

**Planning Board Meeting - Minutes
Tuesday, October 21, 2008
Cumberland Town Hall
290 Tuttle Road, Cumberland, Maine
7:00 PM**

A. *Call to Order*

The meeting was called to order at 7:02 p.m.

B. *Roll Call*

Present: Bill Ward, Board Chair, Bill Richards, Vice-Chair, Bob Couillard, Bob Vail, John Ferland, Chris Neagle
Absent: Pam Russell

Staff: Carla Nixon, Town Planner, Pam Bosarge, Board Clerk

C. *Approval of Minutes of August 19, 2008*

Mr. Vail moved to approve the minutes of August 19, 2008.

Mr. Couillard seconded.

VOTE: 3 in favor (Ward, Couillard, Vail)
3 abstain (Neagle, Ferland, Richards)

D. *Consent Calendar / Deminimus Change: Autumn Ridge Subdivision sidewalk esplanade change; Tax Assessor Map R08, Lots 42B - 42L.*

Ms. Nixon presented background information as follows: The Autumn Ridge subdivision plan shows a 4' esplanade and a 4' sidewalk; due to the topography constraints of the property the esplanade varies in size from 2.5 to 4' wide in some areas.

The Board discussed the plan and asked the amount of variance on the sidewalk.

Mr. Shane, Town Manager stated he has been on site with the Engineers and the esplanade is not less than three feet, and this is in the areas with the gas line and wetlands. The sidewalk is four feet wide.

Mr. Neagle moved to approve the deminimus change as requested.

Mr. Couillard seconded.

VOTE: Unanimous

E. *Hearings and Presentations:*

1. Public Hearing: To recommend to the Town Council draft zoning amendments to Section 204.10 of the Zoning Ordinance; Rural Industrial, to add Associated Retail as a permitted use; and to add the definition of Associated Retail to Section 104 (definitions).



Ms. Nixon presented background information as follows: This is a new use and definition. The RI zone is on upper Middle Road extending from Hazelton's Equipment to the Yarmouth Line on both sides of the road. There have been several inquiries in the past few years from business owners looking to relocate to this area. The problem has been that most of these businesses manufacture products and there is a need to have a small showroom area for customers. The retail piece is generally only a small part of the business, but a necessary one. The letter from Mr. Loring, owner of Graphix Signs outlines his current situation. A previous business, Fat Andy's Lumber, was also tripped up by this and the owner ultimately located his expanded business in North Yarmouth. Today, Ms. Nixon had a conversation with Mr. Jensen, a landowner on Route One and he suggested this might be a good use for the Route One area as well. Another example of this type of use would have been the dropped Planet Dog development on Route 1. They also needed to have a small showroom for their sample products..

Mr. Neagle stated this seems like a good use.

Mr. Ferland agreed with Mr. Neagle.

Mr. Richards stated currently Hazelton's has retail.

Mr. Vail stated as a past practice a load of loam can be purchased from Storey Brothers.

Mr. Couillard asked if there would be a limit on the size of retail.

Ms. Nixon stated the town attorney had discouraged designating a percentage.

Mr. Neagle stated a project would require Site Plan Review, which would give the Planning Board the opportunity for review.

The public portion of the meeting was opened.

Mr. John Chandler of 93 Tuttle Road and 208 Middle Road stated the request is not scary with the current uses, but he would be opposed to large retail with signs and increased traffic.

The public portion was closed.

Mr. Nixon stated internally illuminated signs are no longer permitted.

Mr. Richards moved to recommend to the Town Council the draft zoning amendments to Section 204.14 of the zoning ordinance to add "associated retail" as a permitted use: and to add the definition of "associated retail" to Section 104 (definitions).

Definition: A subordinate use customarily incidental to and located on the same lot with, the main building or use.

Mr. Neagle seconded.

VOTE: Unanimous

2. Public Hearing: To recommend to the Town Council draft zoning amendments to allow the free ranging of chickens by deleting Section 402.4 of the Zoning Ordinance ~~the free range of poultry is prohibited.~~

Ms. Nixon presented background information as follows: This request was forwarded from the Town Council. If this request were to be approved, residents would use the legal system for relief from poultry related complaints. Presently, the Code Officer and Animal Control Officer are notified and they have been able to resolve complaints without citing or filing residents. Our Animal Control Officer explained to the Town Council that these complaints occur in North Yarmouth and he informs those residents that there is no relief under local ordinances.

Mr. Ward asked if there had been any instances, and was anyone aware of why the language was written into the Ordinance.

Mr. Shane, Town Manager stated there was some type of disturbance between neighbors, and the language was added in the 1980's, there was very little discussion at the Council level. Mr. Bernie, Animal Control Officer informed Mr. Shane that has had similar complaints in North Yarmouth, and there is no civil protection. Mr. Shane stated if the language is stricken and there are any conflicts, then residents would have to deal with the court system.

