

**Leicester Zoning Board of Appeals  
Meeting Minutes**

Minutes of December 9, 2015

Hearing on the petition of Cumberland Farms of 100 Crossing Blvd., Framingham, Ma. for a Variance to construct one (1) freestanding sign to be located on the corner of South Main Street and Pleasant Street, Leicester, Ma.

Members present: David Kirwan, Chairman; Jim Buckley, Clerk; David Orth, Paul Schold, Vaughn Hathaway

Alternate member present: Mary Moore, Dick Johnston

In Attendance: Michelle Buck, Town Planner

Meeting called to order at 9:15PM

Mr. Orth recused himself and stepped down as voting member due to a conflict of interest, because he works there.

Mr. Kirwan accepted and announced Alternate member Mary Moore as a voting member.

Voting at tonight's meeting: David Kirwan, Paul Schold, Mary Moore, Jim Buckley, and Vaughn Hathaway.

Instructions were given on the hearing procedures, as well as, the requirements for the granting of a variance.

Mr. Buckley read the Notice, Application and a letter from the Building Inspector into the record.

Submitted into Evidence: the return receipts from the Certified Mailing, a Registered Plot Plan

Correspondence received: Site Consideration from the Building Inspector that was read into the record by Mr. Kirwan.

Mr. Kirwan opened the hearing to the applicant to present their petition to the Board.

Mr. Marc Belanger, Bohler Engineering, representing Cumberland Farms.

Cumberland Farms recently demolished the former gas station at the corner of Pleasant & So. Main Streets and extended the driveway through on Pleasant Street.

This has been approved through the Planning Board Site Plan Review and essentially complete with exception of the landscaping being done in the spring.

They are proposing a second free-standing sign, with the same dimensions as the existing, to be located at the corner on Pleasant Street. The drivers coming down Pleasant Street will be able to see the sign and pull in off of Pleasant Street without having to drive all the way around.

The sign will match the existing sign that's there now and allow visual access from Route 9 and Pleasant Street.

Mr. Buckley asked what the square footage of the sign was. Mr. Belanger said 30 square feet.

Mr. Hathaway asked if the 30-square feet included the LED pricing information.

Mr. Belanger said yes.

Mr. Hathaway noted there was a separate bylaw related to movable/changeable signs, not just for placement of the sign on the site.

Ms. Moore agreed and that it also needed to meet the requirements that the existing sign does, as far as, setbacks, size and height.

Mr. Hathaway noted given there were conditions on the existing sign, the same conditions will apply to the new sign.

Mr. Johnston asked where the sign was being located, from the plan; it was deceiving as to where it was being placed.

Mr. Belanger pointed out that the sign will be just to the right of the corner on Pleasant Street.

Mr. Hathaway explained that variances are usually harder to grant than a special permit. He understood the request being made to allow for an additional sign on the property that at one point were separate properties and had its own sign. So he felt, there would be no more impact than the blighted building that was there.

Ms. Moore asked for clarification that the sign was being placed closer to the corner on the Pleasant Street side. Mr. Belanger said yes.

Mr. Hathaway said he was glad to see the sign was being proposed further back on Pleasant Street and not going back into its original location.

Mr. Kirwan asked if the stripped section shown on the plan was the area being donated to the Town.

Mr. Belanger said yes, they will be sub-dividing the lot and giving the Town 7,064-square feet at the corner where the streets intersect.

Mr. Kirwan asked if everyone was familiar with the Cumberland's in Oxford at the intersection of Routes 12 & 20. Even though that was a complicated setup, the store seems to be able to deal with just having one sign to let the traffic know there was a Cumberland Farms there. He asked if they had looked for a viable way to using just one sign on the lot.

Mr. Belanger said they felt it wouldn't work with this lot because the store is so far back from the intersection. Their main concern was the traffic coming up Pleasant Street; you can't see the canopy until you are at the intersection.

Mr. Kirwan asked if there would be any line of sight issues. Mr. Belanger said no

Mr. Hathaway said from the plan, it looks like the bottom of the sign was around 7-feet from the ground.

Mr. Schold asked for clarification. Cumberland's is proposing a sign that will be bigger than what Cumberland currently has. Mr. Belanger said yes.

