when the roads become public roads.

The Board addressed items # 2, 3, & 4 as one agenda item.

2. Public Hearing : To recommend to the Town Council draft zoning amendments to Chapter 315, Article V, Aquifer Protection of the Zoning Ordinance; to amend §315-36 Regulations, §315-37 Continued Compliance.

3. Public Hearing: To recommend to the Town Council draft zoning amendments to Chapter 315, Article VII; Non-conforming uses, buildings or structures to amend §315-74.

4. Public Hearing: To recommend to the Town Council draft zoning amendments to Chapter 229 Site Plan Review to amend §229-10 Approval Standards and Criteria.

Ms. Nixon presented background information as follows: The town staff has been working on proposed amendments to the Aquifer Protection ordinance to ensure that it fully covers all potential contaminants and sets up an inspection and compliance process.

This work was started after the One Steel Recycling project withdrew. John Sevee, P.E., of Sevee Maher Hydro-Geologists has advised us on these changes:

Highlights include:

- Page 1 – clarifies the definition of “hazardous waste”.
- The top of Page 2 adds some language relating to leachable materials.
- Bottom of Page 2 & top of Page 3 is all new language that describes how the town will conduct annual inspections, and how non-compliance will be dealt with.
- Bottom of Page 3 and top of Page 4 references the Aquifer Protection Ordinance as it relates to the repair, alteration, improvement, or reconstruction of a building or structure located within an aquifer protection area.
- Bottom of Page 4 are amendments to the Site Plan Ordinance relating to aquifer protection.

Mr. Bingham stated he understands there are two major aquifers, one in West Cumberland and the Main Street area, will there be any immediate effects on existing businesses.

Mr. Neagle stated no immediate impact, the businesses will continue, expansions or new uses would be reviewed.

Mr. Bingham asked about Val Halla uses.

Ms. Nixon stated the gas station on Main Street would be subject to inspection; the first meeting with a business owner would be informational to have the owner supply MSDS sheets (which list existing chemicals at the site).

Mr. Bingham stated this amendment is a result of the Comprehensive Plan.

Mr. Neagle stated the Town has two great aquifers, it is important to protect the water supply if or when there is a shortage the Town will have water for its residents.

The public portion of the meeting was opened.

Mr. Brad Hilton of 51 Blanchard Road stated he had two issues. The first is this Ordinance should apply to Town activities; and large parking lots are a concern with daily use and potential for contaminants from vehicles. His second concern was salt use and intentional spilling of salt during a storm.

Mr. Neagle stated the Town's activities are subject to the same zoning regulations and an example is when Twin Brook was developed it needed Planning Board approval.

Mr. Hilton asked why not add a Section C in §315-36 listing items that are not a concern in respect to the aquifer.

Mr. Neagle stated Ordinances define items of concern, if it is not listed or regulated it is not a concern.

Mr. Hilton asked if the Town knew the quality of water in the aquifer. It is important for the Town to have a base line analysis.

Mr. Neagle stated that is a good idea and encouraged Mr. Hilton to discuss it with the Town Manager.

Mr. Bingham agreed the Aquifer language is confusing.

The public portion of the meeting was closed.

Mr. Neagle suggested a wordsmith change on item # 5 page 2. (5) Storage of petroleum or other refined petroleum products, ~~with the exception not to include except for~~ the storage of petroleum products used for ~~household-residential~~ purposes. (The highlighted language is the suggested change to state except for).

Mr. Bingham moved to recommend to the Town Council draft zoning amendments with the suggested language stated by Mr. Neagle to the following sections of the Zoning Ordinance and Site Plan Ordinance.

- Chapter 315, Article V, Aquifer Protection of the Zoning Ordinance; to amend §315-36 Regulations, §315-37 Continued Compliance.
- Chapter 315, Article VII; Non-conforming uses, buildings or structures to amend §315-74.
- Chapter 229 Site Plan Review to amend §229-10 Approval Standards and Criteria.

Mr. Ferland seconded.

VOTE: Unanimous

Chapter 315: Zoning ARTICLE V Aquifer Protection

§ 315-34. Purpose.

The purpose of this article is to protect the health, safety, and general welfare of the residents of Cumberland by protecting the quality of the Town's groundwater through the regulation of activities and land use practices.

§ 315-35. Applicability.

The requirements of this article shall apply to all areas designated as aquifer protection (AP) on the Official Aquifer Protection Map which shall be adopted as part of this chapter. Aquifer protection areas shall be determined on the basis of the most recent data available from the United States Geological Survey and Maine Geological Survey and other public sources.

§ 315-36. Regulations.

- A. Disposal of hazardous waste materials is prohibited. Hazardous waste shall have the same meaning as contained in Title 42 U.S.C. Section 6903 (5):

§ 6903 (5) The term "hazardous waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may

- (A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or
 (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

In addition to those materials identified as hazardous waste by the United States Environmental Protection Agency in accordance with Title 42 U.S.C. § 6903 (5) above, hazardous waste shall also include any and all materials designated as hazardous waste by the State of Maine Board of Environmental Protection, pursuant to its rule making authority in Title 38 M.R.S.A. § 1319-O, and in accordance with the definition located at Title 38 M.R.S.A § 1303-C (15).

- B. The following uses shall only be allowed upon a positive finding by the Planning Board that the proposed use, with any conditions imposed by the Board, will not adversely affect the quality of groundwater:
- (1) Disposal of solid waste, other than brush or stumps, as permitted by the Town of Cumberland Solid Waste Ordinance.
 - (2) Storage of road salt or other deicing agents.

