

**TOWN OF CUMBERLAND PLANNING BOARD MEETING MINUTES**  
**Tuesday, August 18, 2020**

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**A. Call to Order:** Chairman Auclair opened the meeting at 7:00 pm.

**B. Roll Call: Present:** Paul Auclair, Bill Kenny, Steve Moriarty, Jason Record, Joshua Saunders & Ann Sawchuck, **Staff:** Carla Nixon - Town Planner, William Shane - Town Manager & Christina Silberman - Administrative Assistant, **Absent:** Lee Buffinton.

**C. Approval of the Minutes of the July 21, 2020 Meeting:** Mr. Saunders moved to approve the minutes of the July 21, 2020 meeting as written, seconded by Mr. Moriarty and **VOTED, 6 yeas - motion carries, unanimous.**

**D. Staff Site Plan Approvals:** None.

**E. Minor Change Approvals:** None.

**F. Hearings and Presentations:**

***1. Public Hearing: Recommendation to the Town Council on a proposed zone change to rezone a 3.35 acre portion of a 7.16 acre lot located at 222 Gray Rd., Tax Assessor Map U20, Lot 66 from the Village Center Commercial (VCC) zone to the Village Medium Density Residential (VMDR) zone.***

Chairman Auclair introduced the item and noted that tonight the Board is considering the zone change. If the zone change is approved later by the Town Council, somebody would have to come back with a subdivision proposal for the Planning Board's full review.

Town Manager Bill Shane explained the process for a zoning change request and noted that tonight is a public hearing for the Planning Board to hear from the neighbors, in support or in opposition to the proposal, and to make a recommendation to the Town Council. The Town Council will take the Board's recommendation and will decide whether to make the change. A public hearing for this is scheduled for the Town Council meeting Monday night.

Mr. Shane displayed an aerial view of the area and described the topography. Part of the project, if it comes forward, will be a drainage easement that will run out to Route 100. Mr. Shane said that drainage is a big challenge in this area.

Mr. Shane encouraged any members of the public in the audience tonight to testify on this item to also attend the Town Council meeting Monday night.

Doug Reynolds, PE - Gorrill Palmer, representing owner Michael Record, said the proposal is for a 3.3 acre portion of the Board Barn property on the rear portion of the site facing Old Gray Rd. Mr. Reynolds said that the potential is to subdivide the property into four additional lots with three single family homes and one duplex. The proposal is to change this portion of the lot to the VMDR zone. Mr. Reynolds explained that it is the owner's opinion that, by placing residential units at the rear of this property, it would reduce the potential of a someone developing the whole property as a commercial site. Mr.

Reynolds added that creating these lots and building these residential homes maintains a buffer to the Route 100 corridor and to the homes on Old Gray Rd.

Chairman Auclair noted that the Village Medium Density Zone does require 20,000 square feet per residential lot and 20,000 per dwelling for duplexes. Chairman Auclair asked about the wetlands. Mr. Reynolds replied that the wetlands have been subtracted from the net residential calculations. Mr. Reynolds showed a potential subdivision plan and explained the density requirements. The plan will meet all setback requirements.

Mr. Saunders clarified that a 25' landscaped buffer within a 50' setback is needed when residential abuts commercial and Ms. Nixon agreed.

Mr. Record asked what the limits are for changing the zoning on such a small scale. Ms. Nixon replied that this request involves changing the zoning district lines and the Town can do this. The Town Council is seeking a recommendation on whether the Planning Board feels that this is an appropriate change. Ms. Nixon has reviewed the Comprehensive Plan and there isn't anything about increasing residential uses in the commercial area of Route 100 or not.

Mr. Record questioned if the land doesn't have an attractive commercial use or if this is a matter of capitalizing on house lots. Mr. Reynolds replied that the lot is open for lease now. Mr. Record stated that the owner is following the market and Mr. Reynolds agreed.

Mr. Moriarty said that Mr. Reynolds and his client have put forth a sketch of what could be presented to the Planning Board, but this plan has not been presented to the Town in the form of an application. Mr. Moriarty pointed out that if the zone change were made, the applicant could come back with a plan that looks very different.

Chairman Auclair opened the Public Hearing.

