CUMBERLAND BOARD OF ADJUSTMENT AND APPEALS
Cumberland Town Hall - Council Chambers
290 Tuttle Road, Cumberland, ME
Thursday, May 13, 2021 at 7:00 p.m.

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

2. **PUBLIC HEARING: Interpretation/Decision Appeal:** Caleb King of 28 Shirley Lane, Cumberland, ME has submitted an appeal of Assessor/Addressing Officer John Brushwein's decision, that was upheld by Code Enforcement Officer William C. Longley, Jr, to deny Mr. King's request for a street name to serve a lot located off Middle Rd., Tax Assessor Map R01, Lot 49C. This is an appeal under Section 246-8 of the Town of Cumberland Zoning Ordinance.

2. **ADMINISTRATIVE MATTERS:** Approval of the minutes for the November 14, 2019 meeting.

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

Date: 4/22/21
FEE: $100 CK
BY: WCJ #1022

TOWN OF CUMBERLAND
BOARD OF ADJUSTMENT AND APPEALS
INTERPRETATION 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 Caleb D. King owner(s) of property at Unassigned address, Middle Rd. Designated as parcel(s) Tax Assessor Map # R01, Lot # 49C, under provisions of Section 603.2.1 of the Zoning Ordinance of the Town of Cumberland, Maine, hereby appeal the decision of the Cumberland Code Enforcement Officer. I / We wish to:

Appeal the decision not to grant the street name "Deep Creek Drive" Due to its supposed similarity with other existing streets in the town. The proposed street name does not pose an issue in an emergency.

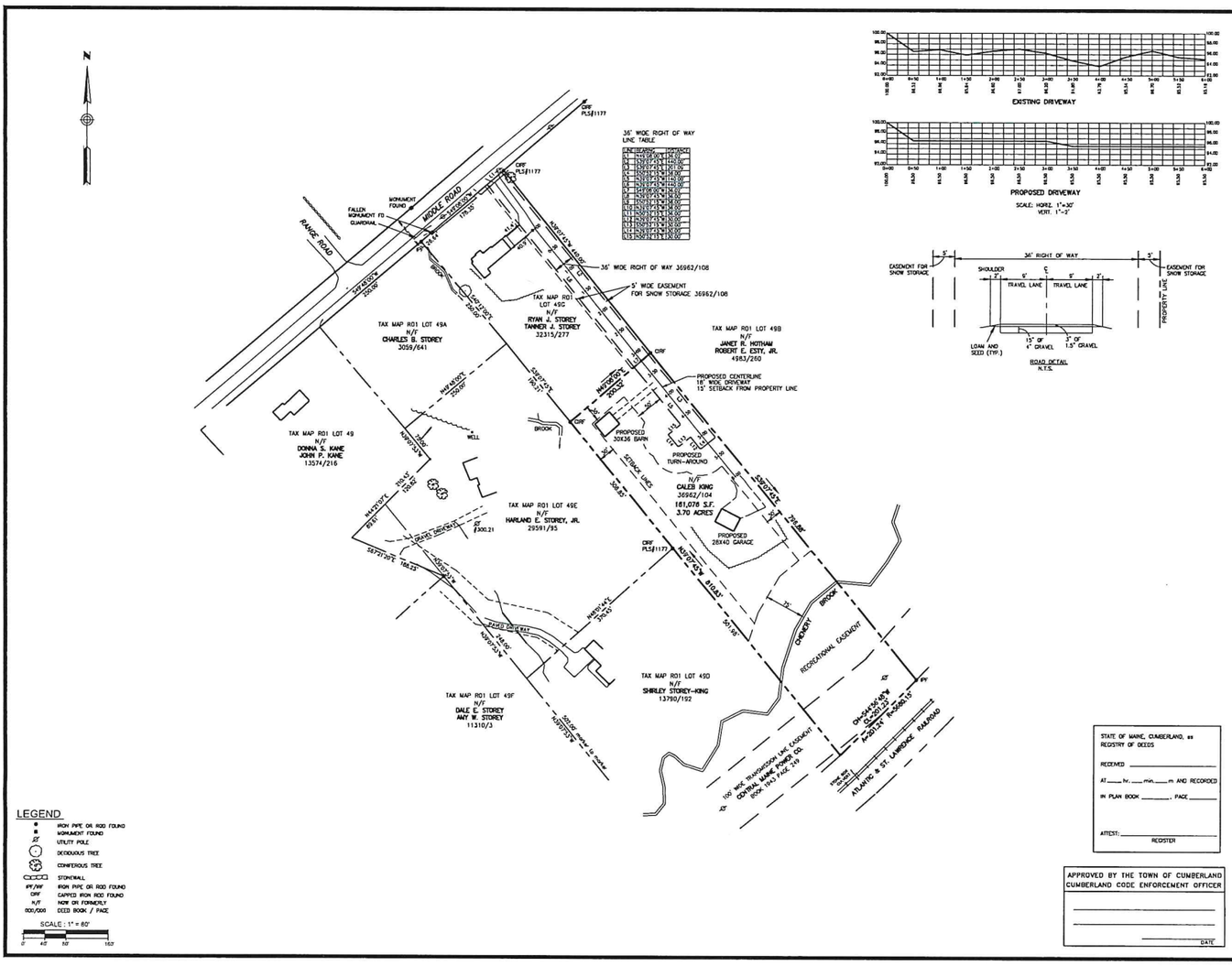
I/ We understand that the Board of Adjustment and Appeals, "shall determine whether the decisions of the Code Enforcement Officer are in conformity with the provisions of this Ordinance, and interpret the meaning of the Ordinance in cases of uncertainty".

