

**Town of Cumberland
Board of Adjustment and Appeals
Minutes of Meeting
Thursday, January 14, 2016**

I. Call to Order:

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

II. Roll Call:

Present: R. Scott Wyman, Chair, Andrew Black, Amanda Vigue, Christian Lewis, Matt Manahan, and Mike Martin

Absent: Ron Copp and Sally Pierce

Staff: Bill Shane, Town Manager

Mr. Wyman, chair welcomed applicants and public to the meeting and gave an overview of the rules of procedure for the meeting. Mr. Wyman stated the Board has a quorum to allow the Board to conduct business. There will be an opportunity for public testimony, in favor, negative, or on a neutral basis.

III. Hearings and Presentations:

Mr. Shane reviewed the agenda item as follows:

1. Special Exception: Normand Berube Builders, Inc. request a special exception to construct two (2) a single-family dwellings at 13 Gray Road (Route 100), Tax Assessor Map U15, Lot 9 in the Village Office Commercial II (VOCII) district.

Mr. Wyman introduced the representative for the applicant Paul Hollis and asked if he could give the Board an overview of the request.

Mr. Hollis presented a plan of the 1.98 acre parcel of land that was recorded in 1928. There are 8 individual lots with a railroad bed behind it which was acquired in 1945. As a result of the subdivision being created before subdivision law there were no requirements to go to the Planning Board with the division of the property. The lots were advertised residentially. A MDOT permit was received allowing only one entrance to the property. Dick Sweet observed the property and identified soils that would support 3-4 bedroom systems. Wetland flagging occurred prior to getting a permit for the parcel on the right. The builders will be applying for a fill permit of less than 4,300 square feet.

Mr. Martin asked for the square footage of each lot.

Mr. Hollis stated that one is 42,384 square feet and the other is 40,785 square feet, exceeding the acreage slightly. The frontage requirements of 75 feet are met with one being 196 feet and the other being 200 feet.

Mr. Black asked how the land is being used on the adjacent properties.

Mr. Hollis stated that they are all residential.

Mr. Wyman asked for testimony in favor of this application.

None

Mr. Wyman asked for testimony in opposition of this application.

None

Mr. Wyman asked for testimony on a neutral basis neither for nor against the petition, but on a neutral basis.

Mr. Shane presented information to the Board related to the VOC II and reviewed the following slides:

Mr. Shane stated that this zone (VOC II) was created with a committee that worked on recreating the Route 100 corridor. The VOC II zone showed was created to be a transitional zone as you approach the intersection of Blackstrap and Route 100 where the denser commercial zone is.

Mr. Wyman asked if the property to the left is commercial.

Mr. Shane stated that it's a seasonal business which is no longer active.

Mr. Manahan asked if there is any other non-residential property in that zone besides the Hart Shelter.

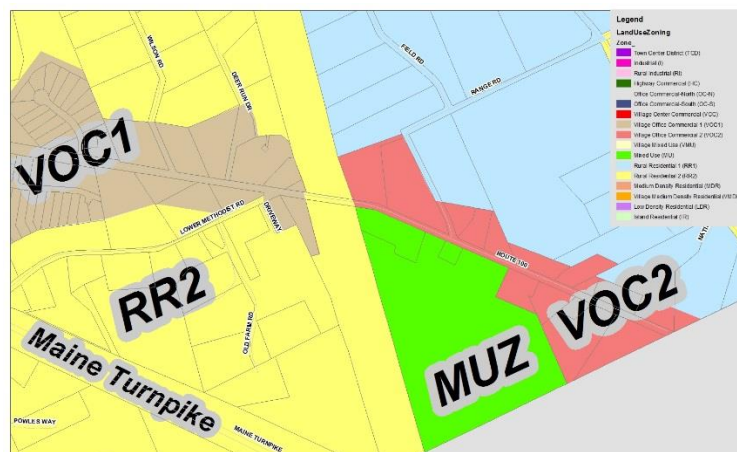
Mr. Shane stated that there is not.

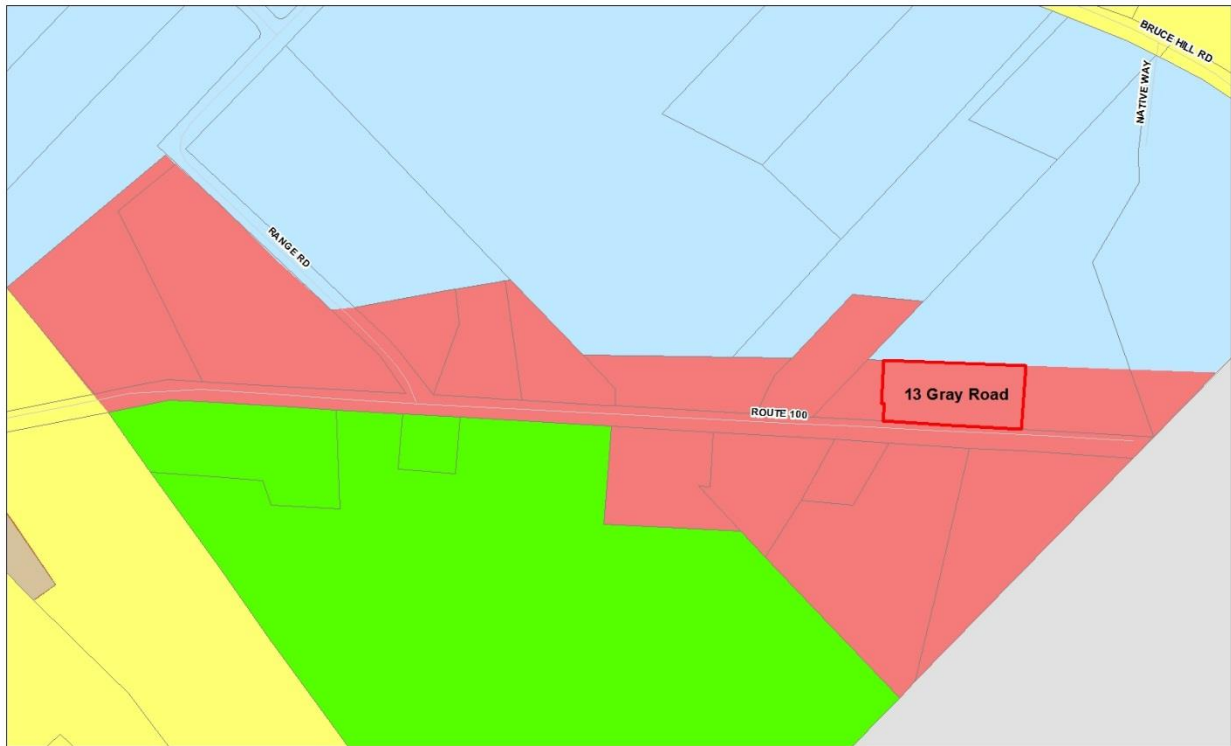
Mr. Lewis asked what the gray shaded area on Mr. Shane's map is.

