

**CUMBERLAND PLANNING BOARD MEETING MINUTES
DECEMBER 20, 2022**

A. Call to Order: Chair Record opened the meeting at 7 pm.

B. Roll Call: Present: Jason Record-Chair, Peter Bingham-Vice Chair, Paul Auclair, Lorraine Rardin, Joshua Saunders & Ann Sawchuck, Carla Nixon-Town Planner, Bill Shane-Town Manager & Christina Silberman-Admin. Asst. **Absent:** Bridget Perry.

C. Approval of the Minutes of the November 15, 2022, meeting: Mr. Bingham moved to approve the minutes of the November 15, 2022, meeting, seconded by Mr. Auclair and **VOTED, 6 years – unanimous, motion carries.**

D. Staff Site Plan Approvals:

1. Major Staff Site Plan Review: Amendment to an approved site plan for LGC Clinical Diagnostics, Inc located at 221 U.S. Route 1, Tax Map R02, lot 10A for new mechanical units to be added to roof of the building addition, installation of (2) two-sided electric vehicle chargers, a ground-mounted generator in mechanical yard and addition of an egress door on building addition.

Town Planner Carla Nixon reported that major staff site plan review approval was granted for an amendment to an approved site plan for minor changes at LGC Clinical Diagnostics at 221 U.S. Route One.

E. Minor Change Approvals: None.

F. Hearings and Presentations:

1. Public Hearing: Site Plan Review for issuance of an Annual Renewable Special Permit for operation of the Storey Brothers Gravel Pit located at 48 Goose Pond Road as shown on Tax Assessor Map R07, Lot 48. Applicant: Robert Storey. Owner: RJT Properties, Inc.

Chair Record introduced the item. Ms. Nixon outlined the annual permit renewal process for gravel pits and reported that Code Enforcement Officer Bill Longley has received no complaints regarding this site.

Rob Storey, Storey Brothers, said he is here for the annual permit for operation of the gravel pit. Mr. Storey said that his company purchased the gravel pit in 2019. There have been no changes in the last year. The pit is used for their own materials and they do not sell materials.

Chair Record opened the public hearing. There were no comments. Chair Record closed the public hearing.

Mr. Saunders moved to issue an annual renewable special permit for the operation of the Story Brothers Gravel Pit located at 48 Goose Pond Road as shown on Tax Assessor map R07, lot 48, seconded by Mr. Auclair and **VOTED, 6 years – unanimous, motion carries.**

2. Public Hearing: Site Plan Amendment for Skillin's Greenhouses, located at 201 Gray Road, Tax Assessor Map U20, Lot 70D to replace the existing warehouse with a new, detached, 60' x 100' warehouse. Applicant: Terry Skillin. Owner: Skillin Agricultural Associates, LLC.

Chair Record introduced the item. Ms. Nixon described the proposed amendment and noted that she visited the site and does not feel any additional buffering is needed. Chair Record said there do not seem to be any substantive changes. Ms. Nixon said it is a simple plan.

Chair Record asked about the current building size. Mr. Skillin replied that it is about 3,600 square feet.

Mr. Auclair noted a reference in the review to Route 1 design standards and said this should refer to the Route 100 standards.

Terry Skillin, President - Skillins Greenhouses, said he is here with Lee Skillin and reported that they took over the property in 2003 and have outgrown the warehouse. Mr. Auclair asked if the new warehouse will be made of the same material. Terry Skillin said the present warehouse is an asphalt shingle building with vinyl siding and the new building will be metal. Chair Record asked if changes to traffic in and out of the business are expected. Terry Skillin answered no.

Chair Record opened the public hearing. There were no public comments. Chair Record closed the public hearing.

Ms. Sawchuck said the finding under item H say that no exterior lighting is proposed but she sees exterior lighting on the designs. Lee Skillin replied that they will do what the town requirements are for exterior lighting on the building. Ms. Nixon proposed to add a condition of approval that she will approve any lighting.

Mr. Saunders moved that the Board approve the following six waivers due to the unique nature of the property and the project and the fact that this is an amendment to an approved site plan; a high intensity soil survey, a hydrogeologic evaluation, a traffic study, a market study, showing the location of proposed recreation areas and showing the location and type of outdoor furniture, seconded by Mr. Bingham and **VOTED, 6 yeas – unanimous, motion carries.**

Mr. Saunders moved to waive the reading of the findings of fact, seconded by Mr. Bingham and **VOTED, 6 yeas – unanimous, motion carries.**

Mr. Saunders moved to adopt findings of fact, as amended to refer to the Route 100 design standards, seconded by Mr. Auclair and **VOTED, 6 yeas – unanimous, motion carries.**

SECTION 229 - SITE PLAN REVIEW 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.

