

**Town of Cumberland
Board of Adjustment and Appeals
Minutes of Meeting
Thursday, November 13, 2008**

Present: R. Scott Wyman, Chair, Adrian Kendall, Vice-Chair, Andrew Black, Matt Manahan, Ron Copp, Ed Kirstein, Mike Martin

Staff: William Longley, Code Enforcement Officer, Pam Bosarge, Clerk

The meeting was called to order at 7:05 p.m.

I. Hearings and Presentations:

1. Special Exception: Angelica Braestrup requests a special exception for a private kennel at 31 Middle Road, Tax Assessor Map R01, Lot 52C in the Rural Residential 2 (RR2) district.

Mr. Wyman welcomed the applicants and gave an overview of the rules of procedure for the meeting. Mr. Wyman stated there would be opportunity for public testimony.

Mr. Longley stated this application is a result of a property inspection. All of the dogs are licensed and Ms. Braestrup was unaware of the zoning requirement. The Zoning Ordinance defines ownership of 4 or more dogs as a private kennel. And the zoning requirements of Rural Residential 2 (Section 204.1.2.2.2) require a special exception for a private kennel. *Section 104.110 Private Kennel: Any premises used for the harboring of more than three dogs under one ownership that are more than 6 months old. [Amended, effective 1/25/99].*

Ms. Braestrup, applicant stated she moved in August from Maryland; she takes in rescue dogs; which due to nervous or shy issues are not adoptable; these dogs are not aggressive. She has been giving homes to dogs for over three years prior to moving to Maine. At one time she had over sixty dogs that were placed at her own expense. These dogs are not kenneled and live with her in the house. Ms. Braestrup stated she has nine dogs, three of the nine are old dogs with health conditions, two have severe heart problems; one is missing connections between the hip bones. Five of the dogs have panic attacks, and one a whip-it is a puppy mill dog. She has a large fenced in area, but the dogs stay mostly in the house with her, and five of the nine dogs are prone to panic attacks and stay in the mudroom when she is away. Ms. Braestrup stated she does not intend to have any more dogs; all of these dogs are spayed or neutered and up to date on all vaccinations. She has contacted Main Line Fence to have a solid fence along the road so the dogs cannot bark at pedestrians.

Mr. Wyman asked Mr. Longley if there was a maximum number of dogs allowed.

Mr. Longley stated no, the ordinance states anything more than three dogs in one ownership is a private kennel. There are several other situations in Town where people have more than three dogs. The State definition of a private kennel has changed to five dogs.

Mr. Manahan asked how many other situations are there in Town where owners have more than three dogs.

Mr. Longley stated 18 or 19 other similar situations.

Ms. Braestrup stated she wouldn't have chosen to have 9-dogs, they were not adopted out.

Mr. Wyman asked if there were any concerns from the neighbors.

Ms. Braestrup stated the first weekend she left on Sunday morning and one of the dogs barked for several hours; this only happened once.

Mr. Wyman asked if the dogs were loose.

Ms. Braestrup stated no.

Mr. Black asked Ms. Braestrup if she was comfortable with a limit of 9 dogs.

Ms. Braestrup stated yes, these are house dogs.

Mr. Black asked about the location of the fence in relation to the closest neighbor.

Ms. Braestrup reviewed the fence location stating the kennel is a long way from the closest neighbor.

Mr. Black asked where the dogs have panic attacks.

Ms. Braestrup stated in the house when they are left alone; these are a result of stress similar to people.

Mr. Black asked about disposal of feces.

Ms. Braestrup stated it is raked up and disposed of in a dumpster similar to kitty litter.

Mr. Wyman asked for testimony from the public that was in favor of the application.

Ms. Sandy Ebaugh of 27 Middle Road, stated she gives full support of the request, she has seldom heard barking; Ms. Braestrup is a very responsible pet owner.

Mr. Wyman referenced the letter of support in the file from Ms. Ebaugh from the tabled October 8, 2008 meeting.

Ms. Brita Bonechi of 34 Longwoods Road, Ms. Braestrup's sister stated one of the first things they did when moving to Maine was to come to check on licensing the dogs. They were told there could be up to 10 dogs licensed to one owner. Her sister has been housing dogs for adoption in Maryland for three years. Ms. Bonechi was in support of the application.