Mr. Shane stated that it is the wetlands Mr. Hollis referred to. It is a national wetland inventory to the South of the lot as well as to the North.

Mr. Wyman asked if the wetland inventory can be filled.

Mr. Shane stated which part of the area, which is just under 4,400 square feet, can be filled with a permit.





Mr. Wyman called Mr. Hollis back to the podium for any additional questions from the Board.

Mr. Hollis stated that they will not be filling the wetlands area to the right of the lot. The fill will be where the house is.

Mr. Wyman stated that this is a Special Exception and according to Zoning Ordinances a Special Exception is neither special nor an exception, but is tantamount to a permitted use and it is up to the board to decide if in fact all of the criteria has been met.

Mr. Wyman closed the public portion of the meeting and the Board deliberated as follows:

The Board reviewed the Special Exceptions with the following findings:

(3) Special exceptions. The Board shall have the power and duty to approve, deny, or approve with conditions special exceptions only where such approval is specifically required. Where an advisory report from the Planning Board is required, the Building Inspector shall refer the application to the Planning Board for its review and recommendations at least 30 days prior to the meeting of the Board of Adjustment and Appeals; however, where site plan or subdivision review is required, the applicant shall apply to the Board of Adjustment and Appeals for special exception approval prior to the submission of a detailed site plan for Planning Board approval, but any conditions imposed by the Board of Adjustment and Appeals shall be binding upon the applicant and upon the Planning Board. The applicant shall have the burden of proving that his application is in compliance with the requirements of this chapter. After the submission of a complete application, the Board shall approve a special exception application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use, with any conditions attached, meets the following standards:

(a) 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 Board found this requirement to be satisfied.

(b) The proposed use will not cause water pollution, sedimentation, or erosion, contaminate any water supply or 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.

(c) The proposed use will not create unhealthful conditions because of smoke, dust, or other airborne contaminants.

The Board found this requirement to be satisfied.

(d) 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 Board found this requirement to be satisfied.

(e) 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 Board found this requirement to be satisfied.

(f) 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 Board found this requirement to be satisfied.

(g) The proposed use has no unusual characteristics atypical of the generic use which proposed use will depreciate the economic value of surrounding properties.

The Board found this requirement to be satisfied.

(h) If located in a Shoreland zone, the proposed use will not result in damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat; will conserve Shoreland vegetation; will conserve visual points of access to waters as viewed from public facilities; will conserve actual points of access to waters; will conserve natural beauty; and will avoid problems associated with floodplain development and use.

The Board found this requirement to be satisfied.

(7) Additional special exception performance standards in certain zones. In addition to the standards contained in Subsection B (3), all special exceptions must conform to the performance standards set forth herein. No use already established on the date of adoption of this chapter shall be so altered or modified as to conflict with or, if already in conflict with, to further conflict with these performance standards.

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

The Board found this requirement to be satisfied.

(b) Vibration inherently and recurrently generated shall not exceed a peak particle velocity of 0.01 inch per second at lot boundaries;

The Board found this requirement to be satisfied.

(c) 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 Board found this requirement to be satisfied.

(d) 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 Board found this requirement to be satisfied.

(e) 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.

The Board found this requirement to be satisfied.

Mr. Manahan motioned based on testimony and findings presented to grant a special exception to Normand Berube Builders Inc. to construct two single-family dwellings at 13 Gray Road (Route 100); Tax Assessor Map U15, Lot 9 in the Village Office Commercial II (VOCII) district.

Mr. Lewis seconded.

VOTE: Unanimous 6-0

IV. Administrative Matters:

Mr. Black moved to approve the minutes of September 10, 2015 meeting.

Ms. Vigue seconded.

VOTE: 4 -0-2

2 abstain (Martin, Wyman)

V. Adjournment:

Mr. Manahan moved to adjourn.

Mr. Lewis seconded.

VOTE: Unanimous 6-0

The meeting was adjourned at 7:25 p.m.

A TRUE COPY ATTEST:

R. Scott Wyman, Board Chair

William R. Shane, Town Manager