

**Town of Boothbay
Board of Appeals
Anthony Appeal of the Coastal Maine Botanical Gardens
Development Permit Application
Findings of Fact, Conclusions, and Decision**

November 9, 2017

Applicant:

Coastal Maine Botanical Gardens
132 Botanical Garden Drive
Boothbay, ME 04537

Appellants:

Vaughn Anthony
Joanne Anthony
V. Kevin Anthony
Jason Anthony
117 Gaecklein Road
Boothbay, Maine 04537

Procedural History

This matter comes before the Board of Appeals (the Board) on appeal from a December 15, 2016 decision by the Town of Boothbay Planning Board approving a development permit for Coastal Maine Botanical Gardens (CMBG).

On January 13, 2017, Appellants Vaughn Anthony, Joanne Anthony, V. Kevin Anthony, and Jason Anthony filed an appeal to this Board challenging the Planning Board's decision. On January 12, 2017, the Boothbay Region Water District filed an appeal to this Board challenging the Planning Board decision.

The Board held an initial hearing on February 28, 2017, during which it determined that the Anthony appeal, the Water District appeal, and CMBG application were all complete. The Board scheduled additional hearings. However, before those hearings could occur, CMBG decided to amend its application to change the location of its proposed septic system.

By agreement of the parties, the Board stayed the Anthony and Water District appeals while CMBG submitted its amended application to the Planning Board. On April 19, 2017, the Planning Board approved CMBG's amended application. On April 26, 2017, the Water District withdrew its appeal to this Board.

On May 17, 2017, the Anthonys filed a new administrative appeal to this Board challenging the Planning Board's approval of the CMBG amended application. This Board consolidated the Anthonys' two appeals.

Pursuant to §§ 5.3.2.1.2 & 5.4.5.2.4, the Board of Appeals conducted a *de novo* review of the Anthony appeal and the CMBG development application. The Board held hearings on June 26, 2017, August 31, 2017, and September 21, 2017, during which the Board heard from the Anthonys, CMBG,

and members of the public. The Board began deliberations on September 21, 2017. Deliberations were cut short when it was discovered that the Board had not received all of the materials relevant to this matter.

The Board initially planned to continue deliberations on October 4, 2017. However, two Board members had visited the CMBG site on their own. Accordingly, the Board scheduled a site walk for the afternoon of October 17, 2017. During that site walk, the Board viewed the CMBG site, along with portions of the abutting properties. In the evening of October 17, 2017, the Board held a hearing in which it heard closing arguments from the Anthonys and CMBG, then reconvened its deliberations.

Findings of Fact

1. Coastal Maine Botanical Garden (CMBG) seeks approval to make improvements to its entrance road, and to construct a new Visitor Center and Gift Shop, a new entrance experience with drop-off plaza and pedestrian bridge to enter the gardens, and visitor and staff parking lots.
2. The CMBG property is located at 132 Botanical Garden Drive. The property is in the General Residential District, Shoreland and Watershed Overlay zones, and Water Reservoirs Protection District. The property is further identified as Assessor's Tax Map/Lots: R04/0109, 24, 23. The proposed area of developments contains an approximate total of 167 acres.
3. A portion of the proposed construction and improvements is located in the Watershed Overlay zone. The remainder of the proposal is located only within the General Residential District.
4. The deed for the proposed project can be seen at the Lincoln County Registry of Deeds Book 4751, Page 119.

Vote: For: 5 Against: 0

Conclusions

Based on the above stated facts, the Board of Appeals makes the following conclusions:

1. Right, Title or Interest in the Property

The applicant has demonstrated right, title, or interest in the property in question.

Vote: For: 5 Against: 0

2. Permitted Use

Section 3.9.4.1 et seq. sets forth the allowed uses within the General Residential District. Further, § 3.9.4.1.1 states that "[i]f a use is not specifically listed in the Land Use Table or is not specifically listed in Section 3.7 or 3.9.4.2 as a prohibited use, and the Planning Board determines that it is substantially similar to and compatible with a use that is listed in the Land Use Table, it shall be regulated in the same manner as such use."

The Board determines that the CMBG use is a "botanical garden." CMBG is not operating either a "museum" or an "educational facility." As a result, the use of CMBG's property is not specifically listed in either the Land Use Table or in Sections 3.7 or 3.9.4.2.

Vote: For: 5 Against: 0

Accordingly and pursuant to § 3.9.4.1.1, the Board must determine whether CMBG's use as a "botanical garden" is substantially similar to and compatible with a use listed on the Land Use Table.

The Board considered two possible analogues from the Land Use Table: Museum and Educational Facility. The Board noted that it was a close question which of those two uses was most substantially similar to the botanical gardens. Nonetheless, the Board concludes and finds that CMBG's use as a botanical garden is most substantially similar to and compatible with a museum. In reaching this decision, the Board finds that CMBG identified itself as a museum in its application materials for this permit and has represented itself as a museum in various grant applications over the years. Moreover, the Board also concludes that the general business practice of displaying plants for viewing is more similar to a museum than to an educational facility.

Vote: For: 3 Against: 2

Based on the foregoing, CMBG's application is regulated in the same way as a museum. Under the Land Use Table in § 3.9.4.1, a museum is not an allowed use within the Watershed Overlay Zone. As part of its application, CMBG's plans include expansion of its use into the Watershed Overlay Zone. Because botanical gardens must be regulated in the same way as museums, this expansion violates the Town of Boothbay Zoning Ordinance.

Vote: For: 3 Against: 2

Decision

Based on the above findings and conclusions, the Board votes to grant the Anthonys appeal and deny CMBG's development application.

Vote: For: 3 Against: 2

Date

11/13/17


Dick Perkins, Chair

Additional findings and conclusions

Notwithstanding the foregoing, the Board has reviewed the entire application and appeal and makes the following additional findings and conclusions. The Board's consideration and decisions on the following standards assume that the project is an allowed use within the Watershed Overlay Zone.

Lots

Standard:

3.9.4.4.1 Lots The following standards are in addition to the standards of Section 3.11.9.

3.9.4.4.1.1 Configuration The depth-to-width ratio or the depth-to-shore frontage on a great pond, stream or coastal wetland ratio and the width-to-depth ratio shall not exceed 5 to 1. {30-A § 4404(17)}

3.9.4.4.1.2 Coverage Lots or the part thereof in the Resource Protection and Stream Protection Areas or in the Shoreland Overlay Zone may be developed to a maximum of 20%. {DEP § 15 B(4)} [Shoreland Overlay Zone]¹⁸

3.9.4.4.1.3 Developable Area The Developed Area divided by the Buildable Area percentage, as these terms are defined in Section 3.8, shall not exceed 50%.

3.9.4.4.1.3.1 The maximum percentage of the buildable area that may be developed is 30%. [Resource Protection Area]

3.9.4.4.1.4 Frontage The minimum shore frontage on a great pond, stream, outlet stream or wetland in feet shall be:

USE/LOCATION	Shoreland Overlay Zone	Resource Protection Area	Stream Protection Area
Residential per dwelling unit			
Adjacent to tidal areas	150	150	150
Adjacent to non-tidal areas	200	200	200
Governmental, Institutional, Commercial or Industrial per principal structure			
Adjacent to tidal areas	200	200	200
Adjacent to non-tidal areas	300	300	300
Public and Private Recreational Facilities	200	200	200

3.9.4.4.1.5 Size The minimum size of a lot in square feet shall be:

Outside Overlay area	Shoreland Overlay Zone	Resource Protection Area	Stream Protection Area	Watershed Overlay Zone
40,000	60,000	80,000	60,000	40,000

3.9.4.4.1.6 Width The average distance in feet between the side lot lines shall be:

Outside Overlay area	Shoreland Overlay Zone	Resource Protection Area	Stream Protection Area	Watershed Overlay Zone
100	100	150	150	100

Board finding and conclusion

The Board finds that the CMBG application meets the criteria set forth in § 3.9.4.4.1, Development and Performance Standards, of the Town of Boothbay Zoning Ordinance.

Vote: For: 5 Against: 0

Structures

Standard:

3.9.4.4.2 Structures The following standards are in addition to the standards of Section 3.11.20.

3.9.4.4.2.1 Height The maximum structure height shall be 34 feet. {DEP § 15 B(2)}

3.9.4.4.2.1.1 The above height limitation does not apply to chimneys, antennas and communications towers. {DEP § 15 B(2)}

3.9.4.4.2.2 Setbacks New structures shall have the following minimum setbacks (in feet): Lot Lines (side and rear) 20

The setback requirements from lot lines shall not apply to subsurface wastewater disposal systems.

Private Way (closest edge of right-of-way) 8

Road (right-of-way center line) State 50 Town 33

The setback requirements from public ways and roads shall not apply to driveways, sidewalks, and similar structures. Fences and walls on corners of lots that are bordered by two intersecting public or private roads shall be setback a minimum of 8 feet from the edge of each road and shall be no more than 42 inches in height.

Structure on Adjoining Property Principal 40 Accessory 20

The setback requirements from structures on adjoining properties do not apply to structures on adjoining properties with less than the required setback.

Shorelines

Great ponds and associated wetlands 100 {DEP § 15 B(1)} [Shoreland Overlay Zone]

Other shorelines 75 {DEP § 15 B(1)} [Resource Protection Area, Stream Protection Area, Shoreland Overlay Zone]

In addition, the Buildable Area setback on lots bounded on at least 3 sides by water shall be 150 feet from the point of any peninsula. [Shoreland Overlay Zone]

Board finding and conclusion

The Board finds that the CMBG application meets the criteria set forth in § 3.9.4.4.2, Development and Performance Standards, of the Town of Boothbay Zoning Ordinance. Specifically, the Board finds that based upon the materials submitted as part of the application, the proposed buildings fall underneath the height restriction and all setbacks have been met.

Vote: For: 5 Against: 0

Chemical and Petroleum Product Storage

Standard:

3.10.6 Chemical and Petroleum Product Storage The storage of gasoline, petroleum, or kerosene products or by-products in excess of the amount normally associated with a use, such as individual household use, farming, commercial fishing and maritime activities, and restaurants, is prohibited:

3.10.6.1 The Planning Board may allow storage of greater quantities if there is a demonstrated need and the requirements of Section 3.6.2 for approval of a Conditional Use are met.

3.10.6.2 No chemical, herbicide, pesticide, fertilizer, gasoline, petroleum, or kerosene products or by-products in excess of the amount normally associated with a use shall be stored within 150 feet from any high-water line or upland edge of a wetland.

Board finding and conclusion

The Board finds that the CMBG application meets the criteria set forth in § 3.10.6, Supplemental Use Standards, of the Town of Boothbay Zoning Ordinance. Specifically, the Board finds that § 3.10.6 does apply to the CMBG application, but that the materials provided in the application showed that the amounts of stored materials were normal for the botanical garden use and that the Anthonys had not shown that the stored materials were greater than what would be normal for the use.