- (3) Animal feedlots which hold more than three animals per acre or, in the case of poultry, which hold more than 150 animals per acre.
- (4) Manure piles or storage pits in excess of 50 cubic yards or, in the case of poultry manure, in excess of 20 cubic yards; manure shall otherwise be disposed in accordance with the provisions of § 315-37A.
- (5) Storage of petroleum or other refined petroleum products, ~~with the exception~~ **not to include the** storage of petroleum products used for ~~household residential~~ purposes.

**** (Planning Board recommended language ~~not to include except for~~ **the** storage of petroleum products used for ~~household residential~~ purposes.

- (6) Disposal of other leachable materials **including, but not limited to, compost or stumps in excess of 50 cubic yards, brush spread over an area of more than 10,000 square feet, asphalt, liquid or semi-solid sludges, roadway snow, and waste oils, not to include** ~~with the exception of~~ single-family and two-family residential septic systems. **Burning of stockpiled compost, brush, and stumps is prohibited.**
- (7) Extraction of earth materials.
- (8) Any residential, commercial, industrial, institutional, or governmental development, including subdivision, which occupies a land or water area in excess of 20 acres.

(9) Storage of hazardous materials as defined by 42 U.S.C. § 9601 (14) or hazardous waste as defined herein at § 315-36 (A).

§ 315-37. Continued Compliance.

A. Expansion of Existing Uses

The expansion by size, area, intensity or type of an existing commercial or industrial use, ~~non-conforming or previously approved use~~, or the addition of a new use shall be reviewed prior to the expansion or addition of a new use and shall require a positive finding pursuant to the criteria above in § 315-36B and approval in accordance with Chapter 229, Site Plan Review. For purposes of this section, intensity shall mean an increase in business operations including, but not limited to, hours, employees, products, materials, and services.

B. Inspection of New Uses

All uses within a designated aquifer protection area approved subsequent to the effective date of this section and pursuant to the criteria above in § 315-36B and Chapter 229, Site Plan Review, are subject to periodic, but at a minimum annual, inspection by the Code Enforcement Officer to ensure continued compliance with the findings and approval of Site Plan Review. Notice of inspection shall be provided to the property owner at least fourteen (14) days in advance.

C. Inspection of Existing Uses

Existing ~~non-conforming or previously approved~~ commercial or industrial uses that were in lawful existence on ~~are in operation prior to~~ January 31, 2013 shall be subject to a preliminary inspection by the Code Enforcement Officer within six months of the effective date of this section. The

preliminary inspection shall include review and inventory of materials that are used, stored, manufactured, or produced within the course of the existing business that could be deemed hazardous waste or could adversely affect the quality of groundwater. Material safety data sheets (MSDS) and spill prevention and containment programs and policies may be requested if applicable. Notice of inspection shall be provided to the property owner at least fourteen (14) days in advance.

If following preliminary inspection, the Code Enforcement Officer issues a notice of non-compliance the property owner shall remedy the non-compliance within thirty (30) days of receiving said notice. If the property owner fails to remedy the non-compliance within thirty (30) days of receiving a notice of non-compliance from the Code Enforcement Officer, the Code Enforcement Officer may order all non-conforming materials removed and/or the closure of the operations that are in violation thereof.

Subsequent to preliminary inspection, all existing, non-conforming, or previously approved commercial or industrial uses are subject to periodic, but at a minimum annual, inspection by the Code Enforcement Officer to ensure continued compliance with the Code Enforcement Officer's preliminary inspection report. Notice of inspection shall be provided to the property owner at least fourteen (14) days in advance.

Chapter 315: Zoning

ARTICLE VII

Nonconforming Uses, Buildings, Structures, and Lots

§ 315-73. Continuation.

The use of any building, structure, or land which is made nonconforming by reason of the enactment of this chapter, or which shall be made nonconforming by reason of a subsequent amendment, may be continued subject to the following provisions.

§ 315-74. Nonconforming uses, buildings or structures.

- A. 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. The repair, alteration, improvement, or reconstruction of a building or structure located within an aquifer protection area shall be subject to the provisions of Chapter 315, Article V (Aquifer Protection) of this Code.
- B. 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.
- C. Expansion of nonconforming use other than residential. 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 chapter. The expansion of a nonconforming use located within an aquifer

protection area shall be subject to the provisions of Chapter 315, Article V (Aquifer Protection) of this Code.

D. Expansion of nonconforming residential use. A nonconforming residential building or structure may be expanded provided that the expansion 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) of this Code.

E. 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 Subsection C of this section.

F. 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 years, provided that a nonconforming commercial use which is not open and operating for at least five days per week during traditional business hours for a period of at least three months in any twelve-month period during the prescribed two-year period shall be deemed to have been abandoned. For any residential use that is nonconforming the discontinuance period shall be four years.

Chapter 229

SITE PLAN REVIEW

§ 229-10. Approval standards and criteria.

The following criteria shall be used by the Planning Board (or Town Planner if Staff Review) in reviewing applications for site plan review and shall serve as minimum requirements for approval of the application. The application shall be approved unless the Planning Board determines that the applicant has failed to meet one or more of these standards. In all instances, the burden of proof shall be on the applicant, who must produce evidence sufficient to warrant a finding that all applicable criteria have been met.

E. Water Protection

(3) Aquifer protection. If the site is located within the ~~Town Aquifer Protection Area~~ areas designated as aquifer protection (AP) on the Official Aquifer Protection Map, a positive finding by the Board (if Staff Review, the Town Planner or Staff Review Committee) that the proposed plan will not adversely affect the aquifer is required in accordance with the standards set forth in Chapter 315, Article V (Aquifer Protection) of this Code.