Mr. Wyman asked for testimony that was neither for nor against but neutral.

Mr. Harland Storey stated he lives across from his nephew's kennel "Charlie's Friends" who IS restricted to 8 dogs. Jim Storey spent over \$100,000 dollars for a kennel with couches and TV; and was fined by the Board for having too many dogs. He didn't want to tell people what to do, but what is fair for one should be fair for all. His property is approximately 250' from the Braestrups fence and he hasn't heard dogs, and has no objection. There was a complaint from a

dog at Charlie's Friends that barked all night, a kennel is a kennel and a dog is a dog and all rules should apply the same.

Mr. Wyman stated potentially the difference is a boarding kennel a fee for service kennel and ownership of more than three dogs which the Ordinance defines as a kennel.

The Board briefly discussed the difference between the two types of kennels.

Ms. Ebaugh stated she had talked with her neighbor Ron Greenburg who was not present but he too was in support of the application.

Mr. Wyman asked for testimony that was in opposition, there was none. The public portion of the meeting was closed.

Mr. Manahan asked if the property was located in the Rural Residential 2 district.

Mr. Longley stated yes.

Mr. Manahan stated a special exception is allowed by right as long as there is no adverse impact on the neighbors.

The Board then reviewed the Special Exception standards, Section 603.2.3 with the following findings:

.1 The proposed use will not create hazards to vehicular or pedestrian traffic on the roads and sidewalks serving the proposed use as determined by the size and condition of such roads and sidewalks, lighting, drainage, intensity of use by both pedestrians and vehicles and the visibility afforded to pedestrians and the operators of motor vehicles;
The dogs will be in a fenced yard and will not create hazards to vehicular or pedestrian traffic.
The Board found this requirement to be satisfied.

.2 The proposed use will not cause water pollution, sedimentation, erosion, contaminate any water supply nor reduce the capacity of the land to hold water so that a dangerous, aesthetically unpleasant, or unhealthy condition may result;
The private kennel will not cause water pollution, sedimentation, erosion, or contaminate any water supply; the dog waste will be raked and disposed.
The Board found this requirement to be satisfied.

.3 The proposed use will not create unhealthful conditions because of smoke, dust, or other airborne contaminants;
The use will not create unhealthful conditions due to smoke, dust, or airborne contaminants.
The Board found this requirement to be satisfied.

.4 The proposed use will be compatible with the uses that are adjacent to and neighboring the proposed location, as measured in terms of its physical size, intensity of use, visual impact, and proximity to other structures and the scale and bulk of any new structures for the proposed use shall be compatible with structures existing or permitted to be constructed on neighboring properties;
Middle Road is a rural area of Town and the kennel will be compatible with neighboring properties.
The Board found this requirement to be satisfied.

.5 The proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard or restrict access of light and air to neighboring properties;

The dogs will reside in the residence with the owner and will not create a nuisance to neighboring properties.

The Board found this requirement to be satisfied.

.6 The proposed location for the use has no peculiar physical characteristics due to its size, shape, topography, or soils which will create or aggravate adverse environmental impacts on surrounding properties;

All dog waste will be raked and disposed in a dumpster and will have no environmental impact on surrounding properties.

The Board found this requirement to be satisfied.

.7 The proposed use has no unusual characteristics atypical of the generic use which proposed use will depreciate the economic value of surrounding properties;

The dogs will reside in the house except when being exercised in the fenced yard, and will not affect the economic value of surrounding properties.

The Board found this requirement to be satisfied.

.8 If located in a shoreland zone, the proposed use (i) will not result in damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat; (ii) will conserve shoreland vegetation; (iii) will conserve visual points of access to waters as viewed from public facilities; (iv) will conserve actual points of access to waters; (v) will conserve natural beauty and (vi) will avoid problems associated with flood plain development and use.

[Amended, effective 12/2/86]

The Board determined the property is not in a shoreland zone.

In addition, Section 603.2.7 was reviewed with the following findings.

In addition to the standards contained in Section 603.2.3, all special exceptions must conform with the performance standards set forth herein. No use already established on the date of adoption of this ordinance shall be so altered or modified as to conflict with or, if already in conflict with, to further conflict with these performance standards.

