

CUMBERLAND PLANNING BOARD MEETING MINUTES February 21, 2023

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

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

C. Election of Officers - Chair and Vice Chair: Mr. Auclair nominated Peter Bingham for Chair, seconded by Mr. Saunders. Mr. Saunders moved to cease nominations for the Chair, seconded by Ms. Rardin and **VOTED, 5 yeas, 1 abstained (Bingham) – motion carries.** Mr. Auclair nominated Lorraine Rardin as Vice Chair, seconded by Mr. Saunders. Mr. Auclair moved to cease nominations for the Vice Chair, seconded by Ms. Sawchuck and **VOTED, 5 yeas, 1 abstained (Rardin) – motion carries.**

Chair Bingham welcomed new Planning Board member George Turner.

Chair Bingham recognized the passing of former, long-time Town Councilor Harland Storey and reported on his contributions to the community.

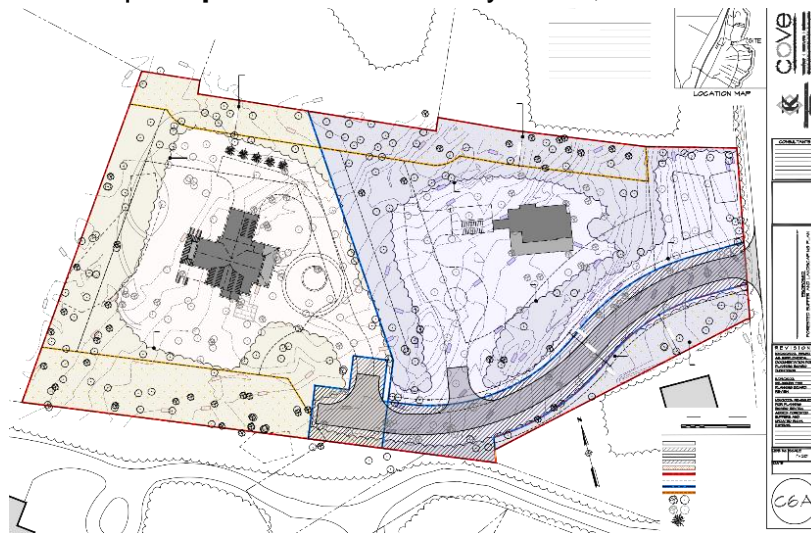
D. Approval of the Minutes of the December 20, 2022, meeting: Mr. Saunders moved to adopt the minutes of the December 20, 2022, meeting as written, seconded by Mr. Auclair and **VOTED, 5 yeas, 1 abstained (Turner), motion carries.**

E. Staff Site Plan Approvals: None.

F. Minor Change Approvals: None.

G. Hearings and Presentations:

1. 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 Bingham introduced the item. Ms. Nixon noted that Randy Smith is not present and members of his team are here to present the item.

Mr. Auclair referred to a letter to be read during the public hearing from Ben and Diana Caswell and disclosed that he is good friends with the Caswells. Mr. Auclair said he has not spoken with the Caswells regarding the project and does not feel that he has a conflict. There were no objections to Mr. Auclair's participation in this matter.

Danielle Betts, PE - Knickerbocker Group, reported that the application was tabled in December and said a tree survey has been done and is included in the meeting packet. Ms. Betts noted that a site walk was held with Landscape Architect Kerry Lewis to look at the north property line and a 30 foot wooded buffer has been added along the northerly border. The position of the road has been shifted slightly to address an abutter concern and another forested buffer was added to the southeast corner of the property. Ms. Betts indicated that the plan now has four distinct wooded buffer areas that will be put into the covenants and restrictions to remain in perpetuity. Ms. Betts said that prior to the purchase of the property, an abutter on the northwest side had inadvertently cleared some of the understory and the developer proposes additional plantings in this area once the development is in place. Ms. Betts said peer review comments regarding stormwater management have been addressed.

Ms. Betts said positive feedback was received from Inland Fisheries and Wildlife and the ability to serve letters were received from Portland Water District and the Cumberland sewer district.

Mr. Saunders asked if there is anything in the plans that denotes what is or is not allowed in the forested buffer. Ms. Betts replied yes, and she read portions of the covenants and restrictions relating to the buffer.

