

**Land Use Committee
Town of Cumberland
Council Chambers – Town Office
January 8, 2015
Minutes**

I. Call to Order: The meeting was called to order at 6:00 p.m.

II. Roll Call:

Present: Steve Moriarty, Chair, Bob Waterhouse, Vice Chair, Tom Foley, Chris Franklin, Lynda Jensen, Bob Maloney, Jim Orser, Sally Pierce, Sally Stockwell, Peter Bingham, Town Council, Chris Neagle, Planning Board, Peter Sherr, Planning Board

Absent: Adrienne Brown, Beth Fitzgerald, Jeff Porter, Shirley Storey-King, Town Council

Staff: Carla Nixon, Town Planner, Pam Bosarge, Administrative Assistant

III. Minutes of Previous Meeting: December 11, 2014

Ms. Pierce moved to approve the minutes of December 11, 2014 as amended.

Mr. Maloney seconded.

VOTE: Unanimous – 9 in favor

IV.

- 1. RR1 & RR2 Zones**
- 2. Route 1 Design Standards**
- 3. Route 1 Restaurant & Retail Uses, Sizes, and Hours of Operation, Drive-Thru, Lighting, and Franchise.**

Mr. Moriarty suggested we begin with Restaurant and Retail Uses and take the items out of order. At the July 10, meeting the Committee voted on the following three motions, which were advisory pending survey results.

***Motion: To create an Overlay Zone on the four lots to the North of Ledgeview Assisted Living in the OCS district to allow restaurant or café uses, not to exceed 3,500 square feet.**

VOTE: 9 in favor

1 opposed (Jensen)

***Motion: Restaurants may be allowed in the OCS and OCN district provided they do not exceed 33% of the developed commercial space. Restaurants may not exceed 3,500 sq. ft.**

VOTE: 8 in favor

2 opposed (Maloney, Moriarty)

RETAIL USES:

Mr. Neagle moved that Retail may be allowed in the OCS and OCN district provided they do not exceed 33% of the developed commercial space. Retail may not exceed 3,500 sq. ft.

Mr. Sherr seconded.

VOTE: 8 in favor

1 opposed (Moriarty) 1 abstain (Gagne)

Since July we have survey results and we know that restaurants and retail on a small and moderate size level are very popular. They scored highly among those who responded. Larger scale operations and

specifically fast food type restaurant operations scored substantially lower. In retrospect I think we were right on target in July in anticipating what the public wanted. I sent a memo as part of the mailing and I think we can simplify this possibly in a single motion. I don't think we need an overlay zone for the four lots, it is more than necessary and would tend to clutter the zoning map and ordinance. I think what we can do is based on our discussions, the results of the survey and motions in July. Is simply indicate that our recommendation would be that in both restaurant and retail uses will be permitted provided they do not exceed 3,500 square feet and provided they not exceed 33% of the developed space. Then as a follow up we can discuss whether we want to discuss hours of operation and drive-through.

Mr. Neagle stated he tends to agree except I think the reason we focused on those lots was because they are all small and because with the 33% limit applied those lots would probably never be used for retail and or restaurant. Although they seem to be good candidates for retail and restaurants, it was a way to remove the 33% requirement for those four lots. Which I still think makes sense. On these four lots we are saying you could be a 100% retail not limited to 33%. It was one way to achieve the goal. I still think it is a sound decision. That would be the impact of eliminating the overlay.

Mr. Waterhouse asked if a free standing restaurant cannot be built in those zones. Only a restaurant within a commercial use can be 33% of the total building. A restaurant can be 100% of the structure if it is its own building?

Mr. Moriarty stated if the building is 3,500 sq. ft. or less it can be a standalone building.

Mr. Neagle stated we didn't want those standalone buildings on the larger lots. We don't want to see a ten acre lot that could be used for a 30,000 sq. ft. commercial building used for a 3,500 sq. ft. restaurant.

Mr. Waterhouse asked would someone purchase a ten acre lot and construct a 3,500 sq. ft. restaurant on as the only building on the lot, that strikes me as pretty foolish. Those lots could be divided theoretically am I correct.

Mr. Neagle stated it could be theoretically but there was a strong push when we considered adding those uses at the Planning Board level. A lot of people came out stating they don't want these lots used for these purposes unless there is something else; because we don't want underdeveloped land. The Town's goal is to have commercial buildings with the highest and best use. We don't want 3,500 square foot stores on the large lots. The 33% says you can't do that. A restaurant or café can be within an office building, with a three pod development. One pod could be a restaurant, one a boutique, and one commercial space.

