

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

October 20, 2015 – Public Hearing and Regular Meeting

The Essex Zoning Board of Appeals conducted their regularly scheduled meeting on Tuesday, October 20, 2015 at 7:00 p.m. in Room A of the Essex Town Hall. Attending Members were P Greenberg, Chair, A. Daddona, W. T. Furgueson, W. Veillette. Alternate members, P. Decker, W. Feirer and B. Sarrantonio.

Staff:

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

P. Greenberg called the meeting to order at 7:00pm

- **Application No. 15-16** on behalf of Cumberland Farms, Inc., 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 expand underground storage, which is an expansion of a non-conforming use within a Water Resource District.

A Daddona chaired the meeting for this proposal.

This application was continued from the August 18, 2015 ZBA meeting. Members seated at the August 18, 2015 meeting were A. Daddona, W. T. Furgueson, W. Veillette. Alternate members, W. Feirer and B. Sarrantonio were seated.

Seated for this proposal this evening were A. Daddona, W. T. Furgueson, W. Veillette. Alternate members, and W. Feirer and B. Sarrantonio were seated.

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

J. Williams stated that this proposal reduces the amount of retail space and the area seeking to expand is food service retain and reducing the retail space therefore reducing the nonconformity. The hardship is that the Board has previously granted variances to the Shell and other service stations nearby. The applicant will reduce the nonconformity by reducing parking spaces from 18 to 16 and the associated hardship is due to

shape and size of property and the two street frontages. As to the water resource district, the letter submitted by J. Williams describes how the site will become less nonconforming and will better conform to water resource district. J. Williams stated that a letter was submitted for the record from WEB Engineering Services which describes the monitoring of the new tanks which help the site to better conform to the water resource district.

J. Marth referenced the WEB Engineering Associates letter as related to the underground storage tanks and stated that they are looking to install two, 20,000 gallon tanks broken up into a 12,000 / 8,000 split, separated by a bulkhead. The tank installation will be done in agreement with the manufacturers guidelines. The piping to the tanks are a double wall system and the gasoline is transmitted through the secondary inner tank. The piping has containment sumps which are alarmed and if there is a leak, an alarm will ring in the building and the sumps will catch the leak.

J. Williams stated that all that info and expert analysis that he has provided substantiate that Cumberland Farms proposes to make the site conforming to the water resource district. J. Williams submitted for the record a two page document of the food service offerings at Cumberland Farms. Cumberland Farms has a large self-branded food offering. The food is prepared at the commissary in Massachusetts and delivered twice weekly to the stores. Everything is heated by a store associate, on site at the Cumberland Farms store in a convection/microwave oven. This qualifies under food service retail under section 40U and J. Williams noted that this proposal reduces a nonconformity to the variance requesting in 40U.

J. Williams referenced the memorandum dated October 15, 2015 from Peter Sipples, Esq., Attorney for Joseph H. Budrow, Essex Zoning Enforcement Agent supporting two grounds for granting a variance.

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

Strict Hyde stated his approval of this proposal. S. Hyde stated that he has lived in-town his entire life and he noted that the applicant is trying to create a proposal the best he can, and it is time for a change and time to update this business.

Cheryl Service stated her approval for this proposal. C. Service that she works for Cumberland Farms at the Centerbrook location and noted that the building is deteriorating quite a bit and needs to be updated. C. Service stated that this proposal is well thought out and takes into account the community needs as well. C. Service expressed her support and asked the Board to consider this proposal.

Ken Bombaci stated his approval for this proposal. K Bombaci stated that he was born and raised in Centerbrook and he recalls when the original gas station went up. K. Bombaci stated that this will be a good asset for the Centerbrook section of Essex. A lot of the local people go into Cumberland Farms and purchases coffee and it has become a favorite among the early morning work forces.

Peter Kwasnuski questioned under how many nonconformities are Cumberland Farms currently operating.

A Daddona stated that the applicant is requesting variances for six nonconformities in their proposal. A Daddona stated that he did not know how many nonconformities are currently in place.

J Williams stated that without an engineer to go through the current nonconformities, he cannot say what the total number of nonconformities are.

