



# TOWN OF NORTHBOROUGH Zoning Board of Appeals

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## DECISION

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**ZBA CASE NO. 13-05**

**PROPERTY LOCATION: 15 Main Street**

**PETITIONER & PROPERTY OWNER: Cumberland Farms, Inc.**

**RECORDED WITH WORCESTER DISTRICT REGISTRY OF DEEDS: Bk: 31866**

**Pg: 221**

This document is the DECISION of the Northborough Zoning Board of Appeals on the petition of Cumberland Farms, Inc. for Variances and Special Permits to allow the construction and use of a convenience store and automobile filling station (existing structure and facilities to be removed) on the property located at 15 Main Street, GIS Map 63, Parcel 78.

## APPLICATION

1. On April 16, 2013, the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining the following Variances and Special Permits from sections of the Northborough Zoning Bylaw listed below, for the property located at 15 Main Street, as follows:
  - Variance from Section 7-06-030, Table 2. Table 2 of Density & Dimensional Regulations;
  - Variance from Section 7-09-030C(1)(a) Off-Street Parking and Loading, Off-Street Parking and Design Standards, Access Driveways and Interior Circulation;
  - Variance from Section 7-09-030C(2)(a) Off Street Parking and Loading, Off-Street Parking and Design Standards, Location Design and Construction of Off-Street Parking;
  - Special Permit per Section 7-03-050, Site Plans;
  - Special Permit per Section 7-07-010D(3)(c)[1], Groundwater Protection Overlay District, Use Regulations; and
  - Special Permit per Section 7-08-020B, Special Permit Required, Increase to Nonconformity
2. On May 8, 2013, the Applicant filed with the Town Clerk an AMENDED Application for Hearing before the Zoning Board of Appeals for the purpose of adding to the original requested Variances and Special Permits from sections of the Northborough Zoning Bylaw listed on the Application for Hearing filed on April 16, 2013, for the property located at 15 Main Street:
  - Variance from Section 7-09-040D(5), Signs, Basic Requirements

3. Notice of the public hearing was duly published in "THE WORCESTER TELEGRAM & GAZETTE" on April 29, 2013 and May 6, 2013, and was mailed to abutters and other parties in interest on April 18, 2013.

### **EXHIBITS**

Submitted for the Board's deliberation were the following exhibits:

1. Application for Hearing before the Zoning Board of Appeals including:
  - a. A Quitclaim Deed for 15 Main Street, recorded at the Worcester District Registry of Deeds on 10/3/2013, Bk: 31866 Pg: 221; with a 2-page attached document entitled "Exhibit A", Legal Description, Property Address: 15 Main Street;
  - b. A certified abutters list for parcels 300 feet from 15 Main Street, including a cover sheet signed by Susan M. Reagan, for the Town of Northborough Board of Assessors, dated April 9, 2013; and a GIS Viewer Map for 15 Main Street, stamped by Stephen P. Decoursey, P.E., dated 4/9/2013.
  - c. A document entitled "Drainage Report for Proposed Cumberland Farms" prepared by Bohler Engineering, dated April 4, 2013;
  - d. A set of twenty-one (21) 24" x 36" plan sheets entitled "Site Development Plans for Proposed Cumberland Farms, 15 Main Street, Town of Northborough, Worcester County, Massachusetts", prepared by Bohler Engineering, dated 1/30/13 and revised 4/4/13 with sheets identified as follows: CFG1.0, Bohler Cover Sheet entitled "Site Development Plans"; CFG2.0, ALTA/ACSM Title Land Survey (By Others); CFG3.0, Site Demolition Plan; CFG 4.0, Site Plan; CFG5.0, Site Grading & Drainage Plan; CFG6.0, Site Erosion & Sedimentation Control Plan; CFG6.1, Site Erosion Control Notes & Details Sheet; CFG7.0, Site Utility Plan; CFG8.0, Site Landscaping Plan; CFG8.1, Site Landscaping Notes & Details Sheet; CFG9.0, Site Construction Details; CFG9.1, Site Construction Details; CFG9.2, Site Construction Details; CGF10.0, Site Lighting Plan (By Others); CFG12.0, Canopy Plan (By Others); CFG13.0, Existing/Proposed Pole Sign (By Others); CFG15.0, General Notes; A1.1, Building Floor Plan (By Others); A3.1, Building Elevations (By Others); and A3.2, Building Elevations (By Others).
  - e. A set of three (3) 24" x 36" plan sheets entitled "Cumberland Farms, Northborough, Massachusetts, 15 Main Street @ Hudson Street" entitled sheets identified as: A1.1, Floor Plan; A3.1, Exterior Elevations; and A3.2, Exterior Elevations, prepared by Aharonian & Associates, Inc., Architects, for Cumberland Farms, 15 Main Street, Northborough, MA, dated December 20, 2012;
  - f. A revised set of twenty-one (21) 24" x 36" plan sheets entitled "Site Development Plans for Proposed Cumberland Farms, 15 Main Street, Town of Northborough, Worcester County, Massachusetts", prepared by Bohler Engineering, dated 1/30/13 and revised 4/4/13, 5/3/13 and 5/9/13, and date-stamped by the Town Clerk's office on May 10, 2013,

