



TOWN OF TEWKSBURY ZONING BOARD OF APPEALS

999 Whipple Road
Tewksbury, MA 01876

Robert Dugan, Chairman
Len Dunn, Vice Chair
Gerald Kutcher
Associate Members:
Jaime Doherty
Dianne Bartalamia

DEPARTMENT OF COMMUNITY DEVELOPMENT

MEETING MINUTES October 30, 2014

The meeting was called to order at 6:30 p.m. by Robert Dugan, Chairman, at the Pike House (temporary town hall). Present at the meeting were Gerald Kutcher, Jamie Doherty, and Dianne Bartalamia. Also in attendance was Melissa Johnson, Recording Secretary.

Len Dunn was not in attendance.

Approval of Minutes – September 25, 2014

MOTION: Mr. Kutcher made the motion to table the September 25, 2014 meeting minutes; seconded by Ms. Doherty and the motion carried 4-0.

NEW HEARINGS

Marguerite J. Bradshaw/Chester Briggs as a party aggrieved for a review of a decision made by the Building Inspector in a letter dated August 15, 2014 as filed with this Board. Said property is located at **967 Main Street**, Assessor's Map 47, Lot 75, zoned Commercial.

The Board is in receipt of correspondence from Attorney Rick O'Neill requesting to continue this matter to December 18, 2014.

MOTION: Mr. Kutcher made the motion to continue Marguerite J. Bradshaw/Chester Briggs as a party aggrieved for a review of a decision made by the Building Inspector in a letter dated August 15, 2014 as filed with this Board. Said property is located at **967 Main Street**, Assessor's Map 47, Lot 75, zoned Commercial to December 18, 2014 at 6:30 p.m.; seconded by Ms. Doherty and the motion carried 3-0.

DUGAN, KUTCHER, DOHERTY

TMC CF New England, LLC for variances for front yard setbacks on Main Street and Old Main Street and side yard setback at northerly property boundary. Applicant seeks to construct retail convenience store/retail gas sales operation as shown on plans filed with this Board. Said property is located at **265 Main Street**, Assessor's Map 22, Lot 13, zoned Commercial and Interstate Overlay District.

Present was Attorney John Smolak, Garrett Wood of TM Crowley & Associates, Phillip Henry of Civil Design Group, and Jeffrey Dirk. Attorney Smolak explained that the applicant is seeking two separate variances from the Board; one for the front yard setbacks and the other for the side yard setback. The proposed project is a retail convenience store with gas station and is proposed to be owned and operated by Cumberland Farms. The site is approximately 1.88 acres in size and is currently vacant. The shape of the lot is long and has approximately 1,000 feet of frontage and is fairly narrow. The property is currently owned by Marc Ginsburg. Attorney Smolak noted that the site is bound by Main Street to the south, a railroad right of way to the northwest, and Old Main Street to the North; beyond which are residences. The site was rezoned at the previous town meeting to be included within the interstate overlay district. As such, an automotive refueling station and accessory uses are permitted by Special Permit of the Planning Board. A convenience store would be allowed by right.

Attorney Smolak explained that the site includes the construction of a proposed 4,650 square foot convenience store, which would be a single story building with a colonial style design. In addition, the project involves the installation of 6 self service gas dispensers in three rows to be parallel with Main Street. The gas dispensers would be located under a proposed overhead canopy that would provide for state of the art fire suppression system. The project includes 25 spaces. The site will be entirely re-landscaped with emphasis on Main Street and Old Main Street to provide for buffer screening. Attorney Smolak explained that over the past several months, they have met with various town staff. A departmental review meeting was held on September 16, 2014 where information was received by various department heads and a neighborhood meeting was held by the applicant on October 20, 2014 to discuss the proposal. Attorney Smolak noted that the meeting was attended by several abutters and the feedback received was positive.

Attorney Smolak explained that they are requesting a variance to allow for a front yard setback of 43.8 feet from Main Street, where 50 feet is required. The setback request for the canopy is 41.1 feet, where 50 feet is required. Attorney Smolak explained that since the Building Inspector has determined that both Main Street and Old Main Street are front setbacks, they are also requesting a front setback of 43.5 feet from Old Main Street. In addition, they are requesting a setback variance on the side yard to 10 feet, where 30 feet is required. Attorney Smolak explained that the reason for this is there is an existing traffic intersection and they are trying to align the intersection with the Walmart traffic light. In order to accomplish this they have moved the building as far West as possible and have created a greater open space area so that the closest residential structure will be 160 feet.

Mr. Dugan requested further explanation on utilizing the existing traffic light.