5. Public Hearing: Minor Site Plan Review for a Dog Day School at 79 Orchard Road, Tax Assessor Map R08, Lot 60A, in the Rural Residential 2 (RR2) district; Brooke Nicholas, Applicant, Owner, Judith Curtis.

Mr. Neagle asked to be recused as the property is directly opposite his property.

Mr. Ferland was acting chair for item # 5.

Ms. Nixon presented background information as follows: The applicants are Brooke and Evan Nicholas of Portland, Maine. The applicants are requesting minor site plan approval for a dog day care business to be operated out of a private residence that is under contract at 79 Orchard Road. Section 3.15-6B (1) p lists the permitted uses in the RR 2 zone. A Boarding Kennel (defined as *any place, building, tract of land or abode in or on more than three privately owned dogs or other pets, or both, are kept at any one time for their owners in return for a fee*) is a permitted use in the zone, subject to site plan review. For this reason, the business cannot be approved as a home occupation. This could have been reviewed as a Staff Site Plan Review, but because of the potential concerns of abutters, the Town Planner has referred this to the Planning Board where a public hearing can be held.

The 1.84 acre property is shown on Tax Assessor's Map R08, Lot 60 A. There is currently a single family home with an approved accessory apartment on the parcel. There is an attached (oversized) two car garage. The lower level of the garage will be finished off with heat and flooring for use as the indoor play area. No new structures or site changes are proposed.

Zoning District: RR2

Proposed Use: Boarding Kennel for up to 25 dogs

Hours of Operation: Monday – Friday, 7:30 a.m. to 5:30 p.m. Times for customers to drop off dogs would be between 7:30 a.m. to 9:30 a.m. and to pick up: 3:30 p.m. to 5:30 p.m. There will be no night or weekend boarding.

Parking: There is parking for 6-7 vehicles in the driveway area.

Access: An existing 14' wide by 80' long paved driveway

Water/Septic: The home is served by private well and septic system.

Dog Waste Disposal: Waste will be stored inside an existing shed and will be disposed of offsite at an appropriate landfill or waste handling facility. There will be no dumpster.

Signage: The applicant intends to install one 4' x 4' wooden sign. There will be one 75 watt light illuminating the sign.

Historic Features: There are stone walls on the property.

Buffering/Landscaping: There is an existing vegetative buffer around all four sides of the property. No additional landscaping is proposed.

There will be an alarm system.

PROJECT HISTORY: None

DEPARTMENT HEAD REVIEWS:

Chris Bolduc, Public Services: No comments

Joe Charron, Police Chief: No comments.

William Longley, Code Enforcement Officer: No comments.

PLANNER'S COMMENTS:

1. Any exterior lighting associated with the business such as building, sign, and yard lighting, should be turned off when the business is closed.

TOWN ENGINEER REVIEW: No review by Town Engineer was required. There is no new construction or other alterations being made to the site.

REQUESTED WAIVERS: None

Ms. Brooke Nicholas, Applicant gave a power point presentation overview of her proposal. Ms. Nicholas stated this will be a day school for up to 25 dogs, she will provide training, behavior modification, and socialization for dogs. The hours will be Monday through Friday; there will be no weekends or overnight boarding.

The dog drop off time is 7:30 a.m. to 9:30 a.m.

The dog pick up time is 3:30 a.m. to 5:30 p.m.

Ms. Nicholas stated as part of the business the plan is to add a canine taxi service to pick up dogs at their homes.

Mr. Bingham asked about the dog waste policy.

Ms. Nicholas stated the waste will be picked up and stored in a trash container in a shed and disposed of at a trash facility.

Mr. Bingham asked about their no barking policy.

Ms. Nicholas stated if there is a nuisance dog with barking it will be removed from the program. All of the dogs are not outside at one time. There will be a solid fence to prevent dogs from outside stimulation.

Ms. Caron asked if this was their home.

Mr. Nicholas stated yes.

Ms. Caron stated she was sure if they were living at the premises they would contain any nuisance barking. Ms. Caron asked about staff.

Ms. Nicholas stated currently it is herself, there is potential for two people with up to twenty-five dogs.

Mr. Boivin asked if dog size would be a factor in the number of dogs.

Ms. Nicholas stated no, behavior not size would determine if a dog stays at the facility.

Mr. Ferland stated the zoning ordinance allows for boarding kennels as a permitted use and asked about this day school use.

Ms. Nixon stated Mr. Longley, Code Enforcement Officer has found they are the same use, which is allowed in the RR2 zone.

Mr. Ferland asked if there would be a limit in the number of dogs and the rationale for the number twenty-five.

Ms. Nicholas stated she figures for 12-13 dogs it requires one staff person.

Mr. Ferland asked if there was a projected time frame to reach maximum capacity.

Ms. Nicholas stated she hopes to be at capacity within a year.

The public portion of the meeting was opened.

Mr. Chris Neagle, of 76 Orchard Road stated he is a dog lover and he looks forward to welcoming them to the neighborhood. He suggested the following as a condition of approval.

- That a no barking policy is implemented and dogs that cannot comply after a period of time will not be allowed on the property.
- The drop off hours for dogs is from 7:30 a.m. to 9:30 a.m. and pick up hours are from 3:30 p.m. to 5:30 p.m. with no weekend and or night hours.

Ms. Nicholas stated she does not like barking dogs and respects the neighbor's concern.

The public portion of the meeting was closed.

Mr. Dillon asked if the conditions were stated in the plan was there a need for the added conditions.

Mr. Bingham stated this is different from a subdivision and there is no plat filed at the Registry of Deeds.

Mr. Neagle stated he agreed the applicant is still bound by the proposal, his concern was that the language be easy to find in future years.