A. 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.

The site is already developed with no apparent natural resources. The location of the new warehouse is in the same location as the previous one, so the proposed change will not impact the site. Based on the above findings of fact, the Board finds the standards of this section have been met.

B. Traffic, Circulation and Parking

(1) Traffic Access and Parking. Vehicular access to and from the development must be safe and convenient.

(a) 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.

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

(c) 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.

(d) 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.

(e) 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.

(f) 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.

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

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

(1) 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.

(2) 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.

(2) Access way Location and Spacing

Access ways must meet the following standards:

(a) 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.

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

(3) Internal Vehicular Circulation. The layout of the site must provide for the safe movement of passenger, service, and emergency vehicles through the site.

- (a) 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.
- (b) 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).
- (c) The layout and design of parking areas must provide for safe and convenient circulation of vehicles throughout the lot.
- (d) 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.

(4) Parking Layout and Design. Off street parking must conform to the following standards:

- (a) 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.
- (b) 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.
- (c) Parking stalls and aisle layout must conform to the following standards.

Parking Stall Angle	Skew Width	Stall Width	Aisle 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

- (d) 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.
- (e) 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.
- (f) 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.

(5) Building and Parking Placement

- (a) 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.

- (b) 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.

- (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 are no changes being made to the parking and circulation plan. Based on the above findings of fact, the Board finds the standards of this section have been met.

C. Stormwater Management and Erosion Control

(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.

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

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(2) Erosion Control

(a) 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.

(b) 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 is no increase in impervious area or need for erosion control due to the nature of the project. Based on the above findings of fact, the Board finds the standards of this section have been met.

(D) Water, Sewer, and Fire Protection

(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.

(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.

(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.

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

The new warehouse will comply with the Fire Chief's recommendations as stated in the condition of approval. There are no changes to the utilities. Based on the above findings of fact, the Board finds the standards of this section have been met.

E. Water Protection

(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.

(2) Water Quality: All aspects of the project must be designed so that:

(a) 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.

(b) 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.

(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 located within the Town Aquifer Protection Area. Any storage of fuel, chemicals, chemical or industrial wastes, biodegradable raw materials or liquid, gaseous or solid materials will meet the standards of the Maine Department of Environmental Protection and the State Fire Marshal's office. This is a condition of approval. The Board finds that the standards of this section have been met.

F. 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 as shown on the submitted FEMA map. Based on the above finding of fact, the Board finds the standards of this section have been met.

G. 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.

The site is currently developed and there are no evident historic or archaeological resources on site. Based on the above finding of fact, the Board finds the standards of this section have been met.

H. 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 exterior lighting is proposed. Based on the above findings of fact, the Board finds the standards of this section have been met.

I. Buffering and Landscaping

(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.

(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. **The warehouse will replace an existing warehouse that is not visible from any of the boundary lines. No new landscaping or buffering is needed. Based on the above findings of fact, the Board finds the standards of this section have been met.**

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

The proposed warehouse use will not cause noise levels that would be a nuisance for neighboring properties. Based on the above findings of fact, the Board finds the standards of this section have been met.

K. Storage of Materials

(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.

(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.

(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.

No new dumpsters are proposed as part of this project. Based on the above findings of fact, the Board finds the standards of this section have been met.

L. 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 are no public improvements. The applicant will utilize Morton Builders to construct the warehouse.

Financial Capacity: The warehouse will not require any public improvements. A bank loan from Norway Savings Bank will help fund the project.

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

M. Design and Performance Standards

(1) Route 100 Design Standards: Applicable

(2) Route 1 Design Standards

(3) Town Center District Design and Performance Standards

(4) Village Mixed Use Performance Standards.

Mr. Saunders proposed a third condition and Ms. Nixon proposed the language to address exterior lighting.

Mr. Saunders moved to approve the site plan amendment for Skillin's Greenhouses, located at 201 Gray Road, Tax Assessor Map U20, Lot 70D to replace the existing warehouse with a new, detached, 60' x 100' warehouse subject to the expiration of

approval, the standard condition of approval and the three proposed conditions of approval, seconded by Mr. Auclair and **VOTED, 6 years – unanimous, motion carries.**

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 extensions to the periods if the approved plan conforms to the ordinances in effect at the time the extension is granted and any and all federal and state approvals and permits are current.

