

**PLANNING BOARD MEETING
MINUTES
TOWN OF CUMBERLAND
Cumberland Town Hall - 290 Tuttle Road
Cumberland, Maine 04021
Tuesday, November 15, 2011
7:00 p.m.**

A. Call to Order

Chairman Neagle called the meeting to order at 7:00 p.m.

B. Roll Call

Members Present: Chris Neagle, Chair, John Ferland, Vice-Chair, Peter Bingham, Gerry Boivin, Ronald Dillon, April Caron, Peter Sherr

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

C. Approval of Minutes of October 18, 2011 meeting

Mr. Bingham moved to approve the minutes of October 18, 2011 as presented.

Mr. Boivin seconded.

VOTE: 7 in favor (Unanimous)

D. Hearings and Presentations:

- 1. Public Hearing: To recommend to the Town Council draft zoning amendments to the zoning ordinance to add Farm Based Retail to Section 104 Definitions and as a permitted use in Sections: 204.1.1 Rural Residential District 1 (RR1) and Section 204.1.2.1 Rural Residential 2 District (RR2).**

Farm – Based Retail: The selling of agricultural produce or products a portion of which is grown or raised on the premises.

Ms. Nixon presented background information as follows: The Town received a phone call from a local sign maker who had been contacted to make a sign for a resident to advertise selling of farm products. The Zoning Ordinance does not permit the sale of agricultural produce or products in the RR1 and RR2 zoning districts which is where most of the farms and orchards are located. This proposed change would allow the sale of products that are produced on the premises and also allows for the sale of other products in an attempt to increase profitability of the operation. This type of change to the Zoning Ordinance is encouraged by the 2009 Comprehensive Plan. The Agriculture and Forestry Resources chapter recommends lessening restriction on farm buildings and operations.

Goal 1: Is to encourage the preservation of land that is suitable for agricultural and forestry uses.

Action 2: Modify town regulations to give more flexibility to farm operations so that additional revenue streams can be created. For example, allow for renting a site for weddings or other functions; allow farms to have summer camp programs; allow additional accessory use buildings with fewer restrictions.

Action 8: Allow roadside stands or pick-your-own operations by right and allow them to sell agricultural products produced or purchased elsewhere.

Ms. Nixon stated that the use Farm Based Retail would require site plan approval to review intensity and issues such as traffic and parking.

Ms. Caron questioned the term majority.

Ms. Nixon stated the initial language suggestion states a portion of what is grown or raised on the premises.

Mr. Sherr stated by definition majority is 51%.

Mr. Neagle agreed the plain English definition is 50+%, the term is not ambiguous.

Ms. Caron stated she is in favor of striking the term majority.

Mr. Dillon asked about adding the term local.

Mr. Neagle suggested perhaps changing the word premises to lot.

Mr. Ferland stated he didn't care how many products were grown on the lot, his concern is size of an operation and neighborhood impact.

Ms. Nixon stated size would be addressed in Site Plan Review.

Ms. Caron stated Home Based Retail has a definition of size.

Ms. Nixon stated this proposal is to formalize the use, and the Board can tweak the definition.

Mr. Bingham stated he visualizes the use similar to pumpkin sales on Route 231 and Stan Brown's honey sales; it is good to anticipate these types of uses.

The Board discussed size and descriptions regarding the use.

Mr. Neagle conducted a straw poll regarding the language of a majority of which is grown or raised on the premises.
VOTE: 6 in favor (Caron opposed)

The Board discussed the proposed language, size, and amount grown on premises.

Mr. Neagle opened the public portion of the meeting.

Mr. Stephen Moriarty, Town Councilor suggested the following language:

Farm Based Retail: The selling of agricultural produce or products a majority of which is grown or raised by the landowner on property owned by the landowner within the RR1 and RR2 districts.

The public portion of the meeting was closed.

Mr. Bingham moved to recommend to the Town Council draft zoning amendments to the zoning ordinance to add Farm Based Retail to Section 104 Definitions and as a permitted use in Sections: 204.1.1 Rural Residential District 1 (RR1) and Section 204.1.2.1 Rural Residential District 2 (RR2).

Farm Based Retail: The selling of agricultural produce or products a majority of which is grown or raised by the landowner on property owned by the landowner within the RR1 and RR2 districts.