Vote: For: 5 Against: 0

**Commercial Development next to a Residential Use
Standard:**

3.10.7 Commercial Development next to a Residential Use Where development other than for a residential use is proposed adjacent to a residential use, the side and rear yard setback shall be landscaped to form a visual buffer. Temporary or permanent structures, including but not limited to, driveways and parking areas, dumpsters and storage shall not be allowed in the setback area.

3.10.7.1 Accessory apartments; one family, two family and multifamily dwellings; lodging houses; and retirement facilities are residential uses.

3.10.7.2 This standard shall apply where the non-residential use abuts:

A. An existing residential use,

B. A lot where a Building Permit for a residential building has been obtained from the Code Enforcement Officer, or

C. A lot created as part of a residential subdivision.

3.10.7.3 Subsurface wastewater disposal facilities may be installed in the buffer area with Planning Board approval. The required visual barrier shall be present.

Board finding and conclusion

The Board finds that the CMBG application meets the criteria set forth in § 3.10.7, Supplemental Use Standards, of the Town of Boothbay Zoning Ordinance. Specifically, the Board finds that there are no structures proposed for the setbacks and that the setbacks as proposed will be landscaped to form a visual buffer. The Board concludes that the buffers will be sufficient once growth is completed. The Board suggests that CMBG ensure that the buffer is as thick as possible.

Vote: For: 3 Against: 2

**Buffers, Visual
Standard:**

3.11.1 Buffers, Visual The required setback area from any public way shall be maintained as a visual buffer when required for a specific use in a Land Use Table of Section 3.9.

3.11.1.1 This visual buffer strip shall be maintained as a vegetated area and shall not be used for parking, storage, display of materials, and placement of dumpsters or similar items. A visual barrier shall be established within the buffer strip by landscaping or fencing.

3.11.1.2 The Planning Board may waive the requirement for a visual buffer if the applicant can demonstrate that the proposed development or the circumstances of the lot satisfy the intent of this standard.

Board finding and conclusion

The Board finds that the criteria set forth in § 3.11.1, Development and Performance Standards, of the Town of Boothbay Zoning Ordinance do not apply to CMBG's application because the Land Use Table in the General Residential District does not require a visual buffer for CMBG's use.

Vote: For: 5 Against: 0

**Buffers, Water Supply Protection
Standard:**

3.11.2 Buffers, Water Supply Protection A water supply protection buffer shall be designed and maintained in accordance with the standards of Section 3.11.2 when required for a specific use in a Land Use Table of Section 3.9. [Watershed Overlay Zone]

Board finding and conclusion

The Board finds that the criteria set forth in § 3.11.2, Development and Performance Standards, of the Town of Boothbay Zoning Ordinance do not apply to CMBG's application because the Land Use Table in the General Residential District does not require a water supply protection buffer for CMBG's use.

Vote: For: 3 Against: 2

**Clearing or Removal of Vegetation for Activities other than Timber Harvesting
Standard:**

3.11.3 Clearing or Removal of Vegetation for Activities other than Timber Harvesting

3.11.3.1 General All clearing of trees shall be in accordance with the Best Management Practices. Ground water runoff buffers as required in Section 3.11.2 shall be maintained.

3.11.3.2 Shoreland Overlay Zone and Watershed Overlay Zone

3.11.3.2.1 Except to allow for the development of permitted uses and the removing of safety hazards specifically identified and marked by a Maine licensed forester, a buffer strip of vegetation shall be preserved within a strip of land extending 100 feet from the shoreline of a great pond and 75 feet from any other shoreline, as follows: {38 § 439-A(6) and DEP §§ 15 O((1)(a)(5) & P(2))}

3.11.3.2.1.1 There shall be no cleared opening or openings greater than 250 square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown.

3.11.3.2.1.1.1 A footpath not to exceed 6 feet in width as measured between tree trunks or shrub stems is allowed provided that a cleared line of sight to the water through the buffer strip is not created.

3.11.3.2.1.2 Selective cutting of trees within the buffer strip is allowed provided that a well-distributed stand of trees and other natural vegetation is maintained.

3.11.3.2.1.2.1 A “well-distributed stand of trees” adjacent to a great pond or a stream flowing to a great pond shall be defined as maintaining a rating score of 24 or more in each 25 foot by 50 foot rectangular 1,250 square feet) area as determined by the following rating system:

Diameter of tree at 4 1/2 feet above ground level (inches) Points

2 – <4 inches 1 4 – <8 inches 2 8 – <12 inches 4 12 in. or greater 8

3.11.3.2.1.2.1.1 Adjacent to other streams, outlet streams, tributary streams, and wetlands a “well-distributed strand of trees” is defined as maintaining a minimum rating score of 16 per 25 foot by 50 foot rectangular area.

3.11.3.2.1.2.1.2 As an example, adjacent to a great pond and associated wetlands, if a 25 foot by 50 foot plot contains 4 trees between 2 and 4 inches in diameter, 2 trees between 4 and 8 inches in diameter, 3 trees between 8 and 12 inches in diameter, and 2 trees over 12 inches in diameter, the rating score is:

$(4 \times 1) + (2 \times 2) + (3 \times 4) + (2 \times 8) = 36$ points

3.11.3.2.1.2.1.2.1 Thus, the 25 foot by 50 foot plot contains trees worth 36 points. Trees totaling 12 points ($36 - 24 = 12$) may be removed from the plot provided than no clear openings are created.

3.11.3.2.1.2.1.3 The following shall govern in applying this point system:

A. The 25 foot by 50 foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer.

B. Each successive plot must be adjacent to, but not overlap a previous plot.

C. Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this Ordinance.

D. Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by is Ordinance.

E. Where conditions permit, no more than 50% of the points on any 25 foot by 50 foot rectangular area may consist of trees greater than 12 inches in diameter.

3.11.3.2.1.2.2 Maintaining “other natural vegetation” is defined as retaining existing vegetation under 3 feet in height and other ground cover and retaining at least 5

saplings less than 2 inches in diameter at 4 1/2 feet above ground level for each 25 foot by 50 foot rectangle area. If 5 saplings do not exist, no woody stems less than 2 inches in diameter can be removed until 5 saplings have been recruited into the plot.

3.11.3.2.1.2.2.3 Notwithstanding the above provisions, no more than 40% of the total volume of trees 4 inches or more in diameter, measured at 4 1/2 feet above ground level may be removed in any 10 year period.

3.11.3.2.1.3 In order to protect water quality and wildlife habitat existing vegetation under 3 feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or other permitted uses as described in Sections 3.11.3.2.1 and 3.11.3.2.1.1.1.

3.11.3.2.1.4 Pruning of tree branches on the bottom one-third of the tree is allowed.

3.11.3.2.1.5 In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.

3.11.3.2.1.6 There shall be no cutting or removal of vegetation within the strip of land extending 75 feet inland from the high-water line of a great pond and associated wetlands, except to remove safety hazards specifically identified and marked by a Maine licensed forester. {38 § 439-

A(6)(B) and DEP §§ 15 O((1)(a)(5) & P(1))} [Resource Protection Area]

3.11.3.2.2 At distances greater than 100 feet from the shoreline of a great pond and 75 feet from any other shoreline, there shall be allowed on any lot, in any 10 year period, selective cutting of not more than 40% of the volume of trees 4 inches or more in diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the 40% calculation. For the purposes of these standards, volume may be considered to be equivalent to basal area. {DEP § 15 P(3)} **[Shoreland Overlay Zone]**

3.11.3.2.2.1 The cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized and the removal of safety hazards specifically identified and marked by a Maine licensed forester. {DEP §§ 15 O((1)(a)(5) & P(1))} **[Resource Protection Area]**

3.11.3.2.2.2 In no event shall cleared openings in the portion of a lot within the Shoreland Overlay Zone for any purpose, including but not limited to, principal and accessory structures, driveways and wastewater disposal areas, exceed in the aggregate, 25% of the lot area within the Shoreland Overlay Zone, or 10,000 square feet, whichever is greater, including land previously cleared. {DEP § 15 P(3)}

3.11.3.2.3 Clearing or removal of woody vegetation necessary for a new subsurface wastewater disposal system and any associated fill extensions shall not extend closer than 75 feet from the high-water line of a great pond, stream, outlet stream or the upland edge of a wetland. {DEP § 15 K}

3.11.3.2.4 Legally existing nonconforming cleared openings on March 24, 1990 may be maintained, but shall not be enlarged, except as allowed by Section 3.11.3.2. {DEP § 15 P(4)}

3.11.3.2.5 Fields and other cleared openings that have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section 3.11.3.2. {DEP § 15 P(5)}

Board finding and conclusion

The Board finds that the criteria set forth in § 3.11.3, Development and Performance Standards, of the Town of Boothbay Zoning Ordinance do not apply to CMBG's application because these standards govern cutting within the Shoreland Overlay Zone and CMBG's application does not propose work to be done within that Zone.

Vote: For: 5 Against: 0

Construction Standards Standard:

3.11.4 Construction Standards It is particularly important that new structures meet the following minimum design criteria.

3.11.4.1 The exterior walls shall be finished with a covering of wood, plastic, or metal clapboards; wood siding; or wood, asphalt, plastic, or metal shingles; masonry, brick or stone or other nationally advertised siding materials. Tarred paper or tarred felt or similar substances shall not be used unless completely hidden from view by previously prescribed finished exterior wall covering.

3.11.4.2 Every chimney shall be constructed of solid masonry units or materials prefabricated or otherwise approved by the National Board of Fire Underwriters.

3.11.4.3 All newly erected structures that are to be wired shall have an adequate and safe electrical Section 3 service of at least 100 amperes and shall be wired in accordance with acceptable industry standards.

3.11.4.4 All buildings shall be set on masonry foundations in the form of masonry walls at least 6 inches thick, or masonry posts at least 6 inches in diameter which in turn rest on ledge or which extend into solid earth for 31/2 feet, or a concrete slab at least 6 inches thick. Mobile home foundations need not be set to below the frost line if not on ledge. Buildings that do not exceed 400 square feet are exempt from this requirement.

3.11.4.5 New commercial construction should be compatible with surrounding properties in terms of formal characteristics such as height, massing, roof shapes and window proportions. Where existing historic buildings surround new construction, building height and exterior materials shall be harmonious with those of adjacent properties.

Board finding and conclusion

The Board finds that the CMBG application meets the criteria set forth in § 3.11.4, Development and Performance Standards, of the Town of Boothbay Zoning Ordinance. Specifically, the Board finds that CMBG has demonstrated that all new construction proposed as part of its application will meet the minimum construction standards set forth in § 3.11.4.