Mr. Ferland stated Mr. Neagle is an astute Planning attorney and an abutter who is suggesting certain parts of the application be listed as a condition of approval. We listen extensively to neighbors, and if there is a concern applicants usually agree.

Ms. Caron stated her concern was waste removal, and asked if there should be condition listed.

Ms. Nixon stated it would be hard to enforce such a condition; the owner will be occupying the premises.

Ms. Nixon asked if the applicant would need to return to the Board for a change of ownership.

The Board discussed that question, and decided if there was change to the operation such as expansion of hours, dogs etc. it would require review from the Planning Board.

The Board reviewed the findings of fact.

Mr. Bingham moved to adopt the findings of fact as presented.

Mr. Boivin seconded.

VOTE: Unanimous 5-0

Mr. Bingham moved to grant Minor Site Plan approval for a Dog Day School at 79 Orchard Road, Tax Assessor Map R08, Lot 60A, in the Rural Residential 2 (RR2) district; Brook Nicholas, Applicant, Judith Curtis, Owner. This approval is subject to the standard limitation of approval, the limitation of approval and the proposed six conditions of approval.

Mr. Boivin seconded.

VOTE: Unanimous 5 – 0

SECTION 10: APPROVAL STANDARDS AND CRITERIA

The following criteria shall be used by the Planning Board in reviewing applications for site plan review and shall serve as minimum requirements for approval of the application. The application shall be approved unless the Planning Board determines that the applicant has failed to meet one or more of these standards. In all instances, the burden of proof shall be on the applicant who must produce evidence sufficient to warrant a finding that all applicable criteria have been met.

10.1 Utilization of the Site

Utilization of the Site - The plan for the development, including buildings, lots, and support facilities, must reflect the natural capabilities of the site to support development. Environmentally sensitive areas, including but not limited to, wetlands, steep slopes, floodplains, significant wildlife habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, and sand and gravel aquifers must be maintained and preserved to the maximum extent. The development must include appropriate measures for protecting these resources, including but not limited to, modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.

There are no changes being made to the site.

The Board finds the standards of this section have been met.

10.2 Traffic, Circulation and Parking

10.2.1 Traffic Access and Parking

Vehicular access to and from the development must be safe and convenient.

10.2.1.1 Any driveway or proposed street must be designed so as to provide the minimum sight distance according to the Maine Department of Transportation standards, to the maximum extent possible.

10.2.1.2 Points of access and egress must be located to avoid hazardous conflicts with existing turning movements and traffic flows.

10.2.1.3 The grade of any proposed drive or street must be not more than +3% for a minimum of two (2) car lengths, or forty (40) feet, from the intersection.

10.2.1.4 The intersection of any access/egress drive or proposed street must function: (a) at a Level of Service D, or better, following development if the project will generate one thousand (1,000) or more vehicle trips per twenty-four (24) hour period; or (b) at a level which will allow safe access into and out of the project if less than one thousand (1,000) trips are generated.

10.2.1.5 Where a lot has frontage on two (2) or more streets, the primary access to and egress from the lot must be provided from the street where

there is less potential for traffic congestion and for traffic and pedestrians hazards. Access from other streets may be allowed if it is safe and does not promote short cutting through the site.

The lot has frontage on 2 streets, however there is an existing access drive that works well with the proposed circulation plan for parking and turning.

10.2.1.6 Where it is necessary to safeguard against hazards to traffic and pedestrians and/ or to avoid traffic congestion, the applicant shall be responsible for providing turning lanes, traffic directional islands, and traffic controls within public streets.

10.2.1.7 Access ways must be designed and have sufficient capacity to avoid queuing of entering vehicles on any public street.

10.2.1.8 The following criteria must be used to limit the number of driveways serving a proposed project:

- a. No use which generates less than one hundred (100) vehicle trips per day shall have more than one (1) two-way driveway onto a single roadway. Such driveway must be no greater than thirty (30) feet wide.
- b. No use which generates one hundred (100) or more vehicle trips per day shall have more than two (2) points of entry from and two (2) points of egress to a single roadway. The combined width of all access ways must not exceed sixty (60) feet.

All the above standards have been met.

The Board finds the standards of this section have been met.

10.2.2 Access way Location and Spacing

Access ways must meet the following standards:

10.2.2.1 Private entrance / exits must be located at least fifty (50) feet from the closest un-signalized intersection and one hundred fifty (150) feet from the closest signalized intersection, as measured from the point of tangency for the corner to the point of tangency for the access way. This requirement may be reduced if the shape of the site does not allow conformance with this standard.

10.2.2.2 Private access ways in or out of a development must be separated by a minimum of seventy-five (75) feet where possible.

All the above standards have been met.

The Board finds the standards of this section have been met.

10.2.3 Internal Vehicular Circulation

The layout of the site must provide for the safe movement of passenger, service, and emergency vehicles through the site.

10.2.3.1 Projects that will be served by delivery vehicles must provide a clear route for such vehicles with appropriate geometric design to allow turning and backing.

10.2.3.2 Clear routes of access must be provided and maintained for emergency vehicles to and around buildings and must be posted with appropriate signage (fire lane - no parking).

10.2.3.3 The layout and design of parking areas must provide for safe and convenient circulation of vehicles throughout the lot.

10.2.3.4 All roadways must be designed to harmonize with the topographic and natural features of the site insofar as practical by minimizing filling, grading, excavation, or other similar activities which result in unstable soil conditions and soil erosion, by fitting the development to the natural contour of the land and avoiding substantial areas of excessive grade and tree removal, and by retaining existing vegetation during construction. The road network must provide for vehicular, pedestrian, and cyclist safety, all season emergency access, snow storage, and delivery and collection services.

The project complies with the above standards.

The Board finds the standards of this section have been met.