Mr. Sherr seconded.

VOTE: 7-0 Unanimous

2. Public Hearing: To recommend to the Town Council draft amendments to the Site Plan ordinance.

Ms. Nixon presented background information as follows: In an effort to further simplify the site plan review process, I have again modified the Site Plan Ordinance. The following list describes each change. The ordinance shows all the changes in underlined red font. Deletions have been ~~struck through~~. The Town Attorney has reviewed the ordinance changes.

1. Previously there were three categories of review: Staff Review, Minor (Planning Board) Site Plan Review, and Major (Planning Board) Site Plan Review. The proposed change would essentially create a new step for very small projects (now termed Minor Staff Review). This would allow these types of projects to be reviewed and a decision made with 10 days of the submission of an application. The Staff Review Committee would not review these types of plans. We were finding that even with the Staff Review option previously created, that it still required a month of time for projects to be reviewed and a decision made.
2. We have changed the term “working days” to just “days”, again, in an attempt to expedite the process.
3. The appeals procedure has been relocated to the end of the ordinance where this type of language is usually placed in an ordinance.
4. The Site Inventory and Analysis step has been deleted. This step required an additional month of review time and didn’t really provide any information that isn’t already required in the various levels of review. Recently, the Board has been approving waivers from this section of the Ordinance.
5. The performance guarantee section has been relocated to be with other general requirements (ahead of the Approval Standards and Criteria) and the language now matches that recently adopted for the Subdivision Ordinance.
6. The Approval Standards and Criteria section has been modified by combining criteria that are similar in type. For example, rather than having separate standards (and findings of fact) for Traffic, Access and Parking, the three standards are now one standard titled, Traffic, Circulation, and Parking.
7. The Standard Condition of Approval has been added to the ordinance (previously it was only in the Subdivision Ordinance).

8. The only other changes are in the formatting and numbering; no substantive changes have been made.
9. Lastly, I have created new, easier to understand application forms and checklists. I have attached one of them for your review.

The Board reviewed the proposed changes to the site plan ordinance.

Mr. Dillon asked about page 4, Section 6.5.

Mr. Neagle recommended striking notification to the Chair of the Planning Board. The new language is to read: ... *A copy of the decision shall also be provided to the Town Manager and other members of the Staff Review Committee and notice to the Planning Board at its next meeting.*

Mr. Dillon asked about the appeal process.

Mr. Neagle stated in his nine years on the Planning Board we have never been appealed and he doesn't think we will be, because we do a good job documenting our decisions. Should that ever happen the Town Manager or Town Council will hire a lawyer, an appeal would not be against the Board, a transcript of the meeting would be provided and lawyers would review the meeting.

Mr. Neagle also clarified that Section 10.2.5 was not new language it had been re-located within the document.

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 amendments as revised to the Site Plan Ordinance.

Mr. Ferland seconded.

VOTE: 7-0 Unanimous

SITE PLAN REVIEW ORDINANCE

TOWN OF CUMBERLAND

Revised: December _____, 2011

SECTION 1: TITLE, PURPOSE, AUTHORITY

- 1.1 Title:** This ordinance shall be known and cited as the "Site Plan Ordinance" of the Town of Cumberland, Maine.
- 1.2 Purpose:** The site plan review provisions are intended to protect public health and safety, promote the general welfare of the community, and conserve the environment by assuring that all non-residential development is designed and

constructed in a manner which assures that adequate provisions are made for traffic, utilities, storm water, erosion and sedimentation, wildlife habitat and fisheries, historic and archaeological resources. Site plan review will also serve to minimize any adverse impacts on neighboring properties and to ensure that new developments will fit in harmoniously to the fabric of the community.

1.3 Review and Approval Authority:

The Town Planner is authorized to review and approve projects classified as Staff Review. However, the Town Planner may refer a Staff Review project to the Planning Board when the nature of the application warrants a public hearing or poses the potential for significant impacts on municipal facilities or natural resources.

The Planning Board is authorized to review all other projects.

SECTION 2: CLASSIFICATION

There are three classification levels of site plan review:

- 1) Minor Staff Review
- 2) Major Staff Review
- 3) Planning Board Site Plan Review

The Town Planner shall classify each project to determine the level of review required based on the applicability standards set forth in this section. Staff Review is designed for the review of smaller projects, while larger projects will be reviewed by the Planning Board.

