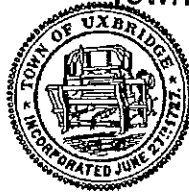


Christopher Currie, Chair  
Rob Knapik, Member  
Joseph Frisk, Alternate Member



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## **DECISION**

**ZBA Case#** FY 17-10a

**Zone:** Business Zone

**Owner:** Richard & Edward Riley; Lori & Scott Brady, and, Blackstone Realty, LLC

**Property Address:** 124-126 North Main Street, 128-130 North Main Street, 4 Hazel Street, and 8-10 Hazel Street

**Assessor's Reference Map:** 304 **Parcel:** 2966, 2967, 2964, and 2958

**Worcester District Registry of Deeds References:** Books: 34960, 41846, 18685, and 20548

**Pages:** 391, 394, 305, and 195

## **SPECIAL PERMIT GRANTED with Conditions**

**Decision Date:** October 4, 2017

**BACKGROUND:** The Applicant submitted a formal Application for Special Permits on November 14, 2016 pursuant to Section 400-50 of the Town of Uxbridge Zoning Bylaw relative to the property located at 124-126 and 128-130 North Main Street and 4, and 8-10 Hazel Street for a Special Permit (i) to allow the operation of a gasoline filling station in the Business zoning district (in accordance with Appendix A, Table of Use regulations), and (ii) to allow the alteration or change of a pre-existing, nonconforming structure (pole sign) in accordance with Section 400-12, by decreasing the nonconformity with Section 400-14(B), as such alteration and change is not substantially more detrimental to the neighborhood than the existing nonconforming structure. On April 12, 2017, the Applicant received unanimous approval from the Town of Uxbridge Planning Board for a Special Permit for Major Nonresidential Project pursuant to Section 400-20 and 400-50.

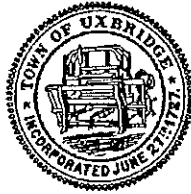
On April 19, 2017 this Board, after hearing, voted to deny the Special Permits (two in favor, one against). The Decision, dated April 19, 2017, was timely filed with the Uxbridge Town Clerk on May 3, 2017. On May 18, 2017 the Applicant filed a timely appeal in Worcester County Superior Court (the "Court"), and timely notified and served the Town and Defendants (the members of the Zoning Board of Appeals). On July 12, 2017, the Parties moved to have the matter remanded to this Board for re-hearing, which was endorsed by the Court on July 24, 2017.

**VOTING MEMBERS PRESENT:** Christopher Currie, Rob Knapik, Joe Frisk

### **SUBMITTALS:**

1. The application, dated November 14, 2016, submitted by Thomas R. Reidy, Esq. on behalf of Cumberland Farms, Inc., consisted of the Zoning Board of Appeals Special Permit Application, with additional property information including the property deeds, a Municipal Lien Certificate, and a Certified List of Abutters, a Project Narrative and Impact Assessments, a Traffic Impact Study, a Stormwater Report, associated fees and the Site Plan Set;
2. Plans, titled Project No. W141636, prepared by Bohler Engineering, with an original date of October 14, 2016 and a final revision date of July 27, 2017, included the following plan sheets:
  - CFG01.0 COVER SHEET
  - CFG01.1 GENERAL NOTES SHEET
  - CFG02.0 ALTA/NSPS LAND TITLE SURVEY
  - CFG02.1 ALTA/NSPS LAND TITLE SURVEY
  - CFG03.0 DEMOLITION PLAN
  - CFG04.0 SITE PLAN
  - CFG05.0 GRADING & DRAINAGE PLAN
  - CFG06.0 SOIL EROSION & SEDIMENT CONTROL PLAN
  - CFG06.1 SOIL CONTROL NOTES & DETAIL SHEET

Bruce Desilets, Member  
Chris Currie, Alternate Member  
Joseph Frisk, Alternate Member



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## **DECISION**

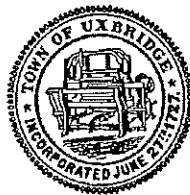
### ***Submittals Continued:***

- CFG07.0 UTILITY PLAN
- CFG08.0 LANDSCAPE PLAN
- CFG08.1 LANDSCAPE NOTES & DETAILS SHEET
- CFG09.0 CONSTRUCTION DETAILS
- CFG09.1 CONSTRUCTION DETAILS
- CFG09.2 CONSTRUCTION DETAILS
- CFG09.3 CONSTRUCTION DETAILS
- CFG10.0 LIGHTING PLAN (BY OTHERS)
- CFG10.1 LIGHTING PLAN DETAILS (BY OTHERS)
- CFG11.0 FIRE SUPPRESSION PLAN
- CFG12.0 CANOPY PLAN & ELEVATIONS
- CFG12.1 CANOPY DETAILS
- CFG13.0 SIGN DRAWING
- CFG13.1 DIRECTIONAL SIGN DETAILS
- A1.1 BUILDING FLOOR PLAN (BY OTHERS)
- A3.1 EXTERIOR ELEVATIONS (BY OTHERS)
- A3.2 EXTERIOR ELEVATIONS (BY OTHERS)
- DS1.1 DOWNSPOUT LOCATION PLAN (BY OTHERS)
- L1.1 EXTERIOR BUILDING LIGHTING PLAN (BY OTHERS)