Vote: For: 5 Against: 0

Cuts and Fills

Standard:

3.11.5 Cuts and Fills The top of a cut or bottom of a fill section shall not be closer than 10 feet to an adjoining property, unless otherwise approved by the Planning Board.

3.11.5.1 Except in a ledge cut, cuts and fills shall be no steeper than a slope of 2 1/2 feet horizontal to 1 foot vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section 3.11.7. Where a cut results in exposed ledge, side slopes no steeper than 4 feet vertical to 1 foot horizontal are permitted.
{DEP §15 H(5)}

3.11.5.2 There shall be no filling, dredging, or grading within 100 feet of the high-water line.
[Resource Protection Area]

Board finding and conclusion

The Board finds that the CMBG application meets the criteria set forth in § 3.11.5, Development and Performance Standards, of the Town of Boothbay Zoning Ordinance. Specifically, the Board finds that the CMBG has demonstrated through its application, testimony, site walk, and other materials, that the cuts, fills, grades, and slopes proposed as part of the application meet the standards of § 3.11.5.

Vote: For: 5 Against: 0

Emissions

Standard:

3.11.6 Emissions The location and vertical height of all exhaust fans, vents, chimneys, or any other sources discharging or emitting smoke, fumes, gases, vapors, odors, scents or aromas shall be shown on plans submitted with an application, with a description of the source materials.

3.11.6.1 Section 3.11.6 does not apply to one and two family dwellings.

Board finding and conclusion

The Board finds that the CMBG application meets the criteria set forth in § 3.11.6, Development and Performance Standards, of the Town of Boothbay Zoning Ordinance. Specifically, the Board finds that all discharging sources shown on the plans meet the standards of this section.

Vote: For: 5 Against: 0

Hazard Trees, Storm-Damaged Trees, and Dead Tree Removal Standard:

3.11.7. Hazard Trees, Storm-Damaged Trees, and Dead Tree Removal

3.11.7.1. Hazard trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:

3.11.7.2 Storm-damaged trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:

Board finding and conclusion

The Board finds that the criteria set forth in § 3.11.7, Development and Performance Standards, of the Town of Boothbay Zoning Ordinance do not apply to CMBG's application because these standards govern cutting within the Shoreland Overlay Zone and CMBG's application does not propose work to be done within that Zone.

Vote: For: 5 Against: 0

Exemptions to Clearing and Vegetation Removal Requirements Standard:

3.11.8. Exemptions to Clearing and Vegetation Removal Requirements

The following activities are exempt from the clearing and vegetation removal standards set forth in Section 3.11.3 provided that all other applicable requirements of this chapter are complied with, and the removal of vegetation is limited to that which is necessary:

Board finding and conclusion

The Board finds that the criteria set forth in § 3.11.8, Development and Performance Standards, of the Town of Boothbay Zoning Ordinance do not apply to CMBG's application because CMBG has not requested any exemption under this section.

Vote: For: 5 Against: 0

Revegetation Requirements Standard:

3.11.9 Revegetation Requirements

When revegetation is required in response to violations of the vegetation standards set forth in Section 3.11.7, to address the removal of non- native invasive species of vegetation, or as a mechanism to allow for development that may otherwise not be permissible due to the

vegetation standards, including removal of vegetation in conjunction with a shoreline stabilization project, the revegetation must comply with the following requirements.

Board finding and conclusion

The Board finds that the criteria set forth in § 3.11.9, Development and Performance Standards, of the Town of Boothbay Zoning Ordinance do not apply to CMBG's application because there has been no showing that there have been any violations of the vegetation standards set forth in this section.

Vote: For: 5 Against: 0

Erosion and Sedimentation Controls

Standard:

3.11.10 Erosion and Sedimentation Controls {38 § 420-C}

3.11.10.1 All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall also require a written soil erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:

- (a) Mulching and revegetation of disturbed soil.
- (b) Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
- (c) Permanent stabilization structures such as retaining walls or rip-rap.

{DEP § 15 Q(3)}

3.11.10.2 In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible. {DEP § 15 Q(2)}

3.11.10.3 Any proposal to fill, displace or expose soil or other earthen material shall require a site specific Erosion and Sedimentation Control Plan developed in accordance with the then – current as of the date of the application edition of the *Maine Erosion And Sediment Control BMPS* of the Bureau of Land and Water Quality, Maine Department of Environmental Protection. {Bureau of Land and Water Quality, Maine Department of Environmental Protection, DEP § 15 Q(1)} Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion

3.11.10.4. Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases permanent stabilization shall occur within nine (9) months of the initial date of exposure. In addition:

- (a) Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.
- (b) Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
- (c) Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.

3.11.10.5. Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainage ways shall be designed and constructed in

order to carry water from a twenty five (25) year storm or greater, and shall be stabilized with vegetation or lined with riprap.

Board finding and conclusion

The Board finds that the CMBG application meets the criteria set forth in § 3.11.10, Development and Performance Standards, of the Town of Boothbay Zoning Ordinance. Specifically, the Board relies upon Attachment D to the CMBG application, which is the Erosion and Sediment Control plan, which was also approved by the DEP, to find that the criteria of this section have been met. The Board also notes that CMBG has agreed to engage a third party to monitor compliance with the Erosion and Sediment Control plan.

Vote: For: 4 Against: 1

Lighting Standard:

3.11.11 Lighting Lights shall be shielded so that the source of illumination is not visible beyond the property boundary. Where there is a mix of residential and commercial uses, exterior lights associated with commercial uses are restricted to a maximum of 20 feet in height. In addition, all lighting (except for security purposes) shall be turned off between 11 p.m. and 6 a.m. Lighting between 11 p.m. and 6 a.m. will be allowed for the period a business is operating with Planning Board approval.

3.11.11.1 Section 3.11.11 does not apply to one and two family dwellings.

Board finding and conclusion

The Board finds that the CMBG application meets the criteria set forth in § 3.11.11, Development and Performance Standards, of the Town of Boothbay Zoning Ordinance. Specifically, the Board notes that CMBG has provided a revised designed lighting plan as part of its application. The Board finds that the revised lighting plan satisfies all of the criteria set forth in this section.

Vote: For: 3 Against: 2

Lots Standard:

3.11.12 Lots

3.11.12.1 General

3.11.12.1.1 Lots with multiple frontages are to be avoided whenever feasible. When lots have frontage on two or more right-of-ways, the plan and deed restrictions shall indicate that vehicular access shall be located only on the less-traveled way.

3.11.12.1.1.1 The Planning Board may approve variations from this requirement.

3.11.12.1.2 Any side of a lot abutting a public or private way shall have the lot line in common with the right-of-way of the public or private way.

3.11.12.1.3 Lot configuration and structure location shall provide for adequate off-street parking and service facilities.

3.11.9.2 Non-conforming Lots Development may occur without the need for a variance on a non- conforming lot of record that existed:

- A. in the Shoreland Overlay Zone before a Shoreland Zoning Ordinance was first adopted on March 4, 1974,
 - B. elsewhere before a Zoning Ordinance for the Town of Boothbay was first adopted on August 20, 1979, or
 - C. before subsequent amendments of the Zoning Ordinance that made the lot non- conforming, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot area, lot width and shore frontage can be met. {DEP § 12 E(1)}
- 3.11.12.2.1** The Board of Appeals may grant variances. {DEP § 12 E(1)}
- 3.11.12.2.2** Variances shall not be granted for lot area, lot width or shore frontage. {DEP § 12 E(1)}
- [Shoreland Overlay Zone] 3.11.12.3 Size**
- 3.11.12.3.1** Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971. {30-A § 4401(6) and DEP § 15 A(3)}
- 3.11.12.3.2** Land beneath roads serving more than two lots shall not be included towards calculating minimum lot area. {DEP § 15 A(2)}
- 3.11.12.3.3** Land below the high-water line of great ponds and associated wetlands, streams, outlet streams or the upland edge of other wetlands shall not be included towards calculating minimum lot area. {DEP § 15 A(2)} **[Shoreland Overlay Zone]**
- 3.11.12.3.4** Lodging Houses, multifamily dwellings, retirement facilities and accessory apartment for other than one family residential dwellings shall have a minimum of 30,000 square feet per dwelling unit adjacent to tidal areas and 40,000 square feet per dwelling unit adjacent to non-tidal areas. {DEP § 15(A)(1)} **[Shoreland Overlay Zone]**

Board finding and conclusion

The Board finds that the criteria set forth in § 3.11.12, Development and Performance Standards, of the Town of Boothbay Zoning Ordinance do not apply to CMBG's application because CMBG does not propose any activities as part of its application that fall within the restrictions set forth in this section.

Vote: For: 5 Against: 0

Noise Standard:

3.11.13 Noise

3.11.13.1 Section 3.11.13 does not apply to one and two family dwellings with no home occupation or accessory use on the property.

3.11.13.2 Excessive noise at unreasonable hours shall be required to be muffled so as not to be objectionable due to intermittence, beat frequency, shrillness or volume.

3.11.13.3 The maximum permissible sound pressure level of any continuous, regular or frequent source of sound produced by any activity regulated by Section 3 shall be as established by the time period and type of District listed below. Sound pressure levels shall be measured at all lot lines, at a height of at least 4 feet above the ground surface.

3.11.13.3.1 Sound from any source regulated by Section 3 shall not exceed the following limits at the property line of said source:

Sound Pressure Level Limits Measured in dBA's (Applicable Hours: 9 p.m. – 7 a.m.): C1, C2, C3, Industrial Park and Maritime Commercial Districts 65

All other areas 55

3.11.13.3.2 Where the emitting and receiving premises are in different Districts, the limits governing the stricter District shall apply.

3.11.13.3.3 The levels specified may be exceeded by 10 dBA for a single period, no longer than 15 minutes in any one day.

Board finding and conclusion

The Board finds that the CMBG application meets the criteria set forth in § 3.11.13, Development and Performance Standards, of the Town of Boothbay Zoning Ordinance. Specifically, the Board finds that the CMBG application meets the criteria of this section because the CMBG operating hours ensure that activities will not occur within the hours during which noise is specifically restricted.

Vote: For: 5 Against: 0

Outdoor Storage Standard:

3.11.14 Outdoor Storage All outdoor storage facilities for fuel, chemicals, or industrial wastes, and potentially harmful raw materials, shall be located on impervious pavement, and shall be completely enclosed by an impervious dike high enough to contain the total volume of liquid kept in the storage area, plus the accumulated rainfall of a 25 year storm. This requirement is intended to prevent harmful materials from spilling and seeping into the ground and contaminating the ground water. Storage tanks for "home heating oil" and diesel fuel, not exceeding 275 gallons in size, may be exempted from this requirement provided that there is no seasonal high-water table within 4 feet of the surface, and that rapidly permeable sandy soils are not involved.

