

SOMERSWORTH ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
SEPTEMBER 7, 2016

MEMBERS PRESENT: Matt Keiser, Vice Chair, Roland Dumont, Don Routhier and John Kennedy, Alternate.

MEMBERS ABSENT: Paul Maskwa, Chair.

STAFF PRESENT: Shanna Saunders, Director of Planning and Community Development and Tracy Gora, Planning Secretary.

The meeting was called to order at 7:00 pm.

Keiser appointed Kennedy as a voting member of tonight's meeting. Stated that there are only four Board members present tonight and three votes are needed for a motion to pass. Stated that the applicants may elect to table their application until the next meeting, in the hopes that there will be a full Board. Stated that there being a short Board is not grounds for an appeal.

1) APPROVAL OF THE MINUTES OF THE MEETINGS OF AUGUST 3 AND AUGUST 25, 2016.

Motion: Dumont moved to approve the minutes of the meeting of August 3, 2016.

Seconded by Routhier. Motion carried unanimously.

Motion: Kennedy moved to approve the minutes of the meeting of August 25, 2016.

Seconded by Routhier. Motion carried unanimously.

2) OLD BUSINESS

A) Any old business that may come before the Board.

Old business items A and B from the meeting public notice were not heard tonight as they were approved at the extra August ZBA meeting.

3) NEW BUSINESS

A) John & Linda Chaston are seeking a variance from Table 5.A.1 of the Zoning Ordinance to build a shed within setbacks on property located at 37 Page Street, in the Residential Single Family-A, with a Historic Overlay (R1AH) District, Assessor's Map 11, Lot 168, ZBA #20-2016.

Saunders reviewed her memo (see attached) and stated that the application has already been reviewed and approved as minimal impact in the Historic District. Stated that the Board is just to review the setback issue.

Public hearing opened 7:04 pm.

Linda Chaston, the applicant, addressed the Board and stated that she would like to have a shed on her property and that they do not have a garage. Stated that they have

a motorcycle and several gas powered tools that they do not want stored in their basement or under the deck. Stated that they originally they wanted a 12'x16' shed but that they have changed that to a 10'x14' shed. Stated that they would like to tuck the new shed into the corner of the property. Stated that others in this area have garages or sheds on their property lines so it is not out of the ordinary for this area. Stated that it is a wooded lot and the shed will not be near other homes. Stated that the lot is not large and they don't want to have to put the shed in the middle of the yard. Stated that she hopes the two extra feet aren't an issue.

Routhier stated that this is in the R1A District and asked if they have City water and sewer.

Chaston replied yes. Stated that she wants to place the shed between five and ten feet from the property line. Stated that she wants to keep it in the corner to have the yard open to use. Stated that it is a small yard.

Routhier asked if five feet makes much of a difference because she is asking them to make an exception.

Chaston stated that on the same street there are others will full-sized garages within a foot of the property line. Stated that she doesn't have a garage and that she just wants a shed. Stated that there wouldn't be any harm having it there.

Routhier stated that if the regulations are followed then she can still have a shed. Asked if there is any other reason she wants the shed in this area other than for convenience.

Dumont confirmed that if they shed was 120 square feet or less then it could be placed in the setback.

Saunders confirmed that if it is 120 square feet or less than it can go anywhere on the property.

Public hearing closed 7:12 pm.

Dumont stated that there are all woods back there and that he doesn't think there is a problem with this as no one can see it. Stated that the Board has approved many of these in the past although each request stands on its own. Stated that they already got Historic District approval. Stated that he supports this request and that it meets the five criteria.

Routhier stated that he feels opposite of Dumont and that he is sympathetic but that it doesn't seem fair. Stated that if the shed was smaller than there would be no issues. Stated that the reason for zoning is for uniformity in the community and that the Board can make exceptions when they meet the criteria. Stated that he doesn't feel the hardship is met and that this won't be a benefit to the community. Stated that he is not in favor of the request.

Keiser stated that he agrees with Routhier and read from the State RSAs regarding the hardship criteria. Stated that he doesn't feel that the hardship criteria is met. Stated that the subject property is larger than others in the area and he doesn't support this.