Mr. Neagle stated free range chickens on a farm are one thing and free range chickens on a 10,000 sq. ft. lot are different and suggested perhaps a lot size minimum be required for free range chickens.

Mr. Ferland stated if Section 402.4 was stricken there should be more emphasis on Section 402.3 which states a minimum of 3-acre lot size in the MDR and LDR districts for animals other than horses or household pets.

Mr. Shane stated there are subdivisions in the RR1 and RR2 districts.

Mr. Richards voiced concern of free range poultry in roadways, and referenced his neighborhood at the intersections on Valley and Pleasant Valley Roads.

Mr. Vail was in favor of free range poultry.

Mr. Couillard thought free range would be okay if the poultry was cooped up at night.

The public portion of the meeting was opened.

Ms. Brita Bonechi, of 34 Longwoods Road states she has been a resident for 28-years and has had free range chickens. Ms. Bonechi stated chickens kill ticks, and other bugs, there are several people in town who have free range chickens, and like her, probably did not realize that was not permitted.

Mr. Neagle asked if the lot sizes were larger than minimum with the people who have free range chickens.

Ms. Janet Preston of Blanchard Road stated she has three acres and has thirteen free range chickens; free range chickens produce eggs higher in omega fatty acids. She would encourage free range chickens; the setback requirements for chicken coops restrict chickens on smaller lots.

Ms. Sally Merrill of Winn Road stated she just learned she was in violation of the ordinance; she has previously had free range chickens.

The public portion of the meeting was closed.

Mr. Neagle and Mr. Ferland discussed both sides of the issue; Mr. Ferland stated the new Comprehensive Plan will be rich with the importance of the Town's agriculture and sustainability.

Mr. Vail moved to recommend the approval of the draft language as proposed. The motion was not seconded.

Mr. Couillard thought it would be nice to allow free range poultry, and on lots smaller than an acre chickens should be penned.

Mr. Richards stated prevention of free range chickens does not limit opportunity for children to have chickens.

Mr. Neagle moved to recommend to the Town Council draft amendments to Section 402.4 of the zoning ordinance stating: The free range of poultry is prohibited on lots less than one-acre.

Mr. Vail seconded.

VOTE: 3 in favor (Vail, Couillard, Ferland)
2 opposed (Ward, Richards)

3. Public Hearing: To recommend to the Town Council a draft zoning amendment to delete Section 204.8.1.8 Self-Storage Facilities as a permitted use in the Office Commercial - South (OCS) district.

Ms. Nixon presented background information as follows: This item is a precursor to Item # 4. Self-Storage facilities were added a few years ago when the developer of Cumberland Foreside Village, David Chase, thought someone was interested in placing some of these units on one of the rear parcels at Cumberland Foreside Village. In order to allow self-storage facilities as a use in the contract zone, they needed to be permitted somewhere else in town and so the Council amended the ordinance by adding the use to the underlying OC-South zone. Since we do not want this use in the proposed expanded area of the OC South, a separate action to delete the use is required. Ms. Nixon checked with the Town Attorney, Natalie Burns and deleting the use will not affect Mr. Chase's ability to have this use as it is in his contract zoning agreement with the town.

Mr. Neagle stated he wouldn't want to remove the use without allowing it somewhere else in town.

Mr. Richards asked the rationale for self-storage facilities.

Ms. Nixon stated the Planning Board recommended allowing them in the Industrial zone, but the Council chose to allow them in the Office Commercial South district. She stated with the Town's efforts to promote Economic Development she thought that storage facilities were not the "highest and best use" for the Route One corridor.

The Board discussed the matter of equality, and if they were not allowed in another zone, Mr. Chase would have a monopoly.

Ms. Nixon stated this doesn't pre-clude adding the use to another zone.

Mr. Neagle moved to recommend to the Town Council draft language to delete Section 204.8.1.8 Self-Storage Facilities as a permitted use in the Office Commercial - South (OCS) district, provided the use is added as a permitted use in another zoning district.

Mr. Couillard seconded.

VOTE: 5 in favor (Ward, Neagle, Richards, Couillard, Ferland)
1 opposed (Vail)

Discussion on the motion:

Mr. Vail stated it is imperative when a use is proposed for land that it will be beneficial to the entire community. This is a policy decision.

Mr. Shane stated this is a procedural matter, and would return to the Planning Board again to determine which zones to allow the use. Self-Storage Facilities were not an allowed use in town until 2005.

Mr. Neagle stated that is a good idea, he was not prepared to make a recommendation on different zone.

4. Public Hearing: To recommend to the Town Council a draft zoning map change to expand the boundary of the Office Commercial - South (OC-S) to include Lots on Map R01, Lots # 12, 12A, 13, 13A, 13B, 14, 14A, 14B currently located in the Low Density Residential district as shown on the map below.



Ms. Nixon presented background information as follows: The Town Council has asked for a recommendation on expanding the OC-South zone to include the 7- additional parcels that lie to the north of the current line. Those parcels are currently zoned LDR as is the other side of Route One and the Foreside. Fred Jensen, a property owner, has made the request for consideration of the zone change.