Linda Brewster, 27 Old Gray Rd., said that her biggest concern is that a number of years ago, her well went dry and she asked if water studies have been done to make sure there is adequate water. Ms. Brewster said that when she purchased her home in 1979 it was zoned rural residential and she asked when the zoning was changed to the VMDR. Mr. Shane pointed out that most of the homes in the area are not on two acre lots. There is public water in front of the Board Barn. Mr. Shane explained that there was a committee that studied this whole area for several years and had multiple public hearings when the zone changes occurred. The VMDR is consistent with what the majority of the lot sizes were in the area. Mr. Shane stated that for all subdivision applications, one of the criteria are whether there is an adequate water supply to support the application. This is a technical standard that the Planning Board reviews. Mr. Shane further explained that tonight is really about the zone change only and to allow that type of land use to occur. If the Town does the zone change and the applicant can't prove that there's adequate water to supply the subdivision, then that subdivision application doesn't get approved.

Ms. Brewster said she is also concerned about the condition of Old Gray Rd. Part of the road is paved and beyond Ms. Brewster's driveway it is a dirt road. Ms. Brewster said that where the dirt road exits onto Route 100 is not safe and it is very difficult to see. Ms. Brewster continued that it really is a one car road and would need to be widened. The road is in very poor condition and always has ruts and puddles. In the winter, water comes off the paved part of the road and into her front yard and freezes. Ms. Brewster said her

concern is not just the drainage on the side of the road with the development, but on the other side as well.

Ms. Brewster said she lives directly across from the Board Barn. There is a direct view to Route 100 from her house. She hears the traffic from Route 100 and from the Turnpike behind her. Mr. Brewster said that if there is not a tall buffer between the residential and commercial zones, they will hear more traffic from Route 100.

Chairman Auclair commented that if the project were to get to the subdivision stage, part of the assessment the Planning Board would make includes the Maine Department of Transportation recommendations that consider road safety.

James Farrar, 29 Old Gray Rd., said that it seems like this is a huge development to shoehorn into a very small amount of space. In the area where they propose putting in 5 units, there are only two houses on the other side of the road. This is a dramatic change to the neighborhood. Mr. Farrar said we need to think hard and fast before making changes that can't be undone. Mr. Farrar knows things can't stay stagnant but he would like to live his final days and still see woods from his front yard.

Mr. Farrar said that the road is a horror show. When it rains, the dirt part becomes almost impassable. The section where the road comes out to Route 100 is illegal and is not supposed to be like this.

Mr. Farrar said that there used to be a road next to his house that went to Forest Lake. All of the smaller lots that fit the VMDR were summer camps about 60 to 70 years ago, before the turnpike came thorough and cut the neighborhood off. Mr. Farrar said he wished he had known when his neighborhood was changed to the VMDR zone. Mr. Farrar said that they should have a voice in how the neighborhood is going to look.

Amanda Snow, 21 Old Gray Rd., referred to Ms. Brewster's comments about the quality of the road and said that a lot people are out walking. People drive really fast off of Route 100 down the dirt part of Old Gray Rd. and having additional housing there would be dangerous. Ms. Snow also had a well issue. Ms. Snow asked if there has been any consideration of what the Town would do for better drainage and Mr. Shane indicated no.

Michael Record, owner, said that his thinking is that changing the zoning on Old Gray Rd. would fit into the neighborhood better. Mr. Record said he has frontage on both the Old Gray Rd. and Route 100. With commercial being on Route 100 Mr. Record thought it would be appropriate to have some residential units along Old Gray Rd. Mr. Record said that his whole property could be developed commercially and if this proposal can't happen, he will consider other options.

Andy Hagerty, owner of Emerald Commons, said that in talking to Mr. Record, Mr. Record mentioned he was going to develop the land and they talked about residential to better fit the neighborhood. Mr. Hagerty said he has six units to the north and he would not want an Irving next to him, and this is an option in the VCC, as are all kinds of other things. Mr. Hagerty said that this is a great opportunity for development to fit the neighborhood. Mr. Hagerty said that as an abutter, he would rather not have more commercial there.

Mr. Hagerty said that he plans to buy these lots from Mr. Record if the plan gets approved. Mr. Hagerty agreed about the road. There are other ways out on Highland Ave. and

George St. A positive would be that Mr. Record would give an easement to the Town to help improve the road. Mr. Hagerty said he is in favor of the proposal.

