

TOWN OF ESSEX
Zoning Board of Appeals

Executive Board

Paul Greenberg, Chair
Michael Noto, Vice Chair

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Regular Members

Al Daddona
W. T. Furgueson
William Veillette

Alternate Members

Ward Feirer
Barbara Sarrantonio
Peter Decker

Unapproved

Minutes
August 18, 2015 – Public Hearing and Regular Meeting

The Essex Zoning Board of Appeals conducted their regularly scheduled meeting on Tuesday, August 18, 2015 at 7:00 p.m. in Room A of the Essex Town Hall. Attending Members were A. Daddona, Acting Chair, W. T. Furgueson, W. Veillette. Alternate members, W. Feirer and B. Sarrantonio were seated.

Staff:

Stella C. Beaudoin, Recording Clerk
Michael Wells, Esq., Legal Counsel

A Daddona called the meeting to order at 7:00pm

A. Daddona read the legal notice into the record.

- **Application No. 15-16** on behalf of Cumberland Farms, 82 Main Street, Centerbrook, CT, Assessor's Map 43, Lot 29, C District, requesting variances to sections 40D, 40U, 50C.2, 50D, 80B, 104D.2 and 104D.3 of the Essex Zoning regulations to allow proposed site development and the demolition and relocation of an existing retail store to one that is 3,742 square feet in size, which is a non-conforming expansion of retail space in conjunction with fuel sales. Also to add a third fuel pump, which is an extension of a non-conforming use within a Water Resource District

Cumberland Farms submitted a prior variance application for this location which was heard at the May 19, 2015 Zoning Board of Appeals meeting. That applicant withdrew the proposal so as to address the comments and concerns stated at the May meeting.

Seated for this application were A. Daddona, W. T. Furgueson, W. Veillette, W. Feirer and B. Sarrantonio.

Joe Williams, Esq. Shipman and Goodwin and John Marth, Project Manager, Cumberland Farms presented on behalf of this application.

J. Williams stated that an application for a variance related to this site, which came before the ZBA at the May 19, 2015 meeting proposed a 4,250 sf structure with 20 parking spaces, 3 access points and an 89 foot canopy over the gas pumps.

J. Marth referenced the new proposed layout and the differences which include a reduction in the size of the building to 3,742 feet. J. Marth stated that this proposed design is the same Cumberland Farms structure as

is utilized in Chatham, MA which is a colonial style building with dormers. J. Marth stated that this reduction in s.f. reduces the nonconformities. This plan eliminates the third curb cut on Westbrook Road which was previously proposed. Per this plan, the second proposed curb cut on Westbrook Road directly faces Spencer's Corner. Six feet has been eliminated from the canopy in this proposal. The dumpster which will be enclosed will have a dedicated loading zone with an enclosure, and there will be substantial landscaping to buffer from adjoining properties. Two street entrances are proposed; one facing Route 154 and one facing Westbrook Road.

J. Williams stated that the reduction of the size of building necessitates the reduction in the number of parking spaces from 20 to 16 spaces which will be located in front of the building with a pedestrian walkway. There are currently 18 spaces existing on site. J. Williams stated that this proposal which offers 30 feet of landscaping makes the site more conforming with the zoning regulations which requires a 15-foot landscaping swath in a commercial zone.

M. Wells asked for summary of variances requested and the associated hardship.

J. Williams stated that in 1975, Joe's service station was situated on this site and in 1986 Cumberland Farms purchased the site and they converted the service station into a convenience store and gas station. In its current state, the store is cramped and the dumpster is exposed. The underground storage tanks were installed in 1989 and the septic must be replaced. Related to the pedestrian and vehicle safety, the site has a tight configuration and circulation and delivery trucks must back onto Main Street to exit the site. J. Williams stated that this business is flanked by commercial uses and all of the immediately surrounding properties are zoned commercial.

J. Williams submitted for the record a google map which shows the existing uses of the surrounding businesses on Main Street and he stated that there are two other gas stations on Main Street, Shell and Sunoco which were recently granted approval to update their site. This plan proposes to improve the aesthetics, streetscape and sidewalks. J. Williams stated that the current site plan is conforming in all dimensional and coverage requirements and the applicant is seeking relief in use related restrictions. This proposal reduces the number of driveways from four to two and there will be new sidewalks along the entire site. J. Williams stated that this proposal adds ample landscape buffers and an extra evergreen screen on the southern boundary and on Joel Marzi's property. A water treatment system will be installed so as to improve the stormwater runoff. The lighting will be better controlled with the installation of new, LED down-lit fixtures with zero light spillage. The trash dumpsters will be closed and screened. The septic will be replaced. The new canopy proposed to be installed over the pumps will have a fire suppressant installed within the canopy. The underground storage tanks will be replaced with state of the art, double wall fiberglass tanks with alarm if there ever is a leak. J. Williams stated that this proposal is consistent with the Plan of Conservation and Development and consistent with the comprehensive zoning plan for the Town of Essex. This proposal compatible with the surrounding commercial properties and will provide better controlled vehicle access and improved pedestrian safety.

