

BRISTOL
ZONING BOARD OF ADJUSTMENT
July 1, 2014

APPROVED:

8/5/14__jrl_____

AGENDA: 14VAR03 VARIANCE: CAROLYN PARKER/CUMBERLAND FARMS, 25 Pleasant St., #114-178

14RVAR01 VARIANCE REHEARING: ZAREMBA PROGRAM DEVELOPMENT LLC/DOLLAR GENERAL, 215 Lake St., #112-001

ATTENDING: Alan DeStefano (Chairman), Richard LaFlamme (Vice Chair), Lorraine Bohmiller, Larry Denton, Ashley Dolloff

ABSENT: -----

OTHER: Public

The meeting opened at 6:01 pm. with a full Board.

MINUTES OF JUNE 3, 2014:

With no corrections to be made by the Board, Mr. DeStefano asked for a clarification that had been made to him by the Planning Board Chairman: On page 5, 2nd paragraph, following the last sentence that read “Mr. O’Hara also questioned the Planning Board and their approval, per their minutes, of putting snow into the river.” Insert “The Planning Board has not approved anything to do with this application to date. On 3/26/2014 at a PCC (Preliminary Conceptual Consultation) the Planning Board minutes read, in response to a question about where the snow would go, “Mr. Schneider answered that it will probably go over the bank just like the State does.”

R. LaFlamme made a motion, second by L. Bohmiller, to approve the minutes as amended. The motion carried.

VARIANCE REHEARING: ZAREMBA/DOLLAR GENERAL

As the town has been unable to find anyone, as yet, willing to do the analysis that has been requested, we shall need to continue this hearing.

L. Denton made a MOTION, second by R. LaFlamme, to CONTINUE THIS HEARING TO AUGUST 5, 2014. The motion CARRIED.

ZAREMBA continued:

Mr. O'Hara stated that he will be unable to attend on Aug. 5th as he will be away. Mr. Dingman, resident, mentioned that he can submit a letter with his concerns and the Board agreed.

VARIANCE: CUMBERLAND FARMS/CAROLYN PARKER

The secretary read the Variance application, the list of abutters notified, the areas where the hearing was notified, and stated that she received no written responses or telephone calls for this hearing.

Ms. Parker stated that this is for Smart Pay pump toppers and sign. It will be an LED price sign/alternator. The standard is for changes of every 8 seconds. Ms. Parker had a model set up at this speed for the Board to see. It can be adjusted from 0 to 60 seconds, she added.

Ms. Parker continued by saying that it is probably according to whether or not the Board interprets this as a flashing sign. She added that the Planning Board has issues with the lighting. Ms. Parker then showed different levels of dimming with the last set at 2. She said that Cumberland usually sets at 6. These signs would be on the pumps and on the sign. Right now, they must be changed manually.

Mr. DeStefano read Article IV, 4.11 (D) of the Zoning Ordinance, the section that the Variance is citing.

L. Denton made a MOTION, second by A. Dolloff, to ACCEPT THE APPLICATION AS COMPLETE. The motion CARRIED.

Ms. Parker was then asked to address the 5 criteria for a Variance. She responded with:
#1. PUBLIC INTEREST – Will benefit the public to inform them of the lower gas price. The purpose is not to have big flashing and moving signs. The proposed sign will change every 8 seconds but is only the 4 ¼" x 60" alternator placard and one digit of the gas prices that will alternate. The hours of operation are 6am to 11 pm and the sign will not be on during the night time.

#2. SPIRIT OF THE ORDINANCE – The purpose of the law is not to have signs using flashing electric lights. As stated above, it is only a section that will change and the law was not meant to prohibit these types of signs.

PARKER VARIANCE continued:

#3. SUBSTANTIAL JUSTICE – The gas station has been in the location for over 40 years. The new sign will be in the exact same location and of the same size. The installation of the “Smart Pay” program is detrimental to the client and the customers allowing them discounted prices.

#4. VALUES OF SURROUNDING PROPERTIES ARE NOT DIMINISHED IN VALUE – The site is an existing gas station that has been in existence since 1970. Cumberland only wishes to change the price display. Surrounding properties will not be affected.

#5. UNNECESSARY HARDSHIP – No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision because we only wish to change the way the price of gasoline is displayed. The proposed use is a reasonable one: the use as a gas station and convenience store will remain as is.

The unique use of the parcel as a retail gas facility requires the advertising of fuel prices in a safe, effective manner. It will pose no adverse impact to the health, safety and general welfare of the community. Relief is required solely to provide for the installation of a “Smart Pay” alternator within the existing LED price sign and pump toppers.

Mr. Denton asked clarification that the electronics are to be on the sign and the pumps are manual. He was told that they want the electronics on both. Mr. DeStefano stated that Bristol is unique in that their pumps face the street so both the sign and the pump toppers would be seen from the street. Ms. Bohmiller asked if they will only be lit for 2 hours and Ms. Parker explained that they will be lit during open hours but would dim by dark. Mr. DeStefano asked if they would be shut off at 11:00pm as he saw Meredith’s still on after closing. Ms. Parker stated that they are supposed to be off when the business closes.