Mr. Schold asked if they felt it needed to be that big in that spot.

Mr. Belanger explained that was Cumberland's proposal and wasn't sure if a smaller sign would work in that location.

Mr. Schold felt it was a big sign for a 4 or 5-car parking area. He thought they could get the same impact with something a little more compact.

Mr. Kirwan said the pricing sign Cumberland has, shows member and nonmember pricing as a customer draw.

Mr. Schold said he wasn't against that, he just felt it could be downsized.

Mr. Johnston pointed out that across the street from this lot, McKenna Insurance has two signs on their property and assumed they must have been approved through the same process as Cumberland's is going through now. That building was also on the corner of Main & Pleasant Streets, although they are much smaller signs.

Mr. Hathaway said a variance is needed in order to have a second sign, but to have a sign up to 50-square feet, a special permit is required. He would like to make sure that a 30-square foot sign did not require a special permit.

Ms. Buck confirmed 30-square feet didn't need a special permit.

Mr. Hathaway said so, by right, Cumberland's can have a 30-square foot sign, if the Board were to grant a variance.

Mr. Orth asked if the proposed sign would have the exact same features as the existing sign; i.e. price changing from member to nonmember. Mr. Belanger said yes.

Ms. Moore asked if the new driveway on the Pleasant Street lot was going to be an entrance and exit or just one way. Mr. Belanger said it will be two lanes.

Ms. Moore asked if the sign light goes out when the store closes. Mr. Belanger noted the store was 24-hours.

Ms. Darlene Eager, 8 Pleasant Street said she found out, after the building was taken down across the street and the driveway constructed, that an abutter's notification was not required. She was shocked to find that this was all done and over with.

She asked how this could happen and if the Planning Board had ever requested a traffic study on that second driveway.

She explained that when she went through that entire process with CVS and everything else, all she heard was about the traffic concerns. Now here we are and it's okay to bring in a second driveway to a business that is already established, but yet she was being notified because Cumberland's wants to put a second sign up. She felt something was wrong with this picture. She felt her property will be directly affected because it is right across the street from this lot.

Ms. Eager continued. Now we are looking at a proposal in the Town's historical protected area, to put up a neon 12-foot lit sign across from her building that houses 3 residential tenants.

Now there is a driveway, right across from her tenant's driveway and it was already difficult to get out of her driveway, which is circular around the building.

When she is leaving her building and the tenants are leaving, and there are cars taking the right on red, she ends up waiting forever trying to pull out of her lot, and then there's traffic sitting in the center of Town, where no one can get through.

So now, which she had no say in, the driveway is there and done. She would like someone to explain to her how that could get done without anybody suggesting a traffic study, when this is only a few feet from a major intersection.

Ms. Eager continued. The argument of this being existing or pre-existing, that was years ago when the gas station was there. This is a whole other ball game and no one does a traffic study? The Planning Board approves this and there wasn't a traffic study.

Mr. Kirwan noted that this being the Zoning Board, this Board didn't have any knowledge or influence on a building being razed or a driveway being installed.

Mr. Kirwan asked Ms. Buck could explain the Planning Board's process to Ms. Eager.

Ms. Buck explained that the Town of Leicester's Zoning Bylaws have never required a buffer notification for site plan review applications, unless there was something being constructed over 30,000 square feet. With this particular application, it barely met the threshold to go before the Board for site plan review, because it's an existing building and they weren't building anything new, they were just adding a driveway.

The Planning Board rarely requires formal traffic studies and didn't do one here because it didn't warrant a study, given it was just a driveway. The Board did request information about site distances and conditions for approval related to restrictions on left turns.

The Board did look at the traffic in general, but did not do a formal traffic study.

Site Plan Review is not a formal hearing; it's an agenda item for discussion.

Ms. Moore said the curb cut didn't look like it goes any further back than what was there.

Ms. Buck agreed. Mr. Schold said the curb cuts were already there.

Ms. Eager noted the driveway hadn't been used for years.

Ms. Moore said just because it hasn't been used doesn't mean that it changed what it was.

Ms. Eager said you're talking 5-years of traffic difference.