Mr. Moriarty stated the language of the motion which was advisory; I don't understand it to preclude the possibility of a free standing restaurant on a large lot. I thought if there was a strip mall or larger development a restaurant couldn't exceed 33% of the total development.

The Committee reviewed the motion: ***Motion: Restaurants may be allowed in the OCS and OCN district provided they do not exceed 33% of the developed commercial space. Restaurants may not exceed 3,500 sq. ft.**

Mr. Neagle stated he didn't think a free standing restaurant could be built unless it is in the overlay zone.

Mr. Foley stated his understanding of the motion on July 10th, was that freestanding 3,500 square foot restaurants are appropriate on the smaller lots on OC-S and on the larger lots not located in the overlay zone they are to be adjunct to the primary commercial use businesses not to exceed 33% of the commercial development in the OC-S.

Mr. Sherr stated he doesn't mind having a free standing building with the limit of 33% of the developed space with a maximum of 3,500 square feet. We are not allowing a single 33% freestanding building you need to have another 66% percent of development on the parcel.

Mr. Waterhouse asked if that includes retail and restaurant.

Mr. Sherr stated the definitions are already existing.

Mr. Foley stated the example we used was the existing SeaFax building could allow 33% of the square footage to be restaurant or retail and everyone agreed that would be appropriate.

Mr. Sherr stated or having three buildings and one of them could be 33% of the developed space for restaurants or retail.

Mr. Waterhouse asked if those uses were phased is that an issue.

Mr. Neagle stated to use the 33% rule the three buildings would all have to be built at the same time, because the language states 33% of the developed space not to exceed 3,500 sq. ft.

Mr. Sherr stated under the current Site Plan Ordinance a developer would have two years to build out the project with the allowable extensions.

Mr. Neagle stated they could phase the development but the restaurant, retail would have to be built last.

Mr. Bingham stated if all of a sudden the vodka company or a distillery came into Cumberland and wanted to have a tasting and sales room just as long as it isn't bigger than 3,500 sq. ft. and doesn't exceed 33% of the developed space it would be allowed.

Mr. Sherr stated it 33% and 3,500 sq. ft. of developed commercial space.

Mr. Neagle stated that raises a good point is it the footprint or total square footage of the building.

Mr. Sherr stated it is the developed floor space.

Ms. Nixon stated we do have a definition in the zoning ordinance for associated retail and that is what businesses such as Delorme the retail store is an "Associated Retail" use. Associated Retail could be added to the OCS and OCN to address the use as subordinate.

Mr. Neagle stated it is a different definition, and I don't view these necessarily as being subordinate uses. I can see three pods which might allow for three different uses, maybe a tax service, restaurant, and small boutique.

Ms. Pierce asked if we were talking about restaurants open to the public such as a café for employees.

Ms. Nixon stated the definition of a restaurant is "serve to the public".

The Committee agreed that a café for employees use would not be governed by the 33% or 3,500 sq. ft. language.

Mr. Neagle moved that we recommend allowing retail and restaurant uses in both OCS and OCN provided:

1. That the restaurant and or retail use not exceed 33% of developed commercial floor space and;
2. That no single restaurant or retail may exceed 3,500 square feet in size.

To recommend that an overlay zoning district be created for the four northern most lots in the OCS zone for restaurant and retail use which eliminates the 33% requirement but retains the 3,500 sq. ft. requirement.

Mr. Sherr seconded.

VOTE: Unanimous 11 - 0 in favor

Discussion:

Mr. Waterhouse clarified that there can be freestanding restaurants on those four lots which don't need to be 33% of the total developed area.

The Committee agreed that was correct, and on the other lots in the OCS and OCN a restaurant can be freestanding as long as it does not exceed 33% of the total square footage of the developed commercial space.

Ms. Jensen asked if these should be two motions.

Mr. Sherr wondered if the two motions would be considered together at the Council level; and concern of requiring two public hearings. He stated he prefers to have them as one motion. I wouldn't want to see the first motion approved and not the overlay zone approved.

Mr. Bingham stated the Council would take them as a whole recommendation from the Committee.

The Committee voted on the motion as stated including the overlay zoning district.

Mr. Waterhouse asked if the overlay would increase the value of those four lots.

Mr. Neagle stated yes, currently you can't put a restaurant or retail on the lots.

Ms. Nixon stated any time you up zone a property to give more choices for uses it may be more valuable.