Mr. Auclair noted that information regarding stormwater was not provided for lot A at the prior meeting and asked if info regarding lot A has been provided. Ms. Betts replied yes and said this was provided to Ms. Nixon earlier today and she asked Ms. Nixon to share it with the Caswells to address one of their concerns. Ms. Betts reported that the result of the stormwater study for lot A shows there will be a reduction in the amount of stormwater leaving lot A as compared to today.

Chair Bingham opened the public hearing.

Bob Vail, Town Councilor, noted that his comments may be apropos as it seems the Caswells concerns have been addressed. Councilor Vail referred to preconstruction and postconstruction stormwater flows and said that postconstruction flows should not be greater than preconstruction flows. Councilor Vail said a developer may add a retention pond to control the rate of stormwater flows so they flows are not greater than the preconstruction but this could create an issue if the duration of the flows are greater. Mr. Vail said he thinks the Caswells raise a valid point about the stormwater flows across their property.

Chris Nolan, southeast abutter, thanked the Knickerbocker Group for the additional buffer on his side and for addressing his water flow concern.

Chair Bingham read a letter from Benson & Diana Caswell regarding the development.

Dear Ms. Nixon: We are direct abutters to the proposed subdivision. I would like to first thank the Knickerbocker Group for listening to the several abutters at the December meeting and responding to their concerns. Two issues have not been completely addressed. #2 Forested Buffers: Three additional forested buffers have been added to the plan. "Lot A North Forested Buffer" is outside the sight and sound lines of our home at 19 Conifer Ridge. It appears from the submitted plan documentation (page 212 of the packet) that a western forested buffer zone could be created within the boundary limit of tree cleaning and disturbance. However, just a name does not create any privacy. Can the same provisions of the "Forested Buffer" in the Deed be included in a recorded easement of the three (four?) additional forested buffers that run with the land? #3 Stormwater Management: The Revised Stormwater Quantity/Quality Narrative, 104 Foreside Road, Cumberland, ME dated January 22, 2023, by SJR Engineering (page 41 of the revised packet from the Knickerbocker Group dated January 31, 2023) contains a materially incorrect assumption and material omission. The application contains neither an analysis nor a stormwater management plan for the proposed Lot A. The application only submits a stormwater management plan for proposed Lot B. The Narrative contains the following paragraph: The project has two watershed areas within the parcel to be split. We have assumed Lot A was approved as part of the original subdivision requirements and has its own approved watershed area. We have performed analysis on Lot B development including the access road to the two lots. We have designated the Design Point of interest on the plan as being the northeast corner of parcel B. Stormwater from this design point downslope flows to a 15" culvert crossing Route 88 onto land of others. Proposed Lot A (1.64 acres) was not approved as part of the original subdivision requirements and does not have its own approved watershed area. Proposed Lot A did not exist nor was there any mention of it when the plan to create the 3.47-acre Lot 10A was approved by the Planning Board on October 13, 1977 as supplemented July 11, 1978 (pages 206 and 207 of the packet). Lot 10A (formally lot 4) was created in October 1977 when the Planning Board approved the Subdivision Plan of Land for Elizabeth Johnson. Please note that a substantial portion (appears to be about 50%) of Lot A slopes downward toward our property (pages 210 and 211 of the packet). We already experience serious water runoff and our land to the east of the berm floods after a substantial rain. As indicated on pages 213 and 214 of the packet, the plan includes substantially raising the topography of the house, driveway, and surrounding landscape of proposed Lot A. The slope of the proposed Lot A towards our property is also planned to increase. We are very concerned about the increased water runoff and would like the Planning Board to review a stormwater management plan for Lot A. This letter has been written to express our thoughts on this matter while we are out of town, and we respectfully request that you share them with the Planning Board and include this letter in the minutes of tonight's meeting. Sincerely, Ben and Diana Caswell

Chair Bingham closed the public hearing.

Ms. Rardin asked if the increase in the buffer helps to manage stormwater. Ms. Betts replied that wooded buffers do help with stormwater management. Mr. Saunders added that this is a current condition and is not improving the stormwater but is preventing it from being worse by making sure the buffer remains.