10.2.4 Parking Layout and Design

Off street parking must conform to the following standards:

10.2.4.1 Parking areas with more than two (2) parking spaces must be arranged so that it is not necessary for vehicles to back into the street.

10.2.4.2 All parking spaces, access drives, and impervious surfaces must be located at least fifteen (15) feet from any side or rear lot line, except where standards for buffer yards require a greater distance. No parking spaces or asphalt type surface shall be located within fifteen (15) feet of the front property line. Parking lots on adjoining lots may be connected by accessways not exceeding twenty-four (24) feet in width.

10.2.4.3 Parking stalls and aisle layout must conform to the following standards.

Parking Angle	Stall Width	Skew Width	Stall Depth	Aisle Width
90°	9'-0"		18'-0"	24'-0" 2-way
60°	8'-6"	10'-6"	18'-0"	16'-0" 1-way

45°	8'-6"	12'-9"	17'-6"	12'-0" 1-way
30°	8'-6"	17'-0"	17'-0"	12'-0" 1 way

10.2.4.4 In lots utilizing diagonal parking, the direction of proper traffic flow must be indicated by signs, pavement markings, or other permanent indications and maintained as necessary.

10.2.4.5 Parking areas must be designed to permit each motor vehicle to proceed to and from the parking space provided for it without requiring the moving of any other motor vehicles.

10.2.4.6 Provisions must be made to restrict the "overhang" of parked vehicles when it might restrict traffic flow on adjacent through roads, restrict pedestrian or bicycle movement on adjacent walkways, or damage landscape materials.

The project meets the above standards.

The Board finds the standards of this section have been met.

10.2.5 Building and Parking Placement

10.2.5.1 The site design should avoid creating a building surrounded by a parking lot. Parking should be to the side and preferably in the back. In rural, uncongested areas buildings should be set well back from the road so as to conform with the rural character of the area. If the parking is in front, a generous, landscaped buffer between road and parking lot is to be provided. Unused areas should be kept natural, as field, forest, wetland, etc.

10.2.5.2 Where two or more buildings are proposed, the buildings should be grouped and linked with sidewalks; tree planting should be used to provide shade and break up the scale of the site. Parking areas should be separated from the building by a minimum of five (5) to ten (10) feet. Plantings should be provided along the building edge, particularly where building facades consist of long or unbroken walls.

There are no new structures proposed. The existing driveway area will allow for 6-7 vehicles to be parked. Since the dogs will be dropped off at varying times, and some may be brought by bus, the proposed parking and circulation plan will be adequate.

The Board finds the standards of this section have been met.

10.2.6 Pedestrian Circulation

The site plan must provide for a system of pedestrian ways within the development appropriate to the type and scale of development. This system must connect the major building entrances/ exits with parking areas and with existing sidewalks, if they exist or are planned in the vicinity of the project. The pedestrian network may be located either in

the street right-of-way or outside of the right-of-way in open space or recreation areas. The system must be designed to link the project with residential, recreational, and commercial facilities, schools, bus stops, and existing sidewalks in the neighborhood or, when appropriate, to connect the amenities such as parks or open space on or adjacent to the site.

There is adequate parking in the driveway area. There are no sidewalks on Orchard Rd. There will be very low traffic volume on site so pedestrian safety is not a concern.

The Board finds the standards of this section have been met.

10.3 Stormwater Management and Erosion Control

10.3.1 Stormwater Management

Adequate provisions must be made for the collection and disposal of all stormwater that runs off proposed streets, parking areas, roofs, and other surfaces, through a stormwater drainage system and maintenance plan, which must not have adverse impacts on abutting or downstream properties.

10.3.1.1 To the extent possible, the plan must retain stormwater on the site using the natural features of the site.

10.3.1.2 Unless the discharge is directly to the ocean or major river segment, stormwater runoff systems must detain or retain water such that the rate of flow from the site after development does not exceed the predevelopment rate.

10.3.1.3 The applicant must demonstrate that on - and off-site downstream channel or system capacity is sufficient to carry the flow without adverse effects, including but not limited to, flooding and erosion of shoreland areas, or that he / she will be responsible for whatever improvements are needed to provide the required increase in capacity and / or mitigation.

10.3.1.4 All natural drainage ways must be preserved at their natural gradients and must not be filled or converted to a closed system unless approved as part of the site plan review.

10.3.1.5 The design of the stormwater drainage system must provide for the disposal of stormwater without damage to streets, adjacent properties, downstream properties, soils, and vegetation.

10.3.1.6 The design of the storm drainage systems must be fully cognizant of upstream runoff which must pass over or through the site to be developed and provide for this movement.

10.3.1.7 The biological and chemical properties of the receiving waters must not be degraded by the stormwater runoff from the development site. The use of oil and grease traps in manholes, the use of on-site vegetated waterways, and vegetated buffer strips along waterways and drainage swales, and the reduction in use of deicing salts and fertilizers may be required, especially where the development stormwater discharges into a gravel aquifer area or other water supply source, or a great pond.

There are no changes proposed to the site that would affect stormwater.

The Board finds the standards of this section have been met.

10.3.2 Erosion Control

10.3.2.1 All building, site, and roadway designs and layouts must harmonize with existing topography and conserve desirable natural surroundings to the fullest extent possible, such that filling, excavation and earth moving activity must be kept to a minimum. Parking lots on sloped sites must be terraced to avoid undue cut and fill, and / or the need for retaining walls. Natural vegetation must be preserved and protected wherever possible.

10.3.2.2 Soil erosion and sedimentation of watercourses and water bodies must be minimized by an active program meeting the requirements of the Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices, dated March 1991, and as amended from time to time.