Mr. Farrar asked about the 50' buffer to a residential area if the lot was commercial. Mr. Saunders said he is not sure that it would need a buffer to Old Gray Road. Ms. Nixon said she would have to look at it to figure out how it would apply. Ms. Brewster said that when the Board Barn was put in, they did require a 50' set back from Old Gray Rd. and they did require a landscape buffer. Mr. Farrar said that in the winter time you can see right through to the Board Barn and, if this is cleared to put a house in, then we will see the traffic on Route 100.

Chairman Auclair closed the Public Hearing.

Mr. Saunders asked if Ms. Buffinton had comments about this. Chairman Auclair replied that Ms. Buffinton's comment was that it appeared to be a very reasonable zoning request change at this time. Chairman Auclair pointed out that Ms. Buffinton had not heard the public's opinions.

Chairman Auclair said that if this stays VCC, it could be commercial and it sounds like the people living there now know this and prefer at this time that it remain commercial.

Mr. Record said that he appreciates the offer to do the drainage and this would be a great thing for the Town regardless of whether this goes through. Mr. Record said he appreciates wanting to capitalize on the land there and in today's market, house lots certainly sell in this town. Mr. Record said he thinks small zoning changes like this are dangerous and not really fair to people. When you buy land in a zone, you expect that zone not to change. People have expectations that zones aren't going to change often, certainly not a few acres at a time. Mr. Record said that he would be in favor of more commercial small businesses. Five more houses in this area would add kids potentially and adds a lot of load onto a small road. Mr. Record said he would find it hard to support the change.

Mr. Moriarty said he has personal experience with the rezoning and explained that prior to the rezoning, the Town Council appointed a committee known as the West Over the Route 100 Advisory Committee. The Committee was very large and had a good number of residents from the Route 100 corridor on it, together with people from other parts of Town. The Committee spent more than two years coming up with recommendations. Mr. Moriarty said that basically the committee recommended a full scale zoning change from Gray to Falmouth to convert the two existing zones, local business and highway commercial, into five new zones of varying levels of intensity. The Committee knew there were many homes in the area that were grandfathered. The goal was to focus commercial development in the area. The Committee's recommendations went through the Planning Board and Town Council review processes and there was an extensive notification process.

Mr. Moriarty said that commercial property in Town is at a premium and there isn't very much of it. Mr. Moriarty said it has been 10 plus years since the zoning changes were adopted and since that time, public water has come in. The area has never been restudied since that time to find out whether the goals of the Committee were achieved and, if not, why not. Mr. Moriarty said that he would not be inclined to rezone this particular parcel without some sort of restudy of the entire Route 100 corridor. Mr. Moriarty

said that if rezoning were done on a lot by lot basis, you end up with a crazy quilt of lots of uses that may not fit well together.

Mr. Moriarty said that at some point zones abut each other or one side of the road is one zone and the other side another zone. Those that live on Old Gray Rd. face a dilemma knowing this lot, which is over seven acres in size, could be developed commercially right now without any zoning change, and if it is rezoned in part to be residential, they could be looking at three small homes and a duplex. This has risk either way. Mr. Moriarty said that the Town should take a fresh look at the area.

Mr. Kenny said he is not in favor of rezoning this at this time. Commercial property is at a premium. Mr. Kenny said that if you add residential units, there could be more children that will be going to the schools and the financial impact outweighs the amount of taxes that would be collected even though this isn't, the Planning Board's issue. Mr. Kenny said he doesn't think the Town should change this to a residential zone.

Mr. Saunders said that he heard the residents' concerns and he doesn't take them lightly. Mr. Saunders pointed out that in the VCC zone the lot size is exactly the same as in the VMDR. While you couldn't have a duplex business, you could have four commercial uses along Old Gray Rd. if the developer split the lot up and were to find commercial buyers. Mr. Saunders said that while this may be a less likely outcome, if it gets rezoned the outcome is pretty likely that there will be four residences. Mr. Saunders said that residential use is a better fit for that area than commercial use and he is in favor of recommending the zoning change.

Ms. Sawchuck agreed that it seems that residential would be more compatible with the neighborhood. Ms. Sawchuck added that if there was a zoning study that concluded that this should be commercially zoned and things have changed, it would be worthwhile to take another look before an ad hoc change is made. Ms. Sawchuck agreed that the Town should look at the whole picture again and she is not inclined to make a minor zoning change at this time.