3.11.14.1 Section 3.11.11 does not apply to one and two family dwellings.

Board finding and conclusion

The Board finds that the criteria set forth in § 3.11.14, Development and Performance Standards, of the Town of Boothbay Zoning Ordinance do not apply to CMBG's application because the application does not propose outdoor storage of the materials governed under this section.

Vote: For: 5 Against: 0

Parking and Loading Standard:

3.11.15 Parking and Loading Off-street parking shall be required for all new and expanded uses and shall be adequately sized for the proposed use. {DEP § 15 G(2)}

3.11.15.1 General

3.11.15.1.1 Parking areas shall meet the shoreline setback requirements for structures for the district in which such parking areas are located. {DEP § 15 G(1)} [Shoreland Overlay Zone]

3.11.15.1.2 Off-street parking shall be located on the same lot as the use for which the parking is required unless other arrangements are approved by the Planning Board.

3.11.15.1.3 No parking space shall serve more than one use unless the Planning Board finds that it is clearly demonstrated that the shared parking area will substantially meet the intent of the requirements by reason of variation in the probable time of maximum use by patrons or employees of such establishments.

3.11.15.1.4 Except for parking for one and two family residential uses, including dwellings in a mobile home park, and home occupations, all parking shall be excluded from the area between the principal building and public and private way(s).

3.11.15.1.4.1 Section 3.11.15.1.4 does not apply in the Maritime Commercial District or Industrial Park District.

3.11.15.1.5 Parking areas for all uses except for one and two family residential uses and any associated Home Occupations shall be designed so that vehicles can be turned around within the lot and are not required to back into public ways.

3.11.15.1.6 Loading facilities shall be located entirely on the same lot as the structure or use to be served. Loading facilities shall also be designed so that they do not interfere with customer traffic flows and parking.

Board finding and conclusion

The Board finds that the CMBG application meets the criteria set forth in § 3.11.15.1, Development and Performance Standards, of the Town of Boothbay Zoning Ordinance. Specifically, the Board finds that all off-street parking is located on the same lot as the use the parking serves, that no parking space serves more than one use, that all parking under the CMBG application is excluded from the area between the principal building and roads, that parking areas are designed with sufficient turnaround areas, and that loading areas are properly designed under the criteria of this section.

Vote: For: 4 Against: 1

Parking and Loading Standard:

3.11.15.2 Access Standards for other than one and two family residential uses Lots shall be designed with a limited number of access points. Normally a maximum of 2 shall be allowed regardless of the number of businesses served.

3.11.15.2.1 The Planning Board may approve variations from this requirement.

3.11.15.2.2 Access points shall be so located as to minimize traffic congestion and to avoid generating traffic on local streets of a primarily residential character.

3.11.15.2.3 Provision shall be made for vehicular access in such a manner as to safeguard against hazards to traffic and pedestrians in existing roads and within the lot, to avoid traffic congestion on any road, and to provide safe and convenient circulation on public roads and within the lot. This may require the provision of turning lanes, traffic directional islands, frontage roads, and traffic controls on existing and proposed public or private roads.

3.11.15.2.4 Access points for commercial uses shall be designed in profile, grading and location to provide the following minimum sight distance, measured in each direction. There are two steps in determining minimum sight distance. First, establishing the point from which the sight distance will be measured; second, measuring the sight distance from that point. Each is described below:

Step 1: Step 2:

The measurement point shall be at least 5 feet behind the curb line or edge of shoulder and 3 1/2 feet above the road surface.

From this measurement point an object in the center of the outside travel lane of the roadway 4 1/2 feet above the pavement must be able to be seen at a distance determined by the legal speed limit of the roadway. This distance is 10 times the legal speed limit.

For example, if the legal speed limit is 30 miles per hour, the minimum sight distance is 300 feet in each direction.

3.11.15.2.4.1 The minimum site distance shall be 100 feet. The Planning Board may allow a shorter distance if the subdivider can show that no alternative exists.

3.11.15.2.5 Entrances and exits shall be clearly identified by the use of entrance and exit signs, curb cuts, and landscaping.

3.11.15.2.6 Where necessary to safeguard against hazards to traffic and pedestrians or to avoid traffic congestion, provision shall be made for turning lanes, traffic directional islands, frontage roads, and traffic controls within existing and proposed public roads.

Board finding and conclusion

The Board finds that the CMBG application meets the criteria set forth in § 3.11.15.2, Development and Performance Standards, of the Town of Boothbay Zoning Ordinance.

Vote: For: 5 Against: 0

Parking and Loading Standard:

3.11.15.3 Parking Area Standards for other than one and two family residential uses

3.11.15.3.1 Major interior travel lanes shall be designed to allow continuous and uninterrupted traffic movement. Enclosures, such as guardrails, curbs, fences, walls, and landscaping, shall be used to identify circulation patterns of parking areas and to restrict driving movements diagonally across parking aisles, but not to reduce visibility of on-coming pedestrians and vehicles. Entrance/exits shall be designed to allow adequate stacking in vehicle circulation lanes.

3.11.15.3.2 Access to parking stalls shall not be provided from major interior travel lanes.

3.11.15.3.3 Unless specifically approved by the Planning Board, parking areas shall be designed to permit each motor vehicle to proceed to and from the parking space provided for it without requiring the moving of any other motor vehicles.

3.11.15.3.4 All parking spaces and access drives shall be at least 5 feet from any side or rear lot line. Where development is proposed adjacent to a one or two family residential use, the side and rear yard setback shall be observed for parking spaces and access drives. This area is to be used as a buffer zone and shall be landscaped so as to form a visual barrier.

3.11.15.3.4.1 Where commercial development is proposed adjacent to a residential use, parking spaces and access drives shall not be allowed in the side and rear setbacks and a visual buffer shall be required in accordance with the standards of Section 3.10.7.

3.11.15.3.5 Parking spaces for a small number of vehicles shall each be approximately 10 feet wide and 20 feet long unless the Planning Board finds that it is clearly demonstrated that smaller parking spaces are appropriate. {DEP § 15 G(3)}

3.11.15.3.6 Parking stalls and aisle layout shall conform to the following Parking Design Standards Table: {DEP § 15 G(3)}

Parking Design Standards Table

Parking Design Standards Table				
Parking Angle	Stall Width	Skew Width	Stall Depth	Aisle Width
90°	9' - 0"		18' - 5"	24' - 0"
60°	8' - 6"	10' - 5"	18' - 0"	16' - 0" one way only
45°	8' - 6"	12' - 9"	17' - 5"	12' - 0" one way only
30°	8' - 6"	19' - 0"	17' - 0"	12' - 0" one way only

3.11.15.3.7 In paved parking areas, painted stripes shall be used to delineate parking stalls. Stripes shall be a minimum of 4 inches in width. Where double lines are used, they shall be separated a minimum of 1 foot on center.

3.11.15.3.8 In unpaved parking areas, appropriate markers shall be used to delineate parking stalls.

3.11.15.3.9 In aisles using diagonal parking, arrows shall be painted on the pavement to indicate proper traffic flow.

3.11.15.3.10 Bumpers or wheel stops shall be provided where overhang of parked cars might restrict traffic flow on adjacent through roads, public ways and interior travel lanes; restrict pedestrian movement on adjacent walkways; or damage landscape materials.

3.11.15.3.11 All parking areas and driveways shall have a gravel sub-base at least 12 inches in thickness and 2 inches of finish gravel, bituminous plant mix grade C hot, or concrete, and shall have appropriate bumper or wheel guards where needed.

3.11.15.3.12 Road and driveway surface drainage shall be directed to an unscarified buffer strip and shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip. {DEP § 15 H(7)} [Shoreland Overlay Zone, Watershed Overlay Zone]

Board finding and conclusion

The Board finds that the CMBG application meets the criteria set forth in § 3.11.15.3, Development and Performance Standards, of the Town of Boothbay Zoning Ordinance. However, the Board suggests that CMBG install curbing at the southwest corner of proposed parking lot B in order to help minimize and control surface drainage at that location.

Vote: For: 5 Against: 0

Parking and Loading Standard:

3.11.15.4 Minimum Parking Requirements A minimum of two parking spaces shall be provided on each tract or parcel of land.

3.11.15.4.1 Uses other than one and two family residential shall provide at least one parking space for each nonresident employee on the largest work shift and one space for each dwelling unit, guest room, campsite, boat slip, mooring or office.

3.11.15.4.2 The Planning Board may grant waivers of the minimum number of spaces requirement and require additional spaces if it determines that such minimums are insufficient.

3.11.15.4.2.1 In determining the number of additional spaces required, the Planning Board shall use information provided by the applicant on actual parking demand of similar uses or the Institute of traffic Engineers Parking Generation Manual.

Board finding and conclusion

The Board finds that the CMBG application meets the criteria set forth in § 3.11.15.4, Development and Performance Standards, of the Town of Boothbay Zoning Ordinance. Specifically, the Board concludes that the application proposes more than the minimum number of parking spaces required under this section.

Vote: For: 5 Against: 0

Roads and Driveways

Standard:

3.11.16 Roads and Driveways Section 3.11.16 shall apply to all roads including the roadway, shoulders, curbs, sidewalks, culverts, drainage system and other appurtenances. It shall also apply to driveways where specifically noted. In addition, it shall apply to any improvement or modification of a road external to the development as may be required. Road construction shall conform to good engineering practices and be suitable for the intended usage of the road. {DEP § 15 H}

3.11.16.1 General

3.11.16.1.1 Road and driveways shall meet the shoreline setback requirements for structures for the district in which such roads and driveways are located unless no reasonable alternative exists as determined by the Planning Board. If no reasonable alternative exists as determined by the Planning Board, the road and/or driveway setback requirement shall be not less than 50 feet upon a clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream, or wetland. {DEP § 15 H(1)} [Shoreland Overlay Zone]

3.11.16.1.2 Approval of an application by the Planning Board shall not be deemed to constitute or be evidence of acceptance by the Town of Boothbay of any road or easement.

3.11.16.1.3 Detailed construction drawings showing a plan view, profile, and typical cross-section of the proposed roads shall be required.

3.11.16.1.4 Roads and driveways shall be designed so as not to create through or “short cut” travel paths.

3.11.16.1.5 New roads and driveways are prohibited except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the area. A road or driveway may also be approved by the Planning Board upon a finding that no reasonable alternative route or location is available outside the area. When a road or driveway is permitted, the road or driveway shall be set back as far as feasible from all shorelines. {DEP § 15 H(4)}

[Resource Protection Area]

3.11.16.1.5.1 In determining what is feasible, the Planning Board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site’s elevation in regard to the floodplain and its proximity to moderate-value and high-value wetlands rated by the Department of Inland Fisheries and Wildlife.