### **3. File Correspondence:**

- Dated 09/28/16 and last revised 03/09/17 Stormwater Narrative & Management Report
- Dated 10/16 Traffic Impact Study prepared by McMahon Associates
- Dated 11/01/16 Graves Engineering peer review of Site Plans, Drainage Report and Traffic Impact Study
- Dated 11/08/16 Department of Public Works Memorandum
- Dated 11/23/16 Supplemental Traffic Impact Study, McMahon Associates
- Dated 12/02/16 Comments from the Fire Chief
- Dated 12/19/16 Market Value of Improvements/Assessed Value analysis email
- Dated 12/28/16 Accident Report from Uxbridge Police Department
- Dated 1/10/17 Noise Study, Cavanaugh Tocci
- Dated 1/18/17 Supplemental Traffic Impact Study, McMahon Associates
- Dated 02/07/17 Graves Engineering Review
- Dated 03/16/17 Graves Engineering Review
- Dated 03/17/17 Peer Review of Traffic Impact Study, WSP/Jennifer Conley
- Dated 03/21/17 Department of Public Works Memorandum
- Dated 04/12/17 Uxbridge Planning Board Special Permit approval Decision
- Dated 08/29/17 Uxbridge Planning Board Memorandum
- Dated 11/21/16, 12/7/16, 12/13/16, 12/28/16, 1/16/17, 4/19/17, 8/29/17, 9/6/17, 9/8/17, 9/28/17, 10/4/17 Letters from various abutters

Bruce Desilets, Member  
Chris Currie, Alternate Member  
Joseph Frisk, Alternate Member



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## **DECISION**

### **PRESENTATION / DELIBERATIONS / FINDINGS OF FACT:**

The public hearing was opened on 12/7/2016, continued for the 1/3/2017, 2/1/2017, 3/1/2017, 4/5/2017 meetings and closed on 4/19/2017. An appeal was taken by the Applicant to the Worcester County Superior Court on 5/18/2017; the Parties moved and the Court endorsed a remand to this Board. Legal Notice of such a remand hearing was properly and timely published in the Telegram and Gazette, and was mailed by certified mail, with return receipt, to abutters pursuant to MGL c. 40A, § 11, identifying a hearing date of September 6, 2017. Due to a lack of quorum, a representative of the Town of Uxbridge appeared at the scheduled and noticed hearing date, time and location, and notified those present of the continuation of said hearing to a date and time certain (to wit: 9/12/17 at 6 p.m., which again was without hearing continued to October 4, 2017 (the "Remand Hearing")). The Remand Hearing was opened, testimony and materials were taken, abutter comment was heard, and the hearing was closed that evening.

Thomas Reidy, Esq., on behalf of the Applicant, Cumberland Farms, Inc., along with representatives from Bohler Engineering and McMahon Associates presented the Application for (i) a Special Permit to operate a vehicle fueling station, and (ii) a finding that the relocation of the freestanding sign at the corner of North Main Street and Hazel Street would not be substantially more detrimental to the neighborhood than the existing sign-location as the relocation would make the new sign less nonconforming.

In describing the proposal, the Applicant, through its representatives, presented information regarding the 4,786 retail convenience store (a use that is allowed by right in the Business zoning district) with six (6) automobile fueling stations (12 fueling positions, including one diesel position), on approximately 1.06± acres of land located in the Business zoning district.

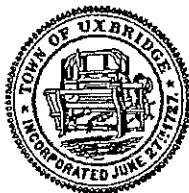
The Board reviewed the material presented, including the Graves Engineering Review letters, the Department of Public Works Memoranda, and the independent review of the Traffic Impact Study, and have reviewed the Plans, Project Narrative and Impact Statements, and have considered the Applicant's presentation and the abutter testimony and find:

#### **Findings:**

The Board found, based upon the materials submitted and testimony given by the Applicant and its representatives, that the adverse effects of the proposed use will not outweigh its beneficial impacts to the Town or the neighborhood, in view of the particular characteristics of the site and of the proposal in relation to that site. Specifically, in making this determination, the Board has considered the social, economic and community needs which are served by the proposal; the traffic flow and safety, including parking and loading; the adequacy of utilities and other public services; the neighborhood character and social structures; the impacts on the natural environmental; and, the potential fiscal impact, including impact on town services, tax base and employment. In addition, the Board considered, relative to the relocation of the existing freestanding sign and its replacement by a new freestanding sign which will be in a location that is less nonconforming than the existing freestanding sign, the Board finds that such a relocation and replacement is not substantially more detrimental to the neighborhood than the existing sign and its location.

