

**DECISION AND RECORD OF PROCEEDINGS**

**DECISION**

**SPECIAL PERMIT**

**262 MILLVILLE ROAD AND 240 SOUTH MAIN STREET**

**OWNER: UXBRIDGE CENTER CROSSING, LLC**

Date: May 11, 2022

Name of Owner/Applicant: Big Y Foods Inc.

Address of Applicant: Big Y Foods, 2145 Roosevelt Avenue, P.O. Box 7840,  
Springfield, MA 01102

Location of Property: 262 Millville Road and 240 South Main Street, Uxbridge, MA  
01569

Assessor Map/Parcels: Map 030.1-Parcel 1926-000.0  
Map 130.0- Parcel 2077-000.0

Deed Books/Pages: Deed Book 51999 Page 210

Site Plan Dated: April 7, 2022

Engineer or Land Surveyor: Bohler Engineering  
352 Turnpike Road, Southborough, MA 01771

Zoning District(s): Business (B)  
Industrial (I-A)

PETITION FOR: A. Special Permit Application for construction of a major non-  
residential project pursuant to Article IV, Section 400-20 of the  
Uxbridge Zoning Bylaw filed with the Town of Uxbridge Planning  
Board.

B. Stormwater Permit pursuant to Section 290 of the Uxbridge  
General Bylaw.

C. Fill Importation Permit pursuant to Section 182 of the Uxbridge  
General Bylaw.

APPLICANT: Big Y Foods, Inc., 2145 Roosevelt Avenue, P.O. Box 7840,  
Springfield, MA 01102

OWNER: Uxbridge Center Crossing, LLC, 100 Church Street, Whitinsville,  
MA 01588

PROJECT SITE: 262 Millville Road and 240 South Main Street, Uxbridge, MA (the "Project Site")

ASSESSOR MAP: 030.1-1926-000.0  
130.0-2077-000.0

DEED REF: Worcester District Registry of Deeds Book 51999, Page 210

ZONING DISTRICT: Business (B)  
Industrial (1-A)

APPLICATION  
RECEIVED: December 3, 2021

PUBLIC HEARING  
DATES: January 12, 2022  
February 9, 2022  
March 9, 2022  
March 23, 2022  
April 13, 2022  
May 11, 2022

#### PROCEDURAL HISTORY

1. The Non-Residential Project consists of the construction of a full-service Big Y supermarket consisting of approximately fifty-five thousand (55,000) square feet of land, a separate outbuilding consisting of approximately five thousand (5,000) square feet for presently identified retail uses and all parking and loading areas facilitating the use of the land. During the course of the public hearings the Applicant added an alternative use to the 5,000 square feet retail building, being an approximately 2,300 square fast-food drive through facility.
2. The site in question consists of approximately 12.68 acres and is presently essentially vacant but for a residential structure which is to be demolished. The property at 262 Millville Road contains the existing structure of the former Cocke' n Kettle Restaurant which is not on the lot being created for the development and is not planned as part of this development for inclusion or any change. The site has two (2) points of access from South Main Street (Route 122). One (1) entrance is limited to single lane travel in both directions at the southerly end of the site. The second (2<sup>nd</sup>) and primary entrance at the northerly end of the parcel is designed to be serviced by a full signalized intersection to be installed by the Applicant. The signalized intersection is the subject of a required permit from the Massachusetts Department of Transportation. The Applicant indicated it is already in discussions with MassDOT concerning that Application.
3. On December 3, 2021, an Application was made by Big Y Foods, Inc. for Special Permit pursuant to Article IV, Section 400-20 of the Uxbridge Zoning Bylaw for construction of a major non-residential project, upon land owned by the owners as indicated above.

4. After proper notice, a public hearing on the Applications for Special Permits and Site Plan Approval was held on January 12, 2022 in a public hearing of the Planning Board of the Town of Uxbridge and subsequently continued with the consent of the Applicant to January 12, 2022, February 9, 2022, March 9, 2022, March 23, 2022 and April 13, 2022.