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

CONDITIONS OF APPROVAL:

1. Any storage of fuel, chemicals, chemical or industrial wastes, biodegradable raw materials or liquid, gaseous or solid materials will meet the standards of the Maine Department of Environmental Protection and the State Fire Marshal's office.
2. The following recommendations from the Town Fire Chief should be considered for this project.
 - 1) Fire suppression sprinkler system.
 - 2) Monitored fire alarm system.
 - 3) Key Box approved by the fire department.
3. Any exterior over the entrance doors lighting for the new warehouse building that the applicant would like to install be approved by the Town Planner prior to issuance of the building permit

3. Public Hearing: Elizabeth H. Johnson Subdivision Amendment to split lot #4, located at 104 Foreside Rd., Tax Assessor Map U04, Lot 10A, into two lots. Applicant/Owner: Cove Development Corp. Representative: Randy Smith, Knickerbocker Group.

Chair Record introduced the item. Ms. Nixon reported that the lot is on Route 88 near Conifer Ridge Rd., the parcel is wooded and large enough to be split.

Randy Smith, Knickerbocker Group, said this subdivision was created in 1977 and amended in 1978. A portion of this subdivision was used to create the Morrill Properties Subdivision. Mr. Smith shared responses to the review comments from Sevee & Maher Engineers.

Chair Record asked if the Town Peer Review Engineer Dan Diffin, P.E. - Sevee & Maher Engineers, has reviewed the applicant's responses to the review comments. Ms. Nixon said the responses arrived earlier today and Mr. Diffin has not reviewed them but there could be a condition of approval that comments from the Town Engineer be addressed.

Mr. Bingham said it seems that the differences of opinion from the applicant and consulting engineer are significant and he thinks this is beyond the scope of a condition of approval. Mr. Auclair agreed with Mr. Bingham.

Mr. Auclair referred to the Basswood Environmental letter and noted two wetlands are identified on the plan. Mr. Auclair asked about the wetland interference threshold for permitting. Mr. Smith replied that the two wetlands are not of special significance. Maine allows up to 4,300 square feet of disturbance. Mr. Smith said that this development will

not disturb either of the wetlands. Mr. Auclair asked about setback requirements for wetlands. Mr. Smith said setbacks are only needed for wetlands with special significance.

Mr. Smith referred to the differences of opinion between the engineers and said he doesn't think it will be difficult for them to work things out should there be a condition of approval. Chair Record asked for Ms. Nixon's thoughts on this. Ms. Nixon suggested that the Board have the scheduled public hearing to hear any concerns and then they may want to table the item. Ms. Nixon said that the engineering disagreements did not get worked out prior to the meeting and it is appropriate that the Board wait and let the Town Engineer review the applicant's responses.

Mr. Saunders asked if there are special considerations for subdivision of an approved subdivision and if there is a homeowners' association. Ms. Nixon replied no, it is an old subdivision. Mr. Saunders inquired about outstanding items and if anything is needed regarding botanical features. Ms. Nixon said she would like Mr. Diffin to weigh in on this. Mr. Saunders asked about public notice of the waiver for showing ten inch diameter trees that the applicant did not request in the application. Ms. Nixon replied that waiver requests are not advertised in the public notice and information was available on the Town website. Abutters did pick up on the waiver from Mr. Diffin's review and Ms. Nixon feels there has been enough notice.

Chair Record opened the public hearing.

Darrell Fisher, 92 Foreside Rd., said he and his wife Berit bought their house in 2007 and moved here from Manhattan. When the Fisher's moved here, there were eight acres across the street and eight acres behind them. There were deer, turkeys and foxes. Mr. Fisher said he and his wife are home most of the time. The lot across the street now has two homes and the lot behind them now has two homes. Mr. Fisher said there has been a real growth spurt on the Foreside with clearcutting going on, nature has changed and there is more traffic. Mr. Fischer said he would like an assurance that the development of the lot will not use access from Chestnut Way.

Deborah Wallace, Knickerbocker group, explained that when Cove Development bought the lot there was language about access to Chestnut Way and this language has been removed.

Berit Fisher, 92 Foreside Rd. asked if the driveway to access this lot, or two lots, will come off Route 88 and Ms. Wallace answered affirmatively.