Type of Activity	<u>Minor Staff Review Required</u> <i>Subject to Section 1.3</i>	<u>Major Staff Review Required</u> <i>Subject to Section 1.3</i>	<u>Planning Board Site Plan Review Required</u>
The construction of a new structure (other than single family and duplex) that contains:	<u>Less than 1000 sq. ft.</u>	<u>Between 1000 and 3000 sq. ft.</u> Between 1000 and 3000 sq. ft.	<u>Over 3000 sq. ft.</u> More than 7000 sq. ft.
The expansion of a non-residential building or structure, including accessory buildings, that increases the total floor area by:	<u>Less than 1000 sq. ft.</u>	<u>Between 1000 and 3000 sq. ft.</u> Between 1000 and 3000 sq. ft.	Over <u>3000</u> sq. ft. More than 2000 sq. ft.

The construction of an impervious surface such as a support pad or paved or gravel parking area:	<u>Less than 1000 sq. ft.</u>	<u>Between 1000 and 3000 sq. ft.</u>	<u>Over 3000 sq. ft.</u> More than 4000 sq. ft.
The conversion of existing buildings or structures from one approved use to another, without enlargement of gross floor area or <u>increase in required</u> parking.	X		
The expansion of an approved use that does not increase the intensity of on or off site impacts.			
Site preparation activities <u>of up to 1 acre of disturbed area</u> including clearing, grubbing, grading, the construction, or reconstruction of driveways and entrances, including the installation of driveway culverts.		X	

SECTION 3: FEES

3.1 Application Fee

Any application for any type of site plan review must be accompanied by an application fee set by order of the Town Council. This fee is to cover the cost of the municipality's administrative processing of the application, including notification, advertising, mailings, staff review, and similar costs. The fee shall not be refundable.

3.2 Technical Review Fee

A technical review fee may be required to pay reasonable costs incurred by the Board or the Town Planner to review the application for technical conformance with the ordinance requirements. The municipality shall provide the applicant, upon written request, with an accounting of his or her account and shall refund all of the remaining monies, in the account after the payment by Town of all costs and services related to the review, provided, however, that where the cost of technical reviews exceeds the amount of monies in the escrow account the applicant shall pay to the Town prior to the issuance of any building permit the amount by which the technical reviews exceed the amount of monies in the escrow account.

SECTION 4: WAIVER AND MODIFICATION OF THESE PROVISIONS

Where the Planning Board or Town Planner finds that there are special circumstances of a particular plan that makes a particular submission requirement or standard inapplicable, a waiver may be granted, provided that such waiver will not have the effect of nullifying the intent and purpose of the Comprehensive Plan. The applicant shall submit, in writing, the reason for the requested waiver. In granting waivers or modifications, the Planning Board or Town Planner may require such conditions that will substantially secure the objectives of the standards so waived or modified.

SECTION 5: MINOR STAFF REVIEW PROCEDURE

~~The term "working days" shall mean days in which the Cumberland Town Office is open.~~

- 5.1 The applicant shall provide two (2) copies of a complete application packet.
- 5.2 The Town Planner shall determine if the application requires Board of Adjustment and Appeals Review. If so, approval by the Board of Adjustment and Appeals shall be required prior to continuing the process described below.
- 5.3 Within ~~10 (ten) working~~ days of the receipt of a completed application, the Town Planner will approve or deny the application in accordance with the provisions of the Site Plan Review ordinance.
- 5.4 The Planning Department will mail notices of the action taken to all abutters within 200 feet of the site within 10 days of the decision.
- 5.5 Submission requirements are listed in Appendix A.