5. During the course of the hearing the Applicant was represented by the following:

A. Civil Engineer/Survey/Permitting

Josh Swerling, P.E.  
Luke DiStefano  
Bohler Engineering  
Beals and Thomas, Inc.  
352 Turnpike Road  
Southborough, MA 01771

B. Traffic Consultant

Shaun Kelly  
Vanasse Associates, Inc.  
35 New England Business Center Drive  
Suite 140  
Andover, MA 01810-1071

C. Legal

Mark L. Donahue, Esquire  
Todd E. Brodeur, Esquire  
Fletcher Tilton PC  
370 Main Street  
Worcester, MA 01608

6. During the course of the public hearing, the following were Peer Reviewers on behalf of the Town:

A. Jeff Walsh, P.E., Civil Engineering

Graves Engineering  
100 Grove Street  
Worcester, MA 01605

B. Daniel A. Dumais, P.E.

MDM Transportation Consultants, Inc.  
28 Lord Road  
Marlborough, MA 01752

7. The following materials were submitted as part of the Applications for Special Permits and Site Plan Approval and during the public hearing process:

- A. The applications submitted by Fletcher Tilton, PC on behalf of Big Y Foods, Inc. consisted of a Letter to the Board which included a project description, a Special Permit Application Form, a Stormwater Permit Applications Form, a Fill/Importation Permit Application, a Certified Abutters list and lot map.
- B. Plans entitled "Proposed Site Plan Documents for Big Y Proposed Development" prepared by Bohler Engineering dated November 19, 2021 as last revised April 7, 2022, included the following plan sheets:
- Sheet C-101 Cover Sheet
  - Sheet C-102 General Notes Sheet
  - Sheet C-201 Demolition Plan
  - Sheet C-301 Overall Site Layout Plan
  - Sheet C-302 Site Layout Plan A
  - Sheet C-303 Site Layout Plan B
  - Sheet C-401 Overall Grading and Drainage Plan
  - Sheet C-402 Grading and Drainage Plan A
  - Sheet C-403 Grading and Drainage Plan B
  - Sheet C-501 Utility Plan
  - Sheet C-601 Soil Erosion and Sediment Control Plan
  - Sheet C-602 Erosion and Sediment Control Notes and Details
  - Sheet C-701 Landscape Plan A
  - Sheet C-702 Landscape Plan B
  - Sheet C-703 Landscape Notes and Details
  - Sheet C-704 Lighting Plan
  - Sheet C-901 Detail Sheet
  - Sheet C-902 Detail Sheet
  - Sheet C-903 Detail Sheet
  - Sheet C-904 Detail Sheet
  - WB – 67 Truck Turn Exhibit L-905
  - Fire Truck Turn Exhibit C-906
  - ALTA/NSPS Land Title Survey dated 8/16/2021 by Control Point Associates, Inc. (7 pages)
- C.
  - Architect Plans dated 11/22/2021 revised through March 3, 2022 by Pepin Associates Architects
    - Sheet 1 - Preliminary Plan
    - Sheet 2 – Exterior Elevation
    - Sheet 3 – View from Front
    - Sheet 4 – View form Left
    - Sheet 5 – View from Right
- D. Transportation Impact Assessment by Vanasse & Associates, Inc. dated December 2021

- E. Transportation Peer Review Comments of MDM Traffic Consultants, Inc. dated January 10, 2022.
- F. Vanasse Associates response to Peer Review comments of MDM Traffic Consultants, Inc. dated April 6, 2022.
- G. Correspondence of MDM Transportation Consultants, Inc. dated April 28, 2022.
- H. Graves Engineering Review #1 dated January 7, 2022.
- I. Bohler Engineering Response to Comments Letter from Graves Engineering, Inc. dated January 31, 2022.
- J. Bohler Engineering Response to Comments Letter from Graves Engineering, Inc. dated March 4, 2022.
- K. Graves Engineering Review #2 dated February 8, 2022
- L. Graves Engineering Review #3 dated /March 11, 2022
- M. Town of Uxbridge Department of Public Works Review Memo dated January 7, 2022, with attachments.
- N. Drainage Report of Bohler Engineering Inc dated November 18, 2021 and revised March 3, 2022