Motion made by Routhier: After review of the application, the file and all the information presented to the Board, I feel that criteria three and five have not been satisfied and I move that the request of John & Linda Chaston for a variance from Table 5.A.3 of the Zoning Ordinance to build a shed within setbacks be **DENIED**.

Seconded by Keiser. Vote was 2-2 with Dumont and Kennedy opposed. The variance request is denied.

- B) Todd & Jennie Berry are seeking an appeal from administrative decision regarding the use at property located at 29 Lil Nor Avenue, in the Residential Single Family (R1) District, Assessor's Map 24, Lot 36, ZBA #21-2016.

Saunders stated that this is a complex application and that she has questions so reached out to the City's legal counsel. Stated that part of the discussion was the fact that the owner of the subject property was not notified of this hearing. Stated that there is a loophole in the State statute and that in this case the applicant is the abutter and not the subject property owner. Stated that the applicant is appealing decisions made for the neighbor's property. Stated that City's legal counsel recommends that the Board continue this item. Stated that the property owner just found out about this yesterday and were upset that they only had one day to prepare. Stated that in the spirit of due process she feels this item should be continued until the next meeting to give the subject property owner time to prepare.

Routhier confirmed that the subject property owner was not notified.

Dumont stated that the Board should follow the advice of the City Attorney.

Motion: Dumont moved that the request for an appeal of administrative decision be **TABLED** until the October 5, 2016 ZBA meeting.

Seconded by Kennedy. Motion carried with a 4-0 vote.

- C) Cumberland Farms, Inc. is seeking variances from Section 20 of the Zoning Ordinance regarding signage on properties located at 208 & 216 Route 108, in the Commercial Industrial (CI) District, Assessor's Map 62, Lots 9 & 11, ZBA #22-2016.

Saunders reviewed her memo (see attached) and stated that they are requesting six variances and that page two of the write up submitted by the applicant describes the requests well. Stated that they are looking for a separate vote on each request and to address each one separately.

Public hearing opened 7:22 pm.

FX Bruton of Bruton & Berube represented the applicant and addressed the Board. Stated that he has worked on many of the new Cumberland Farms throughout the State so he knows the company and their needs very well. Stated that there is a new style of Cumberland Farms that has been embraced that has more muted tones and a stonework façade and showed on the plans. Stated that the property across the street has been demoed and cleared but that is not the proposed location for this project. Stated that they will do a lot line adjustment with one of the abutting properties so it will

be a large lot in context with its location. Stated that this is a standard for what Cumberland Farms wants to look like. Stated that they submitted their proposal to the Sign Committee and they denied it for a couple reasons and reviewed. Stated that the maximum freestanding sign height in Somersworth is 16 feet and Cumberland Farms would like a variance for 20 feet high. Stated that it is a complex calculation to determine total allowable sign area and the Committee indicated that the 86 square feet of proposed wall signage along with the freestanding sign exceeds the allowable signage. Stated that the typical store has a wall sign in the front and one on each gable end. Stated that they eliminated one gable end sign and reduced the size of the freestanding sign so they do have more square footage to work with. Explained how wall signage is calculated is calculated based on the structure's setback from the road. Stated that they can have 31 additional square feet because of the building setback. Stated that 138 square feet of signage is allowed and they are proposing 140 square feet. Stated that Cumberland Farms has pared back their standard signage. Stated that they are eliminating the green strip from their canopy and are trying to get the bare minimum and that he wants the Board to understand the steps taken by the company to reduce their signage. Stated that the Sign Committee indicated that only 8.87 square feet of signage is allowed on each end of the canopy but they are proposing 11 square feet for each end. Showed and passed out plans for the signs on the gas pumps (see attached). Stated that they are considered signs but they would like to have them on the pumps and they are hard to be seen from the road. Stated that State law requires gas prices to be advertised and Cumberland Farms wanted to have the numbers be 24 inches tall. Stated that the Sign Committee indicated that they can only be 12 inches tall and the applicant reduced the proposed size of the diesel price. Stated that the last request relates to the changeable copy portion of the sign and that they are allowed to have 12 square feet but are requesting 16.5 square feet. Stated that in spirit of trying to tone down their standard request they went with this size because they were originally proposing 18 square feet. Stated that he is trying to highlight the effort the company is making to reduce the number and magnitude of their requests. Stated that he wants to point out that their signage won't be like other gas stations because only the press through letter portion of the sign will be lit and not the entire sign. Stated that this has been well received by other communities. Stated that he would like to review the five criteria and that the criteria speaks to all six variance requests. Stated that, regarding criteria one, they are not diminishing property values and that it will be an aesthetic upgrade to the area. Stated that there will be New England style architecture with lots of stone work and traditional colors. Stated that there is an existing commercial use on the property so the value of surrounding properties won't change. Regarding criteria two for the public interest stated that with all the variances there has been significant effort to come into compliance with the strict sign ordinance. Stated that the result net effect is that it won't alter the character of the locality; it will be enhanced. Regarding criteria three for an unnecessary hardship, suggested that the property is unique due to its use. Stated that this is a corner lot and they need to provide advertising for gas and for visibility of oncoming traffic. Stated that the typical Cumberland Farms sign is five feet taller than what they are proposing. Stated that the real analysis of this criteria is if the hardship is unnecessary by not allowing it to occur. Stated that he feels that their attention to detail speaks volumes on how they are trying to address this. Stated that their requests are reasonable and there has been a significant effort to scale back on their area of the signs. Stated that, regarding criteria four for substantial justice, there is no gain to the public by denying this request but there is a gain to the public by allowing it. State that, regarding criteria five for the spirit of the ordinance, they are not proposing flashy lighting and that the signage is far less with the lettering being the only part