SECTION 6: MAJOR STAFF REVIEW PROCEDURE

~~Note: The term "working days" shall mean days in which the Cumberland Town Office is open.~~

- 6.1 The applicant shall provide nine (9) copies of a complete application packet.
- 6.2 The Town Planner shall determine if the application requires Board of Adjustment and Appeals Review. If so, approval by the Board of Adjustment and Appeals shall be required prior to continuing the process as described below.
- 6.3 A copy of the application shall be provided by the Planning Department to the following members of the Staff Review Committee: the Public Services Director, Police Chief, Fire/EMS Chief, Code Enforcement Officer, Economic Development Director, Town Manager, and Chair of the Planning Board. Comments shall be made on the application in writing, to the Town Planner within 7 ~~working~~ days of the date of the application.
- 6.4 The Town shall mail a notice, within three (3) ~~working~~ days of the application submission, to all property owners within 200 feet of the site under review.
- 6.5 Within ~~fifteen (15) working~~ days following the submission of the completed application, the Town Planner shall review all submitted comments from the staff review committee and residents, and in writing, approve, approve conditionally, or deny the application in accordance with the provisions of the Site Plan ~~review~~ Ordinance. The written decision of the Town Planner shall be mailed to the applicant and property owners within 200 feet of the site within ~~three (3) ten~~

(10) working days of the decision. A copy of the decision shall also be provided to the Town Manager and other members of the Staff Review Committee. Notice of the staff approval will be given to Planning Board at its next meeting.

Note: the section below (Appeals) has been moved to Section 14

~~6. Appeals: Within 15 working days of the decision by the Town Planner, the applicant or property owner(s) within 200' feet of the site may appeal the Town Planner's decision to the Planning Board. The appellant in such case shall pay a fee as established by order of the Town Council. The appeal shall be in writing and shall list the specific provision(s) of the site plan ordinance upon which the appeal is based. Site plan decisions of the Planning Board are appealed to the Cumberland County Superior Court.~~

6.6 Submission requirements are listed in Appendix B.

SECTION 7: PLANNING BOARD REVIEW PROCEDURE

The Planning Board shall use the following procedures in reviewing applications for ~~major~~ site plan review.

7.1 Pre- application

Prior to submitting a formal application, the applicant or his/her representative may request a pre application conference with the Planning Board. The purpose of the pre application conference is to:

- Allow the Board to understand the nature of the proposed use and the issues involved in the proposal;
- Allow the Board to understand the location, size, natural resources and general characteristics of the proposed site;
- Allow the applicant to understand the development review process and required submissions;
- Discuss the need for any waivers from the submission requirements;
- Identify issues that need to be addressed in future submissions; and
- Make the applicant aware of any opportunities for coordinating the development with community policies, programs, or facilities.

The pre-application conference shall be informal and informational in nature. There shall be no fee for a pre application review, and such review shall not cause the plan or any related application to be a pending application or proceeding under Title 1 M.R.S.A., Section 302. No decisions on the substance of the plan shall be made at the pre application conference.

Submission requirements are listed in Appendix C

7.2 Application Procedure

All applications must be received by the Town Planner at least 21 days prior to the date of the next Planning Board meeting. The Town Planner will determine if the application is complete. If the application is not complete, the application

will not be placed on the Planning Board agenda. For this reason, it is strongly encouraged that applicants meet with the Town Planner prior to the deadline date to review the application materials.

Note: the section below (site walk) has been moved to Section 7.4)

~~2. Site Walk~~

~~The Board may schedule a site walk if deemed necessary. A written notice for such site inspections shall be published at least once in a newspaper of general circulation in the community, and the date of the publication shall be at least seven (7) days prior to the site inspection. Notice shall also be sent by first class mail to all property owners of record within two hundred (200) feet of the parcel on which the proposed development is located~~

~~There are no formal submission requirements for a pre-application conference. However, the applicant should be prepared to discuss the following with the Board:~~

- ~~.1 The proposed site, including its location, size, and general characteristics;~~
- ~~.2 The nature of the proposed use and potential development;~~

Note: the section below (site inventory and analysis) has been deleted

~~3. Site Inventory and Analysis~~

~~.1 Applicants with projects classified as major developments must submit a site inventory and analysis for Planning Board review. This review must be completed prior to the preparation and submission of a site plan review application and supporting documentation. The Board shall review the site inventory and analysis with the applicant and shall authorize the submission of the formal application when the site analysis is complete. The site inventory and analysis must be submitted to the Planner.~~

~~.2 Upon receipt of a site inventory and analysis, the Planner shall give a dated receipt to the applicant. Within thirty (30) days of the receipt of a site inventory and analysis submission for a major development, the Planner shall review the material and determine whether or not the submission is complete. If the submission is determined to be incomplete, the applicant shall be notified in writing of this finding, which shall specify the additional material required to make the submission complete, and shall advise the applicant that the application will not be reviewed until the additional information is submitted. When the submission is determined to be complete, the applicant shall be notified in writing of this finding and the item placed on the agenda for informal review by the Board.~~