#### GENERAL FINDINGS

Based upon the materials and evidence provided during the hearing process, the Board hereby finds the following:

1. The Applicant proposed to use the Project Site as an approximately 55,000 square foot full-service supermarket with an out building for retail use of approximately 5,000 square feet or, alternatively, a 2,225 square foot fast food facility with drive thru together with associated parking, ingress and egress (the "Project").
2. During the public hearing, the Board considered extensive evidence, both written and oral, regarding the Traffic Impact and Access Study as well as other aspects of the Project. In fact, extensive and exhaustive correspondence was exchanged between the Board's and the Applicant's representative all of which was discussed during the public hearing.
3. Throughout the above exchange, the Plans were revised, and the Applicant provided additional information to address concerns and comments.
4. The Board finds that a Special Permit is required for the Project pursuant to Section 400-20(B) subsections (1), (2) and (3).

5. The Board finds that the Applicant has satisfied the procedural and submission requirements set forth in Sections 400-20(C) through (F), Section 400-42 and Section 400-50(E), as applicable.

6. The Board finds that, after considering the qualities of the specific location, the proposed land use, the design of building form, grading, egress points, and other aspects of the development, the application meets each of the required traffic, environmental, community and fiscal standards, and the various applicable standards as detailed further below. The Board also finds that the application, as a whole, substantially conforms to the intent of Sections 400-20, 400-42, 400-50 and the Zoning Bylaw generally.

7. The Board further finds, in accordance with Sections 400-20, 400-42, and 400-50, that the application satisfies all of the following objectives:

- A. Maximizes pedestrian and vehicular safety both on the site and egressing from it;
- B. Minimizes the volume of cut and fill, the number of removed trees 6" caliper or larger, the length of removed stone walls, the area of wetland vegetation displaced, the extent of stormwater flow increases from the site, soil erosion, and threat of air and water pollution;
- C. Minimizes obstruction of scenic views from publicly accessible locations;
- D. Minimizes visual intrusion by controlling the visibility of parking, storage, or other outdoor service areas viewed from public ways or premises residentially used or zoned;
- E. Minimizes glare from headlights and lighting intrusion and light overspill into the night sky;
- F. Provides adequate access to each structure for fire and other emergency service equipment;
- G. Provides adequate stormwater management consistent with the functional design standards in the Planning Board's Subdivision Rules and Regulations;
- H. Minimizes unreasonable departure from the character, materials, and scale of buildings in the vicinity, as viewed from public ways and places;
- I. Minimizes contamination of groundwater from on-site wastewater disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substances; and
- J. Ensures compliance with the provisions of this Zoning By-Law and other laws, including parking, loading, sign, and landscaping requirements.

8. In granting the Special Permit with conditions, the Board finds that any adverse effects of the proposed use of land as a retail facility as reflected on the Site Plan will not outweigh its beneficial impact to the Town, in view of the particular characteristics of the site, its zoning and the proposal in relation to the site. The Board finds that the standards of 400-20 F of the Zoning Bylaw have been substantially met, that the application as a whole substantially conforms to the intent of the Zoning Bylaws and proposes an appropriate and beneficial development of the site. The Board has also taken into consideration the following:

A. The social, economic and community needs which are served by the proposal are positive.

The proposed full-service supermarket and additional retail building (or fast-food facility) based on the submitted materials together with all associated parking, facilities and infrastructure has been located in a manner consistent with the Uxbridge Zoning Bylaw, §400-20, Appendix A Table of use Regulations, and without limitation, Articles VI, IX and X (Definitions) of the Uxbridge Zoning By-Law.

B. There is minimal impact on traffic flow and safety, including parking and loading.

A Transportation Impact and Analysis Study (TIAS) by Vanasse Associates was submitted for the project. The TIAS fully documented the existing traffic volumes, capacities, controls, road condition, safety, and level of service on the streets adjacent to the site; projected changes due to the site development, with specific reference to probably future uses of neighboring sites and to their potential to affect background traffic growth or decline; assessed the projected impact of such changes; proposed and discussed management and structural improvements and mitigation measures, both on and off the site. The TIAS demonstrated that proposed roadway intersections comply with the development standards referenced in Section 400-20.F of the Zoning Bylaw, and the Massachusetts Department of Transportation Standards and meet the requirements of MassDOT for a signalized intersection as reflected in the Site Plans and the Traffic Assessment. The TIAS analysis concluded that ample roadway capacity is available to support the proposed project with no material degradation of traffic operations relative to no-build conditions. The TIAS was reviewed by the Board's consultant, Transportation MDM, Consultants and all comments of peer review were adequately addressed.