Ms. Moore explained there are laws that if you take a house down and don't rebuild within two years, then yes, you've changed what you had. But just because the building was unused, and the property was not used, didn't change what the property was.

Ms. Eager said but there was no traffic using the access and now there will be and the traffic has increased greatly in the last 5-years. For this to be done the way it was done, now there will be a driveway, where cars can come out, take a right, but not a left during certain hours.

So now someone will end up getting into an accident trying to read the sign that says; between 2 and 4, you can go right and between 11 and 1, you can go left.

This is what is being proposed along with the store sign.

Mr. Kirwan asked where that was stated in the application.

Ms. Buck said that was part of the Planning Board application.

Ms. Eager said its total negligence having no traffic study and to have that sign allowing turns during certain hours was insane. The school bus schedules don't even coincide with those hours.

It makes no sense. She felt it would create a huge problem there and was concerned that there would be a huge accident there.

Mr. Kirwan explained what he understood, that the Zoning Board was being asked to approve or disapprove a sign. He does agree with Ms. Eager's concern; for example, if he was going to pull out of the Main Street lot and cut across Route 9 to go down Pleasant Street, at night won't be as bad as during the day, but there will be people trying to cut in front of you while you're trying to make it across Route 9 as quickly as you can. If there are people unexpectedly stopping to go left into the driveway, it could create problems.

He asked if the Police Chief had taken a look at this situation from a safety point of view and were there any comment received.

Ms. Buck said yes there was comment received and the Chief didn't want any restrictions on left hand turns.

Mr. Kirwan asked why there were restrictions if the Police Chief didn't want any.

Ms. Buck said the Police Department wasn't opposed to restricting left turns because of safety; they don't like signs that are difficult for the Police Department to enforce. For example; if the signs are on private property, the Town is not required by MassDOT, that if someone were to pull out, and the sign says they can't, they cannot be ticketed.

Mr. Kirwan felt this may be beyond the Board's purview and even though he understood the concern, he felt the Board could not address that concern.

Ms. Eager asked if there was a process where this can go back to the Planning Board to amend these hours. Because, now there will be this 12-foot lit sign showing the cost of gas on it. She wanted to know if that was really necessary.

She felt all they should need is a sign that says Cumberland Farms that addresses the hours on what can and cannot be done.

She has three residents, living in the building across the street, who are trying to protect the historical value of this district and asked if this was going to be a historical sign.

She felt it was blatantly ridiculous, to have that sign, that big, in a secondary driveway.

She noted the application stating, "so the full value of their property can be realized." It's all about profit and not safety concerns or concerns for the abutter, it's simply so that they don't lose any business, which she felt didn't make sense that this would promote more business.

Mr. Kirwan noted Cumberland's was a business and in business to make money, so he did understand this request. He asked the applicant if other signs had been designed for similar situations that were not full sized signs.

Mr. Belanger said yes they have done smaller signs, but usually the size is based on the area. He wasn't sure if the main office would waver from that and would have to ask.

Mr. Kirwan felt the only people who might potentially not know that there was a Cumberland's will be the people not familiar with the area coming up Pleasant Street, because everyone else can see it along Route 9.

This will be just a new entryway into the lot and would only benefit those who aren't familiar with this section of Leicester.

Ms. Eager noted this area being a residential neighborhood, where the zoning keeps encroaching more and more. So if Cumberland's is going to have a 12-foot lit sign, and if she wants to run a business from her building, can she put up a 12-foot lit sign?

She asked what that would do to the Center of Town, because that is where the Town was trying to protect. The Planning Board fought like crazy to protect that area and now there will be a second sign that is not necessary.

Mr. Orth questioned if a sign that size was necessary at that entrance.

He said that if people did miss that entrance, they are not going to turn around; they will just go around the corner. So as far as someone missing it, he didn't believe that would have any significance. He agreed the sign should be smaller, because it's a smaller entrance with a small parking area.

Ms. Moore said the size of the sign isn't in question, because they fit into the size that's allowed and that is not what they requested the variance for. They are looking for a variance for the placement of a second sign. So, by right, they are within the zoning law, as far as size.

