

**CUMBERLAND BOARD OF ADJUSTMENT AND APPEALS
Cumberland Town Hall - Council Chambers
290 Tuttle Road, Cumberland, ME
Thursday, September 12, 2024, at 7:00 p.m.**

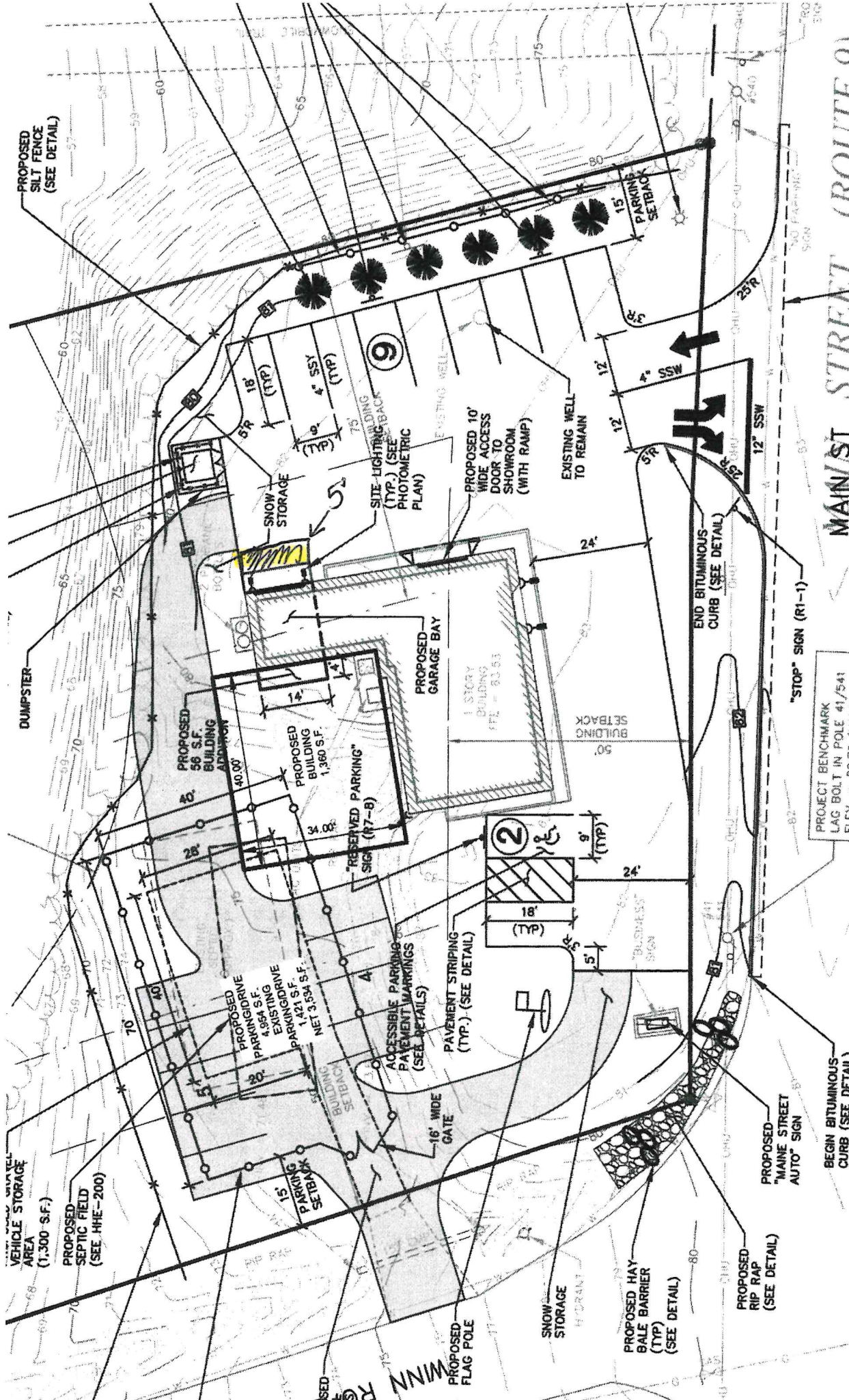
- 1. ELECTION OF CHAIRMAN PRO TEM**
- 2. PUBLIC HEARING: APPLICATION FOR NON-CONFORMING CHANGE OF USE APPEAL.** Matt Almy of Mamas, LLC has submitted an application for an expansion of a non-conforming use appeal per Article VII ss 315-74-C of the Town of Cumberland Zoning Ordinance to add a four car garage and repair facility on the south side of the existing building with access from Winn Rd., to extend the existing detail garage bay by five feet and to have access from the existing lot to the proposed garage. This business operates as Maine Street Auto and is located at 174 Main St., Tax Assessor Map U09, Lot 8.
- 3. ADMINISTRATIVE MATTERS:** Approval of the minutes for the August 8, 2024, meeting.

ANYONE WISHING TO BE HEARD ON ANY MATTER CONCERNING THE ABOVE REQUEST SHOULD BE PRESENT

BOARD OF ADJUSTMENT AND APPEALS RULES OF PROCEDURE

1. No business may be transacted by the Board without a quorum consisting of four members. The concurring vote of a majority of those voting, but at least three votes, is necessary to grant any application. If any matter fails to receive a favorable vote of a majority of the Board members voting, the application will be deemed to have been denied.
2. All testimony must be presented at the podium so that it can be recorded. Testimony will be videotaped. The videotape will be available for inspection at the Town Office during regular business hours.
3. Applicants will first state their case and may present testimony and offer evidence. The burden of proof is on the applicant to present all the evidence the Board needs to determine whether the project will comply with every applicable requirement of the Ordinance. Applicants are strongly encouraged to provide with their written submissions all evidence in support of their application.
4. Following the conclusion of the applicant's case, members of the public may present testimony and offer evidence, in the following order: first, those in favor of the application; second, those opposed to the application; and third, those neither for nor against the application.
5. Applicants may then offer rebuttal evidence.
6. Parties, acting through the Chair, may cross-examine witnesses. The Chair may limit irrelevant, immaterial, or unduly repetitious testimony. Members of the Board may ask questions at any time, with the permission of the Chair.
7. At the conclusion of the rebuttal evidence, the public portion of the proceeding will be closed, and the Board will rule on the application pursuant to the applicable provisions of Cumberland's Zoning Ordinance and Maine law. The Chair may reopen the public portion during deliberations if the Chair determines it is necessary to do so in the interests of a full and fair hearing and a complete record.
8. After a decision has been made, the Board will not entertain a new appeal of similar import concerning the same property until one year has elapsed from the date of the decision, unless the Chair believes that an injustice was done because of a mistake of law or misunderstanding of fact or if the Chair believes a change has taken place in some essential aspect of the case sufficient to warrant a reconsideration of the appeal.
9. The Board's procedures also are governed by Maine law (30-A M.R.S.A. §§ 2691 and 4353, or any successor statutes) and §315-77 of the Cumberland Code.

These rules were adopted on December 12, 2002, pursuant to 30-A M.R.S.A. § 2691(3)(C).



MAIN ST STREET (ROUTE 01)

PROJECT BENCHMARK
LAG BOLT IN POLE 41/541

PROPOSED SILT FENCE
(SEE DETAIL)

VEHICLE STORAGE
AREA
(1,300 S.F.)

PROPOSED SEPTIC FIELD
(SEE HHE-200)

PROPOSED 58 S.F.
BUILDING ADDITION

PROPOSED BUILDING
1,360 S.F.

PROPOSED GARAGE BAY

1 STORY BUILDING
PFL = 8.3.03

BUILDING SETBACK

PROPOSED DRIVE
PARKING S.F.
4,997 S.F.

EXISTING DRIVE
PARKING S.F.
1,421 S.F.

NET 3,576 S.F.

RESERVED PARKING
SIGN (7-9)

ACCESSIBLE PARKING
PAVEMENT MARKINGS
(SEE DETAILS)

PAVEMENT STRIPING
(TYP.) (SEE DETAIL)

18' WIDE GATE

PROPOSED HAY
BALE BARRIER
(TYP)
(SEE DETAIL)

PROPOSED RIP RAP
(SEE DETAIL)

PROPOSED "MAINE STREET
AUTO" SIGN

BEGIN BITUMINOUS
CURB (SEE DETAIL)

"STOP" SIGN (R1-1)

END BITUMINOUS
CURB (SEE DETAIL)

EXISTING WELL
TO REMAIN

PROPOSED 10'
WIDE ACCESS
DOOR TO
SHOWROOM
(WITH RAMP)

SITE LIGHTING
(TYP.) (SEE
PHOTOMETRIC
PLAN)

SNOW STORAGE

18' (TYP.)

4" S.S.Y. (TYP.)

15' (TYP.)

12'

12'

4" S.S.Y.

12' S.S.W.

25'R

6' S

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Chapter 315. Zoning

Article VII. Nonconforming Uses, Buildings, Structures and Lots

§ 315-74. Nonconforming uses, buildings or structures.

- A. Repairs and alterations. A nonconforming building or structure may be repaired, altered, improved, or reconstructed. A nonconforming building or structure may be added to or expanded within the established setbacks for the underlying district after obtaining a permit from the same permitting authority as that for a new structure. The repair, alteration, improvement or reconstruction of a building or structure located within an aquifer protection area shall be subject to the provisions of Chapter **315**, Article **V**, Aquifer Protection, of this Code.
[Amended 2-25-2013]
- B. Rebuilding. A nonconforming building or structure which is damaged or destroyed by fire, explosion, or act of God may be rebuilt at any time. At the option of the owner, the building or structure may be rebuilt upon the original footprint of the destroyed building or structure. Otherwise, the rebuilt structure must be constructed within the established setbacks for the underlying district.
- C. Expansion of nonconforming use other than residential. The number of square feet of floor space area devoted to a nonconforming use may be increased upon application to the Board of Adjustment and Appeals, but only if the Board finds that the proposed expansion of the nonconforming use will have no greater adverse effect upon other property in the same district and neighborhood and that the granting of such approval will not substantially depart from the intended purpose of this chapter. The expansion of a nonconforming use located within an aquifer protection area shall be subject to the provisions of Chapter **315**, Article **V**, Aquifer Protection, of this Code.
[Amended 2-25-2013]
- D. Expansion of nonconforming residential use. A nonconforming residential building or structure may be expanded after obtaining a permit from the same permitting authority that issues permits for a new structure, provided that the expansion does not increase the nonconformity of the structure or expand the area of a nonconforming use. The expansion of a nonconforming residential use shall be subject to the provisions of Chapter **315**, Article **V**, Aquifer Protection, and

Chapter **226**, Shoreland Zoning, Article **II**, of this Code, where applicable.