Onsite parking and loading were designed consistent with the Uxbridge Zoning Bylaws and are sufficient to meet the needs of the project.

C. There will be minimal impact on utilities and other public services.

The proposed project will not overly burden the Town's water or sewer system. The project is a retail use and is expected to need approximately 3,500 GPD of water and generate approximately 3,500 GPD of sewer flow. The project has been reviewed by the Town of Uxbridge Department of Public Works. The Applicant or their successors will be responsible for site infrastructure maintenance, waste disposal, snow removal, landscaping, maintenance of paved areas, and curbing.

D. There will be minimal impact on the neighborhood character and social structures.

The project is located in the Business zoning district.

As the use of the site will be a retail facility as reflected in the Site Plans will have little impact to the provisions described in 400-20.E.2 including air quality, water quality, vibration or electromagnetic radiation. The project has been designed to limit wetland impacts and any impacts will be mitigated. Downcast LED lights in combination with the proposed landscaping will prevent light nuisance/spillage onto adjacent properties.

E. There will be a positive impact on the natural environment.

F. The potential fiscal impact on town services, tax base and/or employment is positive.

Pursuant to Uxbridge Zoning Bylaw 400-20G, the Planning Board finds that the application, with Conditions meets each of the required traffic, environmental, community, and fiscal standards as stated in Findings 1-6. The Planning Board also finds that the application, with Conditions, as a whole, substantially conforms to the intent of the Bylaws and proposed an appropriate and beneficial development to the site.

9. The Board finds that the proposed import of approximately 5,000 cubic yards of fill will be performed in a manner so as to not disturb surrounding properties or the environment.

### DECISION

As the close of the public hearing on May 11, 2022, the Board voted, 5 to 0 to grant a Special Permit for a Major Non-Residential Project pursuant to the Uxbridge Zoning Bylaw, a Stormwater Permit pursuant to General Bylaw Chapter 290 of the Town of Uxbridge and a Fill Importation Permit pursuant to General ByLaw Chapter 182 of the Town of Uxbridge to the Applicant for the Project, subject to the following conditions:

1. The term "Applicant" shall refer to the current Applicant(s) and its assignees, successors, affiliates, subsidiaries or any other entity related thereto. The Applicant shall provide notice to the Board upon any sale, transfer or assignment of the Project, other than an assignment of the Project to a mortgagee pursuant to financing. Each tenant shall provide the contact information to the Board and the Chief of Police for the person or persons primarily responsible for the operating of the tenant's use of the Building.

2. This permit shall expire if site construction in accordance with this permit is not commenced within three (3) years from the date this permit is filed by the Board with the Town Clerk and the appeal period has expired unless an extension is granted by the Board to a date certain.

3. The Applicant shall ensure safe and convenient vehicular access to the Project Site during the entire duration of the Project. At reasonable times and upon reasonable advance notice to the



Applicant or its successors, any Board member or representative shall be permitted access to the Project Site for the duration of the construction of the Project subject to reasonable safety restrictions imposed by the site construction foreman, owner or tenant upon arrival.

4. During any exterior construction, the Applicant shall maintain all feasible and reasonable means of dust control and shall collect all debris. No construction may occur on Sundays or on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, Christmas Eve or Christmas. Monday through Friday, no exterior construction may begin before 7:00 a.m. nor continue past 7:00 p.m., unless approved in advance by the Board. On Saturday, no exterior construction may begin before 7:00 a.m. nor continue past 4:00 p.m., unless approved in advance by the Board. However, between November 15th and April 1st, equipment may be started at 6:30am but construction may not commence until 7:00am. In addition, during certain phases of construction it is anticipated that 24 hour a day operation may be necessary and such operations shall be permitted with notice to the Police Department.