illuminated. Stated that this will be an upgrade to the area. Stated that the sign ordinance can be difficult to comply with and that this is a reasonable and modest request.

Routhier asked who is on the Sign Review Committee.

Saunders replied the Property Maintenance Officer, the Economic Development Manager and herself.

Routhier confirmed that Cumberland Farms submitted a sign permit application to the Committee and they said it does not meet the ordinance due to the reasons in their letter.

Saunders stated that the Committee denied the application for a number of reasons and the applicant submitted for a variance.

Routhier asked if there were certain parts of the regulations that they did not meet.

Saunders confirmed and stated that she doesn't know how many other properties in this area have variances. Stated that all businesses must meet these regulations.

Bruton stated that the Shell station doesn't meet regulations.

Routhier stated that they are asking for privileges that no one else has and that this opens up a can of worms. Stated that Route 108 is a busy road with lots of plans for the future. Stated that there is a Zoning Ordinance for a reason and that if the Board doesn't follow it then that opens things up. Stated that he doesn't see a hardship.

Bruton stated that this is not Cumberland Farms standard sign package and that they did major reductions to try to meet Somersworth's ordinance. Stated that he has gotten variances in the past for signs in this area and that there are other instances and they are reasonable. Stated that there are probably many variances out there and it is for good reason. Stated that this is a corner lot and others in the area are not. Stated that they are asking for about 1.5 square feet more than what is allowed. Stated that they are not asking for special treatment because of who they are but that it is appropriate for this parcel. Stated that it may not be appropriate for this use on a lot half this size.

Routhier asked why they can't just comply with the ordinance.

Bruton stated that this is why there is this process.

Routhier stated that the applicant talked about this not being contrary to the ordinances but that it is contrary because it is against what everyone else has. Stated that the spirit of the ordinance is for regulations. Stated that everyone else is complying. Stated that the applicant talked about other variances but that he doesn't see those.

Bruton stated that their variance isn't based on other property's variances that have been granted. Stated that the standard is not whether someone else got a variance. Stated that saying that a variance can't be granted because it doesn't meet the ordinance is against why there is this process and why there is this Board. Stated that there are safety valves.

Keiser asked about request number four for the canopy sign and asked for clarification on how the area was calculated.

Bruton stated that the Sign Committee helped him with this and showed on the plans. Explained that they are allowed to use 10% of the canopy sign, which would be 8.78 square feet, but they are requesting 11 square feet. Stated that they are not proposing signage for the front canopy.

Keiser asked if the request would meet the criteria if they used the front instead.