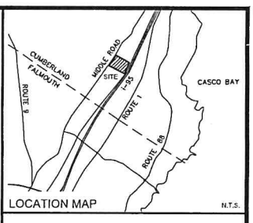
Caleb King
Appellant(s)
Appellant(s) phone number: 207-749-8747

DECISION

Following a hearing and a vote of the Cumberland Board of Adjustment and Appeals on _____, you are hereby notified that your special exception has been
(GRANTED subject to the following restrictions.)
(DENIED due to a finding by the Board that:)

Signed _____





LOCATION MAP N.T.S.

PLAN REFERENCES

1. STANDARD BOUNDARY SURVEY FOR HARLAND E. STOREY, JR. LOCATED IN CUMBERLAND, MAINE BY MAINE SURVEY CONSULTANTS, INC. HARRISON, MAINE DATED MARCH 1991 PLS#1177
2. PLAN OF MIDDLE ROAD IN CUMBERLAND RECORDED IN COUNTY COMMISSIONERS PLAN BOOK 3 PAGE 49
3. BOUNDARY SURVEY, STOREY FAMILY PROPERTIES DATED APRIL 2004 REVISED THRU 6-23-2014 BY ROYAL RIVER SURVEY COMPANY.
4. PLAN OF BOUNDARY SURVEY, MIDDLE ROAD, CUMBERLAND, MAINE MADE FOR HARLAND STOREY, JR. BY ROYAL RIVER SURVEY COMPANY DATED MAY 4, 2015.

GENERAL NOTES

1. OWNER OF RECORD: CALEB KING
   28 SHIRLEY LANE, CUMBERLAND, ME 04021
   C.C.R.D. BOOK 36962 PAGE 104
2. BEARINGS ARE MAGNETIC BASED ON PLAN REFERENCE 2.
3. LOCATION OF CHENERY BROOK APPROXIMATED FROM GOOGLE EARTH GIS.
4. PARCEL IS LOCATED IN THE RURAL RESIDENTIAL DISTRICT (RR2)

MINIMUM LOT SIZE:	2 ACRES
MINIMUM LOT FRONTAGE:	200 FT.
FRONT SETBACK:	50 FT.
REAR SETBACK:	75 FT.
SIDE SETBACK:	30 FT., COMBINED WIDTH AT LEAST 75 FT.

5. THE TOWN OF CUMBERLAND SHALL NOT BE RESPONSIBLE FOR MAINTENANCE, REPAIR, PLOWING OR SIMILAR SERVICES FOR THE PRIVATE STREET SHOWN ON THIS PLAN.

CERTIFICATE

OWEN HASKELL, INC. HEREBY CERTIFIES THAT THIS PLAN IS BASED ON, AND THE RESULT OF, AN ON THE GROUND FIELD SURVEY AND THAT TO THE BEST OF OUR KNOWLEDGE, INFORMATION AND BELIEF, IT CONFORMS TO THE BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS CURRENT STANDARDS OF PRACTICE.

RANDY R. LOUBER, PLS #2427

3/18/21
DATE

STATE OF MAINE
RANDY R. LOUBER
2427
PROFESSIONAL LAND SURVEYOR

STATE OF MAINE, CUMBERLAND, ss
REGISTRY OF DEEDS

RECEIVED: _____

AT ____ hr. ____ min. ____ m. AND RECORDED

IN PLAN BOOK _____, PAGE _____

ATTEST: _____
REGISTER

APPROVED BY THE TOWN OF CUMBERLAND
CUMBERLAND CODE ENFORCEMENT OFFICER

_____

_____

_____
DATE

REV.2	03/19/21	ADDED PROPOSED TURNAROUND, SIGNATURE & CCRD BLOCK
REV.1	06/09/20	ADDED PROPOSED STRUCTURES, UPDATED DEED REFERENCES

Plan for a Private Street
On
Middle Road, Cumberland, Maine
Made for Record Owner
Caleb King
28 Shirley Lane, Cumberland, Maine

OWEN HASKELL, INC.
PROFESSIONAL LAND SURVEYORS
350 US ROUTE 1, UNIT 10, FALMOUTH, ME 04105 TEL. 207-774-0424

DRAWN BY: RRS	DATE: MARCH 10, 2020	JOB NO. 2019-251 C	
CHECKED BY: RRL	SCALE: 1" = 80'	DRWG. NO. 1	

LEGEND

●	IRON PIPE OR ROD FOUND
■	MONUMENT FOUND
20'	UTILITY POLE
	DECIDUOUS TREE
	CONIFEROUS TREE
	STONEWALL
IPF/IRF	IRON PIPE OR ROD FOUND
CIRF	CAPPED IRON ROD FOUND
N/F	NOW OR FORMERLY
000/000	DEED BOOK / PAGE

SCALE : 1" = 80'
0 40' 80' 160'

TOWN OF CUMBERLAND
BOARD OF ADJUSTMENT AND APPEALS

INSTRUCTION SHEET

Dear Applicant:

The Board of Adjustment and Appeals meetings are held on the second Thursday of every month. **All** forms and information are to be submitted on the **Thursday, two weeks prior to the meeting.**

Please fill out the form completely to expedite processing, and return with the **$100.00 application fee.**

Before filling out the form, please be absolutely sure you understand the applicable sections of the Cumberland Zoning Ordinance. If you have any questions, the Code Enforcement Officer or staff person will be most happy to assist you.

File with your form a plot plan of the property in question, drawn generally to scale, showing EXACT distances from buildings (if any) to all lot lines, on 81/2 x 11 inch paper (or larger), and showing location and distances to all public and private rights of way. **Please provide ten (10) copies of your application and plans.** You may wish to present other maps, drawings, etc. to the Board which will support your application.