5. The Applicant shall implement measures to ensure that noise during construction activities does not exceed acceptable levels, as set forth by Federal and State regulatory agencies. The Applicant shall cease any excessively loud during construction activities when directed by a duly appointed agent of the Board.

6. Prior to the issuance of a Building Permit the Applicant shall prepare and submit for the Board's approval a construction traffic management plan which, at a minimum, shall address construction truck routes, contractor parking, staging areas, hours of operation, determination of need for police details during each identified construction phase.

7. All complaints related to the above or otherwise, shall be logged and tracked by the duly appointed agent of the Board and/or the Zoning Enforcement Officer and promptly shared with the Applicant. Complaints will be brought to the attention of the Board, as necessary. Any complaints that are found to be repetitive in nature and continue without appropriate responses of the Applicant may constitute a violation of these conditions and may be grounds for a stop order or a partial stop order after notice to the Applicant and provided the Applicant is first provided an opportunity to be heard. Nothing in this paragraph may be construed to limit the authority of the Zoning Enforcement Officer.

8. Prior to the issuance of a Certificate of Occupancy, a Massachusetts Registered Professional Land Surveyor retained by the Applicant, or similarly qualified professional, shall prepare a certified as-built plan and submit same to the Building and Planning Departments.

9. In addition to the above, the Applicant, shall provide the Town of Uxbridge, and in particular the Chief of Police and Town Administrator, with appropriate contact information for local and regional operations staff of any tenant, and shall update the information as necessary.

10. This site plan approval allows operations twenty-four hours per day, seven days a week, and three hundred and sixty-five days a year.

11. This site plan approval by the Board shall not be construed as approval from any other Board, Commission, official, or department. The Applicant is responsible for obtaining all

required approvals and permits for the proposed project. This site plan approval is contingent on final approval by all other relevant Boards, Commissions, and agencies of the Town. Any approval which imposes conditions inconsistent with the Site Plan referenced in this Decision in a material manner shall require a revision of the site plan. A request for such revision must be submitted in writing to the Board.

12. Recording of a certification of the Town Clerk and this Decision at the appropriate Registry of Deeds shall be a condition precedent to the issuance of a Building Permit.

13. The Applicant shall install and maintain all plantings shown on the site plan.

14. Not less than thirty (30) days prior to the commencement of construction, the Applicant must notify the Planning Board and schedule a pre-construction meeting.

15. The Special Permit, including any attachments or appendices thereto shall be recorded at the Worcester Registry of Deeds within six (6) months after the date the Town Clerk certifies that no appeals have been filed. In no event shall the six-month period include such time required to pursue or await the determination of an appeal referred to in M.G.L. Chapter 40A, section 17. The Applicant shall submit evidence of such recording to the Planning Board.

16. Prior to initiating any blasting during construction (whether on site or associated with off-site mitigation requirements) the Applicant shall coordinate the Uxbridge Fire Department or its designee to conduct pre-blast surveys in accord with existing regulations.

17. The Applicant shall comply with the terms and provisions of any Order of Conditions issued by the Uxbridge Conservation Commission.

18. The Applicant shall comply with the terms and provisions of an access permit to be issued by MassDOT. As set forth above in the Findings, the terms and provisions of the access permit will include the installation of a full-service traffic signalization as generally depicted on the Site Plan and in the Traffic Impact Assessment submitted by Vanasse & Associates, Inc. In the event the proposed traffic signalization is not authorized by MassDOT substantially in the functional manner reflected in the materials submitted during the course of the public hearings, the Applicant will be required to seek a modification of the site plan by application to the Planning Board and a public hearing conducted by the Planning Board.