K. Bombaci stated that the station was put up in late 50's and it was conforming at the time. Zoning came into effect in June of 1966.

Kathy Bishop asked if the tanks being installed are similar to the tanks in Vermont.

J. Williams stated that the same containment tanks are utilized in all of the Cumberland Farms stores. Some states have certain criteria which should be met, but generally the same tanks are used.

K. Bishop questioned if there will there be emergency cut offs at the tanks.

J. Marth stated that there is a call button and a speaker at the tanks for the patron to speak with the attendant.

K. Bishop stated her opposition to this proposal stating that Cumberland Farms is a big box convenience store, one of the largest in the United States and they want to expand. They have 39 violations in VT in 2013 because of their tanks. They had emergency cut off's in Meriden however they never installed them. K. Bishop stated that there are currently 10 pumps in one linear mile and we do not need 11 pumps. This business is worth three hundred billion dollars, it is a big box store, and there is no hardship associated with this proposal. K. Bishop stated that this store should not be expanded.

L. Curran Hernandez, Centerbrook resident and president of retail design and consulting company, stated her concern about the scope of the variances. L. Hernandez submitted for the record, a two page document in which she outlines her concerns related to this proposal and urged the Board to postpone further consideration of this proposal. L. Hernandez asked that Cumberland Farms re-evaluate this proposal to comply with the existing regulations.

J. Marzi, Centerbrook resident. J. Marzi stated that the Cumberland Farms store is allowed to modernize their store, however as to the accessory uses, there is nothing in section 50 that differentiates between principal and accessory uses in expansion. J. Marzi stated that this meeting was continued to allow for the zoning enforcement officer to explain why he is allowing a principal use to become an accessory use and allow an expansion. J. Marzi submitted a letter from Marian Staye, former zoning enforcement officer, dated September 22, 2004 and noted that he agrees that the size of the tanks have nothing to do with the amount of tanks. J. Marzi submitted an American Planning Association document on how they deal with accessory uses. J. Marzi submitted the section of the Essex zoning regulations related to accessory use.

Jane Cyrus, Essex, stated that if the Board approves the variance, to be prepared for the Mobil station to come before the Board with a proposal for the installation of a three foot canopy. J. Cyrus stated that she has witnessed the closing of the Sunoco station because there are 6 gas stations all situated on a small strip. J. Cyrus stated that she encourages Cumberland Farms to improve, however they do not need to expand.

K. Bombaci stated that there were 18 gas stations in the Town of Essex at one point.

B. Sarrantonio referenced the memo from J. Budrow raising the question of what is retail and what is not retail. B. Sarrantonio stated that in this presentation J Williams is reducing the retail, however when you combine the retail and the food, does that result in a reduction or an increase of the total retail space.

J. Williams stated that the total retail decreases because Section 40 U does not apply.

B. Sarrantonio stated that the nonconformity is increasing.

M. Wells stated that Attorney Peter Sipples, legal counsel for the Essex Zoning Commission says that Section 40U does not apply to this application and J. Budrow, Zonine Enforcement Officer states that it does apply. It is up to the Board to decide if the regulation applies and if a variance is required.

J. Williams stated that Section 40U states the retail sale of grocery items and it is a standard rule of construction. J. Williams stated that the Board has an application before them to vary four different sections

of the regulations and the Board needs to make a decision on what we have applied for, not what other variances the Board may think we need. J. Williams stated that the Board is not a super body that must decide on the overall site.

M Wells stated that if they haven't applied for it, the Board does not have to consider it.

J. Marzi stated that he previously asked J. Budrow for any correspondence under section 50I and questioned how many square feet of floor space is being requested in this variance.

J. Williams we have asked for the variances we listed in the letter. The store is 3,700 s.f., and less than previously proposed, and the 1185 s.f of retail as defined by Zoning regulations to which 40U applies. The remainder of the building does not need a variance. Every other Cumberland Farms store proposed across the state is for 4,700 square feet of space.

B. Sarrantonio asked why the proposed underground storage tank is more than twice of the current capacity and questioned if it is possible to install smaller tanks and still service the pumps.