.1 The volume of sound, measured by a sound level meter and frequency weighting network (manufactured according the standards prescribed by the American Standards Association), inherently and recurrently generated shall not exceed a maximum of 60 decibels at lot boundaries, excepting air raid sirens and similar warning devices;

There is no excessive barking of the dogs, they are in the house except when being exercised in a fenced in yard. The dogs will not generate noise to exceed a maximum of 60 decibels at lot boundaries.

The Board found this requirement to be satisfied.

.2 Vibration inherently and recurrently generated shall not exceed a peak particle velocity of .01 inches per second at lot boundaries;

There is no excessive barking of the dogs, they are in the house except when being exercised in a fenced in yard. The dogs will not cause any vibration.

The Board found this requirement to be satisfied.

.3 No materials or wastes shall be deposited on any lot in such form or manner that they may be transferred beyond the lot boundaries by regularly recurring natural causes or forces, and all materials which cause fumes or dust, constitute a fire hazard, or are edible or otherwise attractive to rodents or insects if stored out-of-doors shall be in closed containers; Any waste products from the dogs will be raked and disposed in a manner similar to kitty litter.
The Board found this requirement to be satisfied.

.4 The emission of noxious, odorous matter across lot boundaries in such quantities as to be offensive to persons of ordinary sensibilities is prohibited; and
There will be no noxious, odorous matter across lot boundaries to be offensive.
The Board found this requirement to be satisfied.

.5 No discharge into any private sewage disposal system, or stream or into the ground of any materials in such nature or at such temperature as to contaminate any water supply or otherwise cause the emission of dangerous or unhealthful elements is permitted, and no accumulation of solid waste conducive to the breeding of rodents or insects shall be allowed. [Amended, effective 12/2/86]
The dog waste will be raked and disposed in a dumpster and will not discharge into any private sewage disposal system, stream or into the ground materials to contaminate any water supply.
The Board found this requirement to be satisfied.

Mr. Manahan moved to grant a special exception for a private kennel at 31 Middle Road, Tax Assessor Map R01, Lot 52C in the Rural Residential 2 (RR2) district. The approval is limited to no more than nine (9) dogs owned and licensed by the owner Angelica Braestrup.

Mr. Black seconded.

VOTE: Unanimous

Discussion on the motion:

Mr. Black stated it was important to note why he was in favor of nine (9) dogs in one residence.

1. The size of the lot
2. The dogs will be kept in a fenced enclosure.
3. Testimony that the dogs do not leave the property.
4. The dog waste will be raked and disposed.
5. There are no neighbors against the request.

2. Special Exception: The Congregational Church in Cumberland requests a special exception for the Main Street Children's Center - Day Care Center / Nursery School at 282 Main Street, Tax Assessor Map U11, Lot 47 in the Medium Density Residential (MDR) district, Representative Susan Novak.

Mr. Longley presented background information as follows: For the past twenty years the facility has been used as a school by Head Start (PROP) or Building Blocks, currently there is only one day care in operation the Cumberland Community Nursery School.

Mr. Manahan asked if there was going to be a new owner and was a special exception required.

Mr. Longley stated this is a request for the Church to run the Children's Center; previously the Church has been the landlord.

Ms. Novak, Applicant stated she has been the Church bookkeeper / manager for the last 3 ½ years. The Church has never owned and operated a daycare, it has been the landlord. This request is for the Church to own and operate the daycare / nursery school. When PROP lost its funding, Building Blocks rented its space. Building Blocks has closed; the Cumberland Community Nursery School still operates in the right side of the building. The Church hopes to open its Children's Resource Center in January. The Church is in the process of receiving its State licensing.

Mr. Wyman asked if the daycare would be run by a licensed provider.

Ms. Novak answered yes, the State Licensure would be using her degree, she would be the Director.

Mr. Wyman asked the maximum number of children.

Ms. Novak stated based on the lot size and facility the State would allow up to 48 children.

Mr. Longley stated the Church would be going to the Planning Board for Site Plan approval on Tuesday, November 18. The Medium Density Residential district only allows 20-children.

Mr. Wyman asked for comments in favor of the application. There were none. He asked for comments that were neither for nor against but neutral; there were none. He asked for testimony that was in opposition of the application. There were none. The public portion of the meeting was closed.