[Added 2-25-2013^[1]; amended 1-27-2014]

[1] *Editor's Note: This ordinance also redesignated former Subsections D and E as Subsections **E** and **F**, respectively.*

- E. Change of use. A nonconforming use of a building, structure, or lot of land may be changed to another nonconforming use upon application to the Board of Adjustment and Appeals and in accordance with the standards of Subsection **C** of this section.
- F. Abandonment. A nonconforming use of any building, structure, or lot of land which has been abandoned shall not thereafter be resumed. For purposes of this subsection, a nonconforming use shall be considered abandoned:
 - (1) When it has been replaced by a conforming use.
 - (2) When it has been discontinued for a period of two years, provided that a nonconforming commercial use which is not open and operating for at least five days per week during traditional business hours for a period of at least three months in any twelve-month period during the prescribed two-year period shall be deemed to have been abandoned. For any residential use that is nonconforming the discontinuance period shall be four years.

CUMBERLAND BOARD OF ADJUSTMENT AND APPEALS

Cumberland Town Hall - Council Chambers

290 Tuttle Road, Cumberland, ME

Thursday, November 14, 2019 at 7:00 p.m.

- 1. PUBLIC HEARING: Interpretation Appeal:** Mathew Almy of 25 Sunnyfield Lane, Cumberland, ME and Mark Axelsen of 1 Hemlock Drive, Cumberland, ME, or an entity formed by them, to take title as contract purchasers of property at 174 Main Street, Cumberland, ME currently owned by C.N. Brown Company, a Maine corporation with a mailing address of P.O. Box 200, South Paris, Maine 04281, as shown on Tax Assessor Map U09, Lot 8, to allow a change in use from a non-conforming convenience store with gas sales to a non-conforming auto sales and repair shop in the Rural Residential District 1 Zone. This is an interpretation appeal under Section 315-74 C & E of the Town of Cumberland Zoning Ordinance.

- 2. ADMINISTRATIVE MATTERS:** Approval of the minutes for the August 8, 2019 meeting.

ANYONE WISHING TO BE HEARD ON ANY MATTER CONCERNING THE ABOVE REQUEST SHOULD BE PRESENT

Date: 10/31/19 - 8:55 AM
FEE: \$100.00
BY: Cora

**TOWN OF CUMBERLAND
BOARD OF ADJUSTMENT AND APPEALS
NON-CONFORMING CHANGE OF USE APPEAL FORM**

Important: Do not complete this form unless you understand and comply with the instruction sheet. The Code Enforcement Officer will assist you if needed.

Please Type or Print:

I/We MARK AXELSEN, MATTALMY owner(s) of property at 174 MAIN ST.
Designated as parcel(s) Tax Assessor Map # U9, Lot # 8, under provisions of Section 315-74.C. & E. of the Zoning Ordinance of the Town of Cumberland, Maine, hereby appeal the decision of the Cumberland Code Enforcement Officer. I / We wish to:

OPERATE ; OWN AN AUTO SALES ; REPAIR SHOP

I/ We understand that the Board of Adjustment and Appeals, "shall determine whether the proposed change in use will have no greater adverse effect upon other property in the same district and neighborhood and that the granting of such approval will not substantially depart from the intended purpose of this chapter."

[Signature]
Appellant (signature)
Appellant(s) phone number: (207) 318-8362

DECISION

Following a hearing and a vote of the Cumberland Board of Adjustment and Appeals on November 14, 2019 you are hereby notified that your ~~special exception~~ ^{Appeal} has been (GRANTED) subject to the following restrictions.) In accordance with Site Plan Review per Sec. 229.2-B-1.
~~(DENIED due to a finding by the Board that :)~~

Signed [Signature]
[Signature]
[Signature]
[Signature]
[Signature]



Town of Cumberland

290 TUTTLE ROAD

CUMBERLAND, MAINE 04021

Phone: (207) 829-5559 FAX: (207) 829-2214

November 18, 2019

Matthew Almy
25 Sunnyfield Ln.
Cumberland, ME 04021

Mark Axelsen
1 Hemlock Dr.
Cumberland, ME 04021

Dear Mr. Almy and Mr. Axelsen:

RE: Interpretation Appeal: Matthew Almy of 25 Sunnyfield Lane, Cumberland, ME and Mark Axelsen of 1 Hemlock Drive, Cumberland, ME, or an entity formed by them to take title as purchasers of property at 174 Main Street, Cumberland, ME currently owned by C.N. Brown Company, a Maine corporation with a mailing address of P.O. Box 200, South Paris, Maine 04281, as shown on Tax Assessor Map U09, Lot 8, to allow a change in use from a non-conforming convenience store with gas sales to a non-conforming auto sales and repair shop in the Rural Residential District 1 Zone. This is an interpretation appeal under Section 315-74 C & E of the Town of Cumberland Zoning Ordinance.

At the November 14, 2019 Board of Adjustments and Appeals meeting, the Board voted to grant the Non-Conforming Change of Use Appeal of Matthew Almy and Mark Axelsen for a change in a non-conforming use from a convenience store with gas sales to an auto sales and repair shop for the property at 174 Main St., Tax Assessor's Map U09, Lot 8.

The Board made this decision based on the testimony presented and found that the change in nonconforming use will have no greater adverse effect.

Decisions of the Board are appealable to Superior Court pursuant to the provisions of 30-A M.R.S.A. § 2691(3)(G). You may contact the Code Enforcement Officer, William Longley, at 829-2207 if you have any questions concerning this matter.

Sincerely,

Christina Silberman

Clerk to the Board or Adjustments and Appeals

cc: William C. Longley, Jr., Code Enforcement Officer

Matthew Manahan, Chairman to the Board of Adjustments and Appeals

TOWN OF CUMBERLAND
BOARD OF ADJUSTMENTS AND APPEALS MINUTES
Thursday, November 14, 2019

Roll Call: Board Members Present: Matthew Manahan – Chairman, Andrew Black, Peter Lacy, Sally Pierce & Amanda Vigue. **Staff:** Code Enforcement Officer Bill Longley & Administrative Assistant Christina Silberman. **Board Members Absent:** Ronald Copp, Sr., Christian Lewis, & Michael Martin.

Chairman Manahan opened the meeting with introductions.

1. PUBLIC HEARING: Interpretation Appeal: Matthew Almy of 25 Sunnyfield Lane, Cumberland, ME and Mark Axelsen of 1 Hemlock Drive, Cumberland, ME, or an entity formed by them, to take title as contract purchasers of property at 174 Main Street, Cumberland, ME currently owned by C.N. Brown Company, a Maine corporation with a mailing address of P.O. Box 200, South Paris, Maine 04281, as shown on Tax Assessor Map U09, Lot 8, to allow a change in use from a non-conforming convenience store with gas sales to a non-conforming auto sales and repair shop in the Rural Residential District 1 Zone. This is an interpretation appeal under Section 315-74 C & E of the Town of Cumberland Zoning Ordinance.

Chairman Manahan introduced the item and disclosed that his law firm represents a bank that has a relationship with C.N. Brown. Chairman Manahan stated that he does not personally work on these matters and this will not affect his ability to act fairly on this matter. No objections were raised for Chairman Manahan's participation on this item.

Code Enforcement Officer Bill Longley reported that this is a property that has been vacant off and on over the past year or two. The application is for a use that is not allowed in the zone. The current uses are not allowed in the zone but have been going on for forty plus years and the Zoning has since changed. The only use allowed here is a residence or the use that is there. C.N. Brown has maintained their non-conforming status by opening and operating on a limited bases for a period of time and then has closed again. The tanks are proposed to come out. C.N. Brown has no interest in putting tanks back in and are marketing the property. Potential buyers have offered a business plan and it is the Board's decision whether the plan meets the criteria of the ordinance to allow a different non-conforming use to be allowed in this location.

Chairman Manahan invited the applicants to present their case.

Matt Almy explained that he and Mark Axelsen are here to propose a change to 174 Main St. from its current non-conforming use as a gas station and minimart to an auto sales and repair facility. Hours of operation would be Monday through Friday from 9 am to 6 pm, Saturday from 9 am to 5 pm and closed on Sunday. Mr. Almy said they would like to have two garage bays and roughly 25 used vehicles. They intend to make the building and the lot blend in with the community and look more appealing.

Mr. Almy noted that they are working with Northeast Civil Solutions to come up with a building plan with insulated walls so disturbance to the neighbors is minimized. Mr. Almy said that compared with the gas station, there will be a lot less cars coming in and out. Mr. Axelsen added that they plan to install a buffer to the north with cedar trees.

Chairman Manahan said that the approval standard that the Board has to apply is to find that the use will have no greater adverse effect upon other property in the neighborhood and that the granting of such approval will not substantially depart from the intended purpose of this ordinance. Chairman Manahan asked the applicants to summarize for the Board why the use will be no more adverse than the existing use.

Mr. Almy replied that they want to take a gas station with convenience store with hours of operation from early in the morning until, he believes, 10 pm and turn it into a more visually appealing building with less traffic coming in and out. They will create a safer intersection to conform to 2019 standards. A current egress is too close to the intersection.

Chairman Manahan asked if the applicants have talked to Town staff about going through site plan approval and if they are okay with this. Mr. Almy replied yes. Chairman Manahan asked if the applicants would be okay if the Board put a condition on approval that they go through site plan approval. Mr. Almy replied yes, and he understood this would be required.

Mr. Lacy asked if the proposed garage bays will be added or if the north end of the building will be converted. Mr. Almy said that the building will be converted.

Mr. Black asked if the property line to the west runs along Mill Brook. Mr. Almy replied yes. Mr. Black confirmed that there is no expansion of the floor plan. Mr. Almy agreed. Mr. Black asked if the approximate location of the leach field shown on the plan is existing. Mr. Almy answered yes. Mr. Black asked if there would be any work done on it. Mr. Axelsen replied they will upgrade to a 3 bedroom, 270 gallon septic system.

Mr. Black confirmed that the applicants are proposing two uses, a used car dealership as well as a repair shop. Mr. Axelsen agreed. Mr. Black asked if the repair shop would be open to the public. Mr. Axelsen replied that the repair shop will be to service the vehicles that they purchase and vehicles that customers buy from them. Mr. Black asked if someone that doesn't purchase a car from them can do business. Mr. Axelsen replied that they would do light repair work and Mr. Almy added that if someone wanted an oil change, yes. Mr. Black said there is parking for automobiles that are for sale and asked about parking for vehicles being serviced. Mr. Almy described where these vehicles would be kept. Mr. Black asked if there are any special considerations for hazardous materials. Mr. Almy said they will comply with whatever is required.