~~.3 The Planning Board may hold an on-site inspection of the site to review the existing conditions, field verify the information submitted and investigate the development proposal. The Board may schedule this visit either before or after the first meeting at which the application is considered. A written notice for such~~

~~site inspections shall be published at least once in a newspaper of general circulation in the community, and the date of the publication shall be at least seven (7) days prior to the site inspection. Notice shall also be sent by first class mail to all property owners of record within two hundred (200) feet of the parcel on which the proposed development is located.~~

~~.4 Within forty five (45) days of the finding that the site inventory and analysis submission is complete, the Board shall complete its review of the submission and notify the applicant in writing of its findings.~~

~~The review of the site inventory and analysis shall be informational and shall not result in any formal approval or disapproval of the project by the Planning Board. The Board shall review the submission to determine if the information provides a clear understanding of the site and identifies opportunities and constraints that help determine how it should be used and developed. The outcome of the review process shall be a determination by the Board of the issues and constraints that must be addressed in the formal site plan review application. The Board shall also act on any requests for waivers.~~

7.3 Public Notice Procedure

~~7.3.1 Within thirty (30) days of the receipt of a Planning Board Site Plan development review application, t~~The Town Planner shall review the material and determine whether or not the submission is complete. If the application is determined to be incomplete, the applicant shall be notified in writing of this finding, which shall specify the additional materials required to make the application complete, and shall advise the applicant that the application will not be reviewed until the additional information is submitted. The applicant shall provide all information prior to the deadline date for a subsequent Planning Board meeting. Failure to submit the additional information within six months shall be deemed an abandonment of the application.

7.3.2 Once the application is deemed complete, a notice of the hearing shall be published in a newspaper of general circulation in the community at least once; the date of publication shall be at least seven (7) days prior to the hearing.

7.3.3 The Town Planning Department shall mail a written notice of the date, time, and place of the public hearing at which the application will be considered to the applicant and to all property owners within two hundred (200) feet of the parcel on which the proposed development is located.

7.3.4 Failure of any property owner to receive notice under this section for any reason shall not necessitate a new hearing and shall not invalidate any action by the Planning Board.

~~7.4~~ SITE INSPECTION WALK

The Board may schedule a site ~~inspection-walk~~ if deemed necessary. A written notice for such site inspection shall be published at least once in a newspaper of general circulation in the community, and the date of the publication shall be at least seven (7) days prior to the site inspection. Notice shall also be sent by first class mail to all property owners of record within two hundred (200) feet of the parcel on which the proposed development is located

~~7.5~~ PUBLIC HEARING PROCEDURE

7.5.1 The purpose of the public hearing is to allow the applicant and affected property owners to provide information as part of the record that the Board will use in considering its action on the application. Testimony presented at the hearing should be related to factual information about the application and related submissions and the project's compliance with the review standards and other regulations and requirements of this ordinance or other municipal ordinances.

7.5.2 The Chair shall provide the applicant or his/her representative with an opportunity to make any statement or presentations at the beginning of the hearing. The Chair shall then allow the members of the Board to ask questions of the applicant and for the applicant to answer those questions. Following Board questions, the Chair shall open the public hearing to the public for statements, information submissions, or questions about the project. At the close of the public comment period, the Chair shall afford the applicant an opportunity to answer any questions raised by the public, rebut any statements or information submitted, and cross-examines anyone offering testimony on the application. The Chair may allow the applicant this opportunity after each member of the public testifies if that is deemed to be desirable. At the conclusion of the applicant's response, the hearing shall be closed.

~~7.6~~ PROCEDURES FOR FINAL ACTION ON AN APPLICATION

7.6.1 At the meeting for which final action is requested by the applicant, the Planning Board shall approve, approve with conditions, deny, or table the application. The Board may impose such conditions as are deemed advisable to assure compliance with the standards of approval and performance standards of this ordinance.

7.6.2 In issuing its decision, the Board shall make written findings of fact that establish whether the proposed development does or does not meet the standards of approval, design standards, performance standards, and other requirements of this Ordinance.