Mr. Black asked how many children the Church needed.

Ms. Novak stated she would like to have approval of up to 48 children the same as State approval.

Mr. Black asked the hours of operation.

Ms. Novak stated they will offer a core development program from 9 a.m. - 12 noon with an option to attend extended hours beginning at 7:30 a.m. and from 12:00 p.m. to 5:30 p.m.

Mr. Black asked about traffic.

Ms. Novak stated the drop off times will be 7:30 - 8:00 a.m. and again at 1:00 p.m. - 5:30 p.m. a variety of pick ups will take place.

Mr. Black asked where the students would come from.

Ms. Novak stated the nursery school would be open to the community and surrounding communities.

Mr. Manahan stated the Ordinance limits daycare / nursery schools to 20 students, and does not have a definition for a Children's Center.

Mr. Longley stated he had met briefly with Ms. Novak and reviewed the files; Ms. Novak counseled with Carla Nixon the Town Planner and didn't discuss the number of children.

The Board discussed Section 204.3.2.10 which limits day care centers and nursery schools to no more than 20 children, subject to the provisions of Section 408A and Site Plan Review.

Mr. Martin asked the distance of the nearest abutter to the play area.

Ms. Novak stated approximately 25 to 30 feet.

Mr. Manahan asked if the Children's Center would fit the definition of a private school.

The Board reviewed the definitions in **Section 104.127 School:** *A public or private kindergarten, elementary or secondary school, approved as such by the State of Maine, including accessory uses thereto, and providing instructional services to more than ten students;* and **Section .104.128 School, Commercial:** *Any facility providing instructional services which is not included in the above definition with the exception of day-care or nursery schools.*

The Board discussed whether the use met the definition of a private school, and determined without a new application and public notice the application could not be considered a school.

The Board asked Ms. Novak if she wanted to change her application and come back with a proposal different than a daycare.

Ms. Novak chose to continue as a daycare / nursery school with a limit of 20 children.

The Board reviewed the standards of Section 408A.2 with the following findings:

408A.2 Standards for Day Care Centers and Nursery Schools:

In addition to state requirements and the requirements of any other ordinance, including the special exception and site plan review ordinances, the following standards shall apply to the review of day care centers and nursery schools:

- .1 No Day Care Center or Nursery School shall be located on a lot less than 24,000 square feet in area.

The Church lot size is 66, 210+ -square feet.

The Board found this requirement to be satisfied.

- .2 Day Care Centers and Nursery Schools shall have at least 1,000 square feet of lot area per child received into the home, including the operator's own children under 16 years of age.

The Church has adequate square footage of play area.

The Board found this requirement to be satisfied.

- .3 Day Care Centers and Nursery Schools shall be subject to the provisions of Sec. 7.15 -- Sewage Disposal -- of the Cumberland Subdivision Ordinance. At a minimum, the applicant must present the approval of the Town's local plumbing inspector that the proposed Day Care Center or Nursery School's sewage disposal system can accommodate the proposed use.

The applicant supplied a letter stating the system adequately handles the needs for the church parishioners, and there has been a daycare in the past. The system is functioning.

The Board found this requirement to be satisfied.

- .4 There shall be a fifteen-foot setback for outdoor play areas in side and rear yards, which set-back shall be enforced by fencing and/or plantings. Outdoor play areas shall not be permitted in front yards or yards adjacent to a street.

As a condition of approval the applicant will provide evidence that the fence is in conformance with the 15' setback requirement.

The Board found this requirement to be satisfied.

- .5 There shall be one (1) off-street parking space for each employee and volunteer worker not living at the site, and the parking area shall be designed to provide a safe location for vehicular ingress and egress and for the loading and unloading of children.

The Church parking lot is adequate for each employee's parking; and the Planning Board will review a plan for a new entrance and parking improvements.

The Board found this requirement to be satisfied.

- .6 The Planning Board and/or the Board of Adjustment and Appeals may attach additional conditions directly related to screening and buffering, hours of operation, vehicular access restrictions, off-street parking, traffic volume, wastewater disposal, and barriers and other safety devices. [Sec. 408A enacted effective 12/13/89]

The daycare will be reviewed by the Planning Board for compliance with Site Plan Review standards which include buffering.