J. Marth stated that the larger tanks provide for less deliveries on site, which is beneficial and he stated that 40,000 gallon tanks are installed at every Cumberland Farms site. It is a standard. J Marth stated that he could install smaller tanks, however from a business standpoint it would increase the number of deliveries to the site.

W. Feirer commented on the impervious area which is currently at 51%, and with this proposal will increase to 65%.

J. Marth stated that it is driven by the change in the configuration of the parking with two frontages. It became a function of the layout. The impervious area would increase, however 100% of the stormwater would be treated on site. There is currently no on site treatment for stormwater runoff. J. Marth stated that this is a measure to sustain the water shed district.

K. Bombaci commented on the installation of the third pump and he noted that as the owner of two diesel pickup trucks, he cannot get his truck into the Mobil station and easily access the diesel pump, and that there are very few stations at which he can purchase diesel within the town of Essex.

There was no further comment.

A Daddona closed the public hearing at 8:15 p.m.

- **Application No. 15-19** on behalf of Mark Reeves for Ted Barnard and Laura Berghuis, 3 Pond Meadow Road, Ivoryton, CT, Assessor's map 62, Lot 1-1, RU District, requesting variances to sections 40D, 40E, 40I.1, 50D and 61B of the Essex zoning regulations to raise the roof line of a section of the existing house that is currently in the front setback.

This is a proposal is to elevate the flat roofed portion of the house to accomodate an eight pitch slope for the purpose of adding storage space. The portion of the house being expanded is entirely within the front forty foot setback area. The roof elevation is an expansion of a non conforming portion of the house.

P. Greenberg chaired. Seated for this application P. Greenberg, William Veillette, M. Noto, W.T. Furgueson, A Daddona

Presenting on behalf of this application was Mark Reeves builder. M Reeves stated that the house was built in the 1700's and the hardship surrounding this proposal is that the property predates zoning. This

proposal will not create any additional living space and he proposes to only pitch the flat roof and install a pull-down staircase to access the attic which will be used for storage. The height at highest point will be six feet. There will be no water access in the attic space.

P. Greenberg asked if anyone wished to speak in favor or in opposition to this proposal.

There was no public comment.

There were no letters submitted related to this application.

P. Greenberg closed the public hearing at 8:20 p.m.

- **Application No. 15-20** on behalf of Annelisa Santoro, 48 Main Street, Essex, CT, Assessor's map 47, Lot 25, EV District, requesting variances to sections 40Q of the Essex zoning regulations to allow a swimming pool to come to a point 5 feet from a side property line where 20 feet is required.

This proposal is to install a 10' x 24' in ground swimming pool to a point five feet from a property line where twenty feet is the minimum distance required.

Presenting on behalf of this application was Gordon MacGregor, Vice President of Sales, Rizzo Pool company. This is a proposal for the installation of a therapy pool and a pool for the homeowner's dogs. The lot is .22 acres and has a septic system. The pool is proposed to be 30 feet away from the septic system which puts the placement of this pool closer to the side property line. G MacGregor stated that there is no other location on the property to move the septic due to the size of the lot, and there is no feasible way to move the septic system to pull the pool further away from the property line. G MacGregor stated that he is requesting a variance to install the pool closer to the property line. The hardship is due to the topography of the property and the location of the septic system. Five feet from the property line.

M. Wells stated for the record that it is stated on the application that the hardship is the unique shape of the size and the lot and location of the septic system.

P. Greenberg asked if anyone wished to speak in favor or in opposition to this proposal.

There was no public comment.

P. Greenberg read into the record a letter from the adjacent neighbors, MaryAnn and Fred Pleva, stating no objection to this proposal.

P. Greenberg closed the public hearing at 8:25pm

REGULAR MEETING

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

M. Wells advised the Board to make one motion on Sections 40D, 50C.2 and 50D; Sections 40U, 80B and Sections 104 should be approved separately.

W. Feirer commented on Section 40U, stating that the Board has received two separate opinions on the necessity of this variance; the Attorney Sipples states that this section does not apply and J. Budrow stated that it does apply. In reading the 1986 approval of this particular facility, it clearly states that it is being approved as a retail store with gas usage. W. Feirer stated that it is unclear as to the necessity of varying Section 40U related to this proposal and noted that the Board has heard testimony that the Zoning regulations support food service and other retail

M. Wells agrees with Attorney Peter Sipples interpretation of section 40U.

W.T. Furgueson stated at the last meeting the neighbor's opposition to this proposal was the noise created by the delivery trucks. W.T. Furgueson suggested that the trash company schedule a trash pick up for later in the morning.