7.6.3 The Board shall notify the applicant of the action of the Board, including the findings of fact and any conditions of approval.

SECTION ~~8.1~~ FINANCIAL AND TECHNICAL CAPACITY

- 8.1** Financial Capacity: The applicant shall have adequate financial resources to construct the required improvements and meet the criteria of the statute and the standards of these regulations.
- 8.2** Technical Capacity: The applicant shall retain qualified contractors and consultants to supervise, construct and inspect the required improvements in the proposed subdivision. In determining the applicant's technical ability, consideration shall be given to the applicant's previous experience, the experience and training of the applicant's consultants and contractors, and the existence of violations of previous approvals granted by the applicant.

Note: the section below has been changed to reflect the language contained in the Subdivision Ordinance.

| SECTION ~~9-12~~ PERFORMANCE GUARANTEES

The purpose of a performance guarantee is to secure the completion of all required improvements or the restoration of the site as the Town deems appropriate

Prior to approval, or as a condition of approval, the applicant shall provide a construction schedule and cost estimate for all required improvements to the Town Planner. Required improvements include, but are not limited to street and utility construction, stormwater management, landscaping, erosion control, and monumentation. The Town Planner shall submit the cost estimate to the Town Engineer and Town Manager for review and approval. Once the amount for the performance guarantee is set, the applicant shall provide a performance guarantee in one of the following acceptable forms:

- A. An escrow account funded by cash or a certified check payable to the Town of Cumberland and governed by an escrow agreement in a form reviewed by the Town Attorney and acceptable to the Town Manager. Any interest earned on the escrowed funds shall be retained by the Town.
- B. An irrevocable letter of credit from a financial institution in a form reviewed by the Town Attorney and acceptable to the Town Manager that provides at least 60 days written notification of expiration. The terms and conditions shall include a maximum 2 year time limit and an inflation clause.
- C. Any other performance guarantee reviewed by the Town Attorney as to form that provides security in an amount substantially equivalent to an escrow account or an irrevocable letter of credit.

Completion of required improvements shall be determined by the Town Manager who shall receive written certification from the Town Engineer that all improvements assured by the Performance Guarantee have been constructed in conformance with the approved plan and all applicable codes and ordinances. In addition, the developer shall furnish at his own expense the signed certification by a registered surveyor or civil engineer that all permanent boundary markers or monuments have been installed and are accurately in place in the locations designated in the approved plan.

The performance guarantee may, in the discretion of the Town Manager, provide for a partial release of the performance guarantee amount as specific portions of the required improvements are completed.

Note: The section below has been added. The language is the similar to that contained in the Subdivision Ordinance.

3.3 Inspection of Required Improvements

The following are required improvements: monuments, street signs, water supply, sewage disposal, storm drainage, lighting and signing and pavement markings for traffic control, walking and biking trails, erosion control, or other improvements required by the Board, except where the Board may waive or modify such improvements in accordance with the provisions of these standards.

At least five (5) days prior to commencing construction of required improvements the developer shall pay a fee not less than two (2) percent of the cost of the required improvements, for construction inspections. Any amount in excess of actual cost shall be returned to the developer.

If the Town Engineer shall find, upon inspection of the improvements performed before expiration date of the performance bond, that any of the required improvements have not been constructed in accordance with plans and specifications filed by developer, he/she shall so report to the Code Enforcement Officer and Town Planner, who shall then inform the Town Manager. The Town Manager shall then notify the developer and, if necessary, the bonding company or bank holding the letter of credit, and take all necessary steps to preserve the municipality's right under the performance guarantee.

Upon completion of the development, the developer shall notify the municipal officers in writing stating that all improvements have been completed.

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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.

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.

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.

10.2.~~2~~³ 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.

10.2.~~4~~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.

10.2.~~5~~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.

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.

10.2.~~66~~ 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.

10.~~37~~ 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.

10.3.28 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.

10.49 Water, Sewer, UtilitiesWater Supply Provisions and Fire Protection

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.

10.4.2.40 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.

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.

10.4.4 Fire Protection

The Fire Chief or his/her designee shall review the site plan for conformance with the Fire Protection Ordinance and may provide the Planning Board a list of suggested conditions of approval.

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.