Chairman Manahan commented that if the applicants are doing oil changes there could be more traffic than they are thinking. Mr. Almy said they plan to have one technician who primarily will work on their vehicles and won't have a lot of time to do oil changes. Chairman Manahan said that the Board has to make a finding based on the evidence presented that this is going to have no greater adverse effect upon the property than the existing use. It is difficult for the Board to conclude this if the Board doesn't know exactly what the applicants are doing. The site plan review will help with this.

Mr. Almy said that the technician will do light repair, oil changes, stickers – easy stuff. Their technician will not do any body work. There are vendors that come to do onsite body work to touch up scratches and pop little dents but there won't be noise with this. Mr. Black said that presumably they will be removing tires, Mr. Almy agreed. Mr.

Axelsen said the noise from removing tires is their biggest concern and they are working with an engineer on this.

Ms. Pierce asked how many used cars the applicants expect to have on the lot at one time. Mr. Almy replied 25 to 30. Mr. Lacy asked the applicants to clarify where cars will be, along Winn Rd. or along Rte. 9. Mr. Almy said there will be a few spaces along Winn Rd., facing Rte. 9 and along the north side facing building. Vehicles being serviced will be kept to the west. Ms. Pierce asked if someone is pulling out of the driveway, will these cars block visibility along Rte. 9. Mr. Axelsen replied that the plan is to back the cars up closer to the structure rather than next to the road.

Chairman Manahan stated that this Board does not usually get into the details of the site plan and asked Mr. Longley if site plan review will cover things like if the cars are parked too close to the road. Mr. Longley replied that this will be addressed as part of the site plan review. Ms. Vigue pointed out that there is a raised sidewalk here so cars can't be that close.

Chairman Manahan asked if the site plan review will also deal with lights at night. Mr. Longley replied yes - lighting, buffers, parking and egress are all part of site plan review. Chairman Manahan asked about signage or advertising with inflatables or balloons. Mr. Longley said signage and advertising will be dealt with.

Chairman Manahan asked members of the public that wish to speak in favor of the item to approach the microphone. No one spoke. Chairman Manahan asked if anyone wants to speak against the application.

Adrian Kendall, 190 Main St., said he is torn. The site has been vacant and dark for a while and it will be nice to see something happen and have it cleaned up. There is a lack of definition of what will be happening and he would like to see this fleshed out. Mr. Kendall said that it sounds like there will be more light mechanical work than he anticipated from his review of the application. Mr. Kendall said that the gas station was very lightly used and he questioned the information regarding traffic and number of trips. Mr. Kendall noted that this is a relative analysis, "no greater adverse effect on the neighborhood" is intangible because there are no real standards for what that is. Mr. Kendall has concerns about light pollution. Mr. Kendall said that on balance he does not think the Board can say this will have a less adverse impact and he thinks it would have a more adverse one.

Chairman Manahan asked Mr. Kendall if he could get comfortable with the use if there were certain conditions imposed on it or if he thinks it is a bad idea and would rather see it what it is right now. Mr. Kendall replied that a functioning gas station and convenience store would be okay and is a better neighborhood fit than used car sales and light mechanic work. Mr. Kendall said that a use of the type being proposed would have an adverse effect on the neighborhood.

Mr. Black asked how far Mr. Kendall's house is from the property. Mr. Longley asked Mr. Kendall if he received a notice. Mr. Kendall said no. Mr. Longley said Mr. Kendall is outside of 300 feet. Mr. Black asked Mr. Kendall if the prior use had a noise issue. Mr. Kendall replied that other than people accelerating or breaking, no. Mr. Black asked if Mr. Kendall thinks there will be more traffic than there was when it was a gas

station/convenience store. Mr. Kendall replied that this is conjecture, this type of business is not consistent with what you would expect in this type of neighborhood. Mr. Black asked Mr. Kendall how he would feel if there was one use, either the car dealership on its own or the repair shop on its own and if he thinks one is more problematic. Mr. Kendall said that for a visual impact the car sales has a greater impact and for noise, the repair shop.

Chairman Manahan asked if anyone wishes to speak neither for nor against.

Neil & Stacey Collins, 180 Main St., approached the podium. Mr. Collins said they have seen the proposal and think the applicants have been considerate in how they want to use the site. Chairman Manahan asked if they are across the street. Ms. Collins replied that they are next door. Ms. Vigue asked if they reside there. Ms. Collins said they purchased it in 2017 and renovated it to be a rental.

Ms. Collins said that the north side where the bays will be is very visible from the bedrooms in their house. Any light or noise is something they are very concerned about. Ms. Collins noted that the applicants talked about putting in trees because of their concerns. Mr. Collins said their concern is the quiet enjoyment of their property and managing the noise from the impact wrenches and compressor. Mr. Collins said he would like to know that there is a good plan in place for this.

Ms. Collins asked if this is approved and goes to site plan, would there be another opportunity for neighbors to have input. Mr. Longley said this depends on whether it is staff approval or Planning Board approval. Staff may look at this and make the determination. The other level is with the Planning Board and there would be notice to all abutters within 200 feet. Ms. Collins said she would be more willing to give initial support if she knew that they will have some input into what actually happens given the vagueness of the proposal now.

Chairman Manahan asked for clarification about the level of site plan review. Mr. Longley replied that there are different levels in the Site Plan Ordinance. The Site Plan Ordinance gives jurisdiction to the Town Planner to do approval under the staff level, which this proposal falls under. The Town Planner can kick items to the Planning Board if there are concerns or issues that they feel need greater vetting. Chairman Manahan noted that with the staff level the abutters probably wouldn't have any input. Mr. Longley added that with staff approval, abutters do get noticed after the approval is granted and this can be appealed to the Planning Board.

Ms. Collins said before coming tonight their concerns were lighting that would be on all night that might be annoying to anyone living at 180 Main St. and noise. After tonight, Ms. Collins feels like the impact may be greater than she originally understood as far as where the cars will be displayed and the possibility of other service work.

Mr. Collins said he has thought about how the space is currently used and whether it could be improved and this proposal is a large improvement for traffic and appearance.

Brian Marcaurelle, Wild Way, said that he lives off the private road across the street and learned about this in the *Crier* and suggested that the Town consider expanding the notification radius. Chairman Manahan recommended he contact the Town Council about increasing the notification radius because the Board doesn't control this.

Mr. Marcaurelle said he is torn and echoes others' concerns and does not like looking at an empty gas station. Picturing 30 cars on this lot is hard to envision. He appreciates the efforts the applicants have laid out in their proposal to address concerns about noise, visual impact and lighting. Mr. Marcaurelle said if you are on Winn Rd. and want to turn left onto Route 9, this is pretty tough currently. The Town will want to make sure, for safety reasons, that the sight lines are not diminished in either direction.

Mr. Axelsen that they will get Mr. & Mrs. Collins involved in the lighting and the buffers. Mr. Axelsen said that they live in the community and want to proud of where they work and what they do.

Ms. Vigue asked if the applicants plan to do online marketing. Mr. Axelsen said that they believe a majority of their business will be online. Ms. Vigue asked if this will decrease or increase traffic. Mr. Axelsen replied that this would decrease traffic.

Chairman Manahan closed the public portion of the meeting.

Chairman Manahan referred to whether this is appropriate in the area and if it would be allowed in the district. Chairman Manahan said that it seems to him that the intent of the ordinance is to phase out non-conforming uses but to do so in a way that allows a change of if no more intensive. The Boards' job is to find if this is a no more intensive use than the current use.

Mr. Black said the Board is looking at if the applicants have proven that there is no additional impact by this use. Mr. Black noted that there may be impacts that are lessened but there might be impacts that are more. Mr. Black said he thinks that the Board's job is to make sure that impacts are not increased as opposed to balancing and weighing impacts. Chairman Manahan replied that you could say that on balance it's no greater adverse effect but the language does say "will have no greater adverse effect".

Mr. Black commended the applicants for trying to make less of an impact for the neighbors. In comparing the previous nonconforming use, the Board is looking at a convenience store with a gas station. Probably the greatest adverse impact is the gas station. In comparing the proposed car dealership with the repair shop, Mr. Black said that the repair shop concerns him the most primarily because there will be an increase in noise. Mr. Black said he is not worried about an increase in traffic and can't imagine there will be more traffic going in and out of the site than before. There is a visual impact of having the cars parked there but more than likely they will be nice, clean parked cars. Mr. Black said the use as a used car dealership doesn't concern him. Mr. Black's concern is with the repair shop and the noise from the compressors and impact wrenches and he sees this as an increased impact.

Ms. Pierce said she is torn. The impact will be from the repairs. Ms. Pierce doesn't like the idea of the used cars sitting there. Ms. Pierce said the impact of the convenience store is less than having used cars sitting there.

Ms. Vigue said she is for growth in Cumberland. She is concerned about the noise but it sounds like they will be shut down when people are home from work.

Mr. Lacy said he shares concern about the noise but this can be addressed through site plan review. Mr. Lacy questioned if there will be a greater adverse impact, if the applicants do everything they say they will do, than was there with the gas station.

Ms. Vigue noted that there are systems in place if they don't do A, B and C.

Chairman Manahan said he is sensitive to the noise and questioned if there is a condition the Board could impose to ensure the noise from the repair portion of the use would be no louder than the convenience store/gas station. Mr. Longley said that as part of site plan review, they take into consideration all of these issues. Site Plan Review could set a condition not to exceed a number of decibels at the property line. Chairman Manahan said that if the Board can expect that the site plan review process will result in a noise restriction this will be no greater than a gas station convenience store.

Ms. Vigue asked how many years a gas station has been there.

Ms. Pierce asked if the Board can approve this and require it to go to the Planning Board. Ms. Pierce would like to see the possibility of more input from the abutters. Chairman Manahan replied that he raised this question earlier with staff and it appears that Site Plan Review is required at the staff level. The Town Planner could kick this up to the Planning Board for approval or there could be an appeal to the Planning Board. Mr. Longley noted that the Town Attorney would argue that the Board has no authority to require a higher level of approval than what is in the Ordinance.

Mr. Longley responded to Ms. Vigue's question that there were gas tanks there in 1974 and he believes at that time it was a gas station and repair garage.

Town Councilor George Turner said that he would be upset if the Board of Appeals made a recommendation to send this to the Planning Board and staff ignored the recommendation.

Mr. Black asked what areas in Town a vehicle repair shop would be allowed. Mr. Longley replied in many areas, the VCC and HC zones. Mr. Black said that it seems to him that, as a use, a repair shop is inherently more impactful than a convenience store gas station.

Chairman Manahan said that the Ordinance doesn't help with how to look at "no greater adverse effect" as a whole or do you take each aspect and say each aspect can't be greater. Chairman Manahan said it seems to him that this use is an improvement and Site Plan Review will ensure that lighting, buffering and noise are reasonable.