with sheets identified as follows: CFG1.0, Bohler Cover Sheet entitled "Site Development Plans"; CFG2.0, ALTA/ACSM Title Land Survey (By Others); CFG3.0, Site Demolition Plan; CFG 4.0, Site Plan; CFG5.0, Site Grading & Drainage Plan; CFG6.0, Site Erosion & Sedimentation Control Plan; CFG6.1, Site Erosion Control Notes & Details Sheet; CFG7.0, Site Utility Plan; CFG8.0, Site Landscaping Plan; CFG8.1, Site Landscaping Notes & Details Sheet; CFG9.0, Site Construction Details; CFG9.1, Site Construction Details; CFG9.2, Site Construction Details; CGF10.0, Site Lighting Plan (By Others); CFG12.0, Canopy Plan (By Others); CFG13.0, Existing/Proposed Pole Sign (By Others); CFG15.0, General Notes; A1.1, Building Floor Plan (By Others); A3.1, Building Elevations (By Others); and A3.2, Building Elevations (By Others).

- g. A set of three (3) sheets entitled "Photometric Layout", dated 4/11/13, prepared by LSI Industries;
  - h. A traffic report entitled "Traffic Impact Study for the Cumberland Farms Redevelopment", dated April 2013, prepared by McMahon Associates;
2. An Amended Application for Hearing filed at the Town Clerk's office on May 8, 2013;
  3. A letter to the Zoning Board of Appeals from D.M. Durgin, Fire Chief, dated April 19, 2013;
  4. A memo to Richard Rand, Chairman, Zoning Board of Appeals, from the Design Review Committee, dated May 10, 2013;
  5. A memo to Richard Rand, Chairman, Zoning Board of Appeals, from staff members including the DPW Director, Fire Chief, Town Engineer, Inspector of Buildings, Health Agent, Town Planner, and Police Chief; and
  6. A letter to Richard Rand, Chairman, Zoning Board of Appeals from Fred Litchfield, Town Engineer, on behalf of the Groundwater Advisory Committee, dated May 14, 2013.

### **HEARING**

Attorney Jennifer Allen from Catanzaro and Allen, Luke Destefano from Bohler Engineering, Paul Wilson from Cumberland Farms, and Jason Adams from McMahon Associates each representing the Applicant, Cumberland Farms, Inc., presented the Application at a duly noticed public hearing of the Board on May 14, 2013 in Conference Room B of the Northborough Town Office, 63 Main Street, Northborough, MA 01532. Voting members Richard Rand, Dick Kane, Robert Berger, Jeffrey Cayer, and Brad Blanchette were present throughout the proceedings.

Ms. Allen explained the Applicant is proposing to demolish the existing 2350 square foot gas station, four fuel pumps with each pump servicing two vehicles at a time, and underground fuel tanks with a capacity of 33,000 gallons and redevelop the site with a 4000 square foot convenience store, three fuel pumps with each pump servicing two vehicles at a time, and two underground tanks with a capacity of 40,000 gallons. Ms. Allen and Mr. Destefano explained each Variance and Special Permit request as it pertains to the redevelopment of the site. Variances are being sought to place parking in the front of the store, to allow for a wider width of

the travel lane on the site, and to allow for the sign to be lit midnight to 6:00am. Special Permits are being sought to allow for an increase in the amount of fuel stored underground; site plan approval, and fuel storage as it relates to the groundwater overlay protection district. As part of the Site Plan Approval process, the Applicant worked with the Design Review Committee and the proposed building and site design presented at the public hearing meets the approval of the Design Review Committee. It was noted by Staff how well the Applicant worked with the Design Review Committee to reach a satisfactory building design.

Mr. Destefano reviewed site plan features including the elimination of the vehicle repair service operation; reduction in the number of fuel dispensers; relocation of the entrance/exit on Hudson Street to further north on Hudson Street to avoid disruption with the traffic flow now controlled by the recently installed traffic signal at Hudson Street and Main Street; an entrance only on Main Street closest to the Hudson Street and Main Street traffic signal; and an entrance/exit on Main Street closest to the railroad tracks.