At this time, Mr. DeStefano asked for public comments in favor. There were none.

Mr. DeStefano asked for public comments in opposition. Clay Dingman, resident on Summer St., asked for clarification – is this just for a sign that is not flashing? Mr. DeStefano explained that the Variance was asked for the whole D. section. In that case, Mr. Dingman wanted to speak in opposition. He stated that it does not meet the Spirit of the Ordinance in that, in 2011, the Planning Board looked at this so as to minimize visual clutter and to save views. They specifically eliminated flashing and intermittent signs. They also talked long and hard about keeping the small town look that the townspeople wanted. LED lighting can be permitted under a Conditional Use permit if wanted. Cumberland’s sign is already non-conforming and this would make it more so.

PARKER VARIANCE continued:

Mr. Dingman continued by saying that, in the Master Plan, Chapter 3, there is a specific section on signs and he read the first paragraph: “Signs are one of the most prominent visual elements on the street. If well designed, signs add interest and variety to a building’s façade while enlivening the street scene. On the other hand, signs more than any other single feature can detract from even the most attractive storefront and clutter its surroundings.” Mr. Dingman feels that this sign would violate the Spirit of the Ordinance.

Mr. Dingman then cited a court case in which they stated that a single addition might not harm but cumulative signs would be significant. Mr. Dingman feels that the town has done a great job in revitalizing the look of the Downtown. He feels that this variance is a conflict to the Public Interest. This is an area of low speed traffic and a change in a sign would be distracting. He is against this Variance.

Ms. Parker stated that Cumberland was given a permit for the LED sign that they have now. Cumberland is also in the process of changing colors to yellow, green and blue. The new lights would shine even less. She added that a new gas station would no longer fit on this particular lot.

With no other comments, Mr. DeStefano closed the public portion of the hearing.

The Board discussed the criteria at this time.

#1. PUBLIC INTEREST – Mr. DeStefano cautioned the Board to be mindful of the flavor of the town. Ms. Bohmiller felt that it would be too distracting in that area. Mr. LaFlamme mentioned that the one in Tilton is in a similar area and is distracting. Mr. DeStefano added that the “Smart Pay” program would cause folks to slow down so as to see the changing price. Mr. Denton said that it is an area where parking can be a distracting problem already and Ms. Dolloff added that there is pedestrian crossing in the area, as well. Mr. Denton stated that allowing any flashing or alternating lights would set a precedence. MS. Bohmiller felt that it would be a safety issue.

The Board voted on Public Interest and was unanimous OPPOSITION.

#2. SPIRIT OF THE ORDINANCE – It was felt that the Ordinance is pretty specific as to what the intent was. Mr. Denton added that the price can be displayed in other ways.

The Board voted on Spirit of the Ordinance and was unanimous in OPPOSITION.

PARKER VARIANCE CRITERIA DELIBERATIONS continued:

#3. SUBSTANTIAL JUSTICE – The Board felt that signage and pump toppers are already allowed. They are just not illuminated internally. Mr. LaFlamme mentioned that a lot of stations still do this manually. Mr. DeStefano stated that he is pleased to hear that Cumberland is looking into doing a color change but he would like them to go back to making a station into an old-fashioned one when in a small town area like ours. The Board voted on Substantial Justice and was unanimous in OPPOSITION.

#4. DIMINUTION OF VALUE - The Board felt that this would not affect surrounding property values.

The Board voted on Diminution of Value and was unanimous in APPROVAL.

#5. UNNECESSARY HARDSHIP – Mr. Denton stated that this criteria is hard to justify where they already have a sign and pumper toppers.

The Board voted on Unnecessary Hardship and was unanimous in OPPOSITION.

Therefore, Mr. DeStefano stated that the Variance has been denied. He explained that there is a 30 day time line for appeal. He then signed the Notice of Decision.

COMMUNICATIONS: There was an e-mail from Christina Goodwin, Assessing Admin. Ass't., to inform the Board of a property sold at 65 Danforth Brook Rd. and that nothing will be changing other than the requirement that a yearly inspection be done by the Land Use Officer. This had been overlooked in the past but is now on their agenda.

OTHER:

All of the public had left so Mr. DeStefano went over an e-mail received from Town Attorney Bernie Waugh in which Atty. Waugh went over proper procedures for hearings and rehearing's as a reminder to the Board. Based on this, Mr. DeStefano notified the Board that he will be going over all of the criteria for a Variance at the Rehearing of the Zaremba Variance when it comes back to the Board in August.

NEXT MEETING: The next ZBA meeting will be held on August 5, 2014 at 6:00pm. We have the continued Zaremba/Dollar General case. Applicants have until noon on July 11th to apply for that meeting, as well.

With no other business before the Board, Mr. LaFlamme made a motion, second by Ms. Bohmiller, to adjourn at 7:10 pm.

Respectfully submitted,
Jan Laferriere, recording secretary