At your hearing, you will be expected to present as strong an argument for your application as you can. While members of the Board may ask you for information and documentation, it is not our function to make your case for you.

The format of your hearing will be as follows:

1. You will be asked to present your position to the Board.
2. Opponents and proponents will be asked for their comments.
3. Board members may wish to ask you, opponents, and proponents for information, documentation and certain other facts.

When the Board is satisfied that all have been adequately heard, they will vote to "close the public portion" of the hearing. This means that the Board will participate in further discussion while you, the other participants in your hearing and the public are entitled to stay and observe our debate and votes.

Finally, we solicit your understanding that as fellow citizens, appointed to the Board by the Cumberland Town Council, we must operate within the strict limitations placed upon us by the Cumberland Zoning Ordinance and the laws of the State of Maine, and do not, therefore, enjoy broad discretionary powers.

Sincerely,

CHAIRMAN
Board of Adjustment & Appeals

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 <u>one year</u> 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 Section 603 of Cumberland's Zoning Ordinance.

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

TOWN OF CUMBERLAND
STREET NAME APPROVAL FORM

Name of Applicant: Caleb King

Date of Application: 4/14/21

Proposed Street is a:

✓ Private way subject to DPW / CEO / Planner Approval
___ Subdivision Road to be constructed to public street specifications
___ Other (describe : _____)

Proposed Name of New Street: Please choose three names: Names cannot be similar to existing road names.

1. Deep Creek Drive (preferred selection)
2. Deep Creek Lane
3. PINE Brook RD.

Proposed Name Change from 57 middle Rd to: # Deep Creek Dr.

New Street Accesses off: Middle Rd At: street # 57

Which is off: _____ At: _____

Which is off: _____ At: _____

Tax Map and Lot number(s) of access points: R1-49H and R1-49C

Number of Lots accessed by new street: 2 Lots

Length of New Street (in feet): 6000 ft

Name of Subdivision, if applicable: N/A

For Office Use Below this Line

Street Name Approved by:

Planning Director	Fire Chief	Police Chief	Rescue Chief	Assessor
Date: _____	Date: _____	Date: _____	Date: _____	Date: _____

Cc: ____Public Works Director

Signature of Dispatcher entering Run Card: _____

Date entered into Dispatch records: _____

Street Sign Order Date: _____

PLEASE RETURN THE COMPLETED FORM TO THE ASSESSING DEPARTMENT

FOR PLANNING DEPARTMENT USE ONLY

Date of: **Planning Board approval**: _____ Cc: ____**Town Clerk**

William Longley

From: William Longley
Sent: Thursday, April 22, 2021 11:36 AM
To: Caleb King
Cc: John Brushwein; Charles Rumsey; William Shane; Christina Silberman; William Longley; Dan Small
Subject: Appeal of Road Name denial's
Attachments: Chapter 246 Street Names and Property Numbers.pdf; Board of Adjustments and Appeals application for Interpretation Appeals form 4-22-21.pdf; 315-77 Board of Adjustments and Appeals.pdf

Caleb,

As we discussed the road names you choose were not acceptable to the naming standards per the Town of Cumberland Street Naming Ordinance Chap 246 (see attached)

Proposed new names cannot be similar to existing road names. Your choices of

1. Deep Creek Drive could be confused with Woody Creek Lane
2. Deep Creek Lane same as above
3. Pine Brook Road Many conflicts with this one Pine Lane, Brook Road etc.

These names were review and denied by the Police Chief, Assessor, and Code Officer.

Your option if you choose is to appeal and try to convince the Board of Adjustments and Appeals that your names are not similar and would not pose an issue in an emergency.

The application is also attached along with the section of ordinance that regulates their hearing of an interpretation . This process does require a fee of $100.00 and the application and fee needs to be submitted by April 29th to be on the May 13th meeting.

Please confirm as soon as you decide how you wish to proceed. As we discussed my recommendation would be to choose three more names that are not similar to the names already assigned.

Bill L.

William "Bill" Longley
Code Enforcement Officer, Town of Cumberland
207-829-2207
www.cumberlandmaine.com
290 Tuttle Road, Cumberland, Maine 04021

Town of Cumberland, Maine
290 Tuttle Road
Cumberland, ME 04021
Telephone (207) 829-2205 • Fax (207) 829-2214

To: Cumberland Board of Adjustment and Appeals

From: John Brushwein, Addressing Officer

Date: 5/4/2021

Re: Street Name Appeal

As Addressing Officer for the Town of Cumberland, it is my job to receive road name applications for new private roads constructed in the Town and assign the name and street numbers in accordance with Chapter 246 of the Town of Cumberland Code. After assigning new street names and/or numbers, I have to update the addresses in the 9-1-1 portal at the Maine Emergency Communication Bureau.

§ 246-4(B) Naming System states:

(1) No Streets shall be given the same name (e.g., no Pine road and Pine Lane).
(2) No two streets should have similar sounding names (e.g., Beech Street and Peach Street).

When a street name approval request comes in, I typically send an email to the Chief of police, the Chief of the Fire Department, the Code Enforcement Officer, the Planner, and the Town Manager to see if there is an issue with the road name that could cause a conflict in the event of an emergency dispatch.

The applicant (Caleb King) emailed the request April 15th to the Administrative Assistant, Christina Silberman and me. I was conducting inspections and did not open it at that time. April 21st, Christina asked me if I had responded to the request. I told her I would take care of it then. After looking at the application and seeing that two of the three proposed names had the word Creek in it and the third had Pine and Brook, all of which were included in existing road names (Woody Creek Dr., Pine Rd., Pine Ridge Rd, Pinewood Dr., Brookside Rd., and Brook Rd.), I decided to contact the Police Chief and the Fire Chief to get their opinions. The Fire Chief was on vacation so I contacted the Town Manager (the acting Addressing Officer prior to my appointment) and both he and the Chief of Police indicated that there could be a conflict. (The current similar Road Names were in existence at the time the Ordinance was adopted 11-9-1998.)