3.11.16.1.6 The Planning Board, upon recommendation of the Road Commissioner, may approve variations from the road requirements of Section 3.11.16.

Board finding and conclusion

The Board finds that the criteria set forth in § 3.11.16.1, Development and Performance Standards, of the Town of Boothbay Zoning Ordinance do not apply to CMBG's application.

Vote: For: 5 Against: 0

Roads and Driveways

Standard:

3.11.16.2 Drainage Standards Good drainage must be provided for all new or rebuilt roads and driveways. Section 3.11.13.2 standards are recommended but are not mandatory for driveways on one and two family residential properties outside the Shoreland Overlay Zone.

3.11.16.2.1 Road and driveway surface drainage shall be directed to an unscarified buffer strip and shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip. {DEP § 15 H(7)} [Shoreland Overlay Zone, Watershed Overlay Zone]

3.11.16.2.1.1 The unscarified buffer strip shall be at least 50 feet, plus two times the average slope, in width between the outflow point of the ditch or culvert and a shoreline. {DEP § 15 H(7)}

3.11.16.2.1.1.1 As an example, if the average slope between the shoreline and the proposed road is 30%, then the road setback at that location would be 50 feet plus 2 times 30 feet or 110 feet. {Rich Baker e-mail 2/21/2007}

3.11.16.2.2 Adequate ditches shall be provided for new and rebuilt roads if no other means are to be used for drainage. When ditches are used, the depth should be approximately 24 inches below the center of the road or driveway and should blend with the terrain of the land. It will be up to the discretion of the Road Commissioner as to what good drainage road requirements are in each case.

3.11.16.2.3 Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed for new roads and driveways in a manner effective in directing drainage onto unscarified buffer strips before the flow gains sufficient volume or head to erode the road, driveway or ditch. To accomplish this, the following shall apply: {DEP § 15 H(8)} [Shoreland Overlay Zone, Watershed Overlay Zone]

3.11.16.2.3.1 Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road or driveway at intervals no greater than indicated in the following table:

Grade (Percent)	Spacing (Feet)
0-2	250
3-5	200-135
6-10	100-80
11-15	80-60
16-20	60-45
21+	40

3.11.16.2.3.2 Drainage dips may be used in place of ditch relief culverts only where the grade does not exceed 10%.

3.11.16.2.3.3 On sections having slopes greater than 10%, ditch relief culverts shall be placed at approximately a 30 degree angle down slope from a line perpendicular to the centerline of the road or driveway.

3.11.16.2.3.4 Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning and their inlet and outlet ends shall be stabilized with appropriate materials.

3.11.16.2.4 Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning. {DEP § 15 H(9)}

3.11.16.2.4.1 A permit is not required for the replacement of an existing road or driveway culvert as long as:

A. The replacement culvert is not more than 25% longer than the culvert being replaced;

B. The replacement culvert is not longer than 75 feet; and

C. Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the watercourse. {DEP § 16 B(1)}

Board finding and conclusion

The Board finds that the CMBG application meets the criteria set forth in § 3.11.16.2, Development and Performance Standards, of the Town of Boothbay Zoning Ordinance. Specifically, the Board finds that the drainage plan shows that the project will have good drainage. The required buffer strips are a minimum of 50 feet, the ditches proposed as part of the project are adequate for the expected drainage volume, and the slope meet the requirements.

Nonetheless, the Board expressed a concern about the culvert closest to Gaecklein Road, shown on Plan C14 and handling drainage from parking lots B, C, and D. The Board was concerned about the lack of a level spreader at that location and suggested that CMBG amend its proposal to include one at that location.

Vote: For: 3 Against: 2

Roads and Driveways Standard:

3.11.16.3 Location Standards Roads and driveways shall be located so as to avoid wetlands and rare species where feasible and to minimize the need for cuts and fills.

3.11.16.3.1 Roads and driveways shall be set back at least 100 feet from the shoreline of a great pond and 75 feet from any other shorelines unless no reasonable alternative exists as determined by the Planning Board. {DEP § 15 H(1)}

3.11.16.3.1.1 If no other reasonable alternative exists, the road or driveway setback requirement shall be no less than 50 feet upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the great pond, stream, outlet stream or wetland. Such techniques may include, but are not limited to, the installation of settling basins, or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the great pond, stream, outlet stream or wetland.

3.11.16.3.1.2 On slopes of greater than 20% the road or driveway setback shall be increased by 10 feet for each 5% increase in slope above 20%.

3.11.16.3.1.3 The setback requirements of Section 3.11.16.3 shall not apply to approaches to water crossings, or to roads or driveways that provide access to permitted structures and

facilities located nearer to the shoreline due to an operational necessity. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of Section 3.11.16.3 except for that portion of the road or driveway necessary for direct access to the structure.

3.11.16.3.2 Road and driveway grades shall be not greater than 10% except for segments of less than 200 feet. {DEP § 15 H(6)}

3.11.16.3.3 Existing public roads may be expanded within the legal road right-of-way regardless of their setback from a shoreline. {DEP § 15 H(2)}

3.11.16.4 Road Standards

3.11.16.4.1 General

3.11.16.4.1.1 The center line of the roadway shall be the center line of the right-of-way.

3.11.16.4.1.2 Roads shall be constructed to their full width and length as shown on the site plan. Construction shall be completed to the intersection with an existing or proposed road and to the near lot line of the most distant lot.

3.11.16.4.2 Emergency Vehicle Access A turnaround area on new roads and driveways shall be provided for emergency vehicles approximately every 500 feet. The turnaround area shall meet the standards for new roads. The location(s) and design(s) of the turnaround area(s) shall be agreed to by the Fire Chief.

3.11.16.4.2.1 New roads and driveways that are an extension of an approved road or whose end is more than 200 feet from an existing cross road, shall provide a turnaround area at the end of the road or driveway. If it is feasible that the new road could be extended in the future, the Plat Plan shall indicate the portion(s) of the turnaround area beyond the required road Right-of-Way that shall revert to the abutting properties.

3.11.16.4.3 Intersections Where new road intersections are proposed, they shall be designed in profile, grading, and location to provide the following sight distance, measured in each direction. There are two steps in determining sight distance. First, establishing the point from which the sight distance will be measured; second, measuring the sight distance from that point. Each is described below:

Step 1: Step 2:

The measurement point shall be at least 5 feet behind the curb line or edge of shoulder and 3 1/2 feet above the road surface.

From this measurement point an object in the center of the outside travel lane of the roadway 4 1/2 feet above the pavement must be able to be seen at a distance determined by the legal speed limit of the roadway. This distance in feet is 10 times the legal speed limit.

3.11.16.4.3.1 The minimum site distance shall be 100 feet. The Planning Board may allow a shorter distance if the subdivider can show that no alternative exists.

3.11.16.4.3.2 Where necessary, corner lots shall be cleared of all growth and sight obstructions, and if necessary the ground excavated, to achieve the required visibility.

3.11.16.4.3.2.1 The limitations on clearing or removal of vegetation in Section 3.11.3 shall apply {DEP § 15 P} [Shoreland Overlay Zone, Watershed Overlay Zone]

3.11.16.4.4 Pavement

3.11.16.4.4.1 Minimum standards for the base layer of pavement shall be the Maine Department of Transportation specifications for plant mix grade B hot bituminous with an aggregate size no more than 1 inch maximum with the minimum thickness after compaction of 2 inches.

3.11.16.4.4.2 Minimum standards for the surface layer of pavement shall meet the Maine Department of Transportation specifications for plant mix grade C hot bituminous with an aggregate size no more than 3/4 inch maximum with the minimum thickness after compaction of 1 1/2 inches.

3.11.16.4.4.3 Where pavement joins an existing pavement, the existing pavement shall be cut along a smooth line and form a neat, even, vertical joint.

3.11.16.4.5 Preparation

3.11.16.4.5.1 Before any clearing has started on the right-of-way, the center line and side lines of the new road shall be staked or flagged at 50 foot intervals.

3.11.16.4.5.2 Organic materials, soils not suitable for roadways, rocks and boulders shall be removed to a depth of 2 feet below the subgrade of the roadway and replaced with material meeting the specifications for gravel aggregate sub-base.

3.11.16.4.5.3 Except in a ledge cut, road and driveway banks shall be no steeper than a slope of 2 1/2 feet horizontal to 1 foot vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section 3.11.7. Where a cut results in exposed ledge, side slopes no steeper than 4 feet vertical to 1 foot horizontal are permitted. {DEP §15 H(5)}

3.11.13.4.5.4 Sub-base and Base Course

3.11.16.4.5.4.1 The aggregate sub-base course shall be sand or gravel of hard durable particles free from vegetative matter, lumps or balls of clay and other substances with a minimum thickness after compaction of 24 inches. The gradation of the part that passes a 3 inch square mesh sieve shall meet the following grading standard: Aggregate for sub-base shall contain no particles of rock exceeding 4 inches in any dimension.

3.11.16.4.5.4.2 The aggregate base course shall be sand or gravel of hard durable particles free from vegetative matter, lumps or balls of clay and other substances with a minimum thickness after compaction of 4 inches. The gradation of the part that passes a 3 inch square mesh sieve shall meet the following grading standard: Aggregate for the base shall contain no particles of rock exceeding 2 inches in any dimension.

3.11.16.4.5.5 Underground utilities shall be installed prior to paving to avoid cuts in the pavement. Building sewers and water service connections shall be installed to the edge of the right-of-way prior to paving.

3.11.16.4.6 Size

3.11.16.4.6.1 The following standards apply to Private roads:

Minimum Right-of-Way Width		50 feet
Minimum Pavement Width	Access for 1 – 5 lots	16 feet
	Access for 6 – 9 lots	18 feet
	Access for 10 or more lots	20 feet
Roadway Crown		¼ inch per foot
Minimum width of shoulders (each side)		3 feet

3.11.16.4.6.2 The following standards apply to roads that are to be considered by the Town of Boothbay for acceptance as Public roads:

Minimum Right-of-Way Width	50 feet
Minimum Pavement Width	20 feet
Roadway Crown	¼ inch per foot
Minimum width of shoulders (each side)	4 feet

Board finding and conclusion

The Board finds that the CMBG application meets the criteria set forth in §§ 3.11.16.3 & 3.11.16.4, Development and Performance Standards, of the Town of Boothbay Zoning Ordinance because the application demonstrates that the roads have been designed to meet the standards set forth in these sections.

Vote: For: 5 Against: 0

Roadside Trees and Walls

Standard:

3.11.17 Roadside Trees and Walls

3.11.17.1 Because roadside trees are extremely important to the character of Boothbay, removal of trees shall be minimized, especially along public ways. Shifting the site of the building, parking lot, or the entrance or exit drive can usually lessen removal of existing trees.