The Board found this requirement to be satisfied.

The Board then reviewed the Special Exception standards, Section 603.2.3 with the following findings:

- .1 The proposed use will not create hazards to vehicular or pedestrian traffic on the roads and sidewalks serving the proposed use as determined by the size and condition of such roads and sidewalks, lighting, drainage, intensity of use by both pedestrians and vehicles and the visibility afforded to pedestrians and the operators of motor vehicles;**
The proposed use will have adequate parking, lighting, and drainage and will not create a hazard to vehicular or pedestrian traffic.

The Board found this requirement to be satisfied.

- .2 The proposed use will not cause water pollution, sedimentation, erosion, contaminate any water supply nor reduce the capacity of the land to hold water so that a dangerous, aesthetically unpleasant, or unhealthy condition may result;**

The Board found this requirement to be satisfied.

- .3 The proposed use will not create unhealthful conditions because of smoke, dust, or other airborne contaminants;**

There will be no harmful conditions created by the use of the daycare.

The Board found this requirement to be satisfied.

- .4 The proposed use will be compatible with the uses that are adjacent to and neighboring the proposed location, as measured in terms of its physical size, intensity of use, visual impact, and proximity to other structures and the scale and bulk of any new**

structures for the proposed use shall be compatible with structures existing or permitted to be constructed on neighboring properties;

The property has been used as a daycare for twenty years and will be compatible with existing uses of the Church and neighborhood.

The Board found this requirement to be satisfied.

.5 The proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard or restrict access of light and air to neighboring properties;

The daycare / nursery school will not create a nuisance to neighboring properties because of odors, fumes, glare, and hours of operation or noise.

The Board found this requirement to be satisfied.

.6 The proposed location for the use has no peculiar physical characteristics due to its size, shape, topography, or soils which will create or aggravate adverse environmental impacts on surrounding properties;

The daycare / nursery school will operate indoors and use the existing fenced playground which will not create any peculiar physical characteristics to have adverse impacts on surrounding properties.

The Board found this requirement to be satisfied.

.7 The proposed use has no unusual characteristics atypical of the generic use which proposed use will depreciate the economic value of surrounding properties;

The daycare / nursery school will not have depreciate the economic value of surrounding properties.

The Board found this requirement to be satisfied.

.8 If located in a shoreland zone, the proposed use (i) will not result in damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat; (ii) will conserve shoreland vegetation; (iii) will conserve visual points of access to waters as viewed from public facilities; (iv) will conserve actual points of access to waters; (v) will conserve natural beauty and (vi) will avoid problems associated with flood plain development and use.

[Amended, effective 12/2/86]

The Board determined the property is not in a shoreland zone.

In addition, Section 603.2.7 was reviewed with the following findings.

In addition to the standards contained in Section 603.2.3, all special exceptions must conform with the performance standards set forth herein. No use already established on the date of adoption of this ordinance shall be so altered or modified as to conflict with or, if already in conflict with, to further conflict with these performance standards.

.1 The volume of sound, measured by a sound level meter and frequency weighting network (manufactured according the standards prescribed by the American Standards Association), inherently and recurrently generated shall not exceed a maximum of 60 decibels at lot boundaries, excepting air raid sirens and similar warning devices;

The daycare / nursery school use has existed and will not create noise exceeding a maximum of 60 decibels at lot boundaries.

The Board found this requirement to be satisfied.

.2 Vibration inherently and recurrently generated shall not exceed a peak particle velocity of .01 inches per second at lot boundaries;

There will be no vibration to exceed a peak particle velocity of .01 inches per second at lot boundaries.

The Board found this requirement to be satisfied.

.3 No materials or wastes shall be deposited on any lot in such form or manner that they may be transferred beyond the lot boundaries by regularly recurring natural causes or forces, and all materials which cause fumes or dust, constitute a fire hazard, or are edible or otherwise attractive to rodents or insects if stored out-of-doors shall be in closed containers;

The daycare / nursery school will not have any waste stored out of doors that would attract rodents or insects.

The Board found this requirement to be satisfied.

.4 The emission of noxious, odorous matter across lot boundaries in such quantities as to be offensive to persons of ordinary sensibilities is prohibited; and

The daycare / nursery school will not have noxious, odorous that would be offensive.

