

Zoning Board of Appeals Decisions Decisions for: 01-08-2015

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

APPLICATION NO: 78-14

APPLICANT(S): CUMBERLAND FARMS, INC. of Framingham, MA

OWNER: 212 Teaticket LLC of Falmouth, MA

DEED/CERTIFICATE: Book 16285 / Page 282 and Book 23053 / Page 21

SUBJECT PROPERTY: 212 Teaticket Highway, Teaticket, Massachusetts
Map 39, Section 24, Parcel 011, Lot 000
AND
10 Figuerido Way, Teaticket, Massachusetts
Map 39, Section 24, Parcel 012A, Lot 000

SUMMARY: Granted with Conditions

PROCEDURAL HISTORY

1. On September 9, 2014 Attorney Robert H. Ament on behalf of Cumberland Farms, Inc., (hereinafter referred to as applicant) applied for a Special Permit to modify previous Special Permits to eliminate existing service station building, eliminate auto repair and U-haul operation and construct a convenience, store maintaining the existing self-service gas pumps and canopy on two Business 2 zoned parcels known as 212 Teaticket Highway and 10 Figuerido Way in Teaticket, Massachusetts.
2. A duly advertised public hearing was opened on October 16, 2014. Member Kimberly Bielan recused herself from the hearing process for this application. The Board voted 4 – 0 to continue the hearing to December 4, 2014 without testimony. On December 4, 2014 the Board heard testimony and public comment, requested further information and continued the hearing by a vote of 4 - 0 to January 8, 2015. At the January 8, 2015 hearing additional testimony and public comment were heard.
3. The public hearing was terminated on January 8, 2015 and a decision was rendered by the Board. Board members sitting were Chairman David Haddad, Vice Chairman Kenneth Foreman, Acting Clerk Mark Cool and Member Terrence Hurrie.
4. On January 20, 2015 a Waiver to extend the filing date for the Decision was signed by the applicant's representative and filed with the Falmouth Town Clerk. The document extended the date for filing the decision to January 28, 2015.
5. The Board received documents and exhibits that were submitted to the file prior to the hearing and additional information was submitted during the public – all information submitted is on file in the office of the Board of Appeals at Town Hall, as set forth below:

E-mails/Letters from Abutters/Interested Parties

Received 1/8/2015 Letter of support from John Alves of 570 Teaticket Highway, Teaticket

E-Mails/Letters from Applicant or Representative

Received 9/22/2014 Letter from McMahon Transportation Engineers, Colleen Medeiros, Project Manager, regarding traffic study for subject site [on behalf of Cumberland Farms, Inc. – applicant]

Received 12/31/2014 Letter from Attorney Robert H. Ament submitted with copies of "Existing Site Conditions" and "Planting Plan" – letter explains plans [plans are noted below]

Referrals/E-mails/Letters from Town Departments

Received 9/12/2014 Referral from the Planning Department noting that the Planning Board will begin a Site Plan Review on 10/7/2014

Received 9/26/2014 Referral from Engineering Department with attached memo to Planning Board for comments on "Site Plan Review"

Received 9/26/2014 Letter in form of referral from Falmouth Fire Rescue Department with comments regarding proposed project by applicant Cumberland Farms, Inc.

Received 9/26/2014 A referral from the Building Commissioner having no comment on the proposed project by Cumberland Farms, Inc.

Received 10/3/2014 Copy of Referral from Engineering Department to Planning Board for further comments on "Site Plan Review"

Received 10/16/2014 "Site Plan Review" decision of approval by Planning Board addressed to Building Commissioner Eladio Gore for proposed Cumberland Farms, Inc.

Received 12/4/2014 "Design Review Committee" referral in support of proposed project by Cumberland Farms, Inc.

Received 1/6/2015 E-mail from Engineering Department in answer to question from Zoning Administrator regarding referral from Engineering to Planning dated 10/3/2014.

Plans submitted from Applicant/Engineers/Architects

Received 10/15/2014 "Site Plan Turning Movements Cumberland Farms Gas Truck Cumberland Farms Falmouth, MA" consisting of Figures 1 through 4 drawn by McMahon Transportation Engineers & Planners [on behalf of applicant]

Received 9/9/2014 "New Construction: Cumberland Farms 212 Teaticket Highway Falmouth, MA" architectural plans drawn by Allevato Architects, Inc. consisting of Drawing A1.1 'Floor Plan', Drawing A3.1 'Exterior Elevations', Drawing A3.2 'Exterior Elevations', Drawing DS1.1 'Downspout Location Plan, Drawing L1.1 'Lighting Plan' – all dated 9/3/2014 and with a Board date 'received' stamp of September 9, 2014.