W. T. Furgueson commented on the size of the underground tanks and stated that Cumberland Farms has the right to run their business in an economic fashion. The larger capacity tanks will require fewer deliveries and from a business perspective, they are installing brand new technology and the size of the tanks does not affect the safety of the situation. The construction of the tank is different in size, but the exact same technology with state of the art safety features in place.

W. Feirer referenced 40U and stated that the applicant is reducing a nonconformity. There is nothing in the proposal asking to grant a variance for the canopy or for a third pump.

Members considered Section 104D.2 which addresses the tank issue. The larger tanks reduce the nonconformity. Underground gas tanks not permitted in the water district. The applicant's argument is that they will reduce the nonconformity, protect public health and reduces the fuel deliver on site.

A Daddona asked the Board if they believe that a variance should be granted based on the applicant's argument that going from three to two tanks that they are getting closer to meeting the regulations by making it safer.

MOTION to grant a variance to **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 section 104D.2, of the Essex Zoning regulations to allow two underground storage tanks, which is an extension of a non-conforming use within a Water Resource District; The removal of the three existing tanks with a total capacity of 18,000 gallons, with the installation of two tanks with a total capacity of 20,000 gallons, provides a dramatic improvement over the existing tanks and offers enhanced safety features, therefore reducing the nonconformity. The variance is approved in accordance with the plans submitted; **MADE** by W.T. Furgueson; **SECONDED** by A. Daddona; **IN FAVOR:** A. Daddona, W. Veillette, W.T. Furgueson, W. Feirer; **OPPOSED:** B. Sarrantonio; **ABSTAINING:** None; **MOTION CARRIED:** 4-1-0.

Members considered Section 104D.3 which allows a maximum of 30% of the lot to be impervious and this plan increases it to 64.5%. The applicant's argument is the interaction of the required parking as opposed to the coverage. The onsite treatment of runoff cancelled the increase of impervious surface.

W Feirer noted that there are Zoning regulations related to parking and regulations related to impervious area.

MOTION to grant a variance to, **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 section 104D.3 of the Essex Zoning regulations which allows the maximum of 30% of the lot to be impervious. The proposed

impervious area will be increased from the present 51.1% to 64.5%. The hardship is related to the configuration of the property and the fact that the parking area requires that an additional impervious area be created above the 51.1%. The variance is approved in accordance with the plans submitted; **MADE** by W. Feirer; **SECONDED** by A. Daddona; **IN FAVOR:** A. Daddona, W. Veillette, W.T. Furgueson, W. Feirer, B. Sarrantonio; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED:** 5-0-0.

Members considered Section 80B which requires no more than 25% of parking spaces be located between the building and the street.

W.T. Furgueson stated that the applicant proposes to improve a nonconformity.

W. Veillette stated that the applicant is reducing the nonconformity from 18 spaces to 16 spaces.

W. Feirer stated that the applicant is reducing a nonconformity and they also have a hardship because it is a corner lot.

MOTION to grant a variance to, **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 section 80.B, of the Essex Zoning regulations to reduce the parking spaces from 18 to 16 spaces. In accordance with Adolphson, the applicant proposes to reduce an existing nonconformity and comply with the 15 foot buffer. The hardship is the location of the corner lot. The variance approved in accordance with the plans submitted; **MADE** by W. Veillette; **SECONDED** by A. Daddona; **IN FAVOR:** A. Daddona, W. Veillette, W.T. Furgueson, W. Feirer, B. Sarrantonio; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED:** 5-0-0.

Members considered Section 40U. M. Wells stated that he and P. Sipples believe that this section of the Zoning regulations does not apply and the applicant does not need a variance to Section 40U. The applicant has however requested a variance and they will present to the Zoning Commission. M. Wells stated that the argument is under Adolphson, the square footage of the building has increased, however the retail area has reduced. The Board should use that as a basis for granting or denying a variance to this section of the Zoning regulations. The variance is for the increase in the prepackaged food, if the Board believes that section 40U applies.