J. Williams stated that the applicant is seeking relief from section 40U which prohibits a gas station with a mini mart selling retail items. Cumberland Farms predates the inception of that regulation. Section 80a was recently added to the zoning regulations to include another permitted use in a commercial district, to add food service retail store. J. Williams stated that the total retail area nonconforming under 40U is being reduced and a reduction in a nonconforming condition is a valid legal basis for the Board to grant a variance.

J. Williams stated that the applicant is seeking relief from section 80B. Currently, one hundred percent of parking on site is between the building and another street and the size and configuration of the lot necessitate that the parking be between the building and the street. This plan does not propose to increase the parking, will not expand a nonconformity, and the number of parking spaces is reduced.

J. Williams stated that the third variance from which the applicant is seeking relief is 104D water resource district. Underground storage of gasoline is prohibited. In 1986 the former Zoning Enforcement Official allowed an upgrade of the existing tanks. This plan proposes to replace the three, 6,000 gallon tanks which were installed in 1986 which have reached their life expectancy with two, double wall, fiberglass, 20,000 gallon tanks with monitoring system. J. William stated that the increase in the capacity of the tanks will reduce the deliveries by half. Currently gas delivery occurs every day or day and half and with the new proposal, delivery will occur once every three days. J. Williams stated that this plan is designed to keep and treat the water onsite.

J. Williams stated that the basis for the variances requested is as follows: 1. Make site more conforming; 2. Principal use is retail which is permitted; 3. The Board has granted every other variance to related businesses in the area in past few years. 4. The proposed plan offers substantial improvement on site. 5. This proposal is consistent with Essex Zoning comprehensive plan.

B. Sarrantonio noted that the Zoning Enforcement Officer's memo describes the gas station as an accessory to the retail, which would not necessitate a variance for a third pump and questioned what is the support to that use?

J. Williams stated that the Cumberland Farms in 1986 was approved as a retail store with gas and he noted that even though some of the areas of the store need to be expanded, this location has always acted as a retail store with gas sales as one of the things we sell. J. Williams was unclear as to the percentage of gasoline sales versus other retail sales of food items, etc.

M. Wells questioned if it the contention that this is not a use that is defined by 40U and asked if this proposal falls under 40U.

J. Williams indicated that the question is debatable noting that it is questionable if 40U actually applies to this proposal.

M. Wells stated that this site is currently a complying use, however the question is if the gas station as a principal use.

J. Marth stated that Cumberland Farms is a retail convenience store with gas as an accessory use.

B. Sarrantonio informed the applicant that they must then show some support to that statement.

J. Williams asked if the Board wishes to continue this hearing so the applicant can put together evidence substantiating that the retail use is the primary use.

A Daddona asked if anyone wished to speak in favor or in opposition to this application.

Joel Marzi distributed a list of deeds associated with this property, as transfers came about prior to zoning and during zoning. J. Marzi presented a property deed dated 1958 which was when the gas station was constructed and at that point in time it was a 3-bay garage. In 1988 a zoning permit was issued for 1,624 s.f. of retail space noting that the existing overhead canopy was to be removed. The second item J. Marzi distributed was a collection of Minutes from the Zoning Commission and the Zoning Board of Appeals beginning in 1968.

J. Marzi stated that in 1968 the Zoning Commission amended the auto regulation to permit use only if they were a distance of 2500 feet apart. In 1968 gas stations became illegal by reason of separation distances. Section 80 of the Zoning regs reflects the 2500 feet separation regulation. Prior to Cumberland Farms purchasing the site, it was nonconforming related to the separation regulation. J. Marzi stated that per the

J. Marzi referenced the June 17, 1975 Zoning Commission Minutes in which the Zoning Enforcement Officer required a variance to this site related to separation distances. J. Marzi stated that it is his belief that a variance should be requested for the third pump and a variance should also be sought for entire canopy. J. Marzi stated his objection to the increase in traffic and increase in noise that is associated with this proposal noting that a third pump will increase the flow of traffic and increase the number of patrons, which will therefore result in an increase in the noise and traffic.

Joan Wallace, 28 Westbrook Road asked if the canopy contributes to site or lot coverage.

J Williams stated that the canopy is considered building coverage, and it currently complies.

J. Wallace stated her concern over the impact that the approval of this proposal will have on enjoyment of her property and the valuation of her property. J. Wallace stated that the visual impact is going to be significant and the amount of traffic and noise will be increased which creates a negative impact on the enjoyment and valuation of her property. J. Wallace indicated that there is no hardship presented in association with this proposal and noted that the Zoning Board of Appeals should grant variances sparingly.