Received 10/10/2014 "Cumberland Farms, Inc." drawn by Coastal Engineering Company, Inc. consisting of Sheet 1 of 8 CFG01.0 'Proposed Site Redevelopment Plans', Sheet 3 of 8 CFG03.0 'Site Demolition Plan', Sheet 4 of 8 CFG04.0 'Layout and Materials Plan', Sheet 5 of 8 CFG05.0 'Site Grading & Drainage Plan', Sheet 6 of 8 CFG07.1 'Sewage Disposal System Plan', Sheet 7 of 8 CFG09.0 'Site Construction Details' and Sheet 8 of 8 CFG09.1 'Site Construction Details – all plans dated 10/10/2014 and with a Board date 'received' stamp of October 10, 2014. Note: Plans show the two subject lots being merged.

Received 12/31/2014 "Planting Plan" for Cumberland Farms, Inc. 212 Teaticket Highway, Falmouth Massachusetts, drawn by Hawk Design, Inc. Landscape Architecture, dated 8/14/2014 with a final revision date of 12/18/2014 and with a Board date 'received' stamp of December 31, 2014.

Received 12/31/2014 "Cumberland Farms, Inc. – Plan Showing Existing Site Conditions" Drawing CFG02.0 Sheet 1 of 1, drawn by Coastal Engineering Company, Inc. dated 12/10/2014 with a Board date 'received' stamp of December 31, 2014.

Hearing Process

The Board asked questions of the applicants and applicant's representatives. Representatives present are: Attorney Robert H. Ament, Colleen Medeiros – traffic consultant with McMahon Transportation Engineers & Planners, Reggie Donahue with Coastal Engineering, Rick Boyle Regional Manager with Cumberland Farms, Inc. and Paul Walker with Cumberland Farms,

Inc. All issues were addressed by applicant's representatives.

Public Comment:

Chairman Haddad asked if anyone present would like to speak in favor or opposition. There was no public comment in opposition.

Robert McCloud of Figuerido Way spoke in favor of the application and asked for a 6' fence to be installed along the side property line of Figuerido Way to eliminate any trash from blowing into the residences of Figuerido Way.

Mr. Stone of Figuerido Way spoke in favor of the application and said that he too would like a fence from the gas island to existing fence in rear to eliminate trash that might blow into the residences of Figuerido Way.

Bill Ferzoco, property owner of 212 Teaticket Highway (subject property) asked the Board to consider shrubs for a green fence versus a stockade fence. He also spoke in favor of the application and noted the improvements that will be made on the subject properties.

Board Discussion:

Board discussed traffic flow at the rear of the building, green barrier at the side property line along Figuerido Way, delivery of items to the site, trash pick-up, proposed picnic tables on the south side of the building, hours of operation and merging of the two subject lots.

Member Cool made a motion to close the hearing. Member Hurrie seconded the motion. Motion carried 4 - 0.

Chairman Haddad closed the Hearing.

FINDINGS

The Board of Appeals, after carefully considering all of the facts and evidence submitted at the hearing, makes the following findings:

The subject property located at 212 Teaticket Highway in Teaticket contains a combined total 51,494 square feet of primarily Business 2 zoned land with a very small portion of the rear of the lot zoned Agricultural B. The subject property is located within the Little Pond Coastal Pond Overlay District. The subject property has had several special permits in the past authorizing uses for vehicle sales, vehicle repair, gas service station and most recently U-Haul operation. The applicant applied under Section(s) 240-51 B. (3), 240-18.1 and 240-3 of the Code of Falmouth to remove the existing service station building, eliminate the auto repair and U-haul operation and construct a convenience store, maintaining the existing self-service gas pumps and canopy on the two Business 2 zoned parcels. The existing canopy structure has a nonconforming setback to the front property line off East Falmouth Highway of 29' that requires a 35' setback pursuant to Section 240-68 A. of the Code of Falmouth. The proposed application and plan before the Board is to merge the two subject lots, raze the existing gas service building, keep the gas pumps and canopy and construct a new building. The use of the U-haul operation, car repairs and car wash will be eliminated; the only activity will be a Cumberland Farms service station and convenience store.

Section 240-3 of the Code of Falmouth allows the Board of Appeals to approve a special permit to extend, alter or change a pre-existing non-conforming structure or use if the Board deems said change is not substantially more detrimental than what exists.

The Board finds that the proposed changes to the subject property as discussed and represented herein will not be substantially more detrimental than what currently exists.

The Board finds that the applicants will file an ANR [approval not required] plan with the Planning Board to merge the two subject lots for the proposed use discussed herein.

The Board finds that the proposed application for Cumberland Farms, Inc. meets Section 240-51 B. (3) and that the use on subject property(s) is appropriate. The Board further finds that the proposed plans do not create any new nonconformity.

The Board finds that the existing cesspools will be eliminated and the septic system will be upgraded. The site may be hooked to the Town sewer system in the near future.