~~10.5.2~~ Water Quality Protection

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.

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.

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 Ordinance.

~~14~~ 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.

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.

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.

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.

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.

~~10.10~~ Noise

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

~~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.

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.

10.13 **Design and Performance Standards**

10.13.~~125~~ 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.~~226~~ 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.~~327~~ 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.~~428~~ Village Mixed Use Performance Standards

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

SECTION 11~~3~~: 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), six (6) month~~ 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.

SECTION 12: 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. This condition shall be included on all site plans.

SECTION 13: SUBMISSION OF AS-BUILT PLANS

The developer of any project involving the construction of more than twenty thousand (20,000) square feet of gross floor area or fifty thousand (50,000) square feet of improvements as actually constructed on the site shall submit as-built plans. These plans must be submitted within thirty (30) days of the issuance of a certificate of occupancy for the project or occupancy of the building.

SECTION 14: APPEALS

If the Applicant is dissatisfied with the decision of the Town Planner, he/she may request to have the application reviewed by the Planning Board, which shall conduct a de novo review of the application. The appeal shall be in writing and shall list the specific provision(s) of the ordinance upon which the appeal is based. Site plan decisions of the Planning Board are appealed to the Cumberland County Superior Court.

SECTION 15~~7~~: CONFLICT WITH OTHER ORDINANCES OR REGULATIONS

Where a provision of this ordinance appears to be in conflict with any provision of any other ordinance, rule, regulation, restriction, or statute, that provision which imposes the greater restriction ad/or provides for the lesser density of land use shall have precedence.

SECTION 16~~8~~: SEPARABILITY

The invalidity of any provision of these standards shall not invalidate any other part.

E. Administrative Matters:

Mr. Neagle stated he had requested these items be put on the agenda, he believes that State Statute allows the Planning Board to change the Ordinance; he recommended merging the Administrative Procedures and Planning Board Ordinance into one document. He stated he didn't have any text that needed to be changed in the Administrative Procedures. In the Ordinance he had a question regarding Sections 5 and Section 6.

Mr. Bingham voiced concerns regarding the Administrative Procedures as follows: Number three states that outside approvals must be provided to the Town Planner prior to an applicant being placed on the Planning Board Agenda.

Ms. Nixon stated we could add additional language stating unless waived by the Planning Board. Ms. Nixon explained history where Jordan Farm subdivision was given final approval subject to DEP approval. The DEP approval was granted with major modifications to the final plan. Currently small projects are given verbal approval from DEP and the Board has granted final approval with DEP approval as a condition.

Mr. Neagle suggested the following amended language for **Section 3**. The owner or developer of any project which requires a permit from another regulatory agency such as the Department of Environmental Protection, Department of Transportation, Inland Fisheries and Wildlife, Portland Water District, etc., ~~must~~ **should** provide a written copy of the approval to the Town Planner prior to being placed on the agenda for final plan review and approval, **or seek a submission waiver to the Planning Board.**

Mr. Neagle suggested the following change to **Section 8. Advertising and Abutter Notices:** That ...Abutter notices shall be mailed to all residents within 300' is changed to **300 feet...**

Mr. Neagle recognized Councilor Moriarty for public comments.

Councilor Moriarty stated the Board's Administrative Procedures can be amended as needed by the Board. If the Administrative Procedures are merged into the Ordinance they would only be amended by Council, and the Board would give up flexibility to make changes internally.

Mr. Neagle stated he understands State Statute to give the Planning Board authority to adopt ordinances.

Councilor Moriarty stated the Town Charter allows only the Council to adopt ordinances.

Mr. Neagle suggested that Ms. Nixon seek legal counsel regarding the Board's ability to adopt Ordinances. If the Town Charter prohibits adopting ordinances by the Planning Board we will leave the two documents separate.

Mr. Neagle stated in the Ordinance they will either make recommendations to the Council or make the changes by the Planning Board, his comments were as follows:

Section 6 states the Town Manager and the Building Inspector shall attend at least a majority of the meetings of the Board. The Town Manager attends several meetings, but the Building Inspector has not attended any meetings. At a minimum he would suggest crossing out the ~~Building Inspector~~, and stated he is not sure the Town Manager is required at a majority of the meetings.