Mr. Dirk explained that the project site is located across the street from Walmart. In order to have the traffic signal operate efficiently, they would like to have the driveway line up as close as possible with the existing Walmart driveway. The traffic exiting Walmart will go on a

different phase as this property and will not exit at the same time as the Walmart traffic as the left turning lane exiting Walmart, towards Lowell, is a double lane.

Mr. Dugan asked if they will be making any improvements to Route 38. Mr. Dirk confirmed this and explained that the signal itself will be upgraded to accommodate the fourth leg of the intersection. In addition, there will be sidewalk improvements and landscaping. A left turn pocket lane will also be added heading into Tewksbury to accommodate the left turn movement.

Mr. Henry provided photographs showing the existing conditions versus the proposed conditions. A member of the audience (later identified as Mr. Pereira) requested a view from Old Main Street and Attorney Smolak noted that they do not have that.

Mr. Dugan opened the hearing to the public.

Paul Pereira of 274 Old Main Street came forward and noted that his home is located 160 feet from this property. Mr. Pereira explained that he is not familiar with the process. Mr. Dugan explained that the Zoning Board of Appeals issues variances for the setbacks and does not make determinations on landscaping, fencing, roofing, building color, etc. Mr. Pereira asked if the Board handles noise and traffic. Mr. Dugan noted that it can be discussed and considered in the Board's decision for issuing variances, but the Board cannot make any decisions regarding those matters. Mr. Pereira expressed concerns with a gas station being put so close to a residential neighborhood and the amount of pumps that are being proposed and asked if the number of gas pumps would be changed if the project was designed so that it fits on the lot and did not require variances. Mr. Henry explained that if they mirrored the site the pumps could potentially be moved further north. As the site moves farther north, it gets wider so it is likely they could maintain the same amount of pumps. Mr. Pereira expressed concerns with the delivery process of tanker trucks entering and exiting the property and noted that a tanker truck is approximately 70 feet long as well as with curb cuts and the walkway. Mr. Pereira explained that typically when there is a plan to construct a gas station in a residential area, the neighborhood should be considered and the furthest property line should be 300 feet and it will be 160 in this case. Mr. Pereira provided the Board members with a copy of a flyer that was distributed to the neighborhood. Mr. Kutcher asked what the source of the 300 feet is and Mr. Pereira noted that he will provide this to the Board. Mr. Pereira noted that his understanding of the meeting that occurred on October 20, 2014 is that it was not well attended. Mr. Dugan asked how the residents were notified and Attorney Smolak explained that they mailed notification to all those on the abutters list. Many of the residents in attendance stated that they did not receive the notification.

Ms. Bartalamia requested Mr. Pereira show the location of his home on the plan and asked if it would make a difference if the plan was to be mirrored and the building switched to the side that abuts his property. Mr. Pereira explained that the entire project concerns him so it would not make a difference. Mr. Pereira noted that he will now be looking at a retaining wall and will have lights shining on his property and he has major concerns regarding noise. Mr. Pereira explained that he questions whether this is the right location for this as they are requiring so many variances.

Mr. Dugan explained that this parcel is now included in the interstate overlay district and read Article 4202 of the Zoning Bylaws, which states that this use is allowed by right. Mr. Dugan explained that the overlay allows for more options on the site. I

Dan Connor of 220 Old Main Street came forward and noted that he attended the neighborhood meeting that was held and all of his questions and concerns were addressed. Mr. Connor feels this is a good use for the property and noted that retaining walls are being installed for the noise. Mr. Connor noted that he hopes this project is approved.

Mr. Dugan explained that the proposal for the retaining wall is a 16 foot high, 227 linear feet, modular block retaining wall with fence.

Martha Grant of 5 Neptune Street came forward and noted that she and her neighbors were not notified of the neighborhood meeting. The only notification they received was from the flyer that was put out by the Pereira's. Mr. Dugan explained that the applicant is provided an abutters list by the town and this is who the applicant notifies. Ms. Grant explained that although they may not be direct abutters, they are impacted as there is only two ways in and out of their properties. Ms. Grant explained that there is already increased traffic in this area due to Vic's Waffle House and Walmart and she also has concerns with safety. Ms. Grant asked if there will be access from Old Main Street. Mr. Dugan explained that they will be installing a 16 foot wall on the Old Main Street side. Ms. Grant expressed concerns with the traffic exiting Walmart and tanker trucks making the left turns into the property with the hill that is there. Mr. Dugan explained that the traffic would not be exiting at the same time as Walmart and would have their own green light. Mr. Dirk explained that the trucks would only be entering and exiting the site on a green light so there would be no other traffic moving at the same time. Mr. Dugan asked if it is known when deliveries will be made. Attorney Smolak explained that this would be determined by Cumberland Farms and will likely be made a condition by the Planning Board as to when the deliveries can occur. Ms. Grant asked what the proposed hours of operation are. Attorney Smolak explained that ideally they would be looking for 24 hours, but they would be willing to negotiate on this. Ms. Grant noted that the canopy will be 41.1 feet and asked where the pump will be. Mr. Henry explained that the pump will be at the 50 feet. Ms. Grant noted that the cars waiting to pump gas that will be closer than the 50 feet.

