

**TOWN OF CUMBERLAND**  
**PLANNING BOARD MEETING MINUTES**  
**Tuesday, December 19, 2017 - 7:00 pm**

**A. Call to Order:** Chairman Moriarty opened the meeting at 7:00 pm and noted that Town Planner Carla Nixon is not present.

**B. Roll Call: Present:** Steve Moriarty - Chair, Paul Auclair, Gerry Boivin, Jeff Davis, Joshua Saunders, Peter Sherr & Teri Maloney-Kelly. **Staff:** Christina Silberman - Administrative Assistant. **Absent:** Carla Nixon - Town Planner.

**C. Approval of Minutes of the November 21, 2017 Meeting:** Mr. Saunders moved to approve the minutes of the November 21, 2017 meeting as written, seconded by Mr. Auclair and **VOTED, 6 yeas, 1 abstained (Boivin) - motion carries.**

Chairman Moriarty noted that Item #3 has been tabled.

**D. Minor Change Approvals:** None.

**E. Hearings and Presentations:** None.

**1. Public Hearing: Site Plan Review to allow for Farm Based Special Events, 111 Bruce Hill Road, Tax Map R05, Lot 42 A, Owner and Applicant: Joanne Fryer.**

Chairman Moriarty introduced the item and explained that farm based special events is a new permitted use in the Rural Residential 1, Rural Residential 2 and Medium Density Residential zones. The ordinance requires that the Planning Board conduct site plan review. The Planning Board will not approve individual events. Individual events will be permitted by an application to the Town with a subsequent permit or license to hold the event. The Town is working on the licensing piece. The Planning Board will consider whether this property meets the criteria set forth in the Site Plan Review Ordinance for an event of this type.

Joanne Fryer, 111 Bruce Hill Road, said that the Board has packets that she has prepared with pictures of the site and she asked if there are any questions. Ms. Fryer noted that there was a mistake in Ms. Nixon's review indicating that there will be excavating. There will be no excavating. Ms. Fryer said they will have a tent that will be put up and taken down. The tent will not be visible to any of the neighbors. Ms. Fryer said that there may be wedding ceremonies in some of the pocket meadows where there will be chairs. The tent may be put in different locations depending on the hay season and all of the potential areas are shown.

Greg Fryer, 111 Bruce Hill Road, said that the property is a little over 36 acres and is located about half way down Bruce Hill Rd. (the portion between Range & Blanchard Roads) on the opposite side as the fairground. There are 3 commercial properties close by; the fairground, a horse farm and a driving range. Mr. Fryer said if you see an aerial shot of the property you will notice that on almost 3 sides of the property all you can see are trees. Mr. Fryer said that there are 4 residences that are within 1,200' of where the tents might be sited and some possible tent sites are well beyond 1,200'.

Mr. Auclair asked how many people the Fryers could have at an event. Ms. Fryer responded that a typical number would be 75-150 people.

Chairman Moriarty opened the public hearing. There were no comments. Chairman Moriarty closed the public hearing.

Mr. Sherr asked if there are any waivers and Chairman Moriarty said he does not believe so and none were listed.

Mr. Auclair noted that it has already been mentioned that item 10.7 of the review states that there will be excavation and there will not be any excavation so this can be corrected.

Mr. Boivin said that it appears the Fryers will do spring, summer and fall events and asked if there will be any winter events. Ms. Fryer said that they are not planning any but there may be skiing or sled dogs but these would not be for money. Mr. Boivin asked about parking. Ms. Fryer said parking will be in fields and the area is very dry. Ms. Fryer said that some events will be as a destination site and people may come by bus. Ms. Fryer said they have had a lot of events, not for money, with up to 250 people and there is so much parking.

Ms. Fryer said she probably will not do weddings in July or August because the grass browns out. Ms. Fryer has a dahlia farm and most weddings will be done in the fall.

Mr. Boivin asked if the Fryers will bring in generators and what size they will be. Ms. Fryer said the generators would be pretty quiet or this would ruin a wedding.

Ms. Fryer will be working with event planners. The Fryers will be listed as additional insureds on the planners' policy. The Fryers will provide the grounds and the wedding event planners will work with the bride/groom and caterers. Ms. Fryer said she will only use licensed vendors.

Ms. Fryer will be meeting with Bruce Cross who is a DJ and he is knowledgeable about decibels. Ms. Fryer said that she will ensure that whoever they use are experienced.