19. The grant of a Special Permit pursuant to Section 400-20 for a Major Non-Residential Project includes the Special Permit required for a drive in or drive-thru facility which has been presented by the Applicant as an alternative use for an out parcel. Details with regard to the specific queuing distance of the drive thru, design and implementation of exit lanes and other design details have not been provided as the Applicant has described the proposed use that is only an alternative at the present time. Prior to the issuance of a building permit for a drive thru facility as presented and approved as part of this Special Permit, the Applicant shall be required to submit a supplemental traffic analysis by a recognized traffic engineer demonstrating the traffic flow in, to and through the site as impacted by the fast-food drive thru service, the appropriate location and length of queue lanes, exit or escape lanes or other design details

surrounding such a use for approval by the Board. The Board may, at the expense of the Applicant, retain a peer review traffic consulting to review such report and plans. The ability of the Applicant to proceed will require the affirmative vote of the Planning Board conducted at public meeting; provided, however, that since the special permit is being granted for the drive thru facility such public meeting need not constitute a public hearing.

20. In the event due to unforeseen conditions at the site during development which conditions require the Applicant to seek changes to the approved plans, the Applicant shall submit a request for determination as to whether such change(s) constitute a minor modification or a major modification. In the event the Planning Board by a majority vote determines that the change is a minor modification then the Planning Board may deal with such changes at a public hearing by way of agenda item. If the Planning Board determines that the changes represent a major modification of the plans so as to affect the terms and provisions of this Special Permit, then the Planning Board shall be required to conduct a public hearing for which notice is sent pursuant to and in accord with the Uxbridge Zoning Bylaws.

This Special Permit shall not take effect until the petitioner records at its own expense a copy hereof with the Worcester District Registry of Deeds, pursuant to Massachusetts General Laws, Chapter 40A, Section 11, as amended. The rights authorized by this Special Permit must commence no later than two years from the grant hereof. If this requested Special Permit is litigated, all time periods for recording and construction shall not commence to toll until a final, favorable decision of the Court is rendered.

This Decision does not relieve the petitioner or any other person of the necessity of complying with all other applicable federal, state or local statutes, ordinances, bylaws or regulations.

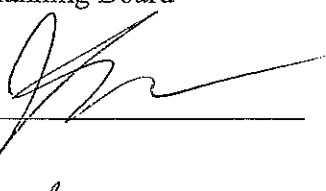
Any person aggrieved by this decision may appeal therefrom in accordance with M.G.L. Chapter 40A, Section 17 within 20 days after the filing of the decision with the Town Clerk.

It was ORDERED by the Board that persons notified of the hearing be notified of the foregoing decision.

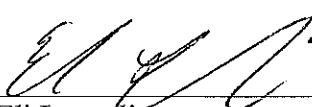
*[Signature page for Decision and Record of Proceedings]*

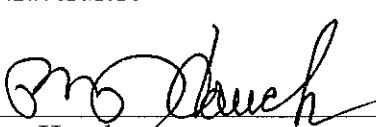
Certified this 11<sup>th</sup> day of May, 2022.

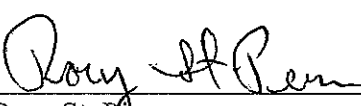
Uxbridge Planning Board

  
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Jim Smith

  
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Joe Leonardo

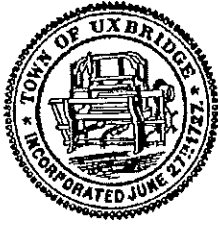
  
\_\_\_\_\_  
Eli Laverdiere

  
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Barry Hauck

  
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Rory St. Pierre

Filed with the Town Clerk on \_\_\_\_\_, 2022.

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Town Clerk



**DECISION  
SPECIAL PERMIT  
262 MILLVILLE ROAD AND 240 SOUTH MAIN STREET  
OWNER: UXBRIDGE CENTER CROSSING, LLC**

I hereby certify that twenty (20) days has elapsed from the date this decision was filed and that no appeal has been filed in this office.

A true copy: ATTEST

(Town Seal Affixed)

This Special Permit shall not take effect until the petitioner records at its own expense a copy hereof with the Worcester District Registry of Deeds, pursuant to Massachusetts General Laws, Chapter 40A, Section 11, as amended. The rights authorized by this Special Permit must commence no later than two years from the grant hereof. If this requested Special Permit is litigated, all time periods for recording and construction shall not commence to toll until a final, favorable decision of the Court is rendered.

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