I emailed the applicant letting him know that the proposed names were not acceptable due to the possible conflict with existing names and provided a list of all the existing road names and asked him to provide new names.

Mr. King sent an email indicating that my response was unacceptable and wanted to take whatever steps necessary to get approval. After receiving Mr. King's response, I contacted Erica P. Sterry, the 9-1-1 GIS Coordinator at the Emergency Services Communication Bureau and related the street name application and my response. Ms. Sterry agreed with my decision to seek alternate road names.

After reviewing the ordinance with the Code Enforcement Officer, Bill Longley, Mr. King was informed he could appeal in accordance with §246-8 of the Town of Cumberland Code.

John Brushwein

From: Caleb King <cking3560@gmail.com>
Sent: Wednesday, April 21, 2021 12:53 PM
To: John Brushwein; William Shane; William Longley
Subject: Re: Street Name
Attachments: ATT00001.htm

> This message's attachments contains at least one web link. This is often used for phishing attempts. Please only interact with this attachment if you know its source and that the content is safe. If in doubt, confirm the legitimacy with the sender by phone.

WARNING:This is an external email that originated outside of our email system. DO NOT CLICK links or open attachments unless you recognize the sender and know that the content is safe!

Mr. Brushwein,

Thanks for finally getting back to me about this.

The decision not to approve the proposed street name is unacceptable. I have reviewed the list of all street names you provided me and there is ONE street with Creek in the name, and I seriously doubt there will be any confusion between "Deep Creek Drive" on Middle Road, and "Woody Creek Lane" off Rt. 9.

In my review of all the street names there are quite a few that are much closer in name and easier to confuse/mix-up than my proposed street name:
- Wood Cir, Woodlands Way, Woodside Dr, Woody Creek Ln
- Wild Apple Ln, Wild Way, Wildflower Way, Wildwood Blvd
- Range Rd, Range Way, Rangers Way
- Old Colony Ln, Old Farm Rd, Old Gray Rd

(I can keep going)

I have faith that our Fire, EMS, and police are all a smart and capable group that could figure out the location if ever need be.

So, just let me know what channels I need to go through to get my name approved, whether that be the planning board, town council, town attorney, or town manager, and I will get the process started. I have jumped through every hoop thus far that has been required of me and I am not afraid to keep doing so.

Thanks,

Caleb King

On Wed, Apr 21, 2021 at 8:56 AM John Brushwein <jbrushwein@cumberlandmaine.com> wrote:

> Mr. King,

Sorry for the delay in getting back to you. Unfortunately, the three choices you had for a street name are not acceptable. There is

already a road containing Creek in the name and there are also roads containing either Pine or Brook in the name. The E-911 street

names need to be as dissimilar as possible to avoid confusion during a dispatch call.

I have attached a list of existing road names. Please submit 3 new names that are not similar to, or contain existing road name

components.

Thank You,

John Brushwein, CMA
Tax Assessor, Town of Cumberland

207-829-2204
www.cumberlandmaine.com
290 Tuttle Road, Cumberland, Maine 04021

Please be advised that pursuant to Title 1 M.R.S.A. Section 402(3), a public record includes any written, printed or graphic matter or any mechanical or electronic data in the possession or custody of an agency or public official that has been received or prepared for use in connection with the transaction of public or governmental business and contains information relating to the transaction of said business; therefore, the public is advised that any correspondence whether by traditional method or e-mail with Town offices or Town officials, with certain limited exceptions, is a public record and is available for review by any interested party.

Total Control Panel Login

To: jbrushwein@cumberlandmaine.com Remove this sender from my allow list
From: cking3560@gmail.com

You received this message because the sender is on your allow list.

CUMBERLAND POLICE DEPARTMENT
290 TUTTLE ROAD
CUMBERLAND, MAINE 04021

EMERGENCY
911

BUSINESS
(207) 829-6391

FAX
(207) 829-2211

Charles Rumsey, IV
Chief

David T. Young, Jr.
Captain

May 4, 2021

To: John Brushwein, Town Assessor

From: Charles Rumsey, Police Chief

Subject: Denial of Proposed Street names Deep Creek Drive, Deep Creek Lane, and Pine Brook Road

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On or about April 21st, we discussed three street names that were proposed by applicant Caleb King. At the time, our discussion included the fact that Cumberland already has similar street names including but not limited to Woody Creek Drive, Pine Ridge Road, Pine Lane, Pinewood Drive, Brook Road, and Brookside Drive.

When we spoke, I indicated that I would not be in favor of the three proposed names, due to possible confusion when responding to emergency calls. Indeed, there are already numerous streets in Cumberland with like sounding names (including the aforementioned) which cause me concern. It is important to remember that in an emergency, there are multiple points of possible confusion or mistake from callers who need our help as well as dispatchers, police, and fire. Dispatchers and first responders are responsible for processing a large amount of information and have multiple complex decisions to make when responding to some emergencies, and the potential for delay or confusion must be avoided if possible. Doing our due diligence early in the process is necessary to minimize this risk, which is shared by not only public services and current residents, but future residents as well.

I understand that an appeal has been filed in this case and have prepared this memo for consideration by the Cumberland Board of Adjustment and Appeals. Please let me know if I can be of further assistance in this matter.