Chairman Moriarty noted that under the ordinance, only 8 events in a single calendar year may be held on one property. Each individual event requires a business license to be issued by the Town Council. The Planning Board is considering whether or not this site meets the criteria set forth in the Site Plan Ordinance.

The Board reviewed the findings of fact and noted some changes. Mr. Saunders moved to adopt the findings of fact as amended, seconded by Mr. Sherr and **VOTED, 7 yeas, unanimous - motion carries.**

#### **FINDINGS OF FACT, CHAPTER 229 – SITE PLAN REVIEW**

**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:** 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 will be no construction of new structures or parking areas. There are no known environmentally sensitive areas on the parcel. The events will be limited to 8 per year.**

**Based on the above findings of fact, 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.

**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 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.

**10.2.3 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.

**10.2.4 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 Stall 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 to 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.

**10.2.6 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 an existing 18' wide driveway into the site. There is adequate sight distance in each direction as shown in the file photos. There is a 16' - 18' wide gravel driveway that extends approximately 2,000' into the site where the events will be held. Parking will be in open fields. There is no need for pedestrian sidewalks as the site is an open field and there will not be traffic circulating during the events. There are no buildings proposed.**

**Based on the above findings of fact, 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.

#### **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 new impervious areas being created as part of this project. There is no construction associated with this application.**

**Based on the above findings of fact, the Board finds the standards of this section have been met.**

#### **10.4 Water, Sewer, Utilities 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 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 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.

**Portable toilets will be used for each event. An on-site generator will provide necessary electrical power for tent lighting and sound amplification. The Fire Chief has reviewed and approved the proposed plan. Potable water will be brought in for each event.**

**Based on the above findings of fact, the Board finds the standards of this section 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.

***Temporary toilets will be brought in for each event. Permanent storage of fuels or chemicals will not occur.***

**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.

***There is no permanent outdoor storage of petroleum products. Underground propane tanks are not part of this amendment.***

**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.***

***Based on the materials included in the application, the Board finds that the standards of this section have 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 site is not located within a floodplain.***

***Based on the above finding of fact, 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 will be no excavation or construction on the site. There are no apparent historical resources on the site.***

***Based on the above finding of fact, 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.

***No lighting is proposed other than the temporary lighting that will be provided from on-site portable generators.***

***Based on the above findings of fact, 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.

**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 will be only infrequent (up to 8 per year) events at the site. There are no new structures or parking areas proposed therefor no new buffering or landscaping is required. The fields are bounded by stands of trees on three sides and Bruce Hill Road on the fourth side.*

*Based on the above findings of fact, 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.

*Potential point source generators of noise are the arrival and departure of trucks that will bring the generator, tents, chairs and other supplies needed for each of the 8 events. Given the distance that exists between neighboring properties and the site, this noise should not be audible. There will be amplified sound and music at most, if not all of the events. The Ordinance limits the hours for amplified music from 10:00 a.m. to 10:00 p.m. Based on the above findings of fact, the Board finds the standards of this section have been met.*

#### **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 permanent outdoor storage of petroleum products. All trash will be removed within 24 hours of the conclusion of the event.*

*Based on the above findings of fact, 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.

**Technical Ability:** *There was no need for technical assistance as there are no new roads, structures or parking areas being built.*

**Financial Capacity:** *There was no need for evidence of financial capacity as there are no public improvements required for the proposal.*

*Based on the above findings of fact, the Board finds the standards of this section have been met.*

#### **10.13 Design and Performance Standards**

The project is NOT subject to any of the design and performance standards contained in the Ordinance for the Route 1, Route 100 or Main Street corridors.

Mr. Saunders suggested striking the limitation of approval because it does not pertain to this item. Mr. Saunders moved to add a fourth condition of approval to read that any temporary outdoor storage of fuels, petroleum products or chemicals shall be limited to the needs of a single event and will be temporary in nature and in approved containers, seconded by Mr. Auclair and **VOTED, 7 yeas, unanimous - motion carries.**

Mr. Saunders moved to approve Site Plan Review to allow for Farm Based Special Events at 111 Bruce Hill Road, Tax Map R05, Lot 42 A, subject to the standard condition of approval and the 4 proposed conditions of approval, seconded by Mr. Sherr and **VOTED, 7 yeas, unanimous - motion carries.**

**Standard Condition of Approval:** This approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted by the applicant. Any variation from the plans, proposals and supporting documents, except de minimis 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.

