

**VILLAGE OF MONROE
ZONING BOARD OF APPEALS
MEETING
MAY 10, 2016
MINUTES**

PRESENT: Chairman Baum, Members Margotta, McCarthy, Vitarelli and Zuckerman;
Assistant Building Inspector Cocks; Kelly Naughton, Esq.

ABSENT: None

Chairman Baum called the meeting to order at 8:08pm with the Pledge of Allegiance to the flag.

1. Cumberland Farms, Inc. – Area Variances – (215-1-13)

Present: Richard J. Olson, Esq., McCabe and Mack LLP and James Galella, PE, Catapano Engineering PC

Application of Cumberland Farms, Inc., 502 State Route 17M, for the following area variances from the requirements of Section 200-66 (M)(2) and Table of Bulk Requirements pursuant to Zoning Schedule I-F, Table of Use Requirements GB District, Column C- Conditional Use #2, Table Q to permit the construction of a 16 pump gasoline service station with associated 4,738 square feet of retail store; two (2) new underground gasoline storage tanks; one (1) new canopy over the pump islands; one (1) new ground price/id sign and all associate work. The property, which is the subject of said action by the Board, is located in a GB Zoning district and identified as Section 215, Block 1, Lot 13 on the tax map of the Village of Monroe: (a) reducing the front yard building setback from the required 50' to 22'-11" on Freeland Street; (b) reducing the front yard setback from the required 50' to 5' to permit the erection of a freestanding sign; (c) a variance from the maximum size curb cut of 25 feet to permit two curb cuts of 30 feet one on Freeland Street and one on 17M; and (d) a variance of the required minimum 100 foot distance from an intersection to a curb cut to allow for one curb cut to be located 64'-11" from the intersection.

Mr. Olson began by saying that Cumberland Farms acquired this site in 1986. The proposal was for a "raise and rebuild" of a new Cumberland Farms prototype building with a 4,738 square feet retail/motor vehicle facility (under the Village's code). The existing setbacks were set forth on the site plan. The variances were for the following: The front yard setback on Freeland Street was for the existing building; the front yard setback on 17M was for the sign; the two proposed 30' curb cuts were to allow for the maneuverability of the trucks; and finally, the setback from the intersection was for the curb cut on Freeland Street, which could not be a 100 foot setback because the curb cut would be right where

the parking was going to be, and they can't set the building any further back because they would not meet the rear yard setback.

Under New York Village Law §712-b(3) balancing of interest test between the benefit to the applicant and any detriment to the neighborhood, Cumberland Farms did not believe there would be any detrimental change to the neighborhood. In fact, they think it would be an improvement to the area.

Continuing, Cumberland Farms did not believe there were any alternatives to their proposed building location. If the building were moved farther back it would encroach upon the rear yard setback. In order to avoid the front yard setbacks the building would have to be placed in the middle of the lot. The building location and orientation follow from the location of the gas canopies which were in compliance with the setbacks.

Were the variances substantial? While numerically they may be substantial, under the law we look at all the facts of the case. Given the odd shape of this lot these were necessary variances that reduce the "substantial" nature of it.

Regarding detrimental effects on the physical or environmental characteristics, the new tanks that were going in would offer better environmental protection than what was there currently.

Finally, the applicant did not believe that this was a self-created hardship.

Chairman Baum asked if there was an existing conditions map underlying this? Mr. Galella responded that there wasn't.

Board members asked about the traffic flow. The trucks would be coming in from 17M? Mr. Galella responded that they would be coming from 17M traveling westbound. Member Vitarelli asked if that was the only way that the trucks could come in? Mr. Galella responded that since the truck offloads on the passenger side there would not be enough room if they came in from Freeland Street. So they would come in from 17M, offload, and then Cumberland Farms anticipated that the trucks would exit left on Freeland Street.

Chairman Baum asked about the width of curb cuts. They would be increased from 25' to 30'. How are they going to be striped? Mr. Galella said that they were planning on two 15' lanes. Member Zuckerman asked how much of a burden was it to make it 25' instead of 30'? Mr. Galella responded that the truck would most likely pop the curb. Mr. Olson said that the curb cut on Freeland Street was designed so that the tankers can pass through. Member Vitarelli asked how long the trucks were? Mr. Galella responded that they were 55 feet long. Member Vitarelli and Member Margotta said they didn't think a left turn onto Freeland would be possible. Member McCarthy asked where the tanks would be located? Mr. Galella said ten feet off the property line.