Cumberland Fire Department

366 Tuttle Road, Cumberland Center, Maine 04021
Emergency 911 Business 829-5421 Fax 829-4256 Email dsmall@cumberlandmaine.com

Daniel R. Small
Chief

May 4, 2021

To: John Brushwein, Town Assessor
From: Daniel Small, Fire Chief
Reference: Street Naming Denial

As per our discussion the three street names of consideration should be denied due to close pronunciation of existing roads that I have listed below.

Brook Road
Brookside Drive
Pine Ridge Road
Pinewood Drive
Pine Lane
Woody Creek Drive

We have experienced delayed arrivals at emergency scenes due to street names sounding similar. To site one example an incident that occurred in Cumberland was significantly impacted due to a caller not being clearly understood. When providing information to the dispatcher there was a lack of clarity and subsequently emergency vehicles were initially sent to Middle Road instead of the actual emergency that was located on Mill Road.

Many 9-1-1 callers are nervous and therefore may not be clear with their communication of the incident location. Dispatchers are required by protocol to immediately ask a caller what the location of the emergency is two times to understand where to send police, medical or fire units. With that said, mistakes still are periodically made due to similar sounding street names.

Whether confusion of the similarity of names or phonetic pronunciations (the letter B sounds like the letter C, etc.) public safety crews must make quick decisions that can immediately change the outcome of an emergency. Street naming that can be made as clear as possible must be considered to assist with the rapid arrival of crews to mitigate exigent situations as effectively as possible.

Should you require further information regarding this street name denial that will be reviewed by the Board of Adjustment and Appeals please do not hesitate to contact me.

Town of Cumberland, ME
Thursday, May 6, 2021

Chapter 246. Street Names and Property Numbers

[HISTORY: Adopted by the Town Council of the Town of Cumberland 11-9-1998; amended 12-22-2003. Subsequent amendments noted where applicable.]

GENERAL REFERENCES
Roads and public property — See Ch. **200**.
Site plan review — See Ch. **229**.
Subdivision of land — See Ch. **250**.

§ 246-1. Purpose.

The purpose of this chapter is to enhance the easy and rapid location of properties by public safety and emergency medical services personnel and postal delivery in the Town of Cumberland.

§ 246-2. Authority.

This chapter is adopted pursuant to and consistent with the municipal home rule powers as provided for in Article VIII, Part 2, Section 1, of the Constitution of the State of Maine and 30-A M.R.S.A. § 3001.

§ 246-3. Administration.

This chapter shall be adopted by the Town Council and administered by the Assessor. The Assessor is authorized to assign street names and numbers to all properties, both on existing and proposed streets, in accordance with the criteria in §§ **246-4** and **246-5**. The Assessor shall also be responsible for maintaining the following official records of this chapter:

A. A Cumberland map for official use showing street names and numbers.

B. An alphabetical list of all property owners as identified by current assessment records, by last name, showing the assigned numbers.

C. An alphabetical list of all streets with property owners listed in order of their assigned numbers.

§ 246-4. Naming system.

A. All new and existing streets that serve two or more properties shall be named regardless of whether the ownership is public or private. All private streets that serve

one or two properties shall be named upon request of a street owner and approval of the Assessor. "Street" refers to any highway, road, street, avenue, lane, private way, or similar paved, gravel or dirt thoroughfare. "Property" refers to any property on which a more or less permanent structure has been erected or could be placed. All proposed names for streets shall be reviewed by the Planning Department and Police Chief prior to approval. A street name assigned by the Town of Cumberland shall not constitute or imply acceptance of the street as a public way.

B. The following criteria shall govern the naming system of new streets:

(1) No two streets shall be given the same name (e.g., no Pine Road and Pine Lane).

(2) No two streets should have similar-sounding names (e.g., Beech Street and Peach Street).

(3) Each street shall have the same name throughout its entire length.

§ 246-5. Numbering system.

A. Numbers shall be assigned every 50 feet along both sides of the street, with even numbers appearing on the left side of the street and odd numbers appearing on the right side of the street, determined by the number origin.

B. The following criteria shall govern the numbering system:

(1) Number origins shall begin from the east and continue west and from the south and continue north. For dead-end streets, numbering shall originate at the intersection of the adjacent street and terminate at the dead end.

(2) The number assigned to each structure shall be that of the numbered interval falling closest to the front door. If the front door cannot be seen from the main street, the number shall be that of the interval falling closest to the driveway of said structure.

(3) Every structure with more than one principal use or occupancy shall have a separate number for each use or occupancy. Duplexes will have two separate numbers. Apartments will have one street number with an apartment number, such as 235 Maple Street, Apartment 2.

(4) At major intersections, the numbering system shall be interrupted so that the first address after the intersection starts with the number rounded to the next highest hundredth. For example, if the last number before the intersection is 82, the first number after the intersection would be 100.

(5) Corner lots should be assigned a number according to where the front door faces the street. There may be instances, however, when a corner lot might be numbered based on its driveway, if it makes sense from an emergency responder perspective.

§ 246-6. Responsibility of owner.

All owners of structures shall, by the date stipulated in § **246-8**, display and maintain in a conspicuous place on said structure the assigned numbers in the following manner:

A. Number on the structure or residence. Where the residence or structure is within 50 feet of the edge of the street, the assigned number shall be displayed on the front of the residence or structure near the front door or entry.

B. Number at the street line. Where the residence or structure is over 50 feet from the edge of the street, the assigned number shall be displayed on a post, fence, wall, the mailbox, or on some structure at the property line next to the walk or access drive to the residence or structure as approved by the Code Enforcement Officer with consultation of the public safety departments.

C. Characteristics of number. The size of the numbers shall be no less than four inches in height, and the numbers shall be located to be visible from the street. They shall be of a contrasting color to any background.