**Conditions of Approval:**

1. The applicant shall obtain a sign permit from the Town of Cumberland.
2. The applicant shall comply with all state and local fire regulations.
3. All fees shall be paid prior to the Town Council's issuance of the Farm Based Event License.
4. Any temporary outdoor storage of fuels, petroleum products or chemicals shall be limited to the needs of a single event and will be temporary in nature and in approved containers.

***2. Public Hearing: Amendment to the approved Village Green Subdivision to revise stream setbacks and buffers for two (2) lots, Tax Map U10, Lots 7B-47 & 7B-53. Owner and Applicant: Village Green Cumberland, LLC; Representative: Stephen Bushey, P.E., Stantec Consulting Services.***

Chairman Moriarty introduced the item. Mr. Boivin disclosed that he used to work for Stantec about 9 years ago and is not affiliated with Stantec and has no bias towards anything.

Adam Shane, Stantec, displayed a plan of the subdivision and said the proposal is to adjust lot lines for two lots within the Village Green Subdivision, lot 47 and lot 53. Both lot line adjustments relate to adjusted stream buffer setbacks and have been permitted and approved by Maine DEP. Mr. Shane said that it is his understanding that the homeowners have temporary Certificates of Occupancy and contingent on this approval they will be granted permanent Certificates of Occupancy.

Chairman Moriarty clarified that these are two lots within the 58 lot subdivision that have been built upon and are occupied but there was encroachment upon the stream setbacks. The DEP has reviewed the encroachment issue and there are letters in the Board's packet approving the revision to the setback. Mr. Shane agreed.

Mr. Shane reported that for lot 47, the current setback is 100' and will be reduced to 75' and for lot 53, the current setback is 90' and will be reduced to 55'. Mr. Shane noted that there was corrective action required for the permit approval on lot 53 and the corrective action has been completed.

Mr. Boivin asked if there is any impact from this to the contract zone. The general consensus of the Board is that this would not impact the contract zone.

Chairman Moriarty opened the public hearing.

Sam York, Fox Run Rd., said he is Chairman of the Conservation Commission and asked what the basis is for allowing the setbacks to be changed to a significantly reduced amount with streams adjacent to them. Mr. Shane cited the Maine DEP response which indicated that they reached out to Inland Fisheries and Wildlife who originally set the buffer and their decision was that there would be no impacts to any special fisheries and they would allow the reduced setback.

Mr. York said that DEP may have allowed the change due to the fisheries but there are pollutants that can arrive in the streams and 50' is insufficient to prevent that over the long term. Mr. York said he thinks there is cause for remediation and protection of the streams prior to any approval. Mr. York said it doesn't stand to reason that the Town would reduce the setback that is not only to protect the fisheries but also the



subsequent streams and flowage into the Piscataqua River. Mr. York recommends that the setback not be reduced without remediation.

Mr. Sherr said that he read that there were mitigation measures required by DEP, especially on lot 53, to deal with erosion and sedimentation controls and to make sure the slopes are stable. Mr. Shane agreed and said there was remedial action required for lot 53. There is a landscaping plan in the Board's packet relating to this to provide the necessary protection. Mr. Shane said the setback on lot 47 will be held at 75' which is a more typical setback for these types of developments.

Chairman Moriarty said that he does not think this item would be on the agenda but for the DEP's approval of the proposed setback reductions. DEP seems to be satisfied with the remediation that has been undertaken already and nothing further is proposed by DEP to be done.

Mr. York commented that there is no definition of what the remediation measure is and whether it is temporary or permanent. Mr. York asked if they are introducing swales, diversions or other protection measures. Mr. York said he thinks the Board should review this before they make a decision. Mr. York added that once things get approved and fail at some point in the future, they never get fixed.

Mr. Shane noted that there are permanent landscape features and the applicants must monitor the plantings which must be replaced or maintained as necessary to achieve 85% survival after one full growing season. Mr. Boivin asked if there is a new owner, is there any assurance that this will be maintained. Mr. Shane said the owner is required to meet the findings of the DEP permit whether the property changes ownership or not. Mr. Boivin asked if there are any inspections and Mr. Shane said no. Mr. Sherr said ultimately a complaint would need to come in to the Town.

Chairman Moriarty asked if the Board approves what is being asked how it will be memorialized in legal documentation. Mr. Shane said the owner will be bound by the DEP permit that was issued for the alteration. Chairman Moriarty asked if the DEP permit is recorded at the Registry and Mr. Shane replied yes.