Mr. Adams explained his meetings with MDOT regarding the access permits for the curb cuts and MDOT has indicated they are in favor of allowing a full access curb cut closest to the railroad tracks. Staff is not in favor of full access curb cuts on Main Street.

Mr. Wilson explained the company is considering a twenty-four (24) operation at this facility and subsequently requested the signs to be lit from midnight to 6:00am. The Applicant will not light the signs when the facility is not open to the public.

Bryan White, resident at 16 Patty Lane, requested the televisions be removed from the pumps due to the associated noise. The Applicant stated Cumberland Farms will not install televisions at the fuel pumps.

Forest Lyford, resident at 57 Pleasant Street, representing Trinity Church, asked if groundwater monitoring wells would be installed and the Applicant responded no monitoring wells are required.

Brian Smith, resident at 97 Main Street, reiterated the request for no televisions at the pumps.

The Board did not receive any letters in opposition to the project.

The hearing was closed on May 14, 2013.

### **FINDINGS OF FACT**

1. The subject property is located in the Downtown Business District and Groundwater Protection Overlay District Area 3.
2. The present use as a filling station predates current zoning requirements and accordingly is exempt from its proscription as a preexisting nonconforming use. The proposed use as a convenience store is allowed by right in the Downtown Business District.
3. In Groundwater Protection Overlay District Area 3, a Special Permit for the expansion of an existing nonconforming use is required per Section 7-07-010D(3)(c)[1], Groundwater Protection Overlay District, of the Northborough Zoning Bylaw.
4. The depth and irregular shape of the lot; its status as a corner lot; its proximity to the residential zoning district; and its current and historic use as an automobile filling station with underground storage tanks and access to two major thoroughfares are conditions which distinguish this lot from other lots in the zoning district.
5. The Applicant proposes to remove the existing service station, fuels pumps, and underground storage tanks and redevelop the site with a convenience store, fuel pumps, and

underground storage tanks. The building to be removed is a 2350 square foot and will be replaced with a 4000 square foot building. The existing underground storage tanks contain 33,000 gallons of fuel and will be replaced with two tanks with a 40,000 gallon total capacity.

6. Construction of the proposed convenience store and automobile filling station will not constitute a substantial detriment to the public good as the proposed use will replace an existing filling station with state of the art fueling facilities and improved access and egress to the public ways.
7. The proposed convenience store will be connected to Town sewer and water, and heated by natural gas.
8. The use of a convenience store and fuel pumps will not adversely affect the neighborhood. It will be compatible with other uses in the Downtown Business District.
9. The proposed use is in substantial harmony with the Northborough Master Plan and the purposes of the Zoning Bylaw as the facility and structures to be constructed to replace the existing and dated automobile filling station was designed so as to accommodate public safety and convenience. The facility will aesthetically and architecturally blend with the downtown business area.
10. The proposed project has been designed to accommodate traffic to and from the site through use of controlled entrance and egress points; proper lighting will be in place; parking is limited to a single area immediately adjacent to the front of the building; and a pedestrian walk way adjacent to the convenience store all ensure the proposed use will not cause nuisance or serious hazard to vehicles or pedestrians.
11. The entire site is being recharged and with the improvements to the site including new underground storage tanks and a stormwater drainage facility, any adverse impact to the natural environment will be significantly reduced and the facility will not impair the ambient water quality. The redevelopment of the site will not derogate from the purpose and intent of the Groundwater Protection Overlay District bylaw.
12. The construction of this facility will conform to any special requirements of the Zoning Board of Appeals, as stated in this written decision.
13. Adequate and appropriate facilities will be provided for the proper operation of the proposed facility in Groundwater Protection Overlay District Area 3.

## **DECISION**

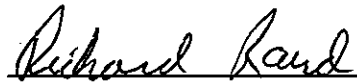
1. On May 14, 2013, after due consideration of the Application, the Board voted unanimously to **GRANT** three **SPECIAL PERMITS** to allow the preexisting nonconforming use of a filling station to be expanded by Special Permit per Section 7-08-020B; Special Permit Site Approval per Section 7-03-050; and a Special Permit per Section 7-07-010D(3)(c)[1] of the Northborough Zoning Bylaw, on the property located at 15 Main Street, with the following conditions:
  - a. Prior to the issuance of a building permit, the applicant shall verify the maximum quantities of any hazardous material that will be stored within the building. Adequate and appropriate storage measures shall be put in place upon review and approval by the Inspector of Buildings and Town Engineer.