Mr. Dugan explained that should the Board grant the variances tonight, the applicant would still require approval from the Planning Board.

Tammy Ministeri of 6 Neptune Street came forward and explained that she understands this is a variance request and noted that she also shares the concerns that were expressed by the other neighbors. Ms. Ministeri explained that even with the retaining wall, there will still be access from the Old Main Street side. Ms. Ministeri does not feel this is the appropriate location for this as there are a lot of kids in this area and noted that her child will no longer be allowed to play in this area if the Cumberland Farms is approved. Ms. Ministeri explained that the Motel Caswell was just demolished and they had hopes that this would help improve their neighborhood, and now this wants to come in. Ms. Ministeri questions whether this is the appropriate location for this project as the area is a residential neighborhood.

Jim Lewis of 2 Barker Road came forward and explained that his concerns are with the traffic on Main Street as people often run the lights at Walmart currently and he was almost hit one day. Mr. Lewis noted that there are also many other traffic lights in this area. Mr. Lewis explained that their home has already been broken in to and he expects that this will increase the foot traffic in their neighborhood. The area is currently well patrolled by the police due to the increase in crime and he is concerned this will increase crime even more. Mr. Lewis noted that he is happy to hear about the retaining wall but expressed concerns that the lot was just recently filled and he is not sure if it has completely settled to build on. Mr. Lewis expressed concerns with the lights shining onto their home and lighting up their property. Mr. Dugan explained that this is a Planning Board issue; however, there are some Zoning Bylaws that can address this.

Ms. Doherty asked if there is a State law that requires how far the pumps have to be from the lot line. Mr. Henry noted that he is not aware of any State law regarding pump setbacks.

Joanne Hicks of 2 Neptune Street came forward and noted that she shares the same concerns as those expressed. Ms. Hicks noted that there are already 11 gas stations in town and questioned whether there is a need for this gas station. Mr. Dugan explained that gas stations are only allowed by Special Permit; however, at the spring town meeting, the town voted to make this area an interstate overlay district which allows for gas stations by right. Ms. Hicks explained that she is tired of seeing the panhandlers in town at Walmart and Home Depot and she is hoping that they will not be allowed at Cumberland Farm. Ms. Hicks expressed concerns with the retaining wall and someone being able to hide behind the wall to do illegal things. Ms. Hicks feels this will require the town to hire more police. Mr. Dugan explained that in his experience, businesses with lights deter criminal activities.

Dan Connor came forward and explained that many have expressed concerns with drugs, and noted that there is an opiate facility that just went in at 170 Main Street and none of the abutters were ever notified. Mr. Connor feels there could be a drug problem anywhere.

Ms. Doherty asked if there will be security cameras. Attorney Smolak confirmed this and explained that Cumberland Farms also shares these same safety concerns and are willing to work with the neighborhood to address these issues.

Ms. Bartalamia explained that security cameras and noise concerns are Planning Board concerns and they would address this.

Paul Pereira of Old Main Street came forward and asked if the existing wall will remain. Mr. Henry confirmed this. Mr. Pereira asked what will be done with the existing driveway. Mr. Henry explained that it will remain; however, they are open to suggestions should there be any.

Ms. Bartalamia asked if Cumberland Farms would consider reducing the size of the building and Attorney Smolak explained that this is unlikely. Mr. Henry noted that the building has already been modified from their typical buildings and they feel they have moved it as far north as they can.

Discussion took place on moving the site more towards the South. Ms. Bartalamia asked who owns the land to the left of the gas station. Mr. Dugan noted the Railroad line owns this land.

Mr. Dugan noted that the applicant has offered to hold another meeting with the abutters and suggested continuing this matter to allow for this. Attorney Smolak explained that they would not be opposed to a condition that they continue to have discussions with the neighbors and noted that they also have to go before the Planning Board.

Mr. Dugan explained that the Board understands the concerns that have been expressed; however, the Board is only addressing the variance request and any other concerns should be expressed to the Planning Board and encouraged the residents present to attend the Planning Board meeting to express their concerns

Martha Grant came forward and agreed that something will in fact be put here and many of the abutters have just found out about this. Ms. Grant explained that she would like the opportunity to meet with the representatives of Cumberland Farms to see what they can work out. Ms. Grant thanked the Board for hearing the neighbors concerns even though they were unrelated to the ZBA meeting.