3.11.17.2 Where stone walls exist, care shall be taken to disturb these as little as possible, since they also act to retain the character of country roads.

Board finding and conclusion

The Board finds that the CMBG application meets the criteria set forth in § 3.11.17, Development and Performance Standards, of the Town of Boothbay Zoning Ordinance because the proposed landscaping plan calls for the replanting of roadside trees that are to be removed as part of the project. In addition, the application plans for no changes to any existing stone walls.

Vote: For: 5 Against: 0

Sanitation

Standard:

3.11.18 Sanitation

3.11.18.1 General

3.11.18.1.1 New buildings and additions or remodeling of existing buildings designed for human habitation or use requiring new or additional plumbing facilities shall not be occupied anywhere in the Town unless they are connected to a municipal sewer district or equipped with either a septic tank and drainage field or a mechanical wastewater treatment facility installed in conformance with the *Maine Subsurface Wastewater Disposal Rules*. Approval by the Local Plumbing Inspector or the Maine Department of Health and Human Services Division of Health Engineering (in the case of a mechanical system not for overboard discharge) or the Department of Environmental Protection (in the case of overboard discharge of effluent from a mechanical system) is also required. {*Department of Health and Human Services 10-144 CMR 241 and DEP § 15 K(1)*}

3.11.18.1.1.1 A holding tank for wastewater disposal is not permitted for a first-time residential use. {*DEP § 15 K(1)*}

3.11.18.1.2 Proposed uses requiring subsurface wastewater disposal, and commercial or industrial development and other similarly intensive land uses, shall require a soils report prepared by a state-certified professional based on an on site investigation. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground

water elevation and presence of ledge, drainage conditions, and other pertinent data that the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist. {38 § 439-A(3) and DEP § 15 R}

3.11.18.1.2.1 On lots in which the limiting factor has been identified as being within 24 inches of the surface, a second site with suitable soils shall be required as a reserve area for future replacement of the disposal area. The reserve area shall be shown on the plan and restricted so as not to be built upon.

3.11.18.1.2.2 In no instance shall a disposal area be permitted on soils or on a lot that requires a New System Variance from the *Maine Subsurface Wastewater Disposal Rules*. {Department of Health and Human Services 10-144 CMR 241}

3.11.18.1.2.3 The Planning Board reserves the right to require that more than one test sample be provided for determining the ability of the land to support adequate subsurface wastewater disposal.

3.11.18.1.2.4 A soils report for the property to be developed that was previously prepared and submitted in connection with an approved subdivision and filed with the Lincoln County Registry of Deeds shall satisfy this requirement.

3.11.18.1.3 No wastewater treatment facility that services more than one dwelling unit shall be approved unless such facility is owned jointly by the owners of each dwelling unit.

3.11.18.1.4 Notwithstanding any of the requirements of Section 3.11.18, recycling gray-water from, including, but not limited to, baths and washing machines for outdoor uses shall be permitted.

3.11.18.2 Subsurface Wastewater Disposal

3.11.18.2.1 General

3.11.18.2.1.1 No person shall dispose of waste from any one family dwelling unit by means of subsurface wastewater disposal unless such lot of land on which such one family dwelling unit is located contains at least 20,000 square feet; and if the lot abuts a pond, stream, or tidal area, it shall further have a minimum frontage of 150 feet in the Shoreland Overlay Zone and 100 feet in all other areas. {12 § 4807-A(1)}

3.11.18.2.1.2 No person shall dispose of wastewater by means of subsurface wastewater disposal from any dwelling unit, other than a one family unit, or any other land use activity which may generate wastewater in excess of the waste disposal requirements of normal one family dwelling units, unless such multiple unit dwelling units or other land use activity is located on a lot of a size and minimum frontage which complies with the requirements of the State Minimum Lot Size law, 12 §§ 4807-4807-G for multiple unit housing or other land use activities. {12 § 4807-A(2)}

3.11.18.2.1.3 Lots with less area or frontage than required in Sections 3.11.15.2.1.1 and 3.11.15.2.1.2 may be approved for subsurface wastewater disposal by the Maine Department of Health and Human Services. {12 §§ 4807-B(2) & 4807-C}

3.11.18.2.1.4 Exemptions

3.11.18.2.1.4.1 The restrictions of Section 3.11.18.2.1.1 for a lot for one family residential purposes shall not apply to one family residential dwelling unit on any lot which, prior to January 1, 1970, was specifically described as an identifiable and separate lot either in the instrument conveying such lot to the then owner or in a valid and enforceable agreement for purchase and sale or was shown on a plan recorded in accordance with law, prior to January 1, 1970; provided that contiguous lots in the same ownership on or after October 3, 1973 shall be considered as one lot for the purpose hereof. {12 § 4807-D}

3.11.18.2.1.4.2 The restrictions of Sections 3.11.18.2.1.1 and 3.11.18.2.1.2 shall not apply to any building in existence and in place on or before October 3, 1973, which then or theretofore disposed of wastewater by means of subsurface wastewater disposal; except that no person shall

reduce the size of the lot upon which such building is located to a size or frontage less than that allowed unless approved in accordance with Section 3.11.18.2.1.3. {12 § 4807-D}

3.11.18.2.2 Replacement subsurface wastewater disposal systems shall meet the standards for replacement systems as contained in the *Maine Subsurface Wastewater Disposal Rules*. {Department of Health and Human Services 10-144 CMR 241}

3.11.18.2.3 Any person transferring property on which a subsurface wastewater disposal system is located shall provide the transferee with a written statement by the transferor as to whether the system has malfunctioned during the 180 days preceding the date of transfer. {30-A § 4216}

3.11.18.2.4 Clearing or removal of woody vegetation necessary for a new subsurface wastewater disposal system and any associated fill extensions shall not extend closer than 75 feet from the high-water line of a great pond, stream, outlet stream or the upland edge of a wetland. {DEP § 15 K} [Shoreland Overlay Zone]

3.11.18.2.5 First time subsurface wastewater disposal systems shall not be installed on sites having an original ground slope greater than 20%.

3.11.18.2.6 The minimum setback for new subsurface wastewater disposal systems shall comply with the *Maine Subsurface Wastewater Disposal Rules*, shall not be reduced by variance, and be no less than 100 feet from the high-water line of a great pond, stream, outlet stream or the upland edge of a wetland. {Department of Health and Human Services 10-144 CMR 241 and DEP § 15 K Note}

3.11.18.2.6.1 Sanitation The minimum setback from the high-water line of a great pond or stream shall be no less than 200 feet. [Resource Protection Area]

3.11.18.2.6.2 The minimum setback for new subsurface wastewater disposal systems shall be no less than 100 feet from wells.

3.11.18.2.6.3 Side and rear yard setback requirements shall not apply to subsurface wastewater disposal systems except for commercial development next to residential uses where the requirement for visual buffering of Section 3.10.7 shall apply.

3.11.18.2.7 Existing properties where a subsurface wastewater disposal facility is located, or partially located, in the Watershed Overlay Zone shall be connected to a public sewer within three years from the date a "Ready to serve" fee is applicable. [Watershed Overlay Zone]

Board finding and conclusion

The Board finds that the CMBG application meets the criteria set forth in § 3.11.18, Development and Performance Standards, of the Town of Boothbay Zoning Ordinance based on the application and other materials presented to the Board. Specifically, the Board finds that CMBG has received a DHHS permit for the revised location of their wastewater system. Furthermore, the Board's finding that the application meets this section is conditioned upon receipt of an approved DEP permit.

In addition, the Board notes that the Anthonys have argued that the project should require an alternative site for the disposal area. Under § 3.11.18.1.2.1, alternative sites are only required on "lots in which the limiting factor has been identified as being within 24 inches of the surface." The Board finds that CMBG has submitted the results of test pits on its site. Although some of the results of the test pits show a limiting factor within 24 inches of the surface, the Board finds that there are sufficient results in which the limiting factor is not within 24 inches of the surface. As a result, the Board concludes that the CMBG property is not a "lot in which the limiting factor has been identified as being within 24 inches of the surface" and therefore an alternative site is not required under § 3.11.18.1.2.1.

Vote: For: 3 Against: 2

**Screening
Standard:**

3.11.19 Screening In locations where potential health or safety hazards may arise (such as rubbish storage or collection areas), a solid wooden fence six feet in height is required.

3.11.19.1 Section 3.11.19 does not apply to one and two family dwellings.

Board finding and conclusion

The Board finds that the CMBG application meets the criteria set forth in § 3.11.19, Development and Performance Standards, of the Town of Boothbay Zoning Ordinance. Specifically, the Board notes that the central dumpster will be screened from visitors.

Vote: For: 5 Against: 0

**Signs
Standard:**

3.11.20 Signs

3.11.20.1 Exemptions For purposes of Section 3.11.20, the term “sign” shall not include and no permit shall be required for:

- A. “FOR SALE”, “FOR RENT” and “FOR LEASE” signs that have been placed on the property with the owner’s permission for the purpose of advertising that property or item for sale, rent or lease. Permitted signs shall include the small stand alone signs normally used by real estate agencies and other signs not over 3 square feet in area; {DEP § 15 I(3)}
- B. One or two signs that identify a residential property owner that meet the requirements of Section 3.11.20; {DEP § 15 I(2)}
- C. Signs erected or posted and maintained for public safety and welfare or pursuant to any governmental function, law, code, or other regulation; {DEP § 15 I(5)}
- D. Signs relating to trespassing and hunting, not exceeding 2 square feet in area; and {DEP § 15 I(4)}
- E. Brass, or similar metallic material, plaques of a personal nature not exceeding one square foot in area.

3.11.20.2 Prohibited Signs

- A. Billboards, streamers, pennants, ribbons, spinners or other similar devices shall not be constructed, posted or erected in any area in Town, except of a temporary nature for a festival or celebration.
- B. Flashing signs, roof signs, signs containing moving parts, and signs containing reflective elements that sparkle or twinkle in the sunlight are not permitted. Signs indicating the current time or temperature are permitted provided they meet all other provisions of Section 3 except as provided in Sections 3.11.20.10.2 and 3.11.20.10.3.
- C. Signs advertising or identifying a business, organization, goods or services that is either defunct or no longer located or available on the premises. {DEP § 15 I(1)}
- D. Signs larger than 32 square feet.
- E. Signs larger than 6 square feet. {DEP §§ 15 I(1) & (2)} [Resource Protection Area, Stream Protection Area]
- F. Signs, except for a traffic, regulatory, or informational sign, using the words “stop”, “caution”, or “danger”, or incorporating red, amber, or green lights resembling traffic signals,

or resembling “stop” or “yield” signs in shape and color.