Chairman Auclair commented that if he were one of the residents, it would be hard to know if he would want residential zoning or commercial there. The water and traffic issue would be resolved if and when the project came for subdivision approval and buffering is a big part of a subdivision proposal. Chairman Auclair said that he likes the idea of looking at the zoning again from a bigger picture of what would be best for everyone in the area.

Mr. Record said that if this proposal doesn't go through, he encourages the owner to investigate commercial development. Mr. Record added that more small businesses in the Town would be a wonderful thing that don't put a load on the schools.

Ms. Nixon outlined the buffer requirements for a cluster subdivision.

Mr. Record moved to recommend to the Town Council the proposed zone change to rezone a 3.35 acre portion of a 7.16 acre lot located at 222 Gray Rd., Tax Assessor Map U20, Lot 66 from the Village Center Commercial (VCC) zone to the Village Medium Density Residential (VMDR) zone, seconded by Mr. Saunders. and **VOTED, 1 yay (Saunders), 5 nays – motion fails.**



**2. Public Hearing: Recommendation to the Town Council on proposed amendments to Chapter 229 (Site Plan Review), Section 10 (Approval Standards and Criteria), Subsection H (Exterior Lighting) of the Cumberland Code.**

Chairman Auclair introduced the item.

Mr. Shane explained that Ms. Nixon has crafted the proposed language and has brought it to the Town Council, as well as the Ordinance Committee. Mr. Shane said the language is fairly simple and adds technical details that were missing.

Chairman Auclair asked about the reference to the apex angle in the proposed language and Ms. Nixon said this refers to a downward facing cone. Chairman Auclair wondered how long the motion detecting lights would stay on. Ms. Nixon said that this could be specified.

Mr. Saunders referred to language about adequate lighting for safe use that is proposed to be stricken and said this language needs to be put in. Mr. Moriarty pointed out that under site plan review, exterior lighting is one of the criteria that the Board applies and he doesn't think the language could be interpreted to do away with that requirement. Mr. Record suggesting keeping this sentence and not striking it. Mr. Record also suggested adding language that states "within a reasonable time" after the motion sensing language.

Chairman Auclair opened the Public Hearing.

Town Councilor Ron Copp, West Cumberland, said that the purpose of the revised language is to give a guideline to what lighting a business can have. Mr. Copp said he would have a concern with a business that is open 24 hours.

Chairman Auclair closed the Public Hearing.

Mr. Record asked if there is any cumulative measurement for lighting. Ms. Nixon said that the ordinance now says that there can't be light trespass beyond the property line.

Ms. Nixon read the proposed language with the suggested revisions.

Mr. Saunders moved to recommend to the Town Council the proposed exterior light standard as just written by Carla Nixon, seconded by Mr. Kenny and **VOTED, 6 yeas - motion carries, unanimous.**

Language below recommended to the Town Council for amendment to Chapter 229,10, H:

H. Exterior lighting. The use of exterior lights shall be minimized to the greatest extent possible. Exterior lighting of commercial buildings, parking areas and signs shall only be allowed during the actual hours of operation and one hour prior to and one hour following the hours of operation. Low level pedestrian lighting (no greater than 14' in height) is permitted at doorways but must be shielded to restrict the maximum apex angle of the cone of illuminations to 150 degrees. The proposed development must have adequate exterior lighting to provide for its safe use during nighttime hours, if such use is contemplated. All other light fixtures shall be motion-sensing set to illuminate a limited area when motion is detected and turned off when the detected motion ceases for a reasonable period of time. All exterior lighting must utilize full cut-off fixtures to avoid glare and adverse impact on neighboring and rights- of-way, and the unnecessary lighting of the night sky. designed and shielded to avoid undue glare, adverse impact on neighboring properties and rights- of way, and the unnecessary lighting of the night sky.

**G. Administrative Matters/New Business:** None.

***H. Adjournment:*** Mr. Moriarty moved to adjourn the meeting at 8:15 pm, seconded by Mr. Kenny and **VOTED, 6 yeas - motion carries, unanimous.**

**A TRUE COPY ATTEST:**

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Paul Auclair, Board Chair

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Christina Silberman, Administrative Asst.

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