Additionally, in preparation for the Remand Hearing, the individual members of the Board thoroughly reviewed the submitted material

Bruce Desilets, Member  
Chris Currie, Alternate Member  
Joseph Frisk, Alternate Member



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## **DECISION**

### **Conditions:**

The Board found that with the following conditions, the Application could be approved as such conditions would ensure compliance with the Town of Uxbridge Zoning Bylaw and would promote the general welfare of the Town and its inhabitants:

1. The Applicant shall adhere to the conditions noted on the approved Plan and in this Decision.
2. The site shall be constructed substantially in accordance with the approved plans. Deviations as a result of other municipal boards, municipal directives, state oversight, or those which the Building Commissioner considers de minimis are acceptable without need for approval by this Board. Substantial changes, as determined by the Building Commissioner, shall require approval from this Board.
3. The number of fuel stations shall be limited to 6 as shown on the approved Plan.
4. That the Hours of Operation shall be from 5:00 A.M. to 12:00 A.M., 7 days per week.
5. Music and audio advertising shall be allowed between the hours of 7:00 A.M. and 9:00 P.M.
6. The Applicant shall install and maintain all plantings shown on the approved Plan, and shall replace any failed plantings within one (1) growing season; to the extent practical, the vegetation should be winter friendly. Plantings located in the south west corner bordering the building, shall be a minimum of 8' high at planting.
7. The Applicant shall install and maintain an attractive fencing 6' high (vinyl) shown on the approved Plan.
8. Snow shall be removed when on-site circulation and/or vehicular site lines are or would be detrimentally impacted.
9. Except for emergency lights, all lights shall be turned off within one-half hour after closing, and shall not be turned on sooner than one-half hour before opening.
10. Garbage is to be stored as designated on the plans, and shall be collected between the hours of 7:00 A.M. to 7:00 P.M. Applicant shall be responsible for maintaining the ongoing cleanliness of the site.
11. Applicant shall manage delivery truck traffic during delivery hours to avoid affecting neighbors or traffic flow.
12. No Loitering signs shall be posted and visible on the site.
13. The Applicant shall maintain the drainage infrastructure in accordance with the Drainage Report and its Stormwater Operation and Maintenance Plan.

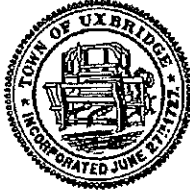
### **MOTION / VOTE:**

Joe Frisk made a MOTION to close Public Hearing FY 17-10a; which was SECONDED by Rob Knapik. The MOTION carried unanimously by a vote of 3-0-0. Chris Currie – aye, Rob Knapik – aye, Joe Frisk – aye.

Joe Frisk made a MOTION to approve a Special Permit for a vehicle filling station with the above conditions. Rob Knapik SECONDED the motion. The Motion was APPROVED UNANIMOUSLY by a vote of 3-0-0. Chris Currie – aye, Rob Knapik – aye, Joe Frisk – aye

Rob Knapik made a MOTION to approve a Special Permit on a finding that the relocation of the sign for a new freestanding sign is not substantially more detrimental to the neighborhood than the existing freestanding sign and location; Joe Frisk SECONDED the motion. The Motion was APPROVED UNANIMOUSLY by a vote of 3-0-0. Chris Currie – aye, Rob Knapik – aye, Joe Frisk – aye

Bruce Desilets, Member  
Chris Currie, Alternate Member  
Joseph Frisk, Alternate Member



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## DECISION

### SIGNATURE PAGE

Christopher Currie, Chair

Joe Frisk, Alternate Member

Rob Knapik, Member

10-6-2017

Date

Bruce Desilets, Member  
Chris Currie, Alternate Member  
Joseph Frisk, Alternate Member



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## **DECISION**

Appeals, if any, from this decision shall be made pursuant to M.G.L. Chapter 40 A, Section 17 and filed within 20 days after the date of the filing in the Office of the Town Clerk.

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

A true copy:     ATTEST

\_\_\_\_\_  
Town Clerk, Kelly Dumas or  
Assistant Town Clerk

Town Seal

**\*\*THE APPLICANT IS REMINDED OF THEIR RESPONSIBILITY TO RECORD THIS  
DECISION AT THE REGISTRY OF DEEDS PER THE CERTIFICATE OF GRANTING.  
NO PERMITS SHALL ISSUE UNTIL THE PERMIT IS RECORDED. \*\***