The Board reviewed the map with the existing properties on Route One.

The public portion of the meeting was opened.

Mr. Fred Jensen, of Falmouth stated he owns a 3.5 acre parcel which is currently zoned LDR which would only allow a house to be built. Development along Route One from Kittery to Bath is commercial.

The public portion of the meeting was closed.

The Board discussed protecting existing residences along the corridor.

Mr. Neagle moved to recommend to the Town Council a zoning map change to expand the Office Commercial - South district as depicted on the map; provided that the 3-lots (13, 12, & 14B) with existing residences as of the date of this amendment remain permitted uses unless the residences are removed from the property.

Mr. Vail seconded.

VOTE: Unanimous

5. Public Hearing: To recommend to the Town Council draft zoning amendments to repeal and replace Section 424.3.8 - Temporary political Campaign Signs as proposed.

Ms. Nixon presented background information as follows: The request came from the Town Council. Mr. Moriarty drafted the language and is present this evening.

Mr. Moriarty stated this change came out of the Forest Lake referendum. There were some signs placed that did not have permits. The Council Ordinance Committee worked to tune-up the language to apply to State and Town Roads. It isn't designed to apply to candidates' proponents or opponents, such as homeowners who place a sign in their front yard. The purpose is to promote accountability for sign removal. The fee will be refundable upon removal of signs within seven days of the election.

Mr. Richards asked if there was a definition of political signs.

Mr. Moriarty stated no, some things are understood and a definition is not necessary.

Mr. Neagle stated the language doesn't imply only candidates need signs.

Mr. Moriarty stated state law overrides this language, the change is to track responsibility for removal of signs, and it is a clearer expression of the Town's opinion; it is not intended to address signs on private landowners' property.

The Board discussed location of signs and rights of way and private property rights.

Mr. Shane stated the wording would protect people who have signs placed in front of their homes; the signs have to be at least five feet from the pavement and fifteen feet from the private property line.

Mr. Neagle stated the fourth paragraph was confusing.

Mr. Neagle moved to recommend to the Town Council draft zoning amendments to repeal and replace Section 424.38 - Temporary Political Campaign Signs with the proposed draft language.

Mr. Richards seconded.

VOTE: 5 in favor (Ward, Neagle,
Richards, Ferland, Vail)
1 opposed (Couillard)

~~.8 — Temporary political campaign signs which do not individually exceed sixteen square feet may be erected in any zone provided they conform with the conditions of this Ordinance and only after obtaining a permit for the display of such signs from the Code Enforcement Officer and payment of a~~

~~refundable application fee as established by order of the Town Council. Applications for such political campaign signs shall be made on forms provided for by the Code Enforcement Officer. If following the election the Code Enforcement Officer finds that all such political advertising signs pertaining to an individual applicant have been removed, he may refund the application fee. No temporary political campaign signs may be erected more than thirty (30) days prior to the election for which such signs pertain. All such temporary political campaign signs shall be removed within 7 days following the election or the deposit fee shall be forfeited to the Town. [Amended, effective 9/1/98]~~

.8 Temporary political campaign signs may be erected in any zone provided they conform with the conditions of this Ordinance but only after obtaining a permit for the display of such signs from the Code Enforcement Officer and payment of a refundable application fee as established by order of the Town Council. Temporary political campaign signs must not individually exceed sixteen (16) square feet in size. Applications for such signs shall be made on forms provided by the Code Enforcement Officer.

No temporary political campaign signs may be erected more than six weeks prior to the election for which such signs pertain.

No temporary political campaign signs shall be closer than fifteen (15) feet to any lot line, or five (5) feet from the edge of any public way as may be determined by a lawful authority, and no such signs may encroach over in the air space of the paved surface of any public right-of-way.

Temporary political campaign signs must be removed within seven (7) days following the election, and upon such removal the Code Enforcement Officer shall refund the application fee. If such signs are not removed within seven days following the election, the application fee shall be forfeited to the Town.

Upon petition to the Code Enforcement Officer, the refundable application fee may be waived upon a showing of indigency of the political campaign or candidate applying for the permit. [Amended, effective]

F. Administrative Matters:

Ms. Nixon stated the Town Council will hold a workshop with the Doane Committee and Planning Board on November 10, 2008 at 6:00 p.m. This will be to review the recommendations of the Doane Advisory Committee.

The Board discussed Main Street uses.

Mr. Ward asked about the MMA training workshop.

Ms. Nixon stated the Town would pay for the workshop, and if anyone wanted to attend to let her know.

G. Adjournment:

Mr. Richards moved to adjourn.
Mr. Couillard seconded.

VOTE: Unanimous

The meeting was adjourned at 9:00 p.m.

A TRUE COPY ATTEST:

William P. Ward, Board Chair

Pam Bosarge, Board Clerk