Mr. Lacy said he reads the statute as on balance does the use have a greater adverse effect than the previous one and on balance he is not seeing that.

Mr. Lacy moved that the Board of Adjustments and Appeals approve the change in use with Site Plan Review approval and a heavy recommendation that this go to the Planning Board and to pay particular attention to night lighting, noise and buffering to the neighbors, seconded by Ms. Vigue. A discussion on the motion was had. The motion was then **VOTED, 3 yeas, 2 nays (Black & Pierce), motion passes.**

2. ADMINISTRATIVE MATTERS: Approval of the minutes for the August 8, 2019 meeting. Mr. Black moved to approve the minutes of the August 8, 2019 meeting, seconded by Ms. Pierce and **VOTED, 3 yeas, 2 abstained (Lacy & Vigue) – motion passes.**

Adjournment: Ms. Pierce moved to adjourn the meeting at 8:33 pm, seconded by Mr. Black and **VOTED, 5 yeas – unanimous, motion passes.**

A TRUE COPY ATTEST:

Matthew Manahan, BoAA Chairman

Christina Silberman, Admin. Asst.

Notice of Decision

Date: February 18, 2020

To: Jim Fischer, P.E.
Northeast Civil Solutions
381 Payne Rd.
Scarborough, ME 04074

From: Carla Nixon, Town Planner

Re: Site Plan Review for a change of use from a non-conforming convenience store with gas sales to a non-conforming auto sales and repair shop in the RR1 Zone, located at 174 Main St., Tax Assessor Map U09, Lot 8.

This is to advise you that on Tuesday, February 18, 2020, the Planning Board conducted a Public Hearing for Site Plan Review for a change of use from a non-conforming convenience store with gas sales to a non-conforming auto sales and repair shop located at 174 Main St. The Planning Board voted unanimously to grant Site Plan Approval for a change of use from a non-conforming convenience store with gas sales to a non-conforming auto sales and repair shop in the RR1 Zone, located at 174 Main St. subject to the Limitation of Approval, the Standard Condition of Approval and six Conditions of Approval.

Findings of Fact: See attached.

Waivers Granted:

1. Waiver from the High Intensity Soils Survey.
2. Waiver from Hydro Geologic Evaluation.
3. Waiver from conducting a Traffic Study.

LIMITATION OF APPROVAL: Construction of the improvements covered by any site plan approval must be substantially commenced within twelve (12) months of the date upon which the approval was granted. If construction has not been substantially commenced and substantially completed within the specified period, the approval shall be null and void. The applicant may request an extension of the approval deadline prior to expiration of the period. Such request must be in writing and must be made to the Planning Board. The Planning Board may grant up to two (2), six (6) month extensions to the periods if the approved plan conforms to the ordinances in effect at the time the extension is granted and any and all federal and state approvals and permits are current.

STANDARD CONDITION OF APPROVAL: This approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted by the applicant. Any variation from the plans, proposals and supporting documents, except de minimus changes as so determined by the Town Planner which do not affect approval standards, is subject to review and approval of the Planning Board prior to implementation.

CONDITIONS OF APPROVAL:

1. The plan shall be revised to show that the building shall be equipped with a hinged key box approved by the fire department.
2. The existing light pole on the front corner of the parcel shall be removed prior to issuance of a building permit.
3. A letter from the Maine Historic Preservation Commission shall be submitted to the Town Planner.
4. The location of the existing and proposed septic system needs to be shown on the site plan.
5. A note shall be added to the plan stating the hours of operation as approved by the Board to be M-F from 9-6 and Saturday from 9-3.
6. A note shall be added to the plan stating that all exterior lighting will be off when the business is closed and that motion-detector lights will be used.

Cumberland Planning Board

Paul Auclair, Board Chair

Chapter 229 – SITE PLAN REVIEW (Findings of Fact)
SECTION 10: APPROVAL STANDARDS AND CRITERIA

The following criteria shall be used by the Planning Board in reviewing applications for site plan review and shall serve as minimum requirements for approval of the application. The application shall be approved unless the Planning Board determines that the applicant has failed to meet one or more of these standards. In all instances, the burden of proof shall be on the applicant who must produce evidence sufficient to warrant a finding that all applicable criteria have been met.

A. Utilization of the Site

Utilization of the Site - The plan for the development, including buildings, lots, and support facilities, must reflect the natural capabilities of the site to support development.

Environmentally sensitive areas, including but not limited to, wetlands, steep slopes, floodplains, significant wildlife habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, and sand and gravel aquifers must be maintained and preserved to the maximum extent. The development must include appropriate measures for protecting these resources, including but not limited to, modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.

The site has recently supported a retail/gas station. The proposed new uses will not require expansion into any environmentally sensitive areas.

Based on the above findings of fact, the Board finds the standards of this section have been met.

B. Traffic, Circulation and Parking

10.2.1 Traffic Access and Parking

Vehicular access to and from the development must be safe and convenient.

10.2.1.1 Any driveway or proposed street must be designed so as to provide the minimum sight distance according to the Maine Department of Transportation standards, to the maximum extent possible.

10.2.1.2 Points of access and egress must be located to avoid hazardous conflicts with existing turning movements and traffic flows.

10.2.1.3 The grade of any proposed drive or street must be not more than +3% for a minimum of two (2) car lengths, or forty (40) feet, from the intersection.

10.2.1.4 The intersection of any access/egress drive or proposed street must function: (a) at a Level of Service D, or better, following development if the project will generate one thousand (1,000) or more vehicle trips per twenty-four (24) hour period; or (b) at a level which will allow safe access into and out of the project if less than one thousand (1,000) trips are generated.

10.2.1.5 Where a lot has frontage on two (2) or more streets, the primary access to and egress from the lot must be provided from the street where there is less potential for traffic congestion and for traffic and pedestrians hazards. Access from other streets may be allowed if it is safe and does not promote short cutting through the site.

10.2.1.6 Where it is necessary to safeguard against hazards to traffic and pedestrians and/ or to avoid traffic congestion, the applicant shall be responsible for providing turning lanes, traffic directional islands, and traffic controls within public streets.

10.2.1.7 Access ways must be designed and have sufficient capacity to avoid queuing of entering vehicles on any public street.

10.2.1.8 The following criteria must be used to limit the number of driveways serving a proposed project:

a. No use which generates less than one hundred (1) vehicle trips per day shall have more than one (1) two-way driveway onto a single roadway. Such driveway must be no greater than thirty (30) feet wide.

b. No use which generates one hundred (100) or more vehicle trips per day shall have more than two (2) points of entry from and two (2) points of egress to a single roadway. The combined width of all access ways must not exceed sixty (60) feet.

10.2.2 Access way Location and Spacing

Access ways must meet the following standards:

10.2.2.1 Private entrance / exits must be located at least fifty (50) feet from the closest un-signalized intersection and one hundred fifty (150) feet from the closest signalized intersection, as measured from the point of tangency for the corner to the point of tangency for the access way. This requirement may be reduced if the shape of the site does not allow conformance with this standard.

10.2.2.2 Private access ways in or out of a development must be separated by a minimum of seventy-five (75) feet where possible.

10.2.3 Internal Vehicular Circulation

The layout of the site must provide for the safe movement of passenger, service, and emergency vehicles through the site.

10.2.3.1 Projects that will be served by delivery vehicles must provide a clear route for such vehicles with appropriate geometric design to allow turning and backing.

10.2.3.2 Clear routes of access must be provided and maintained for emergency vehicles to and around buildings and must be posted with appropriate signage (fire lane - no parking).

10.2.3.3 The layout and design of parking areas must provide for safe and convenient circulation of vehicles throughout the lot.

10.2.3.4 All roadways must be designed to harmonize with the topographic and natural features of the site insofar as practical by minimizing filling, grading, excavation, or other similar activities which result in unstable soil conditions and soil erosion, by fitting the development to the natural contour of the land and avoiding substantial areas of excessive grade and tree removal, and by retaining existing vegetation during construction. The road network must provide for vehicular, pedestrian, and cyclist safety, all season emergency access, snow storage, and delivery and collection services.

10.2.4 Parking Layout and Design

Off street parking must conform to the following standards:

10.2.4.1 Parking areas with more than two (2) parking spaces must be arranged so that it is not necessary for vehicles to back into the street.

10.2.4.2 All parking spaces, access drives, and impervious surfaces must be located at least fifteen (15) feet from any side or rear lot line, except where standards for buffer yards require a greater distance. No parking spaces or asphalt type surface shall be located within fifteen (15) feet of the front property line. Parking lots on adjoining lots may be connected by accessways not exceeding twenty-four (24) feet in width.

10.2.4.3 Parking stalls and aisle layout must conform to the following standards.

Parking Angle	Stall Width	Skew Width	Stall Depth	Aisle Width
90°	9'-0"		18'-0"	24'-0" 2-way
60°	8'-6"	10'-6"	18'-0"	16'-0" 1-way
45°	8'-6"	12'-9"	17'-6"	12'-0" 1-way
30°	8'-6"	17'-0"	17'-0"	12'-0" 1 way

10.2.4.4 In lots utilizing diagonal parking, the direction of proper traffic flow must be indicated by signs, pavement markings or other permanent indications and maintained as necessary.

10.2.4.5 Parking areas must 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.

10.2.4.6 Provisions must be made to restrict the "overhang" of parked vehicles when it might restrict traffic flow on adjacent through roads, restrict pedestrian or bicycle movement on adjacent walkways, or damage landscape materials.

The Town Engineer and Town Planner have reviewed and approved the parking and circulation plan. An entrance permit from MDOT is on file.

Based on the above findings of fact, the Board finds the standards of this section have been met.

10.2.5 Building and Parking Placement

10.2.5.1 The site design should avoid creating a building surrounded by a parking lot. Parking should be to the side and preferably in the back. In rural, uncongested areas buildings should be set well back from the road so as to conform to the rural character of the area. If the parking

is in front, a generous, landscaped buffer between road and parking lot is to be provided. Unused areas should be kept natural, as field, forest, wetland, etc.

10.2.5.2 Where two or more buildings are proposed, the buildings should be grouped and linked with sidewalks; tree planting should be used to provide shade and break up the scale of the site. Parking areas should be separated from the building by a minimum of five (5) to ten (10) feet. Plantings should be provided along the building edge, particularly where building facades consist of long or unbroken walls.

10.2.6 Pedestrian Circulation

The site plan must provide for a system of pedestrian ways within the development appropriate to the type and scale of development. This system must connect the major building entrances/exits with parking areas and with existing sidewalks, if they exist or are planned in the vicinity of the project. The pedestrian network may be located either in the street right-of-way or outside of the right-of-way in open space or recreation areas. The system must be designed to link the project with residential, recreational, and commercial facilities, schools, bus stops, and existing sidewalks in the neighborhood or, when appropriate, to connect the amenities such as parks or open space on or adjacent to the site.