Bruton stated that it might but that they would prefer it on the sides since they are seen from the road.

Keiser asked what the benefit would be by having a 20 foot high sign versus 16 feet high.

Bruton stated that the property is located on a corner and that they still want to have good visibility. Stated that they are proposing less than they usually have but it is higher than the regulations allow. Stated that the regulations speak to all signage but that this is unique because State law regulates adequate price signage for gas stations.

Public hearing closed 8:08 pm.

Keiser stated that he does somewhat agree with some of the comments from Routhier. Stated that he doesn't feel that there is a hardship for having a 20 foot high freestanding sign versus 16 feet high. Stated that he can support request 3 because it is a corner lot and he feels it is reasonable. Stated that he is still debating the correct thing to do for request 4. Stated that it is a four sided canopy but they are only proposing signage on two. Stated that regarding request 5, he would have never thought of gas pumps as signs. Stated that he thinks this is unique and that they are not freestanding signs and supports this one. Stated that he cannot approve request 6 and that there is no need to have 24 inch letters on the sign.

Routhier stated that he agrees with Keiser except for on the two canopy signs.

Saunders read from the sign regulations.

Routhier stated that he doesn't agree with the regulations and that he thinks Cumberland Farms is a good thing and this will be good for the City. Stated that the fact that it is a corner building does make it unique. Stated that he is not opposed to the green stripe. Stated that he does support request 3, 4 and 5.

Kennedy stated that he supports request number 1 and that there are other signs in the area that are higher than that. Stated that he supports requests 1, 3, 4 and 5.

Dumont stated that he supports all of the requests and that they have been through this is so many gas stations. Stated that he doesn't understand how colors are part of the sign. Stated that the applicant has compromised their original request and are trying to meet the regulations. Stated that they did their thing and now we have to do ours. Stated that this is good for the City.

Keiser stated that there seems to be a consensus on request numbers 3, 4 and 5 but not for numbers 1, 2 and 6.

Saunders suggested making any denial motions separately.

Bruton stated that one of the Board members asked for more information on what other properties have.

Keiser stated that he doesn't think that what other businesses have is pertinent to this request.

Bruton stated that he would like to table request 1 to gather more information.

Motion: Routhier moved that variance request number 1 be **TABLED** until the October 5, 2016 ZBA meeting for the applicant to supply more information.

Seconded by Kennedy. Motion carried with a 3-1 vote with Keiser opposed.

Motion made by Routhier: After review of the application, the file and all the information presented to the Board, I feel that all five criteria have been satisfied and move that the request of Cumberland Farms, Inc. for variances from Section 20 of the Zoning Ordinance be **APPROVED**. This motion is for request numbers 3, 4 and 5 in the attachment submitted with the variance application dated 8/22/2016.

Seconded by Dumont. Motion carried with a 4-0 vote.

Motion made by Routhier: After review of the application, the file and all the information presented to the Board, I feel that criteria 2, 3 and 5 have not been satisfied and I move that the request of Cumberland Farms, Inc. for a variance from Section 20 of the Zoning Ordinance be **DENIED**. This request is referred to as number 2 in the attachment submitted with the variance application dated 8/22/2016.

Seconded by Keiser. The vote was 2-2 with Dumont and Kennedy opposed. This variance request is not granted.

Motion made by Routhier: After review of the application, the file and all the information presented to the Board, I feel that criteria 2, 3 and 5 have not been satisfied and I move that the request of Cumberland Farms, Inc. for a variance from Section 20 of the Zoning Ordinance be **DENIED**. This request is referred to as number 6 in the attachment submitted with the variance application dated 8/22/2016.

Seconded by Keiser. Motion carried with a 3-1 vote with Dumont opposed.

D) Any other new business that may come before the Board.

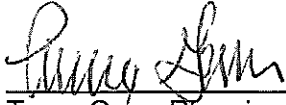
None.

Motion: Dumont moved to adjourn the meeting.

Seconded by Kennedy. Motion carried with a 4-0 vote.

Meeting adjourned at 8:24 pm.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Tracy Gora", is written over a horizontal line.

Tracy Gora, Planning Secretary
Somersworth Zoning Board of Adjustment