There are no changes proposed to the site, therefore there is no need for erosion control measures.

The Board finds the standards of this section have been met.

10.4 Water, Sewer, Utilities

10.4.1 Water Supply Provisions

The development must be provided with a system of water supply that provides each use with an adequate supply of water. If the project is to be served by a public water supply, the applicant must secure and submit a written statement from the supplier that the proposed water supply system conforms with its design and construction standards, will not result in an undue burden on the source of distribution system, and will be installed in a manner adequate to provide needed domestic and fire protection flows.

There is a private well on site that provides adequate water supply.

The Board finds the standards of this section have been met.

10.4.2 Sewage Disposal Provisions

The development must be provided with a method of disposing of sewage which is in compliance with the State Plumbing Code. If provisions are proposed for on-site waste disposal, all such systems must conform to the Subsurface Wastewater Disposal Rules.

There is an existing septic system on site that will provide for adequate residential sewage waste disposal.

The Board finds the standards of this section have been met.

10.4.3 Utilities

The development must be provided with electrical, telephone, and telecommunication service adequate to meet the anticipated use of the project. New utility lines and facilities must be screened from view to the extent feasible. If the service in the street or on adjoining lots is underground, the new service must be placed underground.

There are all necessary utilities on site. No new service is proposed or required.

The Board finds the standards of this section have been met.

10.4.4 Fire Protection

The site design must comply with the Fire Protection Ordinance. The Fire Chief shall issue the applicant a "Certificate of Compliance" once the applicant has met the design requirement of the Town's Fire Protection Ordinance.

The applicants have conferred with the Fire Chief who recommended they utilize an alarm system. The applicants are agreeable to this. There is a proposed condition of approval addressing fire protection.

The Board finds that the requirements for utilities have been met.

10.5 Water Protection

10.5.1 Groundwater Protection

The proposed site development and use must not adversely impact either the quality or quantity of groundwater available to abutting properties or to the public water supply systems. Applicants whose projects involve on-site water supply or sewage disposal systems with a capacity of two thousand (2,000) gallons per day or greater must demonstrate that the groundwater at the property line will comply, following development, with the standards for safe drinking water as established by the State of Maine.

**The project will not exceed 2,000 gallons per day of septic waste.
There is a functioning septic system on site.**

10.5.2 Water Quality

All aspects of the project must be designed so that:

10.5.2.1 No person shall locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxious, toxicity, or temperature that may run off, seep, percolate, or wash into surface or groundwaters so as to contaminate, pollute, or harm such waters or cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste, or unsightliness or be harmful to human, animal, plant, or aquatic life.

10.5.2.2 All storage facilities for fuel, chemicals, chemical, or industrial wastes, and biodegradable raw materials, must meet the standards of the Maine Department of Environmental Protection and the State Fire Marshall's Office.

The applicants have outlined how dog waste will be collected, stored, and disposed of. All fuel storage facilities meet the above standard.

The Board finds the standards of this section have been met.

10.5.3 Aquifer Protection

If the site is located within the Town Aquifer Protection Area, a positive finding by the Board that the proposed plan will not adversely affect the aquifer is required.

**The site is not located within the Town Aquifer Protection Area.
The Board finds this standard has been met.**

10.6 Floodplain Management

If any portion of the site is located within a special flood hazard area as identified by the Federal Emergency Management Agency, all use, and development of that portion of the site must be consistent with the Town's Floodplain management provisions.

**The parcel is depicted on FEMA Floodplain Map # 2130162-0015B as being located in area classified as C – areas of minimal flooding
The Board finds the standards of this section have been met.**

10.7 Historic and Archaeological Resources

If any portion of the site has been identified as containing historic or archaeological resources, the development must include appropriate measures for protecting these resources, including but not limited to, modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.

There is no construction proposed. There are stone walls on the site that will not be affected by this proposed project.

The Board finds the standards of this section have been met.

10.8 Exterior Lighting

The proposed development must have adequate exterior lighting to provide for its safe use during nighttime hours, if such use is contemplated. All exterior lighting must be designed and shielded to avoid undue glare, adverse impact on neighboring properties and rights - of way, and the unnecessary lighting of the night sky.

This is a residential structure with existing lights near doorways. No additional lighting is proposed. A proposed condition of approval is that all exterior lighting associated with the business be shut off during non-business hours.

The Board finds the standards of this section have been met.

10.9 Buffering and Landscaping

10.9.1 Buffering of Adjacent Uses

The development must provide for the buffering of adjacent uses where there is a transition from one type of use to another use and for the screening of mechanical equipment and service and storage areas. The buffer may be provided by distance, landscaping, fencing, changes in grade, and / or a combination of these or other techniques.

The site is buffered from surrounding properties by a mature stand of trees around the 4 sides of the property.

10.9.2 Landscaping

Landscaping must be provided as part of site design. The landscape plan for the entire site must use landscape materials to integrate the various elements on site, preserve and enhance the particular identity of the site, and create a pleasing site character. The landscaping should define street edges, break up parking areas, soften the appearance of the development, and protect abutting properties.

There is an existing stand of trees around the perimeter of the parcel. The house and yard are not visible from any neighboring properties. No new landscaping is proposed because of this.

The Board finds the standards of this section have been met.

10.0 Noise

The development must control noise levels such that it will not create a nuisance for neighboring properties.

While a boarding kennel for up to 25 dogs has the potential for creating noise that could be a nuisance for neighboring properties, the applicant has provided information on how the dogs will be allowed to play and exercise so that they are tired when indoors. The applicant has stated there is a strict “no bark” policy and that the dogs are not kept in indoor or outdoor kennels which reduces or eliminates barking.