There is no existing pedestrian way on-site or connecting to the site.

The new parking spaces will be located to the side of the building (with the exception of the one handicapped space). There will also be a small gravel parking area constructed with a gated entrance from Winn Road. The site constraints will not permit parking in the rear of the building.

Based on the above findings of fact, the Board finds the standards of this section have been met.

10.3 Stormwater Management and Erosion Control

10.3.1 Stormwater Management

Adequate provisions must be made for the collection and disposal of all stormwater that runs off proposed streets, parking areas, roofs, and other surfaces, through a stormwater drainage system and maintenance plan, which must not have adverse impacts on abutting or downstream properties.

10.3.1.1 To the extent possible, the plan must retain stormwater on the site using the natural features of the site.

10.3.1.2 Unless the discharge is directly to the ocean or major river segment, stormwater runoff systems must detain or retain water such that the rate of flow from the site after development does not exceed the predevelopment rate.

10.3.1.3 The applicant must demonstrate that on - and off-site downstream channel or system capacity is sufficient to carry the flow without adverse effects, including but not limited to, flooding and erosion of shoreland areas, or that he / she will be responsible for whatever improvements are needed to provide the required increase in capacity and / or mitigation.

10.3.1.4 All natural drainage ways must be preserved at their natural gradients and must not be filled or converted to a closed system unless approved as part of the site plan review.

10.3.1.5 The design of the stormwater drainage system must provide for the disposal of stormwater without damage to streets, adjacent properties, downstream properties, soils, and vegetation.

10.3.1.6 The design of the storm drainage systems must be fully cognizant of upstream runoff which must pass over or through the site to be developed and provide for this movement.

10.3.1.7 The biological and chemical properties of the receiving waters must not be degraded by the stormwater runoff from the development site. The use of oil and grease traps in manholes, the use of on-site vegetated waterways, and vegetated buffer strips along waterways and drainage swales, and the reduction in use of deicing salts and fertilizers may be required,

especially where the development stormwater discharges into a gravel aquifer area or other water supply source, or a great pond.

10.3.2 Erosion Control

10.3.2.1 All building, site, and roadway designs and layouts must harmonize with existing topography and conserve desirable natural surroundings to the fullest extent possible, such that filling, excavation and earth moving activity must be kept to a minimum. Parking lots on sloped sites must be terraced to avoid undue cut and fill, and / or the need for retaining walls. Natural vegetation must be preserved and protected wherever possible.

10.3.2.2 Soil erosion and sedimentation of watercourses and water bodies must be minimized by an active program meeting the requirements of the Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices, dated March 1991, and as amended from time to time.

The Town Engineer has reviewed and approved the stormwater management and erosion control plans.

Based on the above findings of fact, the Board finds the standards of this section have been met.

10.4 Water, Sewer, Utilities and Fire Protection

10.4.1 Water Supply Provisions

The development must be provided with a system of water supply that provides each use with an adequate supply of water. If the project is to be served by a public water supply, the applicant must secure and submit a written statement from the supplier that the proposed water supply system conforms with its design and construction standards, will not result in an undue burden on the source of distribution system, and will be installed in a manner adequate to provide needed domestic and fire protection flows.

10.4.2 Sewage Disposal Provisions

The development must be provided with a method of disposing of sewage which is in compliance with the State Plumbing Code. If provisions are proposed for on-site waste disposal, all such systems must conform to the Subsurface Wastewater Disposal Rules.

10.4.3 Utilities

The development must be provided with electrical, telephone, and telecommunication service adequate to meet the anticipated use of the project. New utility lines and facilities must be screened from view to the extent feasible. If the service in the street or on adjoining lots is underground, the new service must be placed underground.

10.4.4 Fire Protection

The site design must comply with the Fire Protection Ordinance. The Fire Chief shall issue the applicant a "Certificate of Compliance" once the applicant has met the design requirement of the Town's Fire Protection Ordinance.

A hydrant is located within 30' of the building. The fire protection plan has been reviewed and approved by the Fire Chief. Utilities are on site. There is an existing operating well on site that has served the needs of the previous tenant and should be sufficient for this use as well. The location of the existing and proposed septic system needs to be shown on the site plan; this is a proposed condition of approval.

Based on the above findings of fact, and with the proposed condition of approval, the Board finds the standards of this section have been met.

10.5 Water Protection

10.5.1 Groundwater Protection

The proposed site development and use must not adversely impact either the quality or quantity of groundwater available to abutting properties or to the public water supply systems. Applicants whose projects involve on-site water supply or sewage disposal systems with a capacity of two thousand (2,000) gallons per day or greater must demonstrate that the

groundwater at the property line will comply, following development, with the standards for safe drinking water as established by the State of Maine.

10.5.2 Water Quality

All aspects of the project must be designed so that:

10.5.2.1 No person shall locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxious, toxicity, or temperature that may run off, seep, percolate, or wash into surface or groundwaters so as to contaminate, pollute, or harm such waters or cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste, or unsightliness or be harmful to human, animal, plant, or aquatic life.

10.5.2.2 All storage facilities for fuel, chemicals, chemical or industrial wastes, and biodegradable raw materials, must meet the standards of the Maine Department of Environmental Protection and the State Fire Marshall's Office.

The applicant has provided information on the quantity and type of materials that will be stored on site. The Town Engineer has reviewed this information and found it to be acceptable.

Based on the above findings of fact, the Board finds the standards of this section have been met.

10.5.3 Aquifer Protection

If the site is located within the Town Aquifer Protection Area, a positive finding by the Board that the proposed plan will not adversely affect the aquifer is required.

The site is not located within the Town Aquifer Protection Area.

10.6 Floodplain Management

If any portion of the site is located within a special flood hazard area as identified by the Federal Emergency Management Agency, all use and development of that portion of the site must be consistent with the Town's Floodplain management provisions.

The structures are not located in a flood hazard area, though a small portion of the site is in Zone B defined as:

Areas of 500-year flood; areas of 100-year flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 100-year flood. An area inundated by 0.2% annual chance flooding.

Based on the above finding of fact, the Board finds the standards of this section have been met.

10.7 Historic and Archaeological Resources

If any portion of the site has been identified as containing historic or archaeological resources, the development must include appropriate measures for protecting these resources, including but not limited to, modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.

A letter of request for information from the Maine Historic Preservation Commission was submitted. The response has not yet been received. This can be a condition of approval. The application does state that the site is currently developed and there are no apparent historic or archaeological resources on site.

Based on the above finding of fact, and with the proposed condition of approval, the Board finds the standards of this section have been met.

10.8 Exterior Lighting

The proposed development must have adequate exterior lighting to provide for its safe use during nighttime hours, if such use is contemplated. All exterior lighting must be designed and shielded to avoid undue glare, adverse impact on neighboring properties and rights - of way, and the unnecessary lighting of the night sky.

The applicant has provided cut sheets for the new exterior lights.

A photometric plan was submitted and reviewed. The plan does show slight light trespass across the front property line. Removal of an existing pole light on the front corner would likely remove this effect and the Applicant has agreed to do so. A proposed condition of approval will ensure this.

Based on the above findings of fact and the proposed condition of approval, the Board finds the standards of this section have been met.

10.9 Buffering and Landscaping

10.9.1 Buffering of Adjacent Uses

The development must provide for the buffering of adjacent uses where there is a transition from one type of use to another use and for the screening of mechanical equipment and service and storage areas. The buffer may be provided by distance, landscaping, fencing, changes in grade, and / or a combination of these or other techniques.

10.9.2 Landscaping

Landscaping must be provided as part of site design. The landscape plan for the entire site must use landscape materials to integrate the various elements on site, preserve and enhance the particular identity of the site, and create a pleasing site character. The landscaping should define street edges, break up parking areas, soften the appearance of the development, and protect abutting properties.

6 Arborvitae trees with the height of six feet will be planted on the property line as shown on the plan.

Based on the above findings of fact and the proposed condition of approval, the Board finds the standards of this section have been met.

10.0 Noise

The development must control noise levels such that it will not create a nuisance for neighboring properties.

All repair work will be done inside the building. The hours of operation are limited to daytime hours. The operation should not create a noise nuisance for neighboring properties.

Based on the above findings of fact, the Board finds the standards of this section have been met.

10.11 Storage of Materials

10.11.1 Exposed nonresidential storage areas, exposed machinery, and areas used for the storage or collection of discarded automobiles, auto parts, metals or other articles of salvage or refuse must have sufficient setbacks and screening (such as a stockade fence or a dense evergreen hedge) to provide a visual buffer sufficient to minimize their impact on abutting residential uses and users of public streets.

10.11.2 All dumpsters or similar large collection receptacles for trash or other wastes must be located on level surfaces which are paved or graveled. Where the dumpster or receptacle is located in a yard which abuts a residential or institutional use or a public street, it must be screened by fencing or landscaping.

10.11.3 Where a potential safety hazard to children is likely to arise, physical screening sufficient to deter small children from entering the premises must be provided and maintained in good condition.

The Town Engineer and Town Planner have reviewed the plan for storage of materials and found it to be in compliance with the ordinances.

Based on the above findings of fact, the Board finds the standards of this section have been met.

10.12 Capacity of the Applicant

The applicant must demonstrate that he / she has the financial and technical capacity to carry out the project in accordance with this ordinance and the approved plan.

- **Technical Ability: The applicant has utilized Northeast Civil Solutions to prepare the plan and supporting information.**
- **Financial Capacity: A letter of Financial Capacity has been received from Atlantic Federal Credit Union date February 13, 2020.**

Based on the above findings of fact, the Board finds the standards of this section have been met.

TOWN OF CUMBERLAND
BOARD OF ADJUSTMENT AND APPEALS MINUTES
Thursday, August 8, 2024

Roll Call: Present: Matthew Manahan – Chairman, Andrew Black, Ronald Copp, Sr, Michael Martin, Sally Pierce, Amanda Vigue and Bill Longley - Code Enforcement Officer.

Chairman Manahan opened the meeting.

