

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.