Ms. Sawchuck asked for clarification regarding the Caswells concern with raising the topography of the house, driveway and surrounding landscape for lot A. Ms. Betts said this refers to the grading plan. The design is for stormwater to primarily flow westerly toward a wetland area. Ms. Sawchuck asked for confirmation that the design will not create a problem for the neighbors and Ms. Betts agreed.

Mr. Saunders referred to the buffer and asked if amended subdivisions should meet current subdivision standards. Ms. Nixon replied that the Town Attorney has previously advised that with an existing subdivision, all the Board can look at with an amendment are the specific changes being proposed.

Mr. Saunders noted that when the Board approves a subdivision plan with a perimeter buffer, the buffer is not recorded on the deed but is shown on the subdivision plan. Mr. Saunders stated that the subdivision plan is a legal instrument that can't be changed without coming back to the Planning Board. Ms. Nixon agreed. Mr. Saunders said the

Board does not require that language be put into deeds on a regular basis. Ms. Nixon agreed.

Mr. Turner asked about the Route One side and asked if there are any flowage issues in this area. Mr. Auclair noted that the Town Engineer has reviewed the proposal and has expressed no issues.

Mr. Saunders moved that based on the unique properties of the project and the property, the Board waives the requirement for a hydrogeological study, seconded by Mr. Auclair and **VOTED, 6 years – unanimous, motion carries.**

Mr. Saunders moved that based on the unique nature of the property and the project, the Board waives the requirement for a high intensity soil survey, seconded by Mr. Auclair and **VOTED, 6 years – unanimous, motion carries.**

Chair Bingham said the DEP request is pending. Ms. Nixon agreed. Ms. Betts said a DEP Site Location of Development Permit is not required due to the size and she has confirmed this with DEP. Ms. Nixon asked Ms. Betts to send her confirmation of this. Chair Bingham asked if the letter regarding historic preservation is still pending and Ms. Nixon replied yes.

Chair Bingham reviewed the prepared findings of fact.

Mr. Saunders moved to adopt the findings of fact as amended, seconded by Mr. Auclair and **VOTED, 6 years – 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 or streams on the site. The project will be served by public sewer. 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;

A capacity to serve letter is on file from the 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 report dated 1/22/23 was prepared by SJR Engineering, Inc. 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.

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

The additional lot will not create congestion or unsafe conditions. An MDOT Entrance Permit has been applied for the receipt of which is a condition of approval. Based on the information provided, and with the proposed condition of approval, 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;

A capacity to serve letter is on file from the Portland Water District. A capacity to serve letter from the Town Manager is also on file. Based on the information provided, the Board finds that the standards of this section have been.

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 additional house lot will not cause a burden on the municipality's ability to dispose of solid waste. 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;

A letter from the Maine Department of Inland Fisheries and Wildlife is on file. There are no obvious historic sites, though a letter from the Maine Historic Preservation Commission is a proposed condition of approval. Based on the information provided, and with the proposed condition of approval, 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 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: A letter dated November 29, 2022, from Bangor Savings Bank states that Cove Development Company, LLC has cash reserves in excess of \$350,000 that will cover the costs of the public improvements.

Technical capacity is evidenced by the use of professional technical consultants as outlined in the submission letter dated November 29, 2022.

Based on the information provided, 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 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 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 additional house lot 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;

The current large lot is an approved buildable lot from a previous subdivision. The new lot will divert stormwater runoff from the road and driveway to a proposed soil filter pond adjacent to Route 88. The soil filter pond acts as both stormwater quantity detention and stormwater quality enhancement as it infiltrates through the soil filter. The stormwater report prepared by Steve Roberge, P.E. was 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.

A natural resources survey dated 6/14/22 was included in the application packet. This survey states that two wetland areas were identified which do not meet the minimum criteria for designation as a Wetland of Special Significance under the Maine NRPA. All development will be outside of the wetland areas. 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.

Design and Performance Standards

(1) Route 1 Design Standards. N/A

(2) Route 1 Design Standards. N/A

(3) Town Center District Design and Performance Standards. N/A

(4) Village Mixed Use Performance Standards. N/A

The Board reviewed the proposed conditions of approval and recommended changes.