1. Election of Chairman and Clerk per Town of Cumberland Zoning Ordinance Chapter 315-77. A. (1).

Mr. Black nominated Matthew Manahan as Chairman of the Board of Adjustment and Appeals, seconded by Ms. Vigue. There were no other nominations. The nomination of Matthew Manahan to serve as Chairman of the Board of Adjustment and Appeals was then **VOTED 5 yeas, 1 abstained (Manahan) – motion carries.**

Ms. Peirce nominated Christina Silberman to serve as Clerk to the Board of Adjustment and Appeals, seconded by Ms. Vigue. There were no other nominations. The nomination of Christina Silberman to serve as Clerk to the Board of Adjustment and Appeals was then **VOTED 6 yeas, unanimous – motion carries.**

2. PUBLIC HEARING: Interpretation/Decision Appeal as allowed in Chapter 315.77.B.(1) and Chapter 232-11: Justin Levesque - 16 Hope's Way, Douglas Mason – 11 Hope's Way and Gregory Goding – 12 Hope's Way have filed this appeal regarding issuance of Building Permit #24-148 issued on June 17, 2024 for installation of a 48 panel solar array on a dual axis tracker issued to Kevan and Dwight Deckelmann of 135 Tuttle Rd. as shown on Tax Assessors Map R04, Lot 15A in the RR1- Rural Residential Zone.

Chair Manahan read the agenda item and reviewed the Board of Adjustment and Appeals Rules of Procedure.

TOWN OF CUMBERLAND BOARD OF ADJUSTMENT AND APPEALS RULES OF PROCEDURE

1. No business may be transacted by the Board without a quorum consisting of four members. The concurring vote of a majority of those voting, but at least three votes, is necessary to grant any application. If any matter fails to receive a favorable vote of a majority of the Board members voting, the application will be deemed to have been denied.
2. All testimony must be presented at the podium so that it can be recorded. Testimony will be videotaped. The videotape will be available for inspection at the Town Office during regular business hours.
3. Applicants will first state their case and may present testimony and offer evidence. The burden of proof is on the applicant to present all the evidence the Board needs to determine whether the project will comply with every applicable requirement of the Ordinance. Applicants are strongly encouraged to provide with their written submissions all evidence in support of their application.
4. Following the conclusion of the applicant's case, members of the public may present testimony and offer evidence, in the following order: first, those in favor of the application; second, those opposed to the application; and third, those neither for nor against the application.
5. Applicants may then offer rebuttal evidence.
6. Parties, acting through the Chair, may cross-examine witnesses. The Chair may limit irrelevant, immaterial, or unduly repetitious testimony. Members of the Board may ask questions at any time, with the permission of the Chair.

7. At the conclusion of the rebuttal evidence, the public portion of the proceeding will be closed, and the Board will rule on the application pursuant to the applicable provisions of Cumberland's Zoning Ordinance and Maine law. The Chair may reopen the public portion during deliberations if the Chair determines it is necessary to do so in the interests of a full and fair hearing and a complete record.

8. After a decision has been made, the Board will not entertain a new appeal of similar import concerning the same property until one year has elapsed from the date of the decision, unless the Chair believes that an injustice was done because of a mistake of law or misunderstanding of fact or if the Chair believes a change has taken place in some essential aspect of the case sufficient to warrant a reconsideration of the appeal.

9. The Board's procedures also are governed by Maine law (30-A M.R.S.A. §§ 2691 and 4353, or any successor statutes) and §§ 315-77 of the Cumberland Code.

Chairman Manahan asked Code Enforcement Officer Bill Longley to introduce the item. Mr. Longley reported that on or about June 17th, a proposal was brought before him for a solar permit. Mr. Longley noted that this solar project is unique in that it is on a pole while most of the solar permits he has issued, numbering in the hundreds, have either been on roofs or on the ground. This is the first pole mounted solar permit that Mr. Longley has approved. Mr. Longley said he reviewed the Solar Energy Systems Ordinance and, in his opinion, the application met the requirements. The proposal met the 15-foot setback from a side or rear yard line and approval was limited with a condition on the permit that it be no greater than 24 feet in height. Mr. Longley said that this moving on access type solar system has the ability to go higher than 24 feet and his discussion with the applicant limits the height to no greater than 24 feet. Mr. Longley said the 24-foot height condition was placed on the permit to comply with the Solar Energy Systems Ordinance.

There was Board discussion about which party should speak first and it was decided that the appellants would speak first.

Justin Levesque, Appellant, said that there are basically three parts to their appeal. Mr. Levesque referred to the site plan that was originally submitted with the application and said the site plan has had a lot of evolution. Mr. Levesque referred to a description that structure tilts upward and can go to a maximum height of over 30 feet and this exceeds the current ordinance for solar structures in Cumberland which is 24 feet. Mr. Levesque referred to Mr. Longley's statement that the structure will be flat and restricted to being flat and not tilting or moving. Mr. Levesque said he will outline how by design the system does need to move, tilt and rotate according to how it was designed for it to be safe and how from that safety issue the height will be violated.

Mr. Levesque said he feels like there's a lot of uncertainty currently in the Chapter 232 Ordinance in Cumberland for solar and he asks that the Board help to interpret some of the uncertainty that he will present.

Mr. Levesque referenced Solar Ordinance chapter 232, section nine noting a side setback of 15 feet from any lot line and how pole mounted systems have a maximum height of 24 feet. Mr. Levesque said there is no other language quantifying the array size in this section of the ordinance. Mr. Levesque said the 24 feet max height and the side, rear and front setbacks are the only quantifiable metrics allowing for size of these structures.

Mr. Levesque showed an aerial photo of the location and said this project is of a commercial nature in a rural residential zone. Mr. Levesque said he wrote to Mr.

Longley and members of the Town Council on June 29th after becoming aware of this permit. Mr. Levesque is concerned with the lack of detail on the site plan submitted and said the site plan shows a dot and does not give detail as to the structure size and if the dot indicates the pole or the entire array. Mr. Levesque said there are setback measurements in four directions from a dot and information is missing at the two closest corners. Mr. Levesque said he pointed this out in a letter shared with multiple parties and movement is going forward on a much more detailed site plan. Mr. Levesque is concerned that the full setback requirements will be met because if it abuts close to the property lines and if the setbacks are violated this could potentially taint the abutters' deeds. Mr. Levesque outlined the size of the solar tracker and said he would like more information about how the tracker will move and if the movement will impact setbacks and sight lines.

Chairman Manahan asked if Mr. Levesque's concerns are that if it rotates, it might be within the 15-foot setback. Mr. Levesque confirmed this was his concern.

Mr. Levesque reported that the permit was approved the same day it was submitted and said the ordinance provides for permits to be reviewed within 10 days. Mr. Levesque said that additional aspects could have been thought about, namely the International Residential Code (IRC) that deals with standards for photovoltaic systems.

Mr. Levesque referred to the height of the structure and said the original permit was really confusing with language that it will be 30 feet, 2.5 inches at its max and is 1200 square feet, however, it will not exceed 24 feet in height. Mr. Levesque reported that Mr. Longley said that when flat, the system is about 20 feet high and this is in compliance with the 24-foot height restriction. Mr. Levesque said the structure tilts to operate and will rise up in the air and, if it were to go to its full height, it will no longer be in compliance. Mr. Levesque said this is a structure with moving parts and software that governs its behavior and is designed to rotate so it can follow the sun and tilt to catch the sun's rays. Mr. Levesque questioned how it will operate safely if it stays flat or if there will be a bypass of the manufacturer's software. Mr. Levesque reported that appellant Doug Mason's son Sam contacted Sun Action Trackers, the company that manufactures these devices and the company representative indicated that there is no way to defeat the sensors that guide this device's behavior and set manual directions. Mr. Levesque questioned if the device can even do what it needs to do to be in compliance. Mr. Levesque reported that it's touted in many places on the company website that this structure is a commercial and agricultural tracker and noted that it is proposed to be placed in a residential zone. Mr. Levesque said the manufacturer indicates that it can operate in heavy snow regions with good ground clearance and can tilt to 60 degrees upward so it sheds snow to keep the trackers working. Mr. Levesque outlined information from the company website regarding the tracker operation in inclement weather. Mr. Levesque said when the tracker's flat, it's in wind mode and it's safe and meeting code. The software automatically governs that if the winds go above 45 miles an hour it goes into an automatic flat mode. The tracker also has what's called a snow mode that sends the tracker to 60 degrees so it'll shed the snow and is a safety feature as well.

Chairman Manahan referred to Mr. Levesque's statement about a safety issue and asked if there is something that says that the snow mode is a safety issue. Mr. Levesque said he will get to this and he shared a picture from the Korean parent company Peru. Mr. Levesque noted the structure being discussed is shown on the left.

Double-axis tracking (left) without snow damage and fixed (right) installation with damage caused by snow load. Both are on the same site.



<https://iparu.com/sub/pro/pro02.asp?scriD=0000000245&pageNum=2&subNum=2&ssubNum=1>

Mr. Levesque reported on communication he had with Peru that even with heavy snowfall, there's less risk of damage to equipment compared to a fixed installation. The safety modes are governed automatically by the software and the system knows when snow is happening and when wind is happening. There's a manual function to make it go into snow mode. Mr. Levesque said the manufacturer indicates that tilting to its full height is a feature to prevent against damage and when the wind speed is reached, it goes into flat mode. Mr. Levesque said if it is flat all the time and isn't going to tilt at all, it's in wind mode and if it is programmed to only tilt 23.9 feet, then it's in compliance with the height. Mr. Levesque said it can't be both ways, if it's flat and in compliance with height, this doesn't necessarily guard well against snow, and if it's tilted to 23.9 feet, it's guarded slightly against snow but if it's frozen, and won't automatically move to track the sun, how is it guarded against wind?

Mr. Levesque said he reviewed IRC Section 324 and Cumberland's Code refers to the IRC as being a key guide for eliminating against safety risks. IRC 324-3 indicates that photovoltaic systems shall be designed and installed in accordance with other sections and in the manufacturers installation instructions. Mr. Levesque said this structure is designed to be installed and governed by automatic software that tracks the sun in a 270-degree arc throughout the day. Mr. Levesque said it can be inferred that the operating instructions are very important for safety. Mr. Levesque said this system can be thought of as a very large appliance and the IRC states for appliances to operate safely, the operating instructions need to be followed and with this very large structure, we are not following its operating instructions, we're just going to make it sit flat. Mr. Levesque pointed out that this structure uses automatic tracking with the two safety modes, wind and snow, that is integral to its safe functioning.

Mr. Levesque referred to the meeting minutes where the Town adopted Chapter 232 in October of 2020. Mr. Levesque said the Town defined residential solar system as accessory to residential dwelling units. The residential solar energy system complies with all height and bulk requirements. Mr. Levesque referred to the keyword "subordinate" in the permitted use ordinance language and said there is no wording on square footage. Mr. Levesque said there is a lot of ambiguity in the ordinance. The company that makes this system states it is a commercial and agricultural device. Mr. Levesque noted that when the Town was establishing this ordinance there was a

provision for a size of 900 square feet but this was taken out. Mr. Levesque reported that a ReVision Energy representative stated during the consideration for adoption of the ordinance that most towns have used 1,000 square feet as a maximum. Mr. Levesque noted the permit indicates this system is 1,200 square feet.

