

TOWN OF CUMBERLAND PLANNING BOARD MEETING MINUTES
Tuesday, September 15, 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 August 18, 2020 Meeting: The Board noted minor corrections to the prepared minutes. Mr. Saunders moved to adopt the minutes as amended, seconded by Mr. Kenny 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: Review of a Four (4) Lot Commercial Minor Subdivision to be located at 166 Gray Rd., Tax Assessor Map U19, Lot 8. Representative: David St. Clair, Jr. – St. Clair Associates, Owners: Ronald Copp, Sr., Howell Copp & Jerald Copp, Jr.

Chairman Auclair introduced the item.

David St. Clair, St. Clair Associates, showed a plan of the proposed four lot commercial subdivision and described the location. Mr. St. Clair explained the ownership history of the lot which is now owned by three Copp brothers, Ronald Sr., Howell and Jerald Jr. Mr. St. Clair reported that they have obtained a DOT entrance permit for access to the parcel and there is an existing private way that provides access also. The brothers wish to divide the lot three ways. One of the brothers wishes to divide their portion of the lot into two parcels. The applicants are seeking approval for a minor four lot subdivision.

Mr. St. Clair said that they have reviewed the comments and recognize that there are items that could be addressed, hopefully at a staff level, to bring this to the finish.

Chairman Auclair noted that there are a number of questions that Sevee and Mahar raised.

Chairman Auclair confirmed if this would be for commercial use and Mr. St. Clair agreed. Mr. St. Clair said that the applicants are looking at a four-lot land division and are not proposing any internal roads at this time. Chairman Auclair asked if they are having another road as shown on the proposed plan. Mr. St. Clair said that this road is shown on the plan as the location for the MDOT entrance permit and is proposed for the future. Mr. St. Clair recognized that, should the development of the parcel come forward, the road will need to be engineered and designed.

Mr. St. Clair noted that they have reached out to Portland Water District for the ability to serve letter but you need to be able to identify what your development is. When the applicants' come forward with a project on one of the lots, there will be a need to secure a

formal ability to serve letter. Mr. St. Clair referred to sewage disposal and said they are not sure what they will be doing at this point and asked that this information be reviewed at a later date.

Chairman Auclair referred to the stormwater management waiver request and asked if this would then be changed later. Mr. St. Clair said that is correct.

Mr. St. Clair referred to ground water and said that this is a simple land division and groundwater would be addressed in the future. Mr. St. Clair said they have visited the parcel several times and have found no evidence of freshwater wetlands. They have not proposing an internal road at this time. There is no need to go to MDEP for permitting. There is water service, overhead power and a gas line.

Mr. Saunders remarked that he is not sure what the applicants are here for. The Board really can't approve something that is ambiguous. Mr. Saunders noted that if the Board were to approve this, and the development doesn't look exactly like this, the applicant would have to come back to the Board. Mr. St. Clair responded that the applicants would like to divide the lot up. Mr. St. Clair noted that the lot came out of a corporation name (owned by the brothers) in 2018 and the brothers haven't technically owned the lot (in their individual names) for five years. Mr. Saunders replied that he is not opposed to subdivision but the Board needs to know what the subdivision is going to look like.

Ms. Nixon noted that her memo explained that this application is not ready for final approval. The applicant asked that the Board hear about the project, consider the waivers and give feedback then come back again. Ms. Nixon said that the findings have not been met and it is going to take some time for the applicant to address each finding and nail down the road design.

Mr. Moriarty asked about the location of the lot. Mr. St. Clair showed an aerial view of the area and described the location. Mr. Moriarty asked if the applicant is seeking approval for the lot layout proposed tonight. Mr. St. Clair said that is correct and that they have spent several years working on this. Mr. Moriarty confirmed that the applicant is asking the Board to approve the sketch submitted as an eventual minor commercial subdivision but nothing further. Mr. St. Clair agreed and said that they are not looking at any design on the individual lots at this time.

Ms. Sawchuck said she doesn't understand how the Board can give waivers related to something so nebulous at this point. Ms. Nixon replied that there is no reason why more information can't be provided to the Board for next month.

Ron Copp, Sr. said that they are not asking to build anything on the property. Three brothers own it and they are trying to divide the land. Mr. Copp said he doesn't see how any of the requirements concern this.

Ms. Nixon explained that Mr. St. Clair has brought a subdivision plan because each brother wants to be able to market their lot. This is a subdivision because, under State law, a subdivision is a division of a piece of land into three or more parcels in a five-year period. The Town of Cumberland has a subdivision ordinance that says the applicant has to let the Town know about all of the things in the findings of fact. This can't be addressed yet because the Town doesn't have enough information. Ms. Nixon added that she is confident that Mr. St. Clair can get this info to the Board for next month.

Mr. Copp said that he doesn't see why the Town needs this. Mr. Copp noted that his family has owned this property and paid taxes on it for fifty years and there are no plans for developing the property.

Mr. Record said that this makes sense but it seems that the applicants are putting encumbrances on the land that are going to be more of a hassle. As part of a subdivision, there's a lot of extra hoops to jump through. Ms. Nixon noted that the land can't be divided legally into three or more lots, in this case four, without going through subdivision.

Mr. Copp referred to a court case that Code Enforcement Officer Bill Longley spoke of with him that would allow for the middle parcel to be removed without triggering a subdivision. Ms. Nixon said she did not know about this. Mr. Copp said this seems like a waste of time and money to just divide a piece of property. Ms. Nixon replied that this is the law and she empathizes with what Mr. Copp is trying to do.