Mr. Saunders moved to approve an amendment to the Elizabeth H. Johnson Subdivision to split lot four, located at 104 Foreside Rd., Tax Assessor map U04, lot 10A, into two lots subject to the expiration of approval, the standard condition of approval and the eleven (11) proposed conditions of approval, seconded by Mr. Auclair 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.

PROPOSED CONDITIONS OF APPROVAL:

1. A preconstruction conference is required prior to the start of construction.
2. A copy of the MDOT Entrance Permit is required prior to the preconstruction conference.
3. The amended SLODA permit, if required, shall be submitted to the Town Planner prior to the preconstruction conference.
4. A performance guarantee in an amount and form acceptable to the Town Manager will be required prior to the preconstruction conference.
5. All clearing limits shall be flagged and approved by the Town Engineer prior to the preconstruction conference.
6. A copy of the Maine Historic Preservation approval letter shall be submitted prior to the preconstruction conference.
7. A blasting permit, if required, shall be obtained from the Code Enforcement Officer.
8. All legal and technical review fees shall be paid to the Town prior to the preconstruction conference.
9. An electronic copy of the as-built plans shall be submitted to the Town Planner prior to the release of any remaining inspection fees.
10. A copy of the recorded plan will be provided to the Town within 90 days of Planning Board approval.
11. If the Applicant proposes to revise the sewer service connection to the existing sewer stub identified by Town Staff, final design drawings must be submitted to the Town Engineer for review and approval prior to the preconstruction conference.

2. TABLED Public Hearing: ~~Recommendation to Town Council on proposed amendments to the Cumberland Code of Ordinances Chapter 315-Zoning for various changes relating to density and to Chapter 315-Zoning, section 45-Conversions.~~ This item was tabled prior to the meeting date and was not heard.

3. TABLED - Public Hearing: ~~Recommendation to Town Council on proposed amendments to the Route One Design Standards.~~ This item was tabled prior to the start of the meeting and was not heard.

H. Administrative Matters/New Business:

Ms. Sawchuck asked about Town Council discussions regarding affordable housing. Mr. Shane reported that the Town is looking to put an affordable housing district into the center of town. The Town Council will review this at their second meeting in March. The district will be on the existing 100+ acre parcel that the town office sits on and will be approximately where the ballfields currently are. There could possibly be two buildings with fifty-five units each, one senior and one affordable housing. Mr. Shane noted that the Town Council has not given any direction on this yet. Mr. Shane said the TIF (tax increment financing district) Committee has looked at this. Adding an affordable housing district could allow for six to ten units of short term rentals for people in transition and to help with regional housing crises. The development could be paid for with monies from the TIF District and this is the discussion the Town Council will have next month.

Mr. Shane referred to the recommendation of the Housing Task Force to see the Town build 110 units of affordable housing. The Planning Board has already approved 55

units. Mr. Shane said the project in the center of town would be a huge help. Mr. Shane said the Town is working with a developer that wants to do a project in west of town. The developer is very interested to see what can be done for affordable housing ownership and what deed restrictions and covenants could be in place to allow for this.

Mr. Turner asked if there has been any conversation over setting caps for secondary sales of affordable properties. Mr. Shane said they are trying to develop starter homes at the West Cumberland project to have a smaller footprint and deed restrictions and/or covenants to restrict expansion and to help keep them affordable.

Ms. Rardin asked about progress on improvements to make the Town Center more walkable such as crosswalks and signage. Mr. Shane reported that a project will go out to bid at the end of March that will include crosswalks with safety islands on both ends, better warning signage in denser areas and sidewalk improvements on Tuttle and Blanchard Rd.

Mr. Saunders said he will be away during the April 18th meeting. Mr. Bingham said he will be absent for the April meeting also. Ms. Rardin said she will not be here for the March meeting.

I. Adjournment: Mr. Auclair moved to adjourn the meeting at 7:58 pm, seconded by Mr. Turner and **VOTED, 6 yeas – unanimous, motion carries.**

A TRUE COPY ATTEST:

Peter Bingham, Planning Board Chair

Christina Silberman, Administrative Asst.