Chairman Baum asked what if the applicant shortened the building and moved the parking around to the side. Would they be able to move that curb cut further east? They could have parking in an L shape if they made the building smaller and moved the parking around the side. Then they would have room to move the curb cut. Mr. Galella responded that Cumberland Farms had stalls that were 10'x20' so that people don't bang doors into each other and that they needed 44' for parking. Again the whole issue was going back to shrinking the building. He said he would voice the Board's concerns to Cumberland Farms but he couldn't answer for them.

Member Vitarelli asked what time deliveries would be made? Mr. Galella did not know but Mr. Olson said that delivery times could be controlled.

Member Zuckerman asked if there had been any traffic study? He said that was why being closer than 100 feet to the intersection concerned him. Members of the Board said that this was a very busy intersection, one of the main intersections of the Village. There was a big supermarket there, it had a whole strip mall, there was the bank, the florist and Mr. Cone. If you knew what QuickChek was like, that's what this was going to be like. The traffic impact on that corner was going to be substantial. This was also a main school bus route. Chairman Baum said, "We only get this one shot to get it right for the next 50 years." If the Board messed this up they would have messed it up for a very, very long time.

Chairman Baum asked if they had been to the Department of Transportation? Mr. Olson and Mr. Galella said no.

Member Vitarelli asked if they could give us a rough idea of the sizes of the existing building versus the new building? Mr. Galella said the old building was about 1,500 square feet and the new building was 4,786 square feet (according to the site plan; however, in the Project Description section of the application reference is made to a building of 4,738 sq. ft.) Chairman Baum said that it was a huge-sized convenience store. He asked how big QuickChek was? Mr. Galella responded that the Cumberland Farms and QuickChek buildings are about the same size. But, Member Margotta pointed out, QuickChek had a lot more property. Member Vitarelli asked if there was anything they could do about the dimensions of the building? Mr. Galella said this is their typical building.

Member Vitarelli asked if they had a store room for product? Is that why you need the extra size of the building? They said there is less than 2,000 square feet of retail. Most of the space is for storage. Mr. Olson said they increase the storage to cut down on deliveries. Member Vitarelli asked if they did a study of supermarkets in designing this building because the back store rooms of supermarkets were very small. Mr. Olson responded that Cumberland Farms had done studies of this over the years and this seems to be the best way to get the product in and move the product out. Member Zuckerman asked if they

could make the storage area smaller so that the building was further from the setback? Mr. Galella reiterated that this was a Cumberland Farms standard building.

Member McCarthy asked about the outdoor seating. Was that really necessary? Mr. Olson and Mr. Galella said that was typically what Cumberland Farms had. And it didn't change the setback. Chairman Baum said it didn't change the setback when you measure from the building but when you measure from the patio and the seats it was about ten feet.

Member Vitarelli asked what were the things that were stopping Cumberland Farms from shifting the building to the right, was it just loading and traffic flow? Were they the only things that were stopping you? If you moved the loading dock you would gain that room. Mr. Galella responded that the other option was to have a parking variance. They would lose two or three stations. He could eliminate these two parking stalls, slide the building as far over as possible, move the trash enclosure, add a second curb cut, and put two employee parking stalls in front of the trash enclosure. They'd make up the extra parking stalls that they were losing, they'd be adding 20' further from the corner, and get a further front yard setback. That might work for everybody.

Chairman Baum said that his concern again, was this is the heart of the village. To put such a big building that was going to be so close to Freeland Street. You had two main roads there. He would like to see that front yard setback to Freeland Street respected as much as possible. In his opinion going down to 22' put the seating area practically on top of the road. Mr. Galella said that if they slid the building back then they'd be encroaching on the rear yard. Chairman Baum asked if they would be able to get their loading dock and dumpsters to fit? Mr. Galella responded that he could try to relocate them. He could go for a smaller dumpster enclosure and then he'd be asking for a smaller front yard and rear yard variance.

Member Margotta asked about fitting the building to the size and shape of the lot rather than keeping that prototype building? Mr. Galella responded that this was their standard building and they wanted to keep to that design. Member Margotta asked if there was any attempt to adjust the layout to fit the setback? Mr. Galella said that if you minimized the front setbacks by rotating the building so that it was parallel to 17M then everything else rotated too, and the curb cut onto Freeland Street ended up right back at the corner. There really was no other location for that standard building. Member Margotta said, so Cumberland Farms didn't want you to explore other style buildings with different footprints? Mr. Galella said that was correct.

Member Vitarelli said he would like to see the building shifted over by 25 feet at least to give it a better buffer. As a rule the Board looks for a little give-back from potential applicants especially given that they were already that far out of compliance. Mr. Olson said that even if you cut the size and slid the building down a bit more you were going to go into the rear-yard setback.