10.11 Storage of Materials

10.11.1 Exposed nonresidential storage areas, exposed machinery, and areas used for the storage or collection of discarded automobiles, auto parts, metals or other articles of salvage or refuse must have sufficient setbacks and screening (such as a stockade fence or a dense evergreen hedge) to provide a visual buffer sufficient to minimize their impact on abutting residential uses and users of public streets.

10.11.2 All dumpsters or similar large collection receptacles for trash or other wastes must be located on level surfaces which are paved or graveled. Where the dumpster or receptacle is located in a yard which abuts a residential or institutional use or a public street, it must be screened by fencing or landscaping.

10.11.3 Where a potential safety hazard to children is likely to arise, physical screening sufficient to deter small children from entering the premises must be provided and maintained in good condition.

There will be no exterior storage of materials. There is no potential safety hazard for children due to the fact that when the dogs are outside, they will be in a secured, fenced area or will be on leash.

The Board finds the standards of this section have been met.

10.12 Capacity of the Applicant

The applicant must demonstrate that he / she has the financial and technical capacity to carry out the project in accordance with this ordinance and the approved plan.

There are no new structures or site work proposed. The applicants plan to make minimal investment in the property: a fenced area in the rear yard, installation of rubber flooring and heat in the garage.

Technical capacity is evidenced by the experience of the applicant in training and working with dogs.

The Board finds the standards of this section have been met.

10.13 Design and Performance Standards

10.13.1 Route 100 Design Standards

All development in the Village Center Commercial, Village Office Commercial I and II, and the MUZ Districts shall be consistent with the Town of Cumberland Route 100 Design Standards; in making determination of consistency, the Planning Board may utilize peer review analysis provided by qualified design professionals.

10.13.2 Route 1 Design Guidelines

All development in the Office Commercial North and Office Commercial South districts is encouraged to be consistent with the Route 1 Design Guidelines.

10.13.3 Town Center District Performance Standards

All development in the Town Center District is encouraged to be consistent with the Town Center Performance Standards.

10.13.4 Village Mixed Use Performance Standards

All development in the Village Mixed Use Zone is encouraged to be consistent with the VMUZ Performance Standards.

None of the above standards are applicable.

LIMITATION OF APPROVAL

Construction of the improvements covered by any site plan approval must be substantially commenced within twelve (12) months of the date upon which the approval was granted. If construction has not been substantially commenced and substantially completed within the specified period, the approval shall be null and void. The applicant may request an extension of the approval deadline prior to expiration of the period. Such request must be in writing and must be made to the Planning Board. The Planning Board may grant up to two (2) 1 year extensions to the periods if the approved plan conforms to the ordinances in effect at the time the extension is granted and any and all federal and state approvals and permits are current.

STANDARD CONDITION OF APPROVAL

This approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from the plans, proposals and supporting documents, except minor changes as so determined by the Town Planner which do not affect approval standards, is subject to review and approval of the Planning Board prior to implementation.

Proposed Conditions of Approval

1. That all exterior lighting associated with the business be shut off during non-business hours.
2. There shall be no increase in days or hours of operation without further review and approval by the Planning Board.
3. That all dog waste be disposed of at a licensed landfill that handles such waste.

4. That a no barking policy is implemented and dogs that cannot comply after a period of time will not be allowed on the property.
 5. That all fire protection requirements of the state and municipality be complied with.
 6. The drop off hours for dogs is from 7:30 a.m. to 9:30 a.m. and pick up hours are from 3:30 p.m. to 5:30 p.m. with no weekend and or night hours.
-

Mr. Neagle resumed responsibilities as Chair of the meeting.

6. Public Hearing: To recommend to the Town Council draft Zoning Map Amendments to re-zone property at Tax Assessor Map U21, Lot 17B, 27 Neba Way from Village Office Commercial I (VOCI) to Rural Residential 2 (RR2), owner, applicant Timofey Popov.



Ms. Nixon presented background information as follows: This agenda item went to the Town Council and as directed from the Council it was sent to the Planning Board. Mr. Popov has requested this change due to the fact that his property does not front on Route 100. Ms. Nixon reviewed the staff review process sheet stating the change of use would be consistent with current and adjacent zones.

Mr. Timofey Popov stated he would like to request the zoning change on his property located at Map U21, Lot 17B at 27 Neba Way; stating this property does not have any buildings on it. He would like to build a residential house for his family. The current VOCI does not allow for single residential homes. I have tried to sell the land as it is currently zoned, but was unsuccessful due to the location of the lot. It is not on Gray Road but a back lot accessed by Neba Way. Mr. Popov stated his secondary reason was all the properties around his are residential homes. The lot at Tax Map U21, Lot 18 is also zoned RR2, this lot is next to his.

Ms. Caron stated she was on the Route 100 Committee and the thought was someday this would be commercial; to the left are all homes.

Mr. Neagle stated this change doesn't affect the Route 100 commercial corridor and the property is contiguous with the RR2 zone.

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

Mr. Bingham moved to recommend to the Town Council draft zoning map amendments to re-zone property at Tax Assessor Map U21, Lot 17B, 27 Neba Way from Village Office Commercial I (VOCI) to Rural Residential 2 (RR2), Owner, and Applicant Timofey Popov.

Mr. Dillon seconded.

VOTE: Unanimous 6 – 0

7. **Public Hearing:** To recommend to the Town Council draft Zoning Map Amendments to re-zone property at Tax Assessor Map R07C, Lot 6, 40 Wilson Road from Rural Residential 1 (RR1) to Rural Residential 2 (RR2) district, owner, applicant Gary & Karyn Wilson.



Ms. Caron stated she is friendly with the Wilsons through children's sports activities; stating she didn't think it would affect her ability to participate objectively.