D. Every person whose duty is to display the assigned number shall remove any different number that might be mistaken for, or confused with, the number assigned in conformance with this chapter.

E. It shall be the responsibility of the apartment owner to number and display the individual apartment numbers on apartment buildings.

§ 246-7. New construction and subdivisions.

All new construction and subdivisions shall be named and numbered in accordance with the provisions of this chapter and as follows:

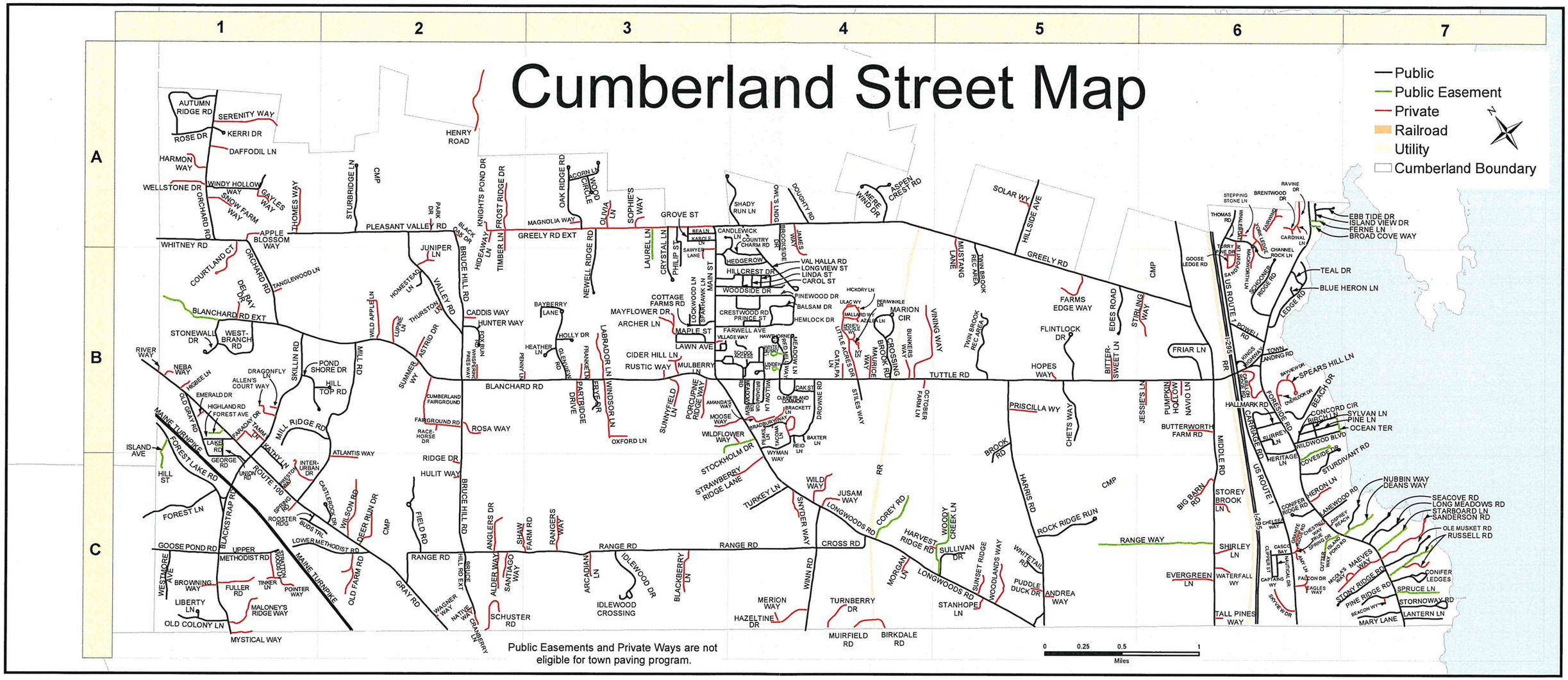
A. New construction. Whenever any residence or other structure is constructed or developed, it shall be the duty of the new owner to obtain an assigned number from the Assessor. This shall be done at the time of the issuance of the building permit.

B. New subdivisions. Any prospective subdivider shall show a proposed street name and lot numbering system in the preapplication submission to the Planning Board. Approval by the Planning Board, after consultation with the Assessor, shall constitute the assignment of street names and numbers to the lots in the subdivision.

§ 246-8. When effective.

This chapter shall become effective immediately. The provisions of this chapter shall be enforced by the Code Enforcement Officer. Appeals of decisions by the Assessor and/or Code Enforcement Officer shall be made to the Board of Adjustment and Appeals as permitted in Chapter **315**, Zoning. It shall be the duty of the Town Council or its designee to notify by mail each property owner and the post office of a new address at least 30 days before the effective date of its use. It shall be the duty of each property owner to comply with this chapter, including the posting of new property numbers, within 30 days following notification. On new structures, numbering will be installed before final inspection or issuance of certificate of occupancy, whichever comes first.

Cumberland Street Map



Public Easements and Private Ways are not eligible for town paving program.