- b. "Do Not Block the Driveway" signage shall be installed by the Applicant on Hudson Street at the entrance/egress curb cut directing people in vehicles to leave the entrance/egress open.
- c. No left turn from the westerly exit on Main Street shall be allowed. Right turn out only will be allowed.
- d. No television devices shall be installed at the fuel pumps or anywhere on site outside.
- e. The site shall be constructed in accordance with the twenty-one (21) pages of the Site Plan dated May 9, 2013 and shall also conform to the seven (7) sheets of pump and tank plans dated February 7, 2012 and revised on 3/5/13. A maximum of 40,000 gallons of fuel may be stored underground.
- f. Prior to the issuance of the Certificate of Occupancy, a Stormwater Operation and Maintenance Plan shall be submitted to and approved by the Town Engineer. The Operation and Maintenance Plan shall be recorded by the Applicant with this decision at the Worcester Registry of Deeds.
- g. A Stormwater Operation and Maintenance Report for the entire site shall be submitted to the Town Engineer on an annual basis. The Report shall include: notification to the Town Engineer before the inspections and/or maintenance are performed and the Town Engineer shall be afforded the opportunity to inspect the work. The Report shall also include the inspection and maintenance of the diesel tanks. Copies of the contract, all inspection reports, and all invoices for work performed shall be provided to the Town Engineer. All material removed from the drainage system shall be disposed of offsite. The Stormwater Operation and Maintenance Report shall also include the inspection and maintenance of the fuel tanks.
- h. Prior to the issuance of a Certificate of Occupancy, an as-built plan of the entire site shall be submitted to the Town Engineer for approval. The as-built plan shall include, at a minimum, and as applicable to the project, a permanent benchmark, elevation of all utilities, pipe inverts and outlets, pipe sizes, materials, slopes; all other drainage structures; limits of clearing, grading and fill; all structures, pavement; contours; and all dates of fieldwork. Upon approval by the Town Engineer one (1) mylar and three (3) paper copies of the as-built plan shall be submitted in addition to an electronic copy compatible with the Town's GIS system and the Town's vertical datum (NAVD 88) and the horizontal datum (NAD 83).
- i. Prior to the issuance of a Certificate of Occupancy, an as-built landscape plan and an as-built photometric layout plan shall be submitted to the Building Inspector for approval. The as-built landscape plan shall include certification from a landscape architect stating the landscaping as constructed on the site substantially meets the landscaping as shown on the approved plan. The as-built

photometric plan shall confirm lighting was installed in accordance with the site plan dated 4/11/13.

2. On May 14, 2013, after due consideration of the Application, the Board voted unanimously to **GRANT** four **VARIANCES** to allow for the placement of twelve (12) parking spaces to be located in front of the convenience store per Section 7-09-030C(2)(a); to allow for one (1) 30' wide access driveway and one (1) 15' wide driveway on Main Street restricted to "entrance only", and one (1) 30' wide full access driveway on Hudson Street per Section 7-09-030C(1)(a); to allow for the front setback of the building to be greater than twenty (20) feet per Section 7-06-030 Table 2; and to allow for the illumination of a sign between the hours of 12:00am and 6:00am only if the store is open to the public for business per Section 7-09-040D(5) of the Northborough Zoning Bylaw, on the property located at 15 Main Street.
3. Appeals, if any, from this decision shall be made pursuant to Massachusetts General Laws, Ch. 40A, Sec. 17 and shall be filed within twenty (20) days after the date of filing of this decision in the office of the Town Clerk.
4. The **SPECIAL PERMITS AND VARIANCES** shall not take effect until a copy of the decision bearing the certificate of the Town Clerk is recorded with the Worcester District Registry of Deeds in accordance with the provisions of Massachusetts General Laws, Ch. 40A, Sec. 11 and 15 stating that "twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed, or if such appeal has been filed it has been dismissed or denied."
5. The **SPECIAL PERMITS AND VARIANCES** shall not take effect until a copy of the decision bearing the certificate of the Town Clerk is recorded with the Worcester District Registry of Deeds in accordance with the provisions of Massachusetts General Laws, Ch. 40A, Sec. 11 and 15 stating that "twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed, or if such appeal has been filed it has been dismissed or denied."
6. If the rights authorized by the **VARIANCES** are not exercised within one year from the time of granting, they shall lapse in accordance with the provisions of Massachusetts General Laws, Ch. 40A, Sec. 9.
7. If the rights authorized by the **SPECIAL PERMITS** are not exercised within two years from the time of granting, it shall lapse in accordance with the provisions of Massachusetts General Laws, Ch. 40A, Sec. 10.

**TOWN OF NORTHBOROUGH, MASSACHUSETTS  
ZONING BOARD OF APPEALS**



**RICHARD RAND, CHAIRMAN**