Jim Lewis came forward and explained that when Town Fair Tire came in they added an element of safety to the neighborhood by adding lighting and security cameras and he hopes that this will also be done if it is allowed.

MOTION: Mr. Kutcher made the motion to close both parts of the hearing; seconded by Ms. Doherty and the motion carried 3-0.

**MOTION: Mr. Kutcher made the motion to approve TMC CF New England, LLC for variances for front yard setbacks on Main Street and Old Main Street and side yard setback at northerly property boundary. Applicant seeks to construct retail convenience store/retail gas sales operation as shown on plans filed with this Board. Said property is located at 265 Main Street, Assessor's Map 22, Lot 13, zoned Commercial and Interstate Overlay District; seconded by Ms. Doherty and the motion carried 3-0.
DUGAN, KUTCHER, DOHERTY**

MOTION: Mr. Kutcher made the motion to take a 5 minute recess; seconded by Ms. Doherty and the motion carried 4-0.

Timothy Duggan for a special permit under Section 3651 to construct a second level on a pre-existing structure with nonconforming front setback on Arlington Street and a nonconforming side setback. Proposed plans are filed with this Board for a property located at **4 Patriot Road**, Assessor's Map 83, Lot 38, zoned Residential.

Present was Timothy Duggan of 4 Patriot Road. Mr. Duggan explained that he would like to construct a second story addition on his home. Mr. Dugan noted that this is a preexisting non conforming lot and asked if the footprint of the building will be changed. Mr. Duggan explained that the footprint will be changed by one foot and is only building a second story.

Mr. Dugan asked if any other work will be done and if the deck and pool are existing. Mr. Duggan confirmed this and explained that he is only building the second story above.

Mr. Dugan opened the hearing to the public and no one came forward to comment.

MOTION: Mr. Kutcher made the motion to close both parts of the hearing; seconded by Ms. Doherty and the motion carried 3-0.

MOTION: Ms. Doherty made the motion to approve Timothy Duggan for a special permit under Section 3651 to construct a second level on a pre-existing structure with nonconforming front setback on Arlington Street and a nonconforming side setback. Proposed plans are filed with this Board for a property located at 4 Patriot Road, Assessor's Map 83, Lot 38, zoned Residential; seconded by Mr. Kutcher and the motion carried 5-0.
DUGAN, DOHERTY, KUTCHER

Old Business

There was no old business.

New Business

There was no new business.

Adjournment

MOTION: Ms. Bartalamia made the motion to adjourn; seconded by Ms. Doherty and the motion carried 4-0.

Approved: 12/18/14

Approval of Minutes – September 25, 2014

NEW HEARINGS

- 6:30 P.M.** **Marguerite J. Bradshaw/Chester Briggs** as a party aggrieved for review of a decision made by the Building Inspector in a letter dated August 15, 2014 as filed with this Board. Said property is located at **967 Main Street**, Assessor's Map 47, Lot 75, zoned Commercial.
- *Application packet dated 9/12/14.*
 - *Letter 10/29/14 fr Attorney O'Neill requesting hearing continued to 12/18/14.*
- 6:30 P.M.** **TMC CF New England, LLC** for variances for front yard setbacks on Main Street and Old Main Street and side yard setback at northerly property boundary. Applicant seeks to construct retail convenience store/ retail gas sales operation as shown on plans filed with this Board. Said property is located at **265 Main Street**, Assessor's Map 22, Lot 13, zoned Commercial and Interstate Overlay District.
- *Application packet received 10/9/14.*
 - *Aerial Exhibit prepared for Cumberland Farms, 100 Crossing Boulevard, Framingham, MA 01702; project location: 265 Main Street (Route 38), Tewksbury, MA; prepared by: Civil Design Group, LLC, 21 High Street, Suite 300A, North Andover, MA; dated 9/5/14; ALTA/ACSM Land Title Survey CF02.0 and CFG02.1 dated August 8, 2014 and Site Plan CFG04.0 dated 8/28/14.*
 - *Owner Authorization dated October 3, 2014 signed by Marc P. Ginsburg for 265 Main Street.*
 - *Notice of Town Hall Public Input Meeting.*
 - *Color rendering of Existing and Proposed prepared by Red Leonard Associates.*
- 6:30 P.M.** **Timothy Duggan** for a special permit under Section 3651 to construct a second level on a pre-existing structure with nonconforming front setback on Arlington Street and a nonconforming side setback. Proposed plans are filed with this Board for the property located at **4 Patriot Road**, Assessor's Map 83, Lot 38, zoned Residential.
- *Application packet dated 10/9/14.*