A
ACORN LN: A3
ALDER WAY: C2
ALLEN'S COURT WAY: B1
AMANDA'S WAY: B4
AMY LN: C6
ANDREA WAY: C5
ANGLERS DR: C2
APPLE BLOSSOM WAY: A1
ARCADIAN LN: C3
ARCHER LN: B3
ASPEN CREST RD: A4
ASTRID DR: B2
ATLANTIS WAY: C2
AUTUMN RIDGE RD: A1
AZALEA LN: B4
B
BALSAM DR: B4
BAXTER LN: B4
BAYBERRY LN: B3
BAYVIEW DR: B6
BEA LN: A3
BEACH DR: B6
BEACON WAY: C7
BIRCH LN: B6
BIRKDALE RD: C4
BITTERSWEET LN: B5
BLACK OAK DR: A2
BLACKBERRY LN: C3
BLACKSTRAP RD: C1
BLANCHARD RD: B1, B2, B3
BLANCHARD RD EXT: B1
BLUE HERON LN: B6
BRACKETT LN: B4
BRADBURY WAY: B4
BRENTWOOD DR: A6
BROAD COVE WAY: A6
BROADMOOR DR: B4
BROOK RD: B5, C5
BROOKSIDE DR: A4, B4
BROWNING WAY: C1
BRUCE HILL RD: A2, B2, C2
BRUCE HILL RD EXT: C2
BUDS TRAIL:C1, C2
BUNKERS WAY: B4
BUTTERWORTH FARM RD: B6
C
CADDIS WAY: B2
CANDLEWICK LN: A3, A4, B4
CAPTAIN'S WAY: C6
CARDINAL LN: A6
CARILLON RIDGE RD: B6
CAROL ST: B4
CARRIAGE RD: B6, C6
CASCO BAY DR: C6
CASTLEROCK DR: C2
CATALPA LN: B4
CHANNEL ROCK LN: A6
CHELSEA WAY: C6
CHESTNUT WAY: C6
CHETS WAY: B5
CIDER HILL LN: B3
CLIPPER ST: C6
CONCORD CIR: B6
CONIFER LEDGES: C7
CONIFER RIDGE RD: C6
COREY RD: C4
CORTLAND CT: B1
COTTAGE FARMS RD: B3
COUNTRY CHARM RD: B3, B4
COVESIDE DR: B6, C6
CRANBERRY LN: C2
CRESTWOOD RD: B4
CROSS RD: C4
CROSSING BROOK RD: B4
CRYSTAL LN: A3, B3
CUMBERLAND COMMON: B4
CUMBERLAND FAIRGROUND: B2
CUTTER WAY: C6
D
DAFFODIL LN: A1
DEANS WAY: C7
DEER RUN DR: C2
DEL RAY DR: B1
DOUGHTY RD: A4
DRAGONFLY LN: B1
DROWNE RD: B4
E
EAGLES WAY: C6
EBB TIDE DR: A6
EDES RD: B5
EMERALD DR: B1
EVERGREEN LN: C6
F
FAIRGROUND RD: B2
FAIRWIND LN: A6
FALCON DR: C6
FARADAY DR: B1
FARMS EDGE WAY: B5
FARWELL AVE: B3, B4
FERNE LN: A6
FIELD RD: C2
FLINTLOCK DR: B5
FORESIDE RD: A6, B6, C6, C7
FOREST AVE: B4
FOREST LAKE RD: B1, C1
FOREST LN: C1
FOX RUN RD: B2
FRANKIE LN: B3
FRIAR LN: B6
FROST RIDGE DR: A2
FRYE DR: B3
FULLER RD: C1
G
GAYLES WAY: A1
GEORGE RD: C1
GLENVIEW RD: B3
GOOSE LEDGE RD: B6
GOOSE POND RD: C1
GRANITE RIDGE RD: C6
GRAY RD (RT 100): B1,C1,C2
GREELY RD EXT: A2, A3
GREELY RD: A3, A4, A5, B5, B6
GROVE ST: A3
H
HALLMARK RD: B6
HARMON WAY: A1
HARRIS RD: B5, C5
HARVEST RIDGE RD: C4,C5
HAWTHORNE CT: B4
HAZELTINE DR: C4
HEATHER LN: B3
HEDGEROW DR: B3, B4
HEMLOCK DR: B4
HENRY RD: A2
HERITAGE LN: B6
HERON LN: C6
HICKORY LN: B4
HIDEAWAY LN: A2
HIGBEE LN: B1
HIGHLAND RD: B1
HILL ST: B1
HILL TOP RD: B1, B2
HILLCREST DR: B3, B4
HILLSIDE AVE: A5, B5
HOLLY DR: B3
HOMESTEAD LN: B2
HOPES WAY: B5
HULIT WAY: C2
HUNTER WAY: B2
I
I295: A6, B6, C6
IDLEWOOD CROSSING: C3
IDLEWOOD DR: C3
INTERURBAN DR: C1
ISLAND AVE: B1, C1
ISLAND POND RD: C6
ISLAND VIEW DR: A6
IVY LN: B4
J
JAMES WAY: A4, B4
JESSIE'S LN: B6
JUNIPER LN: B2
JUSAM WAY: C4
K
KAROLE LN: A3
KATHY LN: B1, C1
KERRI DR: A1
KINGS HIGHWAY: B6
KNIGHTS POND DR: A2
L
LABRADOR LN: B3
LAKE RD: B1
LANEWOOD RD: C6, C7
LANTERN LN: C7
LAUREL LN: A3, B3
LAWN AVE: B3
LEDGE RD: B6
LIBERTY LN: C1
LILAC WAY: B4
LINDA ST: B4
LINDEN CT: B4
LITTLE ACRES DR: B4
LOCKWOOD LN: B3
LONG MEADOWS RD: C7
LONGVIEW ST: B4
LONGWOODS RD: C4, C5
LOWER METHODIST RD: C1, C2
LUPINE LN: B2
M
MACKWORTH LN: A6, B6
MAEVES WAY: C7
MAIN ST (RT 9): A3, B3, B4, C4
MAINE TURNPIKE: B1, C1, C2
MALLARD WAY: B4
MALONEY'S RIDGE WAY: C1
MAPLE ST: B3
MARION CIR: B4
MARY LN: C7
MAURICE WAY: B4
MAYFLOWER DR: B3
MEADOW LN: B4
MEADOWVIEW RD: B4
MERE WIND DR: A4
MERION WAY: C4
MIDDLE RD: A6, B6, C6
MILL RD: B2, C1, C2
MILL RIDGE RD: B1, B2
MOODY MOUNTAIN WAY: B3
MOOSE WAY: B3
MORGAN LN: C4
MUIRFIELD RD: C4
MULBERRY LN: B3
MUSTANG LN: A5, B5
MYSTICAL WAY: C1
N
NATIVE WAY: C2
NAUTICAL DR: C6
NAVIO LN: B6
NEBA WAY: B1