Mr. Levesque said the Appeals Board is here to address uncertainty and there is uncertainty in the bulk requirement limits, the overall square footage of the structure and a qualitative word "subordinate." Mr. Levesque said a solar structure taller than the buildings on the property is no longer subordinate and there is a bulk requirement size violation here. Mr. Levesque referred to ordinance language regarding for the rural residential zones with the need to provide safety, such as the wind and snow mode for this structure, adequate light & air, and coordinated development of unbuilt areas.

Mr. Levesque said the Appeals Board has to cut through the uncertainty and give some certainty based on what has been said, the active marketing from the manufacturer that it's commercial/industrial/agricultural, it not being subordinate to buildings in the area and how it needs to operate to function safely under the established IRC.

Mr. Levesque said he got a notice from the town as an abutter to Twin Brook when the Town was moving a shed and this required a minor staff review and was reviewed by more than one person. Mr. Levesque said for this is something that's 1,139 square feet and rotating in the air and no staff review is required.

Mr. Black questioned Mr. Levesque's concern with a right of way or an easement for access to Mr. Levesque's property. Mr. Levesque said Hope's Way is a private road over the Mason property and Mr. Levesque has a right of way on that road but it is on the Mason property. Mr. Black asked if this proposed structure would impact that in any way. Mr. Levesque said it does not impact moving in and out of the property and if it were to impact the setback limits, he is uncertain how that would affect him if he were to sell his home.

Chairman Manahan invited the next appellant to speak and asked that they try not to repeat what Mr. Levesque said.

Doug Mason, 11 Hopes Way, displayed a plan showing the surveyed right away for Hopes Way. Mr. Mason said that there was a lack of transparency on the size of the solar tracker and the site changed from various places on the Deckelmann property. Mr. Mason said it was decided that it would get the most solar exposure by placing it at the mouth of the septic system that Mr. Mason's property wraps around on three sides. The system will have three side setbacks on Mr. Mason's property and will be right in his direct line of vision. Mr. Mason said Mr. Deckelmann told him that this location was never an option because it was in the way of a zip line, which he did not want to remove plus the solar tracker doesn't have the full sun exposure here. Mr. Mason said Mr. Deckelmann intends on maximizing the system to its full potential. Mr. Mason said apparently it doesn't matter which plot plan was submitted as long as it meets the setbacks and Mr. Deckelmann is allowed to change the location. Mr. Mason said the placement of this 48-panel solar tracker impedes his right to enjoy his open, rural view of his property. Mr. Mason said Mr. Deckelmann told his wife that they will cuss him out every time they drive on their property. Mr. Mason said they spoke with their realtor,

Linda McDonald, and were told that the real estate aesthetics value of their and their neighbor's houses will be impacted. Mr. Mason said he has worked too hard to build equity in his home to have it diminished by an industrial looking solar tracker that doesn't belong placed in his front yard. Mr. Mason questioned if this application should have been red flagged when it appeared on Mr. Longley's desk. This solar panel is the first of its kind in Cumberland and is so novel that there is no language in the ordinance that addresses its size. Mr. Mason said the Ordinance Committee expressed to them that no one foresaw a panel of this scale being built in this town. Mr. Mason suggested that the size of the project warranted additional time to get more eyes on it and said maybe the proposal should have been moved to the Planning Board first. Mr. Mason said if the system gets the green light to become fully operational, as it is meant to, it will be a full year before all of the implications of solar glare effects on their properties on Hope's Way and Tuttle Road are known. Mr. Mason reported that earlier today, Mr. Deckelmann spray painted another new location just inside the 15-foot setback that is roughly 105 feet from Mr. Mason's bedroom window.

Chairman Manahan invited the next appellant to speak.

Greg Goding, 12 Hopes Way, said when he and his wife Marianne moved back to Maine, they looked at several communities and found Cumberland was what they were looking for with a rural area. Mr. Goding said he is in favor of solar energy but is totally opposed to the placement of a commercial sized solar tracking system into their residential neighborhood. Mr. Goding said Mr. Levesque's arguments were very well thought out and well stated. Mr. Goding asked who's responsible for reporting it when the system goes above the 24-foot flat level. Mr. Goding said he looked at Northeast Solar Tracker's website and there are photos of commercial and agricultural locations and there are no residential locations. Mr. Goding said they take great pride in their homes and yards. Mr. Goding recently built a front porch on his house and it will look directly at the solar tracker and that is all they will see now. Mr. Goding said there are alternatives such as roof-mounted systems, solar farms, and solar gardens. Mr. Goding said at some point they will probably be selling their home and having a structure right next to their home, which is basically a commercial sized solar tracker, will greatly reduce the ability to sell and will greatly devalue their home.

Chairman Manahan invited the Deckelmans or their representative to speak. Chairman Manahan noted that because this is a de Novo hearing, meaning the Board is hearing it as if the evidence has not been presented yet, the Board has an obligation to listen to all the evidence and the applicant, the Deckelmans, have a burden to show that they meet the requirements, in particular with respect to property setbacks, to height, and whether it's a permitted use.

Ryan Keith, owner of Northeast Solar Trackers, said he has been putting these systems up for over a year. Mr. Keith was in the business of building houses his entire life and he did Code Enforcement and knows the importance of setbacks. Mr. Keith said he guarantees that this will not encroach on setbacks and if the system impedes a setback, it is his responsibility to relocate it. Chairman Manahan said one issue with respect to setbacks is that if it were to rotate where it's currently proposed would the panels be any closer than 15 feet from the property line. Mr. Keith said it might be 20 feet from the

closest property line if it spins and would not encroach on the setbacks. Mr. Keith referred to the height issue and said the system has a manual setting that can be set to the degree and it will still rotate and it is very easy to set the height. Mr. Keith said leaving the system flat is also a setting but most likely it would be at a slight pitch. Mr. Keith said this unit has a sunlight tracker and will go to the brightest spot in the sky and typically, on a cloudy day, it does go flat. Mr. Keith said the system will not exceed the parameters that he installs. They can change the parameters at any point after it is installed.

Chairman Manahan asked Mr. Keith to respond to the point that there could be a safety issue with respect to snow loads. Mr. Keith said that the snow will not sit on the panel and he believes the snow poundage is 100 pounds per square foot. Mr. Keith added that the wind loading is 105 and this is above the wind loading for a house. Mr. Keith said when the wind speed comes up the system does go flat and will never exceed whatever height is set in the parameters.

Chairman Manahan asked about the appellants' argument that this is a commercial structure and whether the structure is so large that it's not subordinate to the residential use of the property. Mr. Keith said they have installed 20 units in the surrounding towns. Mr. Keith referred to a system in Freeport that went to the Planning Board because of a height restriction of 24 feet and reported that it was voted six to one. Mr. Keith said other towns are allowing these systems without questioning anything. Chairman Manahan said he doesn't think there's any doubt that people notice these systems but the question is whether the ordinance in Cumberland allows it. Chairman Manahan said members of the Board of Adjustment and Appeals are bound by the laws adopted by the Council and can't decide that this isn't allowed because it seems too commercial unless the evidence demonstrates that this is something that is not subordinate to the residential use of the property. Chairman Manahan said Mr. Keith is saying because he has done a lot of these in residential properties, it is his view that that it is subordinate to the residential use. Mr. Keith responded that the system is a little over 1,000 sf and a barn could be put up that is much larger than this on a property and still is considered residential. Mr. Keith added that this is a structure that houses solar on it and it is the size of a large garage. Mr. Keith added that one of these units will cover an electric bill entirely and every town has a sustainability committee so that we can be sustainable. Mr. Keith said with roof mounted systems, 75% of all homes don't have enough roof surface. This system is 1,000 sf and comes out of the ground on a 30-inch sauna tube. Mr. Keith noted that for the same kilowatts as this system, a ground mount system would be three times larger. Mr. Keith said this system is a very efficient use of space in a residential area. Mr. Keith said intends to ask the Town of Cumberland to increase the height but until then, the system will be put at an angle of about 25 degrees and the max height angle will be kept under 24 feet.

Mr. Black asked what the annual estimated production of energy is for this system with the 25-degree angle. Mr. Keith said it will probably produce 35 KW year, which is about \$8,000 worth of power. Mr. Martin asked if this amount is reduced because of the angle being limited. Mr. Keith replied yes, because the system needs to be perpendicular to the sun for the best gain. Mr. Keith said this system is bifacial and, in the wintertime, there will be reflective gain off the snow. Mr. Keith explained that in the wintertime the

system will hit its highest pitch and will actually be quite flat almost the entire summer. Mr. Martin asked if we didn't have these limitations what would the \$8,000 worth of power be likely? Mr. Keith replied that it would be a difference of 10 to 15%.

Mr. Black referred to Mr. Keith's remarks about the 25-degree angle and noted that earlier evidence indicated that an angle of 7.4 degrees would reached the max height. Mr. Keith said when he programs this unit he will measure so as not to exceed the 24-foot height maximum and will set this angle as the maximum tilt angle. Mr. Black inquired, based on certain drawings and certain assumptions of how far the pole is actually set into the ground, if Mr. Keith is talking about setting the pole into the ground to where the lower side of the panel may be just a couple of feet above the ground. Mr. Keith replied that this is basically what happens. Mr. Black asked if the system is set in at a 25-degree angle at the lower end how high will that be off the ground. Mr. Keith estimated it will be six to seven feet. Mr. Black asked if the homeowner could override how the system is set up. Mr. Keith said he has a password to set the parameters and homeowners will not be able change these.

Mr. Copp referred to the term "commercial" and asked if the purpose of the project is for residential or commercial. Mr. Keith replied that it is strictly residential. Mr. Copp asked if this unit is overkill for one residence. Mr. Keith replied it's not. Mr. Keith reported that CMP has a limit and 25 KW and over is a level two and this system is 21 KW and in Central Maine Power's eyes is a residential system.

Ms. Vigue said there was discussion about proposed locations and the location has changed through this process and asked if the abutters were taken into consideration. Mr. Keith replied that as long as they meet setbacks, the ordinance governs that. Mr. Keith noted that there is a sun positioner app that is used to locate the system by looking at the horizon of the trees to see where the sun dips down. Mr. Keith said initially the plan wasn't specific and gave them some wiggle room. Chairman Manahan asked if the structure were to be moved would this need a new building permit. Code Enforcement Officer Bill Longley said there could be an amendment of the existing permit for relocation. Ms. Vigue asked if the system is encroaching on any abutters, if there is a need to change deeds, or if it is part of an association. Mr. Keith replied absolutely not. Ms. Vigue asked about the reference to septic systems and Mr. Keith replied that the system is nowhere near encroaching on the septic at all.