G. Internally illuminated signs except as provided in Section 3.11.20.11.

H. Illuminated signs where the source of illumination is visible beyond the property boundary.
{DEP § 15 I(7)}

I. More than two signs per premise. [Resource Protection Area, Stream Protection Area]

3.11.20.3 Placement Standards

3.11.20.3.1 No signs other than directional signs may be located:

A. within 33 feet of the center line of any public way if the highway/right-of-way is less than 66 feet in width;

B. within 20 feet from the outside edge of the paved portion of any public way with more than 2 travel lanes and a total paved portion in excess of 24 feet in width; or

C. within the full width of the right-of-way of any public way.

3.11.20.3.2 No person shall erect a sign that is affixed to a utility pole. Only signs that identify the

property owner may be affixed to a tree, shrub, rock, or other natural object.

3.11.20.3.3 Signs shall not be mounted on roofs or extend above the roof line (unless mounted on a parapet wall that extends above the roof line, in which case the sign shall not extend above the top of the parapet).

3.11.20.3.4 No projecting sign shall extend into a vehicular public way, nor be less than 10 feet above a pedestrian way.

3.11.20.3.5 No sign or supporting framework shall extend to a height above the maximum building height permitted in a District.

3.11.20.3.5.1 No sign shall extend higher than 20 feet above the ground. {DEP § 15 I(6)}

[Shoreland Overlay Zone]

3.11.20.4 Business Display Advertising Signs

3.11.20.4.1 General Signs shall be placed on the same lot as the business and shall not obstruct motorists’ vision on any abutting road or in parking areas.

3.11.20.4.1.1 The multiple sign concept of Section 3.11.20.4.3 shall be used on lots with signs for 4 or more businesses or services.

3.11.20.4.1.2 The longest dimension shall not be over 8 feet.

3.11.20.4.1.3 One stand-alone sign, visible from each direction, shall be allowed for each road abutting the property.

3.11.20.4.1.4 No more than two signs relating to goods and services sold on the premises shall be permitted. {DEP § 15 I(1)} [Shoreland Overlay Zone]

3.11.20.4.2 Identification Signs Two identification signs per professional business or for a building under construction by a contractor are permitted on the premises of the same. Such signs shall not exceed 6 square feet with the maximum dimension of 3 feet.

3.11.20.4.3 Multiple Signs. Signs other than Wall Signs advertising several occupants of the same building, building complex or business park shall be combined on a single free-standing display board. Multiple signs shall be used at any complex of 4 or more businesses.

3.11.20.4.3.1 The display board shall be of an integrated and uniform design.

3.11.20.4.3.2 The maximum size of the display board shall be 32 square feet and the maximum size of each business or office sign shall be 4 square feet.

3.11.20.4.3.2.1 The maximum size of the display board shall be 6 square feet. {DEP § 15 I(1)} [Shoreland Overlay Zone]

3.11.20.4.3.3 Complexes with over 300 feet of frontage will be permitted 2 free-standing signs.

3.11.20.4.4 Wall Signs Shall have an aggregate area not exceeding 1 1/2 square feet for each lineal foot of building face parallel to a street lot line, or 10% of the wall area to which it is

attached, whichever is less. Where a lot fronts on more than one street, the aggregate sign area facing each street frontage shall be calculated separately.

3.11.20.4.4.1 Where 2 or more wall signs are affixed to one wall, the gross display area shall be the sum total area of all signs.

3.11.20.4.4.2 Signs shall not obscure architectural features of the building, including, but not limited to, arches, sills, mountings, cornices, and transoms.

3.11.20.4.4.3 No part of a sign, including the display surface, shall extend beyond the ends of the wall or more than 6 inches from the building surface.

3.11.20.4.4.4 The size of signs attached to buildings may be increased in area by 25% for every 100 feet of building setback beyond 100 feet. The increase may be prorated according to the actual setback distance.

3.11.20.5 Directional Signs

3.11.20.5.1 General Directional signs shall be limited to one at each intersection where travelers must change direction from one public way to another to reach a particular business, to a maximum of 4 within the Town for the business.

3.11.20.5.1.1 Such signs shall be uniform in size and type of lettering and shall conform to the following specifications:

Width	36 inches
Height	8 inches
Letter Height	maximum of 4 inches
Sign Face	white with black lettering
Rear Face	painted dark green
Material	1/2 inch to 3/4 inch wood board.

3.11.20.5.1.2 Directional information, including one arrow figure only, shall be provided on each sign.

3.11.20.5.1.3 The Town shall provide posts for mounting. Each owner shall provide, maintain, and replace his own sign. The Town may remove a sign if it is not properly maintained or if business operations cease.

3.11.20.5.2 Service clubs and fraternal organizations may include the emblem in color.

3.11.20.5.3 Directional signs indicating an entrance or exit, or a combined entrance/exit, shall be limited to 2 at each driveway. Such signs shall contain no advertising material, shall be no more than 3 square feet in area, and shall not extend higher than 3 feet above ground level.

3.11.20.6 Institution Signs

3.11.20.6.1 Two identification signs per church, museum, library, educational facility, or similar public structure shall be allowed. Such signs shall not exceed 6 square feet with the maximum dimension of 3 feet.

3.11.20.6.2 A bulletin board or similar sign not exceeding 32 square feet in display area, in connection with any church, museum, library, educational facility, or similar public structure, provided that the top of such sign shall not be more than 8 feet above ground level, and provided that it does not possess any of the characteristics listed under "Prohibited Signs".

3.11.20.6.2.1 The bulletin board or similar sign shall not exceed 6 square feet. {DEP § 15 I(1)} [Shoreland Overlay Zone]

3.11.20.7 The Planning Board may approve more than 2 signs on a lot identifying a property owner, business, institution or service for locations outside the Shoreland Overlay Zone.

3.11.20.8 Non-conforming Signs and Sign Structures Signs not in conformance with the provisions of Section 3.11.20 shall be allowed to remain except as qualified below:

3.11.20.8.1 Other than sign maintenance, no non-conforming sign shall be reconstructed, remodeled, relocated, or changed in size or content to show a new trade name, different words, letters or numbers, new design, different colors or different logo, unless such action will make the sign conforming to the greatest extent practicable..

3.11.20.8.2 Nothing in Section 3.11.20.8 shall be deemed to prevent keeping in good repair a non-conforming sign, including sign maintenance, repainting, and replacement of broken or deteriorated parts of the sign itself.

3.11.20.8.3 A non-conforming sign or sign structure that is destroyed or damaged by any means may be restored within 6 months after such destruction only after the owner has shown that the damage did not exceed 50% of the appraised value of the sign. If such sign or sign structure is destroyed or damaged to an extent exceeding 50%, it shall be removed and shall not be reconstructed or replaced unless such action makes the sign and sign structure conforming to the greatest extent practicable.

3.11.20.9 Temporary Signs

3.11.20.9.1 Temporary signs for business openings, commercial and non-commercial special events may be posted in any place in Town upon a written permit from the Code Enforcement Officer. The Code Enforcement Officer shall only grant such a permit after presentation of evidence that the authorities controlling the proposed location of the sign have approved its posting. A temporary sign shall be posted for a period not to exceed 14 consecutive days or 42 days per calendar year. The applicant shall remove said signs upon termination of the activity. Street banners shall be no larger than 50 square feet in area. No temporary sign, other than a street banner, shall be larger than 24 square feet in area. Complete liability for any damage resulting from the placement of a banner across the public way shall be provided, in writing, by the person, firm, or corporation hanging the banner before the issuance of a permit for such banner. Such liability shall be acknowledged upon the application for the permit.

3.11.20.9.1.1 "FOR SALE", "FOR RENT" and "YARD/GARAGE SALE" signs are exempt from Section 3.11.20.9.1.

3.11.20.9.2 Real estate "FOR SALE" signs shall be limited to one at each intersection location where travelers must change direction from one public way to another to reach a particular property for sale, to a maximum of 4 within the Town per property for sale.

3.11.20.10 Changeable Display Signs

3.11.20.10.1 Changeable display signs are permitted at businesses providing retail fuel sales to display the price of fuel only.

3.11.20.10.2 Changeable display signs must change as rapidly as technologically practicable with no phasing, rolling, scrolling, flashing, streaming or blending.

3.11.20.10.3 Changeable display signs may consist of alphabetical or numeric text on a plain or colored background and shall not include any graphic, pictorial or photographic images.

3.11.20.11 Sign Illumination

3.11.20.11.1 Internally illuminated signs shall only be permitted at businesses providing retail fuel sales along the Route 27 corridor.

3.11.20.11.2 Only steady white lights are allowed on internally or externally illuminated signs; any such signs found to cause roadside glare shall be removed.

3.11.20.11.3 Lighting may not be of such intensity or brilliance as to cause glare or impair the vision of any operator of any motor vehicle or in any way interfere with the driver's operation of a motor vehicle.

3.11.20.11.4 Lighting must be shielded to prevent beams or rays of light from being directed at any portion of the public way.

3.11.20.11.5 Signs must comply with the provisions of Section 3.11.11.

Board finding and conclusion

The Board finds that the CMBG application meets the criteria set forth in § 3.11.20, Development and Performance Standards, of the Town of Boothbay Zoning Ordinance and concludes that the signs proposed in the application comply with the standards of this section.

Vote: For: 5 Against: 0

Snow Removal Standard:

3.11.21 Snow Removal No dumping of snow from outside the Zone. [Watershed Overlay Zone]

Board finding and conclusion

The Board finds that the CMBG application meets the criteria set forth in § 3.11.21, Development and Performance Standards, of the Town of Boothbay Zoning Ordinance. Specifically, the Board finds that CMBG will blow snow off of the parking lots into trucks that will move the snow to ensure it is not dumped within the watershed.

Vote: For: 5 Against: 0

Storm Water Runoff Standard:

3.11.22 Storm Water Runoff New construction and development shall be designed to minimize storm water runoff from the site in excess of the natural predevelopment conditions. Where feasible, existing natural runoff control features, such as berms, swales, terraces and wooded areas, shall be retained in order to reduce runoff and encourage infiltration of storm waters. If it is not feasible to detain water on site, downstream improvements to the channel may be required of the applicant to prevent flooding caused by his project. The natural state of watercourses, swales, floodways, or right-of-ways shall be maintained as nearly as feasible. The design shall be for a 25 year storm. {38 §420-C and DEP §§ 15 G(2) & J}

3.11.22.1 Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainage ways shall be designed and constructed using Best Management Practices in order to carry water from a 25 year storm or greater, and shall be stabilized with vegetation or lined with riprap. {38 § 420-C and DEP § 15 Q(5)}

3.11.22.2 Storm water runoff control systems shall be maintained as necessary to ensure proper functioning. {DEP § 15 J}

Board finding and conclusion

The Board finds that the CMBG application meets the criteria set forth in § 3.11.22, Development and Performance Standards, of the Town of Boothbay Zoning Ordinance. Specifically, the Board notes that the project meets the DEP standards for storm water runoff. Although the Board has some concerns about maintenance of the porous pavement and about snow removal, the Board nonetheless concludes that the project as proposed will provide adequate control of storm water runoff.