J. Williams stated that J. Marzi conducts a business, the Essex House of Framing out of his property as well, which is zoned commercial and from which he has benefitted and expanded his business with a 400 s.f. addition in 2006. J. Williams stated that for the past 30 years. J. Marzi has fought any attempt to update and modernize the Cumberland Property and when he bought his property the Cumberland Farms site was already in business. J. Williams stated that per J. Marzi's request the third driveway was removed from this proposal and noted that the applicant has done everything to decrease the adverse impact. J. Williams stated that some of the noise is coming from the businesses at Spencer's Corner and he noted that the noise issue would not change if we rebuilt the site. The visual will present a positive and a substantially improvement. J. Williams stated that the separation requirement of the zoning regulations was adopted after this property was approved as a gas service station and Cumberland Farms is the longest operating station in Centerbrook with no break in the use.

M. Wells questioned what improvement is being made that is not in conformance with the regulations.

J. Williams stated that it was the Zoning Enforcement Officer who stated that a variance to 40D is required to re-pave the site in excess of the permitted area.

M. Wells questioned the hardship in paving more of the site than is currently paved and noted that the applicant is putting forward the argument that by making the property more conforming, by reducing the parking spaces, no hardship is required going on the basis that if you reduce an existing nonconformity, you can obtain a variance for another nonconformity.

M. Wells noted that the applicant is seeking a variance to section 40U and questioned the hardship for seeking space larger than what the regulations permit.

J. Williams stated that the applicant proposes to raze the site and would like to have retail space in excess of 50 s.f. A variance to 40U is required; however, this proposal will make the site more conforming.

M. Wells questioned that per Section 50C.2 is there any change in the characteristic that alters the coverage or the location.

J. Williams stated that the location is the basis, referring to paving, parking, etc.

M. Wells noted that the building conforms with the regulations, however the parking area does not and questioned if the addition of a pump requires a variance.

J. Williams stated that the pump does not require a variance. Section 104D.1 Principal Uses, lists a gas station in a water resource district is not permitted for principal uses. This use, as it exists is not a gas station as a principal use. The applicant is seeking a variance to 104D.2 for the underground tanks.

W. Feirer stated that the Board has heard a good deal of testimony and there has been conflicting testimony on the sections to the regulations seeking variance. W. Feirer suggested that further consideration to this proposal be postponed and further clarification provided by the Zoning Enforcement Officer as to which variances are being requested.

M. Wells suggested that insufficient information or information which conflicts with the regulations to be varied per Joe Budrow, Zoning Enforcement Officer, then the Board would invite J. Budrow and his counsel to define what the Town's position is.

B. Sarrantonio stated that the Board has received a good deal of material and noted that the Board is not in a position to vote on this proposal at this time. B. Sarrantonio stated that she would like some support that the gas station is accessory use to retail.

MOTION MADE by Ward Feirer to continue to the September 15, 2015 regularly scheduled meeting of the Zoning Board of Appeals, the Public Hearing on **Application No. 15-16** on behalf of Cumberland Farms, 82 Main Street, Centerbrook, CT, Assessor's Map 43, Lot 29, C District, requesting variances to sections 40D, 40U, 50C.2, 50D, 80B, 104D.2 and 104D.3 of the Essex Zoning regulations to allow proposed site development and the demolition and relocation of an existing retail store to one that is 3,742 square feet in size, with the food service portion being a non-conforming expansion in conjunction with fuel sales. Also to add a third fuel pump, with a canopy as to all pumps and two 20,000 underground storage tanks, which is an extension of a non-conforming use within a Water Resource District; **SECONDED** by B. Sarrantonio; **IN FAVOR:** A. Daddona, W. Veillette, W. T. Furgueson, B. Sarrantonio, W. Feirer; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED:** 5-0-0.

REGULAR MEETING

Correspondence and Invoices

There was no correspondence and no invoices.

Approval of Minutes – June 2015

MOTION to approve the June 16, 2015 Minutes with the amendment to Page 3; second full paragraph, omit the following: "P. Greenberg noted the lack of a stated hardship surrounding the increase of the size of the existing building, which is almost double."; **MADE** by A. Daddona.; **SECONDED** by B. Sarrantonio; **IN FAVOR:** A. Daddona, W. Veillette, W. T. Furgueson, B. Sarrantonio, W. Feirer; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED:** 5-0-0.

Adjournment

MOTION to adjourn the meeting at 9:30 p.m. to the next regularly scheduled meeting to be held on Tuesday, September 15, 2015 at 7:00 p.m. at the Essex Town Hall, Conference Room A, 29 West Avenue, Essex, CT; **MADE** by W. T. Furgueson; **SECONDED** by W. Veillette; **IN FAVOR:** A. Daddona, W. Veillette, W. T. Furgueson, B. Sarrantonio, W. Feirer; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED:** 5-0-0.

Respectfully submitted,

Stella C. Beaudoin
Recording Secretary