The Board finds through testimony of the abutters that a fence along the southerly side of Figuerido Way is desirous in order to help eliminate any trash blowing onto the residences off Figuerido Way. The Board further finds through testimony of the applicants that they are amenable to a 'green' buffering along the property line. Furthermore, the Board finds that additional landscape along Figuerido Way [north side of property] beginning at the installation of the new tree shown on Sheet L1 (Landscape Plan with final revision date of 12/18/14), adjacent to the canopy of the pumps, westerly along Figuerido Way to the rear of the property will address concerns of residents. The Board will administratively approve the revised planting plan showing the additional landscape and proposed bike rack noted herein.

The Board finds that the traffic flow is adequate and that the applicant is amenable to one-way traffic, north to south, at the rear of the building. The Board further finds that the applicant has made improvements to the entrance of the subject property along Route 28 and between the curb cuts. Furthermore, the Board finds that snow removal will be maintained on site.

The Board finds due to the high traffic volume along East Falmouth Highway [Route 28] that delivery times for fuel and retail items sold in convenient store shall be restricted so as to avoid peak traffic hours of 7:00 AM to 10:00 AM and 4:00 PM to 6:00 PM. The Board further finds that wet and dry trash pick-ups shall be between the hours of 5:30 AM and 7:00 AM. Furthermore, the Board finds through testimony of the applicants that the proposed convenient store on subject property will not be a storage area for other Cumberland Farm stores.

The Board finds that the second floor of the proposed new building will be for utilities only – with no storage or office space. The Board further finds through applicant's testimony and plans submitted that the existing kiosk under the canopy at the pumps will be removed.

The Board finds that the proposed Cumberland Farms service station and convenient store is intended to be open twenty-four (24) hours a day.

The Board finds through testimony that the applicant is amenable to locating a bike rack near the picnic tables at the south side or southeast corner of the convenient store building. It will be located so as not to interfere with traffic on site and shall be shown on revised Landscape Plan for Board's approval. The Board further finds that the applicant intends to sell propane that will be located at the outside front of the convenient store.

In addition to the above findings, the Board finds that the proposed Cumberland Farms self service station and convenient store will be in harmony with the general purpose and intent of this chapter and does include consideration set forth in Section 240-216 of the Code of Falmouth as follows:

- A. The site is adequate in terms of size for the proposed use discussed and represented herein as the proposed plans show lot coverage conforming, adequate parking and site improvements.
- B. The site is suitable for the proposed use as the property is zoned Business 2 and the use proposed herein is allowed by special permit pursuant to Section 240-51 B. (3) of the Code of Falmouth.
- C. There does not appear to be any adverse impact on traffic flow and safety as the entrance to the site has been improved and time frame for deliveries are conditioned herein.
- D. The visual character of the subject property will be improved and there does not appear to be any adverse impact on the neighborhood's visual character; and there is no adverse impact on any view or vista from the roadway or abutting properties.
- E. The septic system will be upgraded and the existing cesspools on the site will be eliminated according to the current Sanitation Code and approved by the Board of Health and will be connected to a Municipal sewer system, when and if available.
- F. There are adequate utilities to subject property by virtue of an existing commercial business on site. However, the Applicant will have to contact the Town Water Department regarding its requirements.
- G. The proposed Cumberland Farms self-service station and convenient store discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.
- H. There was Site Plan Review as required by the Planning Board and the Board of Appeals took the Site

Plan Review Decision under consideration.

I. The application is within compliance of all applicable sections of the zoning bylaws as represented, except for the nonconformity stated herein.

J. The approval of this special permit does not include any affordable housing.

Member Cool made a motion to Grant the Special Permit with conditions. Member Foreman seconded the motion.

NOW THEREFORE

BE IT RESOLVED, that the Board of Appeals (herein referred to as Board) being of the opinion aforesaid and acting under the provisions of the Code of Falmouth voted 4 – 0 to Grant the Special Permit to Cumberland Farms, Inc. (herein referred to as Applicant) under Section(s) 240-51 B. (3), 240-18.1 and 240-3 of the Code of Falmouth to remove existing service station building, eliminate auto repair and U-haul operation and construct a convenience store, maintain the existing self-service gas pumps and canopy on two Business 2 zoned parcels known as 212 Teaticket Highway and 10 Figuerido Way in East Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The removal of the existing service station building, removal of the U-haul operation, car repair and carwash, construction of new building, setbacks, lot coverage and use of site shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "New Construction: Cumberland Farms 212 Teaticket Highway Falmouth, MA" architectural plans drawn by Allevalo Architects, Inc. consisting of Drawing A1.1 'Floor Plan', Drawing A3.1 'Exterior Elevations', Drawing A3.2 'Exterior Elevations', Drawing DS1.1 'Downspout Location Plan, Drawing L1.1 'Lighting Plan' – all dated 9/3/2014 and with a Board date 'received' stamp of September 9, 2014.