B. Sarrantonio stated that section 40U applies to prepackaged items.

M. Wells stated that the applicant is going before the Zoning Commission for a separate special exception, however if they argued that this was retail, they would avoid the need for a special exception. Under the Essex Zoning regulations, there is a difference which M. Wells stated does not apply

MOTION to grant a variance to, **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 and 50D 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 expand underground storage, which is an expansion of a non-conforming use within a Water Resource District. Section 40U restricts the retail sale of groceries to 50 square feet. The applicant proposes the sale of prepackaged food service, and therefore under Adolphson, which states that while the overall present building footprint has increased from 2,373 s.f. to 3,742 s.f., the retail area as computed by the applicant has been reduced from 1,200 s.f. to 1,185 s.f., reducing a non conformity by 15 s.f. The variance approved in accordance with the plans submitted; **MADE** by A. Daddona; **SECONDED** by W. T. Furgueson; **IN FAVOR:** A. Daddona, W.

Veillette, W.T. Furgueson, W. Feirer; **OPPOSED:** B. Sarrantonio; **ABSTAINING:** None; **MOTION CARRIED:** 4-1-0.

- **Application No. 15-19** on behalf of Mark Reeves for Ted Barnard and Laura Berghuis, 3 Pond Meadow Road, Ivoryton, CT, Assessor's map 62, Lot 1-1, RU District, requesting variances to sections 40D, 40E, 40I.1, 50D and 61B of the Essex zoning regulations to raise the roof line of a section of the existing house that is currently in the front setback.

MOTION to grant a Variance to **Application No. 15-19** on behalf of Mark Reeves for Ted Barnard and Laura Berghuis, 3 Pond Meadow Road, Ivoryton, CT, Assessor's Map 62, Lot 1-1, RU District, requesting variances to sections 40D, 40E, 40I.1, 50D and 61B of the Essex zoning regulations to raise the roof line of a section of the existing house that is currently in the front setback. There is no increase in the footprint and the flat roof has exceeded its life expectancy. The design includes an architectural feature which is not a habitable space. The hardship associated with this proposal is the location of this circa 1700's home in its proximity to the road. This variance is approved in accordance with the plans as submitted; **MADE** by A. Daddona; **SECONDED** by W.T. Furgueson; **IN FAVOR:** P. Greenberg, A. Daddona, W. Veillette, W. T. Furgueson, M. Noto; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED:** 5-0-0.

Discussion: M. Noto questioned the hardship surrounding a need for a pool as this is a luxury item.

W. Veillette stated that this is a therapy pool and only four feet in depth.

MOTION to grant a Variance to **Application No. 15-20** on behalf of Annelisa Santoro, 48 Main Street, Essex, CT, Assessor's map 47, Lot 25, EV District, requesting variances to sections 40Q of the Essex zoning regulations to allow a swimming pool to come to a point 5 feet from a side property line where 20 feet is required. The hardship associated with this proposal is the shape of the lot, the location of the septic system in conjunction with the installation of this therapy pool. This variance is approved in accordance with the plans as submitted; **MADE** by W. Veillette.; **SECONDED** by A. Daddona; **IN FAVOR:** P. Greenberg, A. Daddona, W. Veillette, W. T. Furgueson; **OPPOSED:** M. Noto; **ABSTAINING:** None; **MOTION CARRIED:** 4-1-0.

Correspondence and Invoices

There was no correspondence and there were no invoices.

Approval of Minutes – September 15, 2015

MOTION to approve the September 15, 2015 Minutes as presented; **MADE** by A. Daddona.; **SECONDED** by P. Greenberg **IN FAVOR:** A. Daddona, W. Veillette, W. T. Furgueson, P. Greenberg, M. Noto; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED:** 5-0-0.

Adjournment

MOTION to adjourn the meeting at 9:10p.m. to the next regularly scheduled meeting to be held on Tuesday, November 17, 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, P. Greenberg, M. Noto; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED:** 5-0-0.

Respectfully submitted,

Stella C. Beaudoin
Recording Secretary