Vote: For: 3 Against: 2

Structures
Standard:

3.11.23 Structures

3.11.23.1 General

3.11.23.1.1 No more than one principal structure shall be placed on one lot unless:

A. The minimum lot area and shore frontage standards, without variance, are met for each principal structure; and

B. The placement of the principal structures will allow division of the lot in conformance with all requirements of Section 3 including the required minimum setbacks between principal and accessory structures on abutting lots. {DEP § 15 A(5)}

3.11.23.1.2 Accessory structures shall meet the standards for approval of a principal structure except for minimum lot area.

3.11.23.1.3 Lawfully created lot coverage that exceeds that allowed in a Zoning District may be continued and maintained but cannot be further increased. {DEP § 12 A}

3.11.23.2 Location

3.11.23.2.1 New structures shall be sited with respect to significant natural features such as wetlands or designated unique or critical areas to minimize adverse impacts on these features on or off the property.

3.11.23.2.1.1 New structures other than one and two family residential dwellings and their associated structures shall be sited so that obstruction of views from the public ways will be minimized. This can be achieved by taking advantage of topographic changes or existing vegetation.

3.11.23.2.2 The lowest floor elevation or openings of all structures, including basements shall be elevated at least 1 foot above the elevation of the 100 year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent floodplain soils. The development shall be in compliance with the Town of Boothbay Floodplain Management Ordinance. {38 § 440 and DEP § 15 B(3)}

3.11.23.2.2.1 All proposed developments and uses shall provide evidence that the development or use will not increase the 100-year flood elevation. {38 § 440}

3.11.23.2.3 Structures that require direct access to the water as an operational necessity; such as piers, docks and retaining walls; or other functionally water-dependent uses are exempt from shoreline setback requirements. {DEP § 15 B(1)(a)} [Shoreland Overlay Zone]

3.11.23.2.3.1 Recreational boat storage structures are not functionally water-dependent. {DEP § 17}

3.11.23.2.4 Structures unless functionally water related shall be located outside the velocity zone in areas subject to tides. The Federal Emergency Management Agency's Flood Insurance Rate Maps shall be used to determine these areas. [Shoreland Overlay Zone]

3.11.23.3 Non-conforming Structures

[Sections removed]

3.11.23.4 Setbacks The setback area from roads and public ways shall not be used for any above ground structure. Driveways, sidewalks, walls, fences and the planting of vegetation are allowed.

3.11.23.4.1 The Planning Board may allow subsurface waste disposal if there is no other feasible location on the lot.

3.11.23.4.2 No development shall be allowed within the road or public way right-of-way.

Board finding and conclusion

The Board finds that the CMBG application meets the criteria set forth in § 3.11.23, Development and Performance Standards, of the Town of Boothbay Zoning Ordinance. Based upon the plans and other materials presented to the Board, all proposed structures meet the requirements in this section.

Vote: For: 4 Against: 1

Waste Disposal

Standard:

3.11.24 Waste Disposal The applicant shall provide for the disposal of all solid and liquid wastes on a timely basis and in an environmentally safe manner. The Planning Board shall consider the impact of particular industrial or chemical wastes or by-products upon the Town's disposal method and disposal area (in terms of volume, flammability or toxicity) and may require the applicant to dispose of such wastes elsewhere in conformance with all applicable state and federal regulations. The Planning Board may require the applicant to specify the amount and exact nature of all industrial or chemical wastes to be generated by the proposed operation.

3.11.24.1 Section 3.11.21 does not apply to one and two family dwellings.

Board finding and conclusion

The Board finds that the CMBG application meets the criteria set forth in § 3.11.24, Development and Performance Standards, of the Town of Boothbay Zoning Ordinance. Specifically, the Board finds that the waste disposal plan submitted as part of the CMBG application sets forth procedures that meet the standards in this section.

Vote: For: 5 Against: 0

Section 3.6 and 5.5 Standards

3.6.1 General The Code Enforcement Officer and Planning Board shall consider the following criteria and, before granting approval, must determine that the application is in conformance with the land use goals and objectives of Section 1.8, the standards of Section 3 and that the proposed development or use:

5.5 Review Criteria – Administrative Appeals The Board of Appeals shall consider the following criteria and, before granting approval, must determine that the application is in conformance with the land use goals and objectives of Section 1.8, the standards of Sections 2 and 3 and that the proposed development or use:

Board finding and conclusion

The Board concludes that the general goals and objectives of § 1.8 in the Town of Boothbay Zoning Ordinance are broad objectives rather than specific individual standards. As such, those goals guide interpretation of the other provisions in the Ordinance. However, the Board concludes that § 1.8

does not set specific standards that govern permit applications. Therefore, the Board is not required to make specific findings about the goals and objectives in § 1.8 in connection with the CMBG application.

Vote: For: 3 Against: 2

Standard:

§ 3.6.1/5.5(A) Will maintain safe and healthful conditions

Board finding and conclusion

The Board finds that the CMBG application meets the criteria set forth in § 3.6.1/5.5(A) of the Town of Boothbay Zoning Ordinance and that the project will maintain safe and healthful conditions.

Vote: For: 3 Against: 2

Standard:

§ 3.6.1/5.5(B) Will not result in water pollution, erosion or sedimentation to surface waters

Board finding and conclusion

The Board finds that the CMBG application meets the criteria set forth in § 3.6.1/5.5(B) of the Town of Boothbay Zoning Ordinance. Although some Board members expressed concerns in this area, the Board concludes that the application has shown that the project meets the standards set forth in the Ordinance, as those standards currently exist. Furthermore, the Board notes that the project also meets DEP standards with respect to phosphorus and other issues. Though there was evidence suggesting that the DEP standards might not be sufficient, the Board concluded that it was required to apply the existing standards and did not have jurisdiction to change those standards. As a result, the Board concludes that the project as designed will not result in water pollution, erosion or sedimentation to surface waters.

Vote: For: 3 Against: 2

Standard:

§ 3.6.1/5.5(C) Will adequately provide for the disposal of wastewater

Board finding and conclusion

Conditioned that CMBG receives the required additional permits for its wastewater disposal system, the Board finds that the CMBG application meets the criteria set forth in § 3.6.1/5.5(C) of the Town of Boothbay Zoning Ordinance and that the project as designed will adequately provide for the disposal of wastewater.

Vote: For: 5 Against: 0

Standard:

§ 3.6.1/5.5(D) Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;

Board finding and conclusion

The Board finds that the CMBG application meets the criteria set forth in § 3.6.1/5.5(D) of the Town of Boothbay Zoning Ordinance and that the project will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat.

Vote: For: 3 Against: 2

Standard:

§ 3.6.1/5.5(E) Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters

Board finding and conclusion

The Board finds that the criteria set forth in § 3.6.1/5.5(E) of the Town of Boothbay Zoning Ordinance does not apply to the CMBG application.

Vote: For: 5 Against: 0

Standard:

§ 3.6.1/5.5(F) Will protect archaeological and historic resources as designated in the Comprehensive Plan

Board finding and conclusion

The Board finds that the criteria set forth in § 3.6.1/5.5(F) of the Town of Boothbay Zoning Ordinance does not apply to the CMBG application.

Vote: For: 5 Against: 0

Standard:

§ 3.6.1/5.5(G) Will not adversely affect existing commercial fishing or maritime activities in the Maritime Commercial District

Board finding and conclusion

The Board finds that the criteria set forth in § 3.6.1/5.5(G) of the Town of Boothbay Zoning Ordinance does not apply to the CMBG application.

Vote: For: 5 Against: 0

Standard:

§ 3.6.1/5.5(H) Will avoid problems associated with floodplain development and use.

Board finding and conclusion

The Board finds that the criteria set forth in § 3.6.1/5.5(H) of the Town of Boothbay Zoning Ordinance does not apply to the CMBG application.

Vote: For: 5 Against: 0

Conditions of approval

The Board notes that if the project were an allowed use in the Watershed Overlay Zone, the project would meet all of the remaining standards under the Ordinance. If the project were an allowed use in the Watershed Overlay Zone, the Board imposes the following conditions on the project.

1. Entrance to the CMBG property along Gaecklein Road must be gated and locked except at times when it is in use by CMBG staff, subcontractors, or vendors for operational necessity. Keys, combinations, or other appropriate access control devices shall be provided to the Fire Chief and Ambulance Service to facilitate emergency access. When special events such as Gardens Aglow are occurring, signs shall be posted by CMBG at the end of Gaecklein Road to indicate that there is no public access to the Gardens via that road.

Vote: For: 5 Against: 0

2. All filling along Gaecklein Road shall be stabilized with erosion control mats and other methods to ensure that there is no erosion until the permanent landscaping is fully established. The permanent landscaping shall be maintained to prevent erosion.

Vote: For: 5 Against: 0

3. CMBG has prepared a plan that is designed and mutually agreed upon by the Boothbay Region Water District, CMBG and the Town of Boothbay for storm water management monitoring and data collection. Focus of the data collection should be in collecting data that will allow the parties to test the efficacy of CMBG's stormwater modeling. Focus of the monitoring should be on CMBG property or immediately adjacent property, rather than at Knickerbocker Lake itself, to best separate CMBG stormwater effects from other issues in the watershed.

Vote: For: 4 Against: 1

4. CMBG's third party contractor responsible for inspection and maintenance of CMBG's stormwater management BMP's shall submit an annual report to the CEO that includes annual maintenance and inspection logs and a summary of findings, including identification of any stormwater management system issues and corrective actions.

Vote: For: 3 Against: 2

5. Before the applicant commences any land use activity pursuant to this approved development application, the applicant shall obtain all necessary Maine DEP, Army Corps of Engineers, MDOT, DHHS, LPI and other land use approvals other than the State Fire Marshall approval. If any agency or official imposes any more stringent conditions on the applicant or if the other agency or official's conditions of approval in any way impact the Town of Boothbay's substantive review criteria, the applicant shall return to the Board for review and approval of an amended development application.

Vote: For: 5 Against: 0

6. The property shown on this plan may be developed and used only as depicted on this approved plan and as described in Findings of Fact #1-4. All elements and features of the plan and all representations made by the applicant in the record of the Board of Appeals proceedings are conditions of the approval. No change from the conditions of approval is permitted unless an amended plan is first submitted to and approved by the Board of Appeals.

Vote: For: 5 Against: 0

11/13/17
Date


Dick Perkins, Chair