Mr. Copp asked if anything would be transported or used on Hope's way for the construction of the system. Mr. Keith said no, they will need a concrete truck, a crane and will have trailers and a mini excavator but Mr. Deckelmann has an entrance that they will come in off of. Mr. Keith added that if there is a need to cross someone else's property, they will absolutely talk to them first but they don't have to touch anybody else's property to get to the site.

Chairman Manahan invited Mr. Deckelmann to speak. Mr. Deckelmann said this has been a really interesting process for him and kind of saddening as he thought he had really great relationships with his neighbors. Mr. Deckelmann said Mr. Levesque did an incredible job researching the unit but at no time did Mr. Levesque try to reach out to him or to Mr. Keith. Mr. Deckelmann said the reason why there's been some ambiguity about where the system was going is that he was trying to be accommodating to the

Mason's property. Mr. Deckelmann apologized to the other appellants and said it didn't occur to him to talk to them because they're over 300 feet away. Mr. Deckelmann said he looked at the Masons' house and the system will be in a place where they do see it when they come and go but it's kind of out of sight from their front porch and is out of sight from their back porch. Mr. Deckelmann said this is a NIMBY (not in my backyard) situation where the neighbors don't want to see it. Mr. Deckelmann explained that the system is a two-dimensional object and will blend in. The system will meet a hundred percent of Mr. Deckelmann's energy needs. Mr. Deckelmann has changed to heat pumps and geothermal and he runs two electric cars and will be off the grid with this system with a green house. Mr. Deckelmann said the appellants are worried about their property value, but if this doesn't go through and he doesn't do this solar project, he has other options to do solar which would interfere highly with the Masons and he has tried to avoid this. Mr. Deckelmann said he has a 1,000 square foot covered porch and this system is the same size as his porch.

Mr. Black asked if Mr. Deckelmann had any problems with the restrictions that were put in place by the building permit that was issued. Mr. Deckelmann replied no and added he will lose 10 to 15% and it would be better if it were producing 100%. Mr. Deckelmann hopes Mr. Keith does come before the Planning Board to change the ordinance. Mr. Black asked if Mr. Deckelmann could live with the restrictions put in place that it can't be above 24 feet and Mr. Deckelmann responded that he intends to.

Mr. Copp referred to the horizontal turn of the system and asked how many degrees it would follow the sun. Mr. Keith replied that it has the potential for 270, and he guesses it is only 190. Mr. Keith said there are two options for the parameters to set it to, light sensing or GPS. The GPS option has data logged in for that longitude/latitude and it will know exactly where the sun rises and sets.

Mr. Deckelmann said he has tried to be neighborly and tried very hard to reach out to minimize potential impacts the neighbors perceived but it was heels in the ground, not in my backyard.

Chairman Manahan invited public comments.

Shirley Story-King, retired Town Councilor and Ordinance Committee Chairman, reported that the height restriction was not arbitrary and it is consistent with other height restrictions within the town. Ms. Story-King said this is a commercial product and it is not marketed anywhere else, except by Mr. Keith perhaps. Ms. Story-King said if this were to go through a commercial permitting process, it would go to the Planning Board and none of those steps were followed. Ms. Story-King said she believes a structure of this size would require a 30-foot setback in a rural residential zone, 15 feet is the setback for sheds and small buildings. A barn would have to be setback 30 feet and Ms. Story-King said this is something to consider. Ms. Story-King said this clearly is industrial and commercial whether Mr. Keith markets it that way or not. Mr. Martin asked Ms. Story-King if she disagrees with the representation that this puts out enough power to power this one house. Ms. Story-King replied that she can't say and said if people are considering the green argument, she wants them to consider the forever chemicals that exist in solar panels and heat pumps and while this might be going green, it is flooding our environment with forever chemicals as well.

Tim Kearins, 11 Cumberland Common, said he is concerned with the precedent this sets. Mr. Kearins pointed out that Mr. Longley mentioned that this was a unique proposal and the first pole mounted one in Cumberland. Mr. Kearins is concerned about how fast this got approved and said he doesn't know how many residents would plan on doing this in the future. Mr. Kearins is concerned about the height. Mr. Kearins said the saying of not in my backyard is a crude way of saying we don't want to change the character of our surroundings and he agrees with this. Mr. Kearins said Mr. Longley said he approved this with a facet that said it had to lay flat and the builder said it is most likely going to be tilted and these statements conflict. Mr. Kearins said he is concerned with safety and having kids around and he can just picture one of these things looking like a perfect surface for a snow fort. Mr. Kearins said we heard about how easy it is to take these things down if the rules are violated and most of that information is coming from the person who's selling the equipment. Mr. Kearins urged the Board to rescind the building permit for further study. Mr. Longley clarified that when he gave the description that it would be closer to flat, it isn't that it would be exactly flat, it is that the 24 feet could not be attained in the up position. Mr. Longley read the condition on the permit as follows: "Installation of a 48-panel solar array on dual access tracker. Tracker will not exceed 24 feet per the ordinance. This is issued subject to the Maine Uniform Building and Energy Code and the IRC 2015 as adopted by the State of Maine."

Chairman Manahan called for a five-minute break after which he called the meeting back to order.

Chairman Manahan invited public comments in favor of the appeal.

Dave Brown, Cumberland, said from what he has heard, this is a huge structure and is not anything that anybody is used to. Mr. Brown said we go through great detailed processes when we build anything normal and to have this happen in one day, given all of the information investigated tonight, seems not proper. Mr. Brown said it seems that it is subject to further review.

Robert Timberlake, 25 Tuttle Rd., said he thinks this is a huge commercial structure and although it can be programmed to go lower, it also can be programmed to go higher. Mr. Timberlake said sooner or later someone is going to want to put it up higher because it'll be more efficient when it's tilted higher to get more sunlight. Mr. Timberlake thinks this system is out of keeping with the residential character of Tuttle Rd. Mr. Timberlake likes solar and has a solar hot water system on his roof and does not object to the solar trackers that he has seen. Mr. Timberlake said this system will be considerably higher if it goes up and is out of keeping with the character of the neighborhood. Mr. Timberlake urges the reconsideration of the proposal and supports those who want to have another look at the system.

Realtor Linda McDonald said she was asked by Mr. Mason when she was shown a picture of the solar tracker if it would affect property value and it was easy for her to answer that it unequivocally would. Ms. McDonald said the 1,139 square foot size has a commercial aesthetic and this system feels very different than everything her clients are looking for or what they expect in the Tuttle Rd. area.

Chairman Manahan invited public comments in opposition to the appeal. There were no comments.

Chairman Manahan invited public comments from anyone else. There were no comments.

Chairman Manahan asked if the appellants would like to respond to any of the comments that have been made.

Mr. Levesque said the system is going to move and tilt, but not above 24 feet and asked how will that affect solar glare to their properties. Mr. Levesque said the system is in their front yards and he doesn't want it in his front yard. Chairman Manahan asked Mr. Levesque if he is making an additional argument because of glare on neighboring property and said the Board hasn't had evidence on this. Mr. Levesque said he doesn't have anything else to add. Mr. Keith said they've done tons of studies to show solar panels actually absorb light and they don't glare.

Mr. Mason asked why there are not 30-foot setbacks and why push the 15 feet when there's enough property there.

Mr. Goding said this system is not in the backyard, it's right in front of his house and he will be looking directly at it every day.

Chairman Manahan closed the public comment portion of the meeting and invited Board members to make a motion to begin deliberations. Mr. Black moved to deny the appeal and the motion was seconded by Mr. Martin.

Ms. Pierce asked what determines whether a solar system is residential or commercial. Mr. Manahan references Mr. Keith's statement that CMP does not treat this as commercial and treats the energy production as residential. Chairman Manahan said the appellants have raised the question of whether or not this is allowed and the Board doesn't have to label this as commercial. Chairman Manahan stated that whether the manufacturer or other people call it commercial, it doesn't really matter as long as it's allowed under the solar ordinance in the residential zone. Chairman Manahan said Mr. Levesque raised the question of whether the system is somehow subordinate to the residential use of the property and if it predominates on the property because it's so huge. Chairman Manahan pointed out that the Board can't decide this is something that's commercial and doesn't like it in the residential zone. Chairman Manahan noted that the Town Council had a size restriction, which they removed and this tells the Board that we can't necessarily decide that the size of this structure is directly relevant to whether it's subordinate to the primary use of the property. Chairman Manahan said it seems to him that this is not subordinate to the primary use of the property.

Mr. Black said he does think the applicant for the permit has the burden in this case and that they have met that burden. Mr. Black said the issues that the Board is constrained to looking at is what the Town Council has said by adopting the ordinance. Mr. Black noted that issues about whether it's consistent or in keeping with the general character of the neighborhood are irrelevant, the Town Council has decided that is not a factor that the Board is to consider. Mr. Black said the Board is supposed to consider the height and all indications are that this will be set to where it will not exceed 24 feet in height and the offset (setback) with the 15 feet from any point was demonstrated to be

met as well. Mr. Black referred to the subordinate piece of this and said there's no indication that this is not subordinate to the property. Mr. Black said on the commercial piece of this, there is no indication that the use of this energy is for anything other than the residential property itself. Mr. Black continued by stating under the CMP net metering laws, CMP only reimburses you for up to what you actually use and you can't go and use this as a means of making money from CMP. Mr. Black said for these reasons, he thinks the system is subordinate to the property.

Chairman Manahan agreed with Mr. Black and said it's not the position of the Board of Appeals to decide what's right and what makes the most sense for the town from a solar energy perspective. The Board has to follow the ordinance. Chairman Manahan said quite frankly, it meets the setbacks, it meets the height restriction and it does not subordinate to the residential use. Chairman Manahan said this is the limit on the Board's jurisdiction. Mr. Martin said he agrees a hundred percent. Mr. Copp and Ms. Vigue agreed.

Chairman Manahan called for a vote of those in favor of the motion to deny the appeal and it was **VOTED 6 yeas, unanimous – motion carries.**

The Board discussed the steps needed to follow up and noted that the appeal was denied.

3. ADMINISTRATIVE MATTERS: Approval of the minutes for the May 13, 2021, meeting. Mr. Copp moved to approve the minutes of the meeting of May 13 2021, seconded by Ms. Pierce and **VOTED 4 yeas, 2 abstained (Martin & Vigue) – motion carries.**

Adjournment: Ms. Pierce moved to adjourn the meeting, seconded by Mr. Martin and **VOTED, 6 yeas – unanimous, motion carries.**

A TRUE COPY ATTEST:

Matthew Manahan, BoAA Chairman

Christina Silberman, Admin. Asst.