Mr. Auclair asked what happens if the Board does not approve this. Mr. Shane said that the owners would not be issued permanent Certificates of Occupancy. Mr. Auclair asked what the potential resolution would be. Mr. Shane said possible additional plantings or more stabilization.

Mr. Saunders noted that the DEP findings state that the applicants have made adequate provisions for fitting the development harmoniously into the existing natural environment and the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities provided that the applicants monitor and maintain vegetation as described in finding 2. Mr. Saunders said his feeling is that if the DEP has been made aware of the situation and has said this is what has to be done to remedy the situation than he will not impose his lack of knowledge on someone who seems to have worked things out.

Mr. Auclair noted that Inland Fisheries has also approved the revision to the stream setback.

Mr. Sherr added that plans submitted in the Board's packet have engineering drawings showing the revised grading plan, the landscape plan and landscape plantings to stabilize the slope. There are notes on the plan that talk about the erosion control measures. Mr. Sherr said all of these were designed by a licensed Engineer to adequately control erosion and sedimentation and it has been approved by DEP. Mr. Sherr said he has no problem moving forward.

Mr. Boivin agreed.

Charles Graham, 4 Tacoma Ln., said he is here with his wife Kaylene who owns the property. Mr. Graham said that about a week before they closed on the property in June, the title company ordered a plot plan which revealed that 18 inches of the porch was within the 100' setback. If the Grahams ever wanted to mortgage the property, they would not be able to do so because they were issued a temporary occupancy permit. Mr. Graham said he was present when the DEP representative Mr. Cherry came and inspected lot 47 and the violation. Mr. Cherry inspected the brook area that is only active at certain times of the year and the hillside going up to Mr. Graham's house. Mr. Cherry did not seem to think that there needed to be any remediation for lot 47. The DEP permit that was issued does not require any specific remediation.

Mr. Graham said that Mr. Cherry made clear that the original DEP 100' setback from a stream was made at the behest of Inland Fisheries in a blanket fashion to protect any species of fish life that may be in the brooks. Mr. Cherry readily concluded that there were no fish in the brooks. They are drainage ditches. Mr. Graham said he would appreciate the Board's consideration and if the Board needs to take a look and thinks they need to do something he would certainly consider this. Mr. Graham added that the expertise demonstrated by Mr. Cherry and the thoroughness of his examination suggests that all that needs to be done with respect to lot 47 has been done.

Chairman Moriarty closed the public hearing.

Chairman Moriarty said he does not think that the Board has to read through all of the findings of fact because they have not changed. Ms. Silberman noted that Ms. Nixon's review indicates that the findings of fact are the same as the last approval. Mr. Saunders said that the Board could waive the reading of the findings of fact but should deal with the waivers first.

The Board reviewed the requested waivers. Mr. Saunders moved that due to the unique characteristics of this project that the Board waive the requirement for any preliminary plan location maps, seconded by Mr. Sherr and **VOTED, 7 yeas, unanimous - motion carries.**

Mr. Saunders moved that due to the unique characteristics of this site and the project that the Board waive the requirement for preliminary plan maps and information, seconded by Mr. Sherr and **VOTED, 7 yeas, unanimous - motion carries.**

Mr. Saunders moved that due to the unique characteristics of the site and the project that the Board waive the requirement for final plan submissions, seconded by Mr. Sherr and **VOTED, 7 yeas, unanimous - motion carries.**

Mr. Saunders moved that due to the unique characteristics of the site and the project that the Board waive any requirement for any further submission of materials, seconded by Mr. Sherr and **VOTED, 7 yeas, unanimous - motion carries.**

Mr. Saunders moved that due to the fact that the Board has previously reviewed and adopted all of the findings of fact and that there are no changes other than those potentially discussed here tonight that the Board waive the reading of the findings of fact, seconded by Mr. Auclair and **VOTED, 7 yeas, unanimous - motion carries.**

#### **MAJOR SUBDIVISION REVIEW:**

##### **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 project will be on public sewer therefore the soils do not need to support waste disposal. The applicant has provided a soils report prepared by Albert Frick Associates, Inc. describing the soils as they relate to the design for the proposed drainage system. The MDEP has not yet issued a Site Location of Development permit which includes a review of the erosion control plans.**

**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. There is a letter on file from the Portland Water District dated 3/30/11 that states that 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. There is a letter on file from the Portland Water District dated 3/30/11 that states that there is an adequate supply of water to serve the needs of the proposed 12 lot mixed use subdivision without creating a burden on the existing water supply.**