Ms. Nixon stated the previous Manager didn't come to meetings, she questioned if this was written prior to the town having a Town Planner. As the Ordinance continues to state The Board may request the Town Manager to engage such professional and clerical help as it may require carrying out its duties,

subject to the availability of funds appropriated thereof by the Council. The Ordinance probably had the Town Manager attending meetings to check on the status of things.

Mr. Neagle asked Ms. Nixon to review the **Section 6** for another meeting.

Mr. Neagle read **Section 5: Requirements of Two-Thirds Council Vote to Override Certain Planning Board Actions** In those matters in which the Planning Board is called upon to make a decision and which are now reserved by the Charter, Statute, or Ordinance for decision by the Town Council, the Board of Adjustment and Appeals, the Town Manager, or others any alteration of their decision can only be achieved by a two-thirds vote of the Council.
A proposal which has been disapproved by the Board may be enacted only by a two-thirds vote of the Council.

Mr. Neagle stated the only decisions made the Planning Board are approving subdivisions, site plans and making recommendations to the Council.

Mr. Dillon asked if the Planning Board approves a site plan and the Council disagrees do they need a two-thirds vote to override the decision.

Mr. Neagle stated Planning Board decisions are not appealed to the Council they are appealed to a judge. Decisions would only be appealed to the Town Council in cases where our Charter, Statute, or Ordinance requires the decision by the Council. Mr. Neagle asked Ms. Nixon to ask Natalie Burns if there are any such decisions that fit that section.

Mr. Bingham stated he can't recall any issues being referred to the Council for appeals.

Mr. Neagle stated **Section 4 - #D**, states the Board shall prepare, every five years, a revised Zoning Ordinance which shall become one of the several possible vehicles for implementation of the Comprehensive Plan. He has been on the Board eight years and we have never revised the zoning ordinance.

Mr. Dillon stated the Ordinance states the Planning Board is responsible for initiating the comprehensive plan, and asked in the past how was that procedure done, did the Planning Board or Council initiate the Committee.

Mr. Neagle stated the Council appointed a Comprehensive Plan committee which consisted of residents and some Planning Board members. The committee drafted a Comprehensive Plan which was submitted to the Planning Board for a recommendation to the Council. The current Comprehensive Plan model is a good process.

The Committee continued discussing the Planning Board Ordinance.

Mr. Moriarty agreed this is a very old Ordinance and was probably adopted by an early Town Council and a lot of it is obsolete and needs to be re-tooled.

Mr. Bingham stated this ordinance was not addressed during the last Charter review.

Mr. Neagle recommended considering changing the Administrative Procedures as discussed and ask staff to give guidance on changes to the Planning Board Ordinance.

Mr. Bingham moved to adopt the Administrative Procedures as revised.

Mr. Dillon seconded.

VOTE: 7-0 Unanimous

Mr. Neagle tabled the Planning Board Ordinance pending answers to the following:

- A. Who gets to make the changes and to bring the Ordinance back to the Board with revisions from staff, Section 4.A, C, and D could be removed.

Mr. Dillon asked for clarification on how the Board of Adjustment and Appeals fits into the process.

Mr. Neagle stated it only fits in the sense if a use is a special exception it would receive that approval prior to site plan review.

Ms. Nixon stated Section 3 addresses appointment of a Chair and Vice Chair and asked if we wanted to leave the time ambiguous or specify appointment times in January or March.

Mr. Neagle stated appointments have happened in January at renewal or re-appointments of Board members.

Mr. Bingham stated we have approved several projects in the past few months and one of the things in the Comprehensive Plan that we haven't dealt with is land use and lot sizes. If we don't have a lot of stuff going forward into the next year it might be a good time to re-visit these issues as one of the last pieces of the Comprehensive Plan we haven't talked about.

Mr. Neagle asked if the Comprehensive Plan suggests that issue should start at Planning Board or Council.

Mr. Bingham stated the Planning Board has initiated items, the Main Street issue started with the Planning Board, we can as a Board initiate procedures to Council.

Mr. Neagle asked Ms. Nixon to clarify that the Planning Board can initiate land use or Comprehensive Plan issues to the Council.

Mr. Neagle adjourned the meeting at 8:10 p.m.

A TRUE COPY ATTEST:

Christopher S. Neagle, Board Chair

Pam Bosarge, Board Clerk