Ms. Nixon referenced the Zoning Change Staff Review sheet and presented background information as follows:

1. Is the proposed re-zoning consistent with the current and adjacent zones? **No. This parcel is in the middle of an existing RR1 zone. To change the zoning for this parcel would constitute spot zoning. The Town could consider rezoning all of RR1 to RR2. This would double the density build-out however, since RR1 requires 4 acres per lot, RR2 requires only 2 acres, hence the request.**
2. Is the requested re-zoning consistent with the Comprehensive Plan?
 - **The parcel is not located in one of the three designated "Growth Areas" of the Town. (Chapter 14-Future Land Use Plan).**
3. Does the proposed re-zoning benefit or promote the interests of the current or proposed zone and the Town at large? **No. It allows for increased development in a designated Rural Zone. This parcel is not contiguous with the zoning district it wishes to move to; spot zoning would result.**
4. Have patterns of growth or development in the current zone changed such that an existing permitted use or special exception is no longer compatible? **Yes, if the two contract zoned subdivisions are taken into consideration, there is a shift to more dense residential development.**
5. Proposed Additional Use: **Not Applicable**

Ms. Nixon continued stating the Town Council is interested in exploring updates to the Comprehensive Plan specifically addressing the issue of lot sizes in the RR1 and RR2 zones. These zones were arbitrary lines drawn with aquifer concerns. The current planning theory is to cluster houses together and preserve the open space.

Mr. Bingham stated this RR1 and RR2 designation occurred after the 1987 Comprehensive Plan which wanted to control growth. The Town conducted a hydrological and soil study and determined areas that could support smaller and larger lots; it was a legal way to designate areas of Town. He appreciates the Wilson's position but agrees if this were re-zoned it would set a precedent of spot zoning. One of the five key elements of the current Comprehensive Plan was to look at lot sizes. He will request that the Town Council immediately study and propose changes to the RR1 & RR2 zones.

Ms. Karyn Wilson, applicant stated they went to the Town Council and asked for re-zoning of the entire area. The Council instructed them to propose their lot and agreed changes in septic systems makes the four acre zoning obsolete.

Mr. Gary Wilson stated this was a gravel pit. Castle Rock is going to have 17 houses on much smaller lots.

Ms. Wilson stated they have priced out a single family house on the four acre lot and it is not financially feasible. A realtor approached them regarding having a slightly larger house to market if Castle Rock was not the right fit for a buyer. The only way they can build a home with profit is to have two lots and two houses.

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

Ms. Caron reviewed the staff review sheet and asked about the process to change RR1 to RR2.

Mr. Neagle stated someone would have to request the change.

Ms. Caron stated she understands the Board's position on spot zoning, but the two contract zones change everything. In her opinion it is inevitable; she appreciates how the applicant feels and thinks this is a reasonable request.

Mr. Dillon stated abutters were notified and there was no response from neighbors. This is not a unique piece of property.

Ms. Caron stated the lot abuts the open space lot in Castle Rock.

Mr. Bingham stated the Board would not be setting a good precedent to change one lot. He suggests that the RR1 and RR2 zones be reviewed.

Ms. Caron stated she was on the Route 100 committee and feels this is a reasonable request.

Mr. Neagle stated he is not concerned with precedent; he appreciates the Wilson's dilemma; however, he cannot support a zone change that creates an island of land that isolates a lot differently from all of its neighbors. This would be spot zoning which is illegal.

Ms. Caron stated the lot abuts Castle Rock.

Mr. Neagle stated Castle Rock is not relevant it is a contract zone. The Town received a public benefit of affordable housing. There is no benefit to the Town to cut a lot in two; it is not consistent with the Comprehensive Plan. He will support Mr. Bingham's motion to urge the Council to review the area.

Ms. Wilson, applicant stated their original request was the entire area.

Mr. Ferland agreed with Mr. Neagle if this issue were brought forward it would constitute spot zoning, however, the zone clearly needs review. He doesn't support the re-zoning request, but supports a rapid analysis of RR1 and RR2.

Mr. Dillon agreed.

Mr. Neagle stated the Board could recommend this issue stay on the agenda as a place holder to follow the Council process.

Mr. Bingham moved to not recommend to the Town Council draft zoning amendments to re-zone property at Tax Assessor Map R07C, Lot 6, at 40 Wilson Road from Rural Residential 1(RR1) to Rural Residential 2(RR2). The Planning Board requests that, in conjunction with the proposed Comprehensive

Plan update, the Town Council immediately engages in a study of the Rural Residential One (RR1) and Rural Residential 2 (RR2) zoning districts.

Mr. Dillon seconded.

Discussion:

Mr. Neagle suggested an amendment that the Planning Board asks that the town wide review of RR1 & RR2 zones begin with the Mill Road Area west to the power lines.

Mr. Dillon seconded.

The motion as amended was to not recommend to the Town Council draft zoning amendments to re-zone property at Tax Assessor Map R07C, Lot 6, at 40 Wilson Road from Rural Residential 1 to Rural Residential 2. The Planning Board requests that, in conjunction with the proposed Comprehensive Plan update, the Town Council immediately engages in a study of the Rural Residential One (RR1) and Rural Residential 2 (RR2) zoning districts. The Planning Board asks that the town wide review of RR1 & RR2 zones begin with the Mill Road Area west to the power lines.

Mr. Dillon seconded.

VOTE: 5-1
1 opposed (Caron)

F. Administrative Matters: None

G. Adjournment:

Chairman Neagle adjourned the meeting at 9:25 p.m.

A TRUE COPY ATTEST:

Christopher S. Neagle, Board Chair

Pam Bosarge, Board Clerk