Chairman Baum asked how did this site plan develop? Did they try different sized structures? Mr. Galella responded that they did not try different sized structures but they tried turning and rotating this building. Member Margotta said that there were a lot of variance requests for this just to make what they wanted work out on this particular lot. Mr. Olson replied that no matter what they did they couldn't build this building without variances. Mr. Galella continued that they would have to completely reduce the size of the building. They'd have to cut the building in half in order to be in conformity with the requirements. Chairman Baum said I don't see how you'd have to cut the building in half; Member Margotta concurred. You could change the footprint layout. It doesn't have to be a rectangle. Chairman Baum said they could take 15' off of the building. Mr. Olson said that it would still require a variance.

Mr. Galella and Mr. Olson said they could go back to Cumberland farms with the Board's recommendations. Discussion ensued about the minimum requirements that the Board would find acceptable. Chairman Baum said he understood that they've got two front setbacks and that presents a hardship. If they had a 2,000 square foot building and this was the best design, that would be one thing. But this is a 4,700 square foot building. That was a huge building. To cram that in to this intersection, leaving such a small setback because that was their model and prototype, he didn't know if he could in good conscious accept that.

Mr. Galella responded that he could get it further away from the corner just by re-working the trash enclosure but then he'd be encroaching on the rear setback. Is he more inclined to get a rear yard setback than a front yard setback? Chairman Baum said that given that they already had an existing building to the east, he would have less of a concern visually and esthetically with that than encroaching upon the front setback.

Chairman Baum opened the hearing up to the public. Two members of the public were in attendance: David Umberto, Greenery Plus Florist and his father. Mr. Umberto agreed with the chairman that it was a large building for the site. He had concerns about the gas storage tanks and the sign, which were addressed by the applicant's engineer to his satisfaction. Mr. Umberto then said that the Village never permitted the previous gas station to have a canopy because once their canopy went up you wouldn't be able to see his building when you were driving on the road. Chairman asked Assistant Building Inspector Jim Cocks if the canopy met the setback requirements and he confirmed that it did. The Chairman asked how high the canopy would be and Mr. Galella told him it would be 21' high.

Member Vitarelli asked about the sign. How far back was it? Five feet? Chairman Baum said that the Board tried to maintain a distance of at least 15' from the property line. Mr. Galella said he'd speak to Cumberland Farms about that.

Chairman Baum said that he would like to see a different layout, an alternate layout. Member Zuckerman asked if the Board could require that they bring a traffic engineer with them? Mr. Olson said that they already had a traffic report. Chairman Baum agreed they should have a traffic engineer come to the next meeting. He wanted to make sure they had an adequate setback and that they were not creating a detrimental situation on Freeland Street by having this curb cut too close to the intersection limiting car movements, creating queues and creating traffic conflicts. Mr. Galella said that he might be able to get another 20' or so, bringing the curb cut up to 84' instead of 64'.

Member Margotta would like to see how much if at all Cumberland Farms was willing to modify the building, even if it were a small adjustment. It may only require 5' to satisfy everybody. Mr. Galella asked if the building size was an issue? If we get to an acceptable variance do you still want the building reduced? Chairman Baum responded that the length of the building was 420'. He suggested that they could take off 20' of building and still have 4,000 square feet of building. That's still a pretty decent-sized building. Move the building over, open up that end at Freeland Street.

It was then agreed to adjourn the hearing to the next Board meeting to allow Cumberland Farms an opportunity to submit revised plans and any additional evidence for the Board's consideration prior to its final determination.

On a motion made by Chairman Baum and seconded by Member Margotta, it was unanimously: **Resolved to adjourn the public hearing for Cumberland Farms until June 14, 2016 at which time the Board will review any revised plans and additional evidence submitted by Cumberland Farms prior to its final determination.**

Ayes – 5

Nays – 0

Absent or Abstaining – None

ADOPTION OF MINUTES FROM APRIL 12, 2016 MEETING

On a motion made by Chairman Baum and seconded by Member Vitarelli, it was: **Resolved that the minutes be adopted.**

Ayes – 3

Nays – 0

Absent or Abstaining – Member McCarthy (abstaining) and Member Margotta (abstaining)

ADJOURNMENT:

On a motion by Member Margotta, seconded by Member Vitarelli, with all in favor, **there being no further business, the meeting was adjourned at 9:31 pm.**

Ayes – 5

Nays – 0

Absent or Abstaining – None

Respectfully submitted,

A handwritten signature in cursive script that reads "Elizabeth A. Doherty".

Elizabeth Doherty
ZBA Secretary