**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;

**The erosion control plan has been reviewed by the Town Engineer who has made a recommendation that will be incorporated into the final plan. MDEP approval is still outstanding.**

**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;

**There is a traffic study on file dated April, 2011 which has been reviewed and approved by the MDOT and Tom Gorrill, the Town's peer review traffic engineer.**

**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 public sewer. Al Palmer, P.E., the Town's sewer peer review engineer, has reviewed and approved the proposed sewer plans.**

**There is a letter on file dated 7/27/11 from the Town Manager, Bill Shane, stating that the town has agreed to accept the flow of at least 16,000 gallons per day to its municipal sewer system from this project.**

**Sewer user permits have not yet been purchased by the owner. This will be done prior to final submission.**

**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 183 cubic yards 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;

**Letters on file dated 10/25/05 and 4/14/11 from Department of Conservation states that there are no rare or botanical features documented specifically within the project area.**

**Letters on file dated 10/12/05 and 6/8/11 from the Department of Inland Fisheries and Wildlife states that there are no known significant wildlife habitat or threatened or endangered species in the vicinity of the project.**

**A letter on file dated 4/28/11 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 comments will be addressed for final plan review.**

**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 expert engineering, surveyors, soils evaluators, traffic engineers and landscape architects.**

**A letter dated 8/1/11 from Norway Savings Bank states that "the developers have the financial capacity, management skills, and marketing finesse to successfully develop this site and complete the project on time and on budget."**

**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 man-made pond on the site is not by State definition a great pond or lake regulated by the State.**

**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 affect the quality or quantity of ground water;

**The project will be served by public sewer. There are no proposed activities that would adversely affect the quality or quantity of ground water.**

**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- Areas of Minimal Flooding.**

**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 May 11, 2011 prepared by DeLuca-Hoffman Associates has been submitted and 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.

**Wetlands on the parcel were identified by Boyle associates. There are no natural vernal pools on the site.**

**The project requires a NRPA permit from MDEP and the US Army Corp of Engineers for the proposed wetland and stream impacts associated with construction. 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]

**One perennial and three intermittent MDEP jurisdictional streams are located within the westerly portion of the site. The 5,976 square feet of impacts associated with the stream crossings are permitted through the NRPA Permit-by-Rule process which has been undertaken.**

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

**SECTION 300 – AQUIFER PROTECTION (if applicable)**

**The parcel is partially located in the Aquifer Protection District. A residential development on public sewer will not adversely affect the aquifer.**

Mr. Saunders moved to approve the amendment to the previously approved Village Green Subdivision to revise stream setbacks and buffers for two lots, Tax Map U10, Lots 7B-47 & 7B-53 subject to the Standard Conditions of Approval, seconded by Mr. Sherr and **VOTED, 7 yeas, unanimous - motion carries.**

**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 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.

Mr. Sherr inquired if there was a Mylar for the Board to sign. Mr. Shane said he thought a Mylar was previously submitted but if not he will make sure one is provided.



**3. TABLED ~~Public Hearing: Site Plan Review for site preparation for Heritage Village, Skyview Drive, Tax Map R01, Lot 11-7, Owner and Applicant; Heritage Village Development Group, LLC, Representative; Stephen B. Mohr, Mohr & Seredin Landscape Architects.~~** This item was tabled prior to the meeting.

**F. Administrative Matters/New Business:** Chairman Moriarty said that this is Teri Maloney-Kelly's final meeting with the Planning Board and he expressed his deep appreciation and thanks for Ms. Maloney-Kelly's years of service and her efforts on the Board.

Chairman Moriarty reported that there was legal action brought against the Town based on the Board's approval of the Solar Way subdivision. The individual who brought the action has decided not to pursue it so it is no longer pending and is over and done with.

Chairman Moriarty noted that there still remains a legal action pending against the Town and the SAD regarding the removal of a fence that previously divided the SAD property from the single existing home that sits between the school and the cemetery. This matter is still pending.

Chairman Moriarty said the Board's next meeting will be the third Tuesday in January. The Town Council has appointed a new member to take Ms. Maloney-Kelly's place and this is Bill Kenny and he will be at the January meeting.

**G. Adjournment:** Mr. Saunders moved to adjourn the meeting at 8:17 pm, seconded by Mr. Sherr and **VOTED, 7 yeas, unanimous - motion carries.**

A TRUE COPY ATTEST:

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Stephen Moriarty, Board Chair

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Christina Silberman, Administrative Asst.