The Board found this requirement to be satisfied.

.5 No discharge into any private sewage disposal system, or stream or into the ground of any materials in such nature or at such temperature as to contaminate any water supply or otherwise cause the emission of dangerous or unhealthful elements is permitted, and no accumulation of solid waste conducive to the breeding of rodents or insects shall be allowed.

[Amended, effective 12/2/86]

The Church has an adequate functioning septic system; there will be no sewage disposal into a stream or onto the grounds to contaminate any water supply.

The Board found this requirement to be satisfied.

Mr. Manahan moved to grant to the Congregational Church in Cumberland a special exception for the Main Street Children's Center a daycare / nursery school at 282 Main Street, with the conditions that the daycare / nursery school is limited to twenty (20) children per Ordinance; that the fencing is in compliance with the 15' setback; with the allowance of a sign as described in the application; Tax Assessor Map U11, Lots 47 & 48 in the MDR district.

Mr. Black seconded.

VOTE: Unanimous

3. Special Exception: The Town of Cumberland requests a special exception for a Municipal Use for a salt / sand shed at the public works garage property at 23 Drowne Road, Tax Assessor R03, Lot 54 in the Rural Residential One (RR1) district, Mark Bergeron, P.E. Sevee & Maher Engineers, Representative.

Mr. Bergeron presented background information as follows: The sand / salt shed was approved and installed as a temporary structure in 2004. Since the shed is being used as a permanent structure, the Town wishes to obtain special exception approval from the Board, and Site Plan Review approval from the Planning Board. The parcel is located in the RR1 district, where municipal uses and buildings are subject to special exception approval from the Board and Site Plan Review approval from the Planning Board.

No impervious surfaces or buildings will be constructed as part of this project. As described in more detail on the enclosed plans, some minor grading, ditching, and ditch stabilization will be performed to correct some drainage and erosion problems around the site.

The monitoring well on the property shows slightly elevated chloride / sodium levels as a result of some run-off, they suggest sweeping / vacuuming and pushing the salt / sand further into the building. The nearest residence is 700 to 1,000 feet away, the project will ask for Planning Board approval in December.

Mr. Wyman stated this appears to be an improvement with no adverse impact.

Mr. Manahan asked about the DEP / Sand Salt regulations that all storage be covered by X date.

Mr. Bergeron stated the DEP has approved the project. There was a pre-existing salt shed and this will bring it into compliance.

Mr. Manahan agreed this would bring a pre-existing condition into compliance.

Mr. Black asked if there were any changes from the letter submitted October 27, 2008.

Mr. Bergeron stated there will be two lights at the end of Drowne Road, on a pole near the shed which will be on a timer or switch at public works. There will be no utilities to the shed.

Mr. Wyman asked for testimony from the public in favor of the application.

Mr. Bill Shane, Town Manager presented a brief history of the project. The salt shed was at the top of the hill and in the fall of 2004 the building collapsed. It was replaced as a temporary structure with the current facility. The building has a capacity for 300 tons of salt, in between storms the side walk plow / sweeper cleans up any spill.

Mr. Wyman asked for testimony that was neither for nor opposed but neutral. There was none. Mr. Wyman asked for testimony that was in opposition. There was none. The public portion of the meeting was closed.

Mr. Manahan moved to dispense with reading of the special exception standards as they were addressed in the written application.

Mr. Martin seconded.

VOTE: Unanimous

The Special Exception Standard with findings as submitted by the applicant:

.1 The proposed use will not create hazards to vehicular or pedestrian traffic on the roads and sidewalks serving the proposed use as determined by the size and condition of such roads and sidewalks, lighting, drainage, intensity of use by both pedestrians and vehicles and the visibility afforded to pedestrians and the operators of motor vehicles;
The sand/salt shed will not create any hazards to vehicular or pedestrian traffic on Drowne Road since it is in a fenced area not accessible to the general public. The shed is mostly limited to use during winter months, with some hauling of materials in the fall. Drowne Road is sufficient to handle the truck traffic using the shed. The shed is lit by two lights on existing utility poles at the top and bottom of the driveway. The power line stops at the last utility pole, and there are no utilities serving the shed. The shed is not visible from the end of Drowne Road because the shed is located approximately 20 feet below the elevation of the end of the road.
The Board found this requirement to be satisfied.