- "Cumberland Farms, Inc." drawn by Coastal Engineering Company, Inc. consisting of Sheet 1 of 8 CFG01.0 'Proposed Site Redevelopment Plans', Sheet 3 of 8 CFG03.0 'Site Demolition Plan', Sheet 4 of 8 CFG04.0 'Layout and Materials Plan', Sheet 5 of 8 CFG05.0 'Site Grading & Drainage Plan', Sheet 6 of 8 CFG07.1 'Sewage Disposal System Plan', Sheet 7 of 8 CFG09.0 'Site Construction Details' and Sheet 8 of 8 CFG09.1 'Site Construction Details – all plans dated 10/10/2014 and with a Board date 'received' stamp of October 10, 2014. Note: Plans show the two subject lots being merged.

- "Planting Plan" for Cumberland Farms, Inc. 212 Teaticket Highway, Falmouth Massachusetts, drawn by Hawk Design, Inc. Landscape Architecture, dated 8/14/2014 with a final revision date of 12/18/2014 and with a Board date 'received' stamp of December 31, 2014.

2. The applicant shall revise the "Planting Plan" for Cumberland Farms, Inc. to show the proposed additional plantings sufficient to screen site and retain trash on the site along the southerly side of Figuerido Way starting at the installation of the new tree shown on Sheet L1 (Landscape Plan dated 8/14/14, revision date of 12/18/14), adjacent to the canopy of the pumps, westerly along Figuerido Way to the rear of the property. The revised "Planting Plan" shall also show the proposed location of a bike rack on site. The revised plan shall be approved by the Board of Appeals prior to the issuance of a building permit for construction.

3. The added plantings to be approved by the Board in Condition 2 above shall be planted prior to the final post construction sign-off by the Zoning Administrator.

4. The landscape, signage and directional arrows on the site shall be maintained at all times. All signs, including directional arrows on the pavement, shall always be maintained to be visible for traffic on site.

5. The two subject lots, 212 Teaticket Highway and 10 Figuerido Way, shall be merged and a copy of an ANR plan shall be filed with the Registry of Deeds and a copy of said filing submitted to the Board of Appeals prior to the issuance of an Occupancy Permit or final sign-off of post construction by the Zoning Administrator.

6. The sale of propane – such as Blue Rhino – shall be allowed on the outside of the front of the convenient store.

7. Delivery of fuel and retail items sold in Cumberland Farms convenience store shall not be made to the

site during the peak hours of 7:00 AM to 10:00 AM or 4:00 PM to 6:00 PM.

8. Trash pickup for wet or dry trash shall be during the hours of 5:30 AM to 7:00 AM.

9. There shall be one-way traffic counter clockwise, with directional arrows or signage, to the rear of the proposed building on site. This one-way traffic shall be maintained at all times.

10. Any deviation, no matter how minor, from plans submitted and approved, orally or in writing, by this Board, shall be submitted to the Board for approval prior to implementation of said change. Minor changes may be administratively approved by the Zoning Administrator.

11. The Applicant shall meet the requirements of the DPW Water Division.

12. This permit shall not take effect until a copy of the decision bearing the certification of the Town Clerk that 20 days has elapsed after the decision had been filed in the office of the Town Clerk with no appeal being filed, or an appeal has been filed within such time, is recorded in Barnstable Registry of Deeds. (Any person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.)

13. This permit shall lapse two years from the date on which this decision is filed in the Town Clerk's office if a substantial use of the Special Permit has not sooner commenced except for good cause as determined by the Board of Appeals.

Decision by Falmouth Zoning Board of Appeals continued:

Application: 78-14

Applicant: CUMBERLAND FARMS, INC. of Framingham, MA

Subject Address: 212 Teaticket Highway, Teaticket, Massachusetts
Map 39, Section 24, Parcel 011, Lot 000
AND
10 Figuerido Way, Teaticket, Massachusetts
Map 39, Section 24, Parcel 012A, Lot 000

Action: The Board of Appeals, by the Chairman's signature below, represents that the Board voted as follows for the above referenced Comprehensive Permit.

Vote: Board voted 4 – 0 to Grant the Special Permit requested herein based on the Findings and subject to the Conditions stated above.

Kenneth Foreman, Board Chairman

Date Filed with Town Clerk

Notice is hereby given that any appeal from this Decision shall be made pursuant to Section 17 of Massachusetts General Laws, Chapter 40A, and shall be filed within twenty (20) days after the date of filing of this Decision in the office of the Falmouth Town Clerk.

Notes:

SP #78-14 Cumberland Farms - 212 Teaticket Hwy & 10 Figuerido Way / posted 1/29/15 mm