Mr. Moriarty stated the next item for discussion is whether we want to allow or prohibit drive through restaurants in the OCS and OCN district. Given the small degree of popular support for fast food restaurants as seen in the survey results, we may want to consider an additional provision prohibiting drive-through restaurants.

Mr. Sherr asked if the Design Standards are part of our recommendation; should we recommend the standards address drive through with design standards.

Ms. Nixon reviewed the hand out with proposed zoning amendments for the OCN and OCS, the proposed amendments are underlined. The only thing suggested to be removed is **Timber Harvesting and adding the language for Restaurants**; I have highlighted in yellow with a question do you want to allow drive-through service.

Mr. Neagle wants the language to match the new motion language.

Mr. Waterhouse stated he was thinking of Starbucks, I assume not having drive-through service would prohibit a coffee shop.

Mr. Moriarty stated in West Cumberland there is the Brew-Thru coffee shop which is a drive-through establishment.

Mr. Waterhouse asked if a drive-through is not allowed.

Mr. Moriarty stated if we do not specifically address it, a drive-through would be allowed. The question is if we intend to prohibit it, now is the time to say so.

Mr. Neagle stated he doesn't think we should ban drive-through on Route One, because it is US Route One, and if I am running a business there I would like to have some drive-through business.

Mr. Sherr agreed he is more concerned with looks which can be managed by Design Standards.

Mr. Foley agreed he doesn't want to object to drive through, but wants to discourage chain restaurants; a pull through coffee shop won't affect his neighborhood.

Mr. Orser stated we have a good foundation for the Design Standards.

Mr. Bingham stated you could have a 3,500 square foot Dunkin Donuts or Tim Horton's however; the survey does not support chain restaurants.

The Committee discussed chain restaurants.

Mr. Neagle stated it is not legal to zone out chain restaurants.

Mr. Franklin stated if a drive through looks different the use does not bother him; Design Standards will dictate the look.

Ms. Nixon agreed with Design Standards she didn't see a risk.

Mr. Waterhouse stated the survey results show 27% support franchise, 22% support fast food and 87% support small independent café and restaurants. He wasn't thinking of a Starbucks when asking the question. We did ask about Dunkin Donuts.

Ms. Pierce stated she agreed she didn't see anything wrong with drive through, we will have restaurant Design Standards.

Ms. Stockwell stated if we don't allow drive through we are less likely to have a chain restaurant. The survey doesn't want chain restaurants.

Mr. Foley stated we should listen to the people from the surveys who don't want a chain restaurant.

Mr. Neagle thanked Mr. Waterhouse for the survey results; people don't want fast food we should ban drive-through.

Ms. Nixon stated we can educate people regarding Design Standards and drive-through, they weren't envisioning the Starbucks in Falmouth. When people think of drive-through establishments they think of Route 1 in Falmouth.

Mr. Sherr agreed think of McDonald's in Freeport, and suggested we not discourage drive-through with design standards they will not look like typical drive through establishments.

Mr. Moriarty stated in the Town Center District we did adopt no drive through, Louie's Grill could be a Tim Horton's based on size. However, Route One and Main Street don't have the same considerations.

Mr. Neagle stated we can't preclude fast food restaurants however, we can say no drive through and limit hours of operation. The question is in the Route One corridor is drive through capability a great enough concern to address.

Mr. Waterhouse stated we will have to defend our decisions, stating Design Standards as a way to avoid concerns. Would a franchise such as Dunkin Donuts be interested in locating on Route One if it can't look like a typical Dunkin Donuts?

Ms. Stockwell stated the survey results show people don't want franchise or fast food, it is not a matter of design standards but the type of services we want in our community, and we should limit these.

Mr. Neagle stated if we agree our recommendation will be the starting point for many public hearings; I support Ms. Stockwell's view.

Motion:

Mr. Neagle moved to ban drive through restaurants in the OCS and OCN districts.

Ms. Stockwell seconded.

**VOTE: 9 in favor
1 opposed (Sherr)**

The Committee discussed whether to limit hours of operation.

Mr. Neagle stated he sees no reason to limit hours.

The Committee discussed slide 33 of the survey results indicating other limitation concerns listed by respondents.

Mr. Foley stated the Foreside Tavern is vacant by 10:00 p.m. and is not a problem.

The Committee discussed hours of operation and perhaps a bar or tavern locating on Route One.

Mr. Moriarty stated the Planning Board has the authority to limit hours of operation.

The Committee agreed it was not necessary to limit hours of operation.

3. Route One Design Standards

Ms. Nixon presented an overview of the proposed Design Standards stating standards apply to non-residential and multi-plex development. Waiver language has been provided to allow the Planning Board the right to waive standards when they do not apply.