Chris Nolan, 100 Foreside Rd., said when he received the abutter notice, it was the first he knew that the lot was going to be divided. Mr. Nolan was told when the lot sold that there was only going to be one house. Mr. Nolan is very concerned about the water runoff. Mr. Nolan said in looking at the design, it seems Chestnut Way has gotten bigger and is pushing closer to his property line. Mr. Nolan is concerned about drainage off the road going into the stream and shares concern watching all of the wooded areas on Foreside Rd. being developed. Mr. Nolan said he had not heard about access through Chestnut Way and this would cut right behind his property.

Robert Clark, 9 Conifer Ridge, said his backyard abuts the side yard of this lot. Mr. Clark moved here 8 years ago. Mr. Clark noted they don't have any drapes and are feeding about 30 turkeys right now and have deer and fox in their backyard. Mr. Clark reported that Mrs. White, a previous owner, told him she was going to sell the lot to Mr. Wright and he would keep the wooded area as a buffer. Mr. Wright sold the property shortly after buying it. Mr. Clark saw a model with one house on the internet and saw the plan with a 50 foot green strip that is in the deed. Mr. Clark said there is no protection for the north side of lot. The plan says development will be 65 feet from the property but it is not specified how it will be maintained and Mr. Clark would like this area set aside the same way as the other side. The development will change Mr. Clark's backyard where they recreate and changes the whole environment. Mr. Clark said one house would be better than two and he hopes the resolution will ensure the wilderness and their privacy.

Chair Record read the following letter from Benson & Diana Caswell:

We are direct abutters to the proposed subdivision. One of the deciding factors at the time we purchased our home was the low density of homes and occupants in our neighborhood. I am asking the Planning Board to consider four issues of concern to us:

#1, Review the proposed subdivision as a commercial matter, not as a residential one, because the lot was purchased by a commercial developer with the intent to profit from its development within a low-density residential neighborhood.

#2, Reject the request for a waiver of Criterion 3-the identification of 10" trees, which we understand is required by Section 250-45. Without doubt, this requirement establishes a means to retain the neighborhood's environment, and one could reasonably argue it protects the neighborhood from a degree of development.

#3, Do not find that the standards of Criterion 8 have been met. The proposed subdivision, which is wooded and undeveloped, will have an undue adverse effect of the scenic and natural beauty of the area including its aesthetics and significant wildlife habitat. There are currently 35 turkeys that roost and feed in the area.

#4, The seller of the property deeded a covenant with a forested buffer border designed to provide privacy between his residential home and the proposed subdivision. We ask for the Planning Board to condition their approval upon the establishment of a privacy border for the benefit of our property as well.

This letter has been written to express our thoughts on this matter while we are out of town, and we expect them to be shared with the Planning Board and included in its minutes of tonight's meeting.

Chair Record closed the public hearing.

Mr. Bingham referred to review of the proposed subdivision as a commercial matter and said it does not matter who the owner is and Ms. Nixon agreed. Mr. Bingham referred to public comment about the water and said the Town Engineer and the Developer should ensure the safe distribution of water runoff. Buffering is in the Board's purview and Mr. Bingham wants to preserve buffering for the neighbors. Mr. Bingham said that if granting the waiver from marking the trees over 10" in diameter will affect the buffer then he would not want to approve it. Chair Record agreed.

Mr. Auclair said most of the Board is very interested in preserving land and nature and pointed to the Board's passage of the conservation subdivision option. The issue is that the Board has to say on what basis they can deny an application. There are a number of ordinances and regulations to review. Mr. Auclair said that at this point, he would like

clarification from the Town Engineer regarding the technical issues in question and he would be in favor of tabling the item.

Chair Record asked about the purpose for identifying the 10" in diameter trees. Ms. Nixon replied that this situation is a little different. Ms. Nixon has viewed the property and does not think the waiver is appropriate in this case. The trees located there now are important for buffering. Ms. Nixon said the Board can ask that additional trees be planted as an appropriate buffer. There is nothing prohibiting that this area be cleared and the Board could ask that this be an undisturbed buffer. Mr. Saunders noted that there is nothing in the ordinance to prevent the cutting of a tree identified as 10" or greater. Ms. Nixon said this is to help the Board with considering the buffer.

Chair Record said he is a little uncomfortable moving the item forward and would like to hear more from the Town Peer Review Engineer Dan Diffin.

Mr. Bingham moved to table the item, seconded by Mr. Auclair and **VOTED, 6 yeas – unanimous, motion carries.**

4. Public Hearing: Final Major Subdivision Review for White Rock Terrace, a four story, 55 unit, senior, affordable apartment building with a 13,500 square foot building footprint to be located off Sky View Drive, on a 4.5 acre portion of the lot shown on Tax Assessor Map R01, Lot 11-7 in the Cumberland Foreside Village Subdivision. Applicant: Kristin Martin - The Szanton Company. Owner: Peter Kennedy, Heritage Village Development Group, LLC. Representative: Travis Letellier, P.E., Acorn Engineering, Inc.