Mr. Belanger said the Building Inspector's interpretation of the Zoning Bylaw was that there can only be one sign per lot, even though right now it's still two lots, but his interpretation was that it's one in the same lot.

Ms. Moore felt that was because it's for one business, even though its two pieces of property, its one business. Mr. Hathaway agreed.

Ms. Moore felt this was an improvement from what had been there for the past 10-years.

Mr. Harry Brooks said from the reading of the application, is that Cumberland's was worried about losing business if they didn't have the sign. He asked how Cumberland's can lose any business, when all you have to do is go up a little further to see the Route 9 sign. He felt there shouldn't be another sign there at all, other than an enter/exit sign.

Ms. Eager noted there were going to be several signs there, which was her concern.

She does feel that some signage should be there, but to encroach onto the residential area, particularly her building, it's not necessary.

Ms. Buck noted that this was in a different zoning district than what was across the street.

Mr. Kirwan said there were a couple of options; the applicant can stay with the current proposal and the Board can vote on that. The other potential the Board could ask for was to have the

applicant redesign the sign to something that would have less impact and more appropriate for that location.

Mr. Buckley agreed that businesses do need signs and that they were in business to make a profit. Along Route 9, larger signs are needed for the fast moving traffic to notice. On Pleasant Street, the traffic doesn't move as fast, so it really doesn't warrant a big sign.

Mr. Kirwan asked if Mr. Buckley was suggesting having the applicant withdraw their petition in order for a new design to be presented to the Board.

Mr. Buckley said that would be up to the applicant to decide.

Mr. Orth suggested for the Board to continue the hearing, asking the applicant to prepare a new sign design to present at a continuance.

Mr. Hathaway agreed, but suggested making it clear as to what the Board's expectations would be, such as, what size would the Board consider being just right. Because they could come back with a 20-square foot sign and the Board decides that wasn't acceptable and continue again.

Mr. Belanger said he will ask his client what smallest possible sign they would like to see go there.

Mr. Orth said Cumberland's must have designed similar signs on what they felt would be an appropriate smaller size.

Mr. Kirwan said his opinion was that the gas price section wasn't necessary for a secondary location. Ms. Eager also noted the height.

Mr. Kirwan said that's why the Board was asking, from an engineer's point of view, who understands line of sight and readability, what might be a proper size that would have less impact, but yet serves the purpose of the business owner, which was to alert people.

Mr. Hathaway agreed and just wanted to guide the applicant so they can address the Board's and neighbor's concerns. He asked by eliminating the pricing on the sign and just have Cumberland Farms on it, would that be a sufficient downsize acceptable to everyone.

Mr. Brooks asked about the height. Mr. Hathaway suggested still having the 7-feet from the ground to the bottom of the sign.

Mr. Kirwan agreed by eliminating the pricing and maybe putting the pole further in, would be acceptable.

Ms. Eager felt having just a small sign that says Cumberland Farms with an arrow pointing the way in would be sufficient. Having something that tall there would look absolutely ridiculous. They already have their advertisement on Route 9, which is the main draw.

She is worried that this will be a big issue, with the traffic and safety.

Mr. Buckley explained that unfortunately, the Board can only deal with what is there now, right, wrong or indifferent.

He suggested the Board continue the meeting, so the petitioner can go back to his client and possibly come back with an alternative proposal.

Mr. Kirwan asked for any further comments, questions or concerns.

Mr. Belanger said Cumberland's did have different size signs and felt they would be willing to work with the Town. He asked for a continuance.

After some discussion, it was agreed to continue to January 20<sup>th</sup>.

MOTION: Mr. Buckley moved to continue the hearing on the petition of Cumberland Farms to January 20<sup>th</sup>, 2016 at 7PM to allow the applicant to redesign the sign that will meet the concerns of the neighborhood, the Board and was also agreeable to Cumberland Farms.

SECONDED: Mr. Schold - Discussion: Mr. Schold suggested a 50% reduction, with no lights and eliminating the gas pricing. Ms. Moore suggested also showing the entrance drive.

VOTE: All in Favor

Meeting adjourned at 10:05PM

Respectfully submitted:

*Barbara Knox*

Barbara Knox