.2 The proposed use will not cause water pollution, sedimentation, erosion, contaminate any water supply nor reduce the capacity of the land to hold water so that a dangerous, aesthetically unpleasent, or unhealthy condition may result;

The purpose of the sand/salt shed is to eliminate the loss of salt dissolved and washed away by precipitation, and to keep the salt dry for easier loading and spreading. Inside storage also reduces the possibility of contaminating streams, wells or groundwater with salt runoff. The pavement around the shed provides an impervious surface to load and mix the salt with sand.

The properties near the sand/salt shed property are served by public water and sewer utilities.

According to Bill Landis, Cumberland's Public Services Director, salt is delivered to the shed in the fall for use during the winter. An amount of salt to handle one storm event is usually kept in the shed at all times, with a peak amount of up to 200 cubic yards stored in the shed at any one time. A loader mixes the salt with the nearby sand pile and loads the mix directly into trucks as needed. Most road salting operations occur in the early morning (4 a.m.) to prepare roads for the morning commuters. Any material left on the ground is scraped back into the shed to shield it from the elements. Annually, the floor under the salt pile is cleaned and treated with a sealant to reduce salt infiltration into the ground.

As part of the closed municipal landfill east of the shed, SME monitors for the Town of Cumberland two groundwater wells near the landfill as part of the closure permit. Monitoring well B-3A, located south of the shed, has high levels of chlorides that points to runoff from the sand/salt shed. As shown on Drawing C-101, grading and drainage improvements will be made around the shed. A riprap ditch on the east side of the driveway will be constructed to stabilize that area. Riprap aprons will be constructed at two existing culverts. A riprap pad and swale will be relocated near the shed to divert runoff away from the monitoring well. SME believes that these modifications will improve the drainage patterns around the shed and reduce salt runoff. The Board found this requirement to be satisfied.

.3 The proposed use will not create unhealthful conditions because of smoke, dust, or other airborne contaminants;

The sand/salt shed operation does not produce any significant airborne contaminants. The Board found this requirement to be satisfied.

.4 The proposed use will be compatible with the uses that are adjacent to and neighboring the proposed location, as measured in terms of its physical size, intensity of use, visual impact, and proximity to other structures and the scale and bulk of any new structures for the proposed use shall be compatible with structures existing or permitted to be constructed on neighboring properties;

The sand/salt shed is an arched, fabric-covered structure approximately 42 feet wide by 63 feet long. See Appendix A for photographs of the sand/salt shed and the surrounding area. The peak of the roof is approximately 20 feet above the ground. The structure is compatible with the other public works buildings and structures in the area. The shed is not visible from the end of Drowne Road or Amanda's Way. The sand/salt shed needs to be near the public works garage in order to facilitate efficient road salting operations.

The Board found this requirement to be satisfied.

.5 The proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard or restrict access of light and air to neighboring properties;

The shed is located over 750 feet from the nearest residence on Oak Street, and over 1,100 feet from the homes on Amanda's Way. No significant odors or fumes are generated by the shed's use. Any light glare from the light poles near the shed is essentially buffered by the existing wooded area near the shed. The only noise associated with the shed is the use of loaders and dump trucks being loaded with sand and salt. No vibrations or fire hazards are created by the sand/salt shed. Neighboring properties are not restricted to access of light and air as a result of the shed.

The Board found this requirement to be satisfied.

.6 The proposed location for the use has no peculiar physical characteristics due to its size, shape, topography, or soils which will create or aggravate adverse environmental impacts on surrounding properties;

The shed is located in an area that is unobtrusive to surrounding properties, by taking advantage of the natural topography of the site. The size and shape of the shed are comparable to the adjacent public works garage structures. As noted in Item .2 above, SME believes the drainage modifications and good housekeeping measures will reduce the environmental impacts of the shed. The Town owns approximately 154 acres of land adjacent to the shed which provides additional buffering to neighboring properties.

The Board found this requirement to be satisfied.

.7 The proposed use has no unusual characteristics atypical of the generic use which proposed use will depreciate the economic value of surrounding properties;

The shed has been in operation for almost four years with no reported impact to the economic value of surrounding properties.