Chair Record introduced the item. Ms. Nixon provided history on the project.

Nathan Szanton, President, said he is here with resident Amy Cullen, Vice President, Kristin Martin, Project Manager and Travis Letellier, Civil Engineer - Acorn Engineering.

Mr. Letellier reported that all outstanding issues with peer review comments have been addressed. There have been minor changes to the stormwater design and some technical details on the plan. Chair Record asked if there were any changes to the elevations and Mr. Letellier replied there were no changes.

Ms. Sawchuck said this is the first income restricted project she has reviewed and asked for more information on the restrictions that the financing provides. Ms. Martin reported that they will work through Maine State Housing Authority's low-income tax credit program and she described the process. Ms. Martin said that the income restriction will be part of the deed and will be in place for forty-five years.

Mr. Saunders asked about income limits. Ms. Martin replied that the limit is for households earning sixty percent of the area median income. This can change from year to year based on a calculation put out by HUD (Department of Housing and Urban Development).

Mr. Auclair asked about the tax status. Ms. Martin replied that they are not a non-profit agency and will pay taxes.

Ms. Sawchuck asked about the senior restriction and Ms. Martin said this will also be for forty-five years.

Chair Record opened the public hearing.

Dr. Sean McCloy, abutting lot owner, asked if the landscaping plans were changed to add more coniferous trees. Ms. Martin responded that they have requested the landscaping plan be updated to add two evergreens between Dr. McCloy's property and a few more between the Nautical Dr. houses.

Chair Record closed public hearing.

Mr. Saunders referred to a parking study and asked if the applicant would be opposed to adding a parking study as a condition of approval. Ms. Martin indicated that this would be okay.

Chair Record reviewed the prepared findings of fact.

Mr. Saunders moved to adopt the prepared findings of fact as written, seconded by Mr. Auclair and **VOTED, 6 yeas – unanimous, motion carries.**

Findings of Fact - Chapter 250 Subdivision of Land: 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;

There are no flood plains on site. The project will be served by public sewer. There are no streams on the site. Based on the information provided, the Board finds that 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 project will be served by public water; a capacity to serve letter is on file from the Portland Water District. Based on the information provided, The Board finds that 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 55 apartment units will not create a burden on the existing municipal water supply as indicated in the capacity to serve letter from Portland Water District. Based on the information provided, the Board finds the standards of this section have been met.**

4. Erosion. The proposed subdivision will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results; **An erosion and sedimentation control plan that includes housekeeping procedures for maintenance has been submitted and the plan has been reviewed by the Town Engineer. Based on the information provided, the Board finds that 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; **A traffic impact assessment dated 10/24/22 was submitted that shows estimated trip counts. The report states that the project will be a low trip generator and will not require a traffic movement permit from MDTO. Based on the information provided, the Board finds that 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 not cause an unreasonable burden on the municipal sewer system as indicated in the capacity to serve letters from the Portland Water District and the Town Manager. Based on the information provided, the Board finds that 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 property management company or owner will be responsible for locating the solid waste and recyclable material to the space allocated for solid waste storage as noted on Site Plan Sheet C-10. A commercial waste hauler will dispose of the trash that is placed in the dumpster. Based on the information provided, the Board finds that 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 are on file from State agencies indicating that the proposed subdivision will have no adverse impact on any of the above features. The Board finds that 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 and approved by the Town Planner, the Town Engineer and Town department heads. The Board finds that 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;

Financial Capacity: The total project budget is approximately \$19,000,000. A statement of Financial Capacity, including funding sources, was submitted in the application packet.

Technical capacity is evidenced by the use of professional technical consultants as outlined in the application packet. In addition, a statement from the developer was provided that gave an overview of past projects completed in Maine and New Hampshire.