Chairman Auclair opened the Public Hearing.

Town Manager Bill Shane said that he will check with Mr. Longley about the lot being divided without going through subdivision. Mr. Shane pointed out that this lot has storm drain lines and water lines around it and has type A soils. These are the types of lots that people want for commercial development. Mr. Shane said that the Town will work closely with Mr. St. Clair and his team to keep the costs down. Each of these lots would come back for future site plan approval. Mr. Shane noted that the Planning Board and the staff have to follow the rules and sometimes the rules don't quite fit. Mr. Shane added that he thinks this will be great for economic development.

David St. Clair, 34 Forest Ln., said he is the applicants' representative but he wants to recognize as a resident that commercial development is needed in the west end of Town. Mr. St. Clair said he looks forward to having this project move forward.

Chairman Auclair closed the Public Hearing.

Mr. Record said he empathizes with the situation and hopes to see the project come back before the Board. Mr. Record added that the Town needs more small commercial lots.

Mr. Moriarty said that he doesn't want the meeting to end on a down note and he is very enthused about the sketch presented. The plan fits the site very well and ultimately will make a nice subdivision. Mr. Moriarty continued that the problem is that the Board is being asked to approve a division of land without the information needed to go forward with approval. Mr. Moriarty said he has no negative feelings about the proposal.

Mr. Kenny said he loves the proposal and hopes to see the applicant back next month. Mr. Kenny added that this is exactly what the Town is looking for.

Mr. St. Clair said he appreciates the Board's time and feedback and he recognized that more information is needed.

Mr. Saunders moved to table review of the four-lot minor subdivision, Tax Assessor map U19, lot 8, seconded by Mr. Kenny and **VOTED, 6 yeas - motion carries, unanimous.**

2. Public Hearing: Recommendation to the Town Council on proposed amendments to Chapter 315 (Zoning), Section 21 (Town Center District), B-12 (Day Care Centers

and Nursery Schools) of the Cumberland Code, to increase the number of children allowed from 20 to 28.

Chairman Auclair noted that this item is related to the day care center and nursery school at the church of which he is a member and he is on the Finance Committee. Chairman Auclair recused himself from participating on this item and he sat in the audience.

Vice Chairman Jason Record took control of the meeting and introduced the item.

Ms. Nixon clarified that this item is a recommendation to the Town Council.

Mr. Saunders asked if, in other zones where this use is allowed, there is the same number limitation. Ms. Nixon replied that there are daycare centers, daycare homes, nursery schools and each are licensed by the State differently and have different definitions in the Town's ordinance. Mr. Saunders noted that this request is for a zoning change up to 28 and he questioned why the Board is setting the number and if there are other requirements that hold the number down or ensure the property can handle that number. Ms. Nixon said it comes down to how the State classifies the type of care facility.

Al Shuler, Moderator at Cumberland Congregational Church, addressed the Board and said there has been a childcare center at the church for a long time. Mr. Shuler said the limitation of 20 children in the zoning ordinance has been there since the beginning. The State has said the facility is large enough to accommodate 28 and has no problem with the larger number. The church would like to go up to the number that the State would let them have.

Vice Chairman Record questioned if this creates an uneven playing field for businesses in other zones potentially. Ms. Nixon responded that she does not think so.

Mr. Saunders asked if the State always plays a role in determining the maximum number of children. Mr. Shuler said yes, the State licenses their program for 20 but this is because the town limits them to 20. The State would license them for 28 if the Town approves the zoning change. Mr. Shuler stated that things traditionally addressed by the zoning ordinance do not pose any problem with the larger number.

Vice Chairman Record opened the Public Hearing. There were no public comments. Vice Chairman Record closed the Public Hearing.

Mr. Moriarty disclosed that he is a member of the church and stated that he is not in a position of leadership or financial responsibility nor does he have any children of an age to attend there. Mr. Moriarty said he does not feel that he has a conflict of interest and is prepared to address this item on the merits.

Ms. Sawchuck also disclosed that she is a member of the church and stated that she has no connection to the childcare center and feels that she can make an unbiased decision.

Mr. Kenny asked that the record note that the Board does not believe that Mr. Moriarty or Ms. Sawchuck has a conflict and can participate. Vice Chairman Record agreed.

Mr. Moriarty moved that the Board favorably recommend to the Town Council that Chapter 315, Section 21.B-12 of the Cumberland Code be amended to increase the number of children allowed in daycare centers and nursery schools from 20 to 28, seconded by Mr. Saunders. The Board discussed the proposed language and whether the ordinance should

specify a maximum number or state “the maximum number of children allowed by the State”. The consensus of the Board was to recommend the proposed language but let the Town Council know that the Board is also in favor of language allowing the maximum number of children allowed by the State. The motion was then **VOTED, 5 yeas, 1 abstained (Auclair) - motion carries.**

Chairman Auclair returned to the dais and Vice Chairman Record returned control of the meeting to Chairman Auclair.

G. Administrative Matters/New Business: None.

H. Adjournment: Mr. Saunders moved to adjourn the meeting at 8:09 pm, seconded by Mr. Moriarty and **VOTED, 6 yeas - motion carries, unanimous.**

A TRUE COPY ATTEST:

Paul Auclair, Board Chair

Christina Silberman, Administrative Asst.