The Board found this requirement to be satisfied.

.8 If located in a shoreland zone, the proposed use (i) will not result in damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat; (ii) will conserve shoreland vegetation; (iii) will conserve visual points of access to waters as viewed from public facilities; (iv) will conserve actual points of access to waters; (v) will conserve natural beauty and (vi) will avoid problems associated with flood plain development and use.

[Amended, effective 12/2/86]

The site is not located in a Shoreland zone, so this standard does not apply.

The Board determined the property is not in a shoreland zone.

In addition, Section 603.2.7 was reviewed with the following findings.

In addition to the standards contained in Section 603.2.3, all special exceptions must conform with the performance standards set forth herein. No use already established on the date of adoption of this ordinance shall be so altered or modified as to conflict with or, if already in conflict with, to further conflict with these performance standards.

.1 The volume of sound, measured by a sound level meter and frequency weighting network (manufactured according the standards prescribed by the American Standards Association), inherently and recurrently generated shall not exceed a maximum of 60 decibels at lot boundaries, excepting air raid sirens and similar warning devices;

The only sounds associated with the sand/salt shed are the loaders and dump truck used to mix, load, and haul the sand/salt mixture. Use of the facility is generally limited to winter months and intermittent hauling of sand and salt materials to the site. As noted in previous paragraphs, the shed is located over 750 feet from the nearest residence and is situated in a low part of the land, which provides some noise buffering to adjacent properties.

The Board found this requirement to be satisfied.

.2 Vibration inherently and recurrently generated shall not exceed a peak particle velocity of .01 inches per second at lot boundaries;

No significant vibrations are generated by the use of the sand/salt shed.

The Board found this requirement to be satisfied.

.3 No materials or wastes shall be deposited on any lot in such form or manner that they may be transferred beyond the lot boundaries by regularly recurring natural causes or forces, and all materials which cause fumes or dust, constitute a fire hazard, or are edible or otherwise attractive to rodents or insects if stored out-of-doors shall be in closed containers;

The purpose of the sand/salt shed is to eliminate the loss of salt dissolved and washed away by precipitation, and to keep the salt dry for easier loading and spreading. Inside storage also reduces the possibility of contaminating streams, wells or groundwater with salt runoff. The pavement around the shed provides an impervious surface to load and mix the salt with sand. The sand pile outside the shed is contained near the existing slope. There are no flammable materials or wastes stored in or near the shed.

The Board found this requirement to be satisfied.

.4 The emission of noxious, odorous matter across lot boundaries in such quantities as to be offensive to persons of ordinary sensibilities is prohibited; and

There are no significant odors associated with the sand/salt shed.

The Board found this requirement to be satisfied.

.5 No discharge into any private sewage disposal system, or stream or into the ground of any materials in such nature or at such temperature as to contaminate any water supply or otherwise cause the emission of dangerous or unhealthful elements is permitted, and no accumulation of solid waste conducive to the breeding of rodents or insects shall be allowed. [Amended, effective 12/2/86]

There is no septic system associated with the sand/salt shed. The sand/salt shed provides shelter for the salt pile to reduce the amount of salt dissolved and washed away by precipitation. SME believes that with the proposed drainage modifications and the improved housekeeping measures, salt infiltration into the ground will be reduced. No solid waste is stored on the site.

The Board found this requirement to be satisfied.

Mr. Black moved to grant the special exception request for a salt / sand shed for a municipal use at the public works garage property at 23 Drowne Road, Tax Assessor Map R03, Lot 54 in the Rural Residential One (RR1) district. The special exception request is granted based on findings from testimony and the application stating evidence of the request meets the criteria of Sections 603.2.3 and 603.2.7 of the Zoning Ordinance.

Mr. Manahan seconded.

VOTE: Unanimous

II. Minutes - Minutes of April 10, 2008

Mr. Black moved to approve the minutes of April 10, 2008.

Mr. Manahan seconded.

VOTE: Unanimous

III. Adjournment:

Mr. Manahan moved to adjourn. Mr. Black seconded.

VOTE: Unanimous

The meeting was adjourned at 8:45 p. m.

A TRUE COPY ATTEST:

R. Scott Wyman, Board Chair

Pam Bosarge, Board Clerk