Mr. Neagle stated Ordinances don't have yes and no boxes in an ordinance.

Ms. Stockwell agreed those would be used as a checklist and suggested taking out the yes and no and incorporate those into the application.

Ms. Nixon stated the language will be changed from should which indicates discretionary to shall which would indicate mandatory.

Mr. Waterhouse stated he was not sure why the language should be removed.

Ms. Nixon stated the language could be challenged.

Mr. Moriarty stated if the mandatory requirements are too onerous there will be a waiver provision.

Mr. Neagle stated he supports the Design Guidelines being changed to Standards he didn't read them carefully and would prefer to take action on this at the next meeting.

Mr. Waterhouse asked about process for changing the guidelines to standards.

Ms. Nixon stated our report and recommendations will be sent to the Council who will refer them to the Planning Board for a public hearing; then the Planning Board will send it back to the Council for adoption and another public hearing.

Mr. Moriarty stated the Committee would fulfill the charge by recommending Route One Standards which will be reviewed by the Planning Board and adopted by the Council as modified or amended.

Mr. Foley moved to change the words should to shall and accept the Guidelines as Standards. Mr. Neagle seconded. The Motion and second were withdrawn.

Discussion: Is the Committee comfortable shifting from permissible to mandatory without thoroughly having read through the proposed standards. Ms. Nixon will make linguistic changes and do we want to re-visit next month after having read a "final version".

The Committee agreed they should do due diligence and carefully review the "final version"

Mr. Foley withdrew his motion; Mr. Neagle withdrew his second.

New Motion:

Mr. Foley moved to have the Town Planner revise draft Route One Standards in regards to mandatory language instead of permissive language for the Committee to review.

Mr. Sherr seconded.

VOTE 8 in favor

0 opposed

2 abstain: Stockwell, Franklin

Ms. Stockwell asked if we should consider energy efficiency into the Design Standards.

Ms. Nixon stated there is a state adopted Building and Energy code.

Mr. Neagle stated that is not a Design Standard question.

Mr. Sherr stated at the end of the day the developer is regulated by the State Building Code and anything more could be cost prohibitive and limit developers.

Ms. Nixon stated on lot #2 at Sky View Drive a doctor wanted to construct an energy neutral building and it was difficult and very expensive.

Mr. Neagle stated an issue for him with guidelines is the 75 foot buffer from Route One. Route One is sixty feet wide and the 100 foot right of way is not uniform within the corridor and asked about

considering reducing the 75 foot buffer. Mr. Neagle referred to the maps showing the right of way and lots on Route One.

Mr. Foley stated developers also have the opportunity to thin the buffer to create a park like setting.

Mr. Moriarty suggested Committee members e-mail Ms. Nixon any concerns or items they would like to see in the Design Standards prior to the next meeting.

Ms. Stockwell provided a handout from Grow Smart with interesting ideas for controlling growth and encouraged the Committee to read this information.

Mr. Waterhouse asked for clarification on the existing Cluster Subdivision lot sizes regardless of RR1 or RR2 zoning.

The Committee discussed the current cluster zoning provision allowing lots in either RR1 or RR2 which allow a minimum 60,000 square foot lot without sewer and a 45,000 square foot lot with water, and a 30,000 square foot lot with water and sewer.

Mr. Neagle met with Mr. Waterhouse after the meeting to discuss the cluster subdivision.

Ms. Stockwell asked for a few scenarios showing how a single lot could be developed with either cluster or conservation subdivision.

Mr. Neagle stated it would be helpful to have zoning maps with no color designating the current RR1 and RR2 zones.

Mr. Bingham asked to have a 60 acre parcel showing the difference in a cluster and conservation subdivision.

Mr. Moriarty stated we have the following items left in our Charge:

1. Route One Design Standards
2. RR1 and RR2 zoning
3. Conservation Subdivision

V. Next Meeting: Thursday, February 5th at 6:00 p.m.

Mr. Franklin stated it is difficult to have discussions on the rural districts without a designated growth area. The survey showed 78% thought there should be specific areas in the rural residential zone where the protection of the rural character should be encouraged. We need to look at specific areas to protect and designate growth areas.

Mr. Moriarty stated at the last meeting the Committee held a straw vote with 7-4 preserving the same RR1 and RR2 zones.

Mr. Moriarty asked to have a map to clarify the growth areas.

VI. Adjournment: The meeting was adjourned at 8:15 p.m.

Respectfully submitted,

Pam Bosarge, Administrative Assistant