NEWELL RIDGE RD: A3, B3
NICOLA'S WAY: C7
NUBBIN WAY: C7
O
OAK RIDGE RD: A3
OAK ST: B4
OCEAN TER: B6
OCTOBER FARM LN: B4
OLD COLONY LN: C1
OLD FARM RD: C2
OLD GRAY RD: B1, C1
OLE MUSKET RD: C7
OLIVIA LN: A3
ORCHARD RD: A1, B1
OSPREY REACH: C6
OVERLOOK DR: B6
OWL'S LNDG: A4
OXFORD LN: B3
P
PARK DR: A2
PARTRIDGE DR: B3
PEAK'S LN: B4
PENNY LN: B3
PERIWINKLE DR: B4
PHILIP ST: A3, B3
PINE LN: B6
PINE RIDGE RD: C7
PINEWOOD DR: B3, B4
PLEASANT VALLEY RD: A1, A2
POINTER WAY: C1
POND SHORE DR: B1, B2
PORCUPINE RIDGE WAY: B3
POWELL RD: B6
PRESTON WAY: C1
PRINCE ST: B4
PRISCILLA WAY: B5
PUDDLE DUCK DR: C5
PUMPKIN HOLLOW: B6
R
RACEHORSE DR: B2
RANGE RD: C2, C3, C4
RANGE WAY: C5, C6
RANGERS WAY: C3
RAVINE DR: A6
RED MILL WAY: B4
REID LN: B4
RIDGE DR: C2
RIVER WAY: B1
ROCK RIDGE RUN: C5
ROOSTER RIDGE: C1
ROSA WAY: B2
ROSE DR: A1
ROUTE 100: B1, C1, C2
RUSSELL RD: C7
RUSTIC WAY: B3
S
SAND POINT LN: A6, B6
SANDERSON RD: C7
SANTIAGO WAY: C2
SAWYER LN: B3
SCHOOL ACCESS RD: B3, B4
SCHOONER RIDGE RD: B6
SCHUSTER RD: C2
SEACOVE RD: C7
SERENITY WAY: A1
SHADY RUN LN: A3, A4
SHAW FARM RD: C2, C3
SHIRLEY LN: C6
SKILLIN RD: B1, C1
SKY VIEW DR: C6
SNOW FARM WAY: A1
SNYDER WAY: C4
SOLAR WAY: A5
SOPHIE'S WAY: A2
SPARHAWK LN: B3
SPEARS HILL LN: B6
SPRING RD: C1
SPRUCE LN: C7
STANHOPE LN: C5
STARBOARD LN: C7
STEPPING STONE LN: A6
STILES WY: B4
STIRLING WAY: B6
STOCKHOLM DR: B3, B4
STONEWALL DR: B1
STONY RIDGE RD: C6, C7
STOREY BROOK LN: C6
STORNOWAY RD: C7
STRATTON WOODS LN: C1
STRAWBERRY RIDGE LN: C3, C4
STURBRIDGE LN: A2
STURDIVANT RD: B6, C6
SULLIVAN DR: C5
SUMMER WAY: B2
SUNNYFIELD LN: B3
SUNSET RIDGE: C5
SURREY LN: B6
SYLVAN LN: B6
T
TACOMA LN: B4
TALL PINES WAY: C6
TAMMY LN: B1
TANGLEWOOD LN: B1
TEAL DR: B6
THOMAS DR: A6
THOMES WAY: A1
THURSTON LN: B2
TIMBER LN: A2
TINKER LN: C1
TORRY PINE DR: B6
TOWN LANDING RD: B6
TRUE SPRING DR: C6
TURKEY LN: C4
TURNBERRY DR: C4
TUTTLE RD: B3, B4, B5, B6
TWIN BROOK REC AREA: B5
U/V
UNION RD: B1, C1
UPPER METHODIST RD: C1
US ROUTE 1: A6, B6, C6
VAL HALLA RD: A4, B4
VALLEY RD: A2, B2
VILLAGE WAY: B3
VINING WAY: B4
W/Y
WAGNER WAY: C2
WATERFALL WY: C6
WELLSTONE DR: A1
WESTBRANCH RD: B1
WESTMORE AVE: C1
WHALEBOAT LN: A6
WHISPERING PINES WAY: B2
WHITETAIL RD: C5
WHITNEY RD: A1
WILD APPLE LN: B2
WILD WAY: C4
WILDFLOWER WAY: B4
WILDWOOD BLVD: B6
WILLOW LN: B4
WILSON RD: C2
WINDSOR LN: B3
WINDY HOLLOW: A1
WINN RD: C4
WINTERBERRY CT: B4
WOOD CIR: A3
WOODLANDS WAY: C5
WOODSIDE DR: B3, B4
WOODY CREEK LN: C5
WYMAN WAY: B4
YORK LEDGE DR: A6, B6

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APRIL 2021

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 lawn 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.

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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.

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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

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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 quite 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 was 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.

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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 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.

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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.**

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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.

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