The Board finds that 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 1, 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 project is not situated in any of the areas listed above. Based on the information provided, the Board finds that 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 residential apartments, which will be served by public water and sewer, will not adversely affect the quantity or quality of groundwater. Based on the information provided, the Board finds that 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 development is not located within a 100 year flood plain as shown on the applicable FEMA Flood Insurance Rate Map. Based on the information provided, the Board finds that the standards of this section have been met.**

14. Storm water. The proposed subdivision will provide for adequate storm water management; **A stormwater Management Report dated October 2022 was included in the application. The proposed development has been designed to manage stormwater runoff through Best Management Practices approved by MDEP. The plan has been reviewed and approved by the Town Engineer. Based on the information provided, the Board finds that the standards of this section have been met.**

15. Freshwater wetlands. All potential freshwater wetlands, as defined in 30-A M.R.S.A. §4401 (2-A), within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district. **Wetland areas have been identified on the plans. Based on the information provided, the Board finds that 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] **There were no streams identified on the site. Based on the information provided, the Board finds that the standards of this section have been met.**

Mr. Saunders suggested adding a condition of approval for a parking study. Chair Record suggested adding a condition of approval for landscaping.

Mr. Saunders moved to approve Final Major Subdivision Review for White Rock Terrace, a four story, 55 unit, senior, affordable apartment building with a 13,500 square foot building footprint to be located off Sky View Drive, on a 4.5 acre portion of the lot shown on Tax Assessor Map R01, Lot 11-7 in the Cumberland Foreside Village Subdivision subject to the expiration of approval, the standard condition of approval and 13 proposed conditions of approval, seconded by Mr. Bingham and **VOTED, 6 yeas – unanimous, motion carries.**

EXPIRATION OF APPROVAL: Construction of the improvements covered by any site plan approval must be substantially commenced within 12 months of the date upon which the approval was granted. If construction has not been substantially commenced within 12 months of the date upon which approval was granted, the approval shall be null and void. If construction has not been substantially completed within 24 months of the date upon which approval was granted or within a time period as specified by the Planning Board, the approval shall be null and void. The applicant may request an extension of the period. Such request must be made in writing and must be made to the Planning Board. The Planning Board may grant up to two one-year extensions to the period if the approved plan conforms to the ordinances in effect at the time the extension is granted and any and all federal and state approvals and permits are current.

STANDARD CONDITION OF APPROVAL: This approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted 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. A preconstruction conference is required prior to the start of construction.
2. The amended SLODA permit shall be submitted to the Town Planner prior to the preconstruction conference.
3. A performance guarantee in an amount and form acceptable to the Town Manager will be required prior to the preconstruction conference.
4. All clearing limits shall be flagged and approved by the Town Engineer prior to the preconstruction conference.
5. A blasting permit, if required, shall be obtained from the Code Enforcement Officer.
6. All legal and technical review fees shall be paid to the Town prior to the preconstruction conference.
7. An electronic copy of the as-built plans shall be submitted to the Town Planner prior to the release of any remaining inspection fees.
8. The owner will be responsible for the removal of solid waste via a private waste hauler.
9. A sign permit for any proposed signs is required.
10. All storage for fuel, chemicals, chemical or industrial wastes, biodegradable raw materials, or liquid, gaseous or solid materials shall meet the standards of the Maine Department of Environmental Protection and the State Fire Marshal's office.
11. The building shall comply with the requirements of the State Fire Marshal's Office and the Town Fire Chief.

12. A parking study after one year of occupancy shall be conducted to determine if the area reserved for additional parking should be utilized.
13. A final landscaping plan with additional tree plantings between the building and Skyview Drive and between the building and Nautical Way be reviewed and approved by the Town Planner prior to the pre-construction conference.

G. Administrative Matters/New Business: Mr. Bingham announced that tonight is the last meeting for Chair Record who has been a member of the Planning Board for four years and has served as Vice Chair and Chair. Mr. Bingham said that Chair Record has also served simultaneously for the last two years as a member of the School Board with the last 6 months as the Chairman. Mr. Bingham thanked Chair Record for his service on behalf of the Town.

Mr. Bingham reported that the Town Council has appointed George Turner to serve on the Planning Board beginning in January. Mr. Turner is a long time resident of Cumberland and has experience on the Board of Zoning Appeals and on the Town Council. Mr. Turner is a Realtor and will bring real estate knowledge to the Board. Mr. Bingham welcomed Mr. Turner to the Planning Board. Mr. Turner expressed his gratitude.

Chair Record thanked everyone and said he has learned a lot and has zero concerns about members of the Planning Board handling things going forward.

H. Adjournment: Mr. Saunders moved to adjourn the meeting at 8:30 pm, seconded by Mr. Bingham and **VOTED, 6 yeas – unanimous, motion carries.**

A TRUE COPY ATTEST:

Peter Bingham, Planning Board Chair

Christina Silberman, Administrative Asst.