

Town of Newington, NH  
ZONING BOARD OF ADJUSTMENT

Meeting Minutes – July 17, 2013

**Call to Order:** Chair Matt Morton called the July 17, 2013 meeting at 6:30 PM.

**Present:** Matt Morton, Chair; Ted Connors; Ralph Estes; Alternate, Justin Flynn; Planning Board Rep, Justin Richardson; Town Planner, Tom Morgan; and Jane Kendall, Recorder

**Absent:** John Frink

**Public Guests:** Attorney F.X. Bruton; Christopher Tymula, MHF Design Consultants; Ted Reed, Sprague Energy; Zack Jenkins, Appledore Engineering

**Minutes:** *Ted Connors moved to accept the Zoning Board Minutes of March 25, 2013, and April 1, 2013. Ralph Estes seconded the motion, and all members voted in favor.*

**Public Hearings:**

A) Request by **Cumberland Farms** for the following variances from the Zoning Ordinance for property located at **97 Gosling Road** (corner of Woodbury Avenue), **Tax Map 34, Lot 2**

- 1) Within the 75' setback required by Article VI, construct several structures, some within 5 feet of the public right-of-way.
- 2) Within the 100-foot wetlands setback and 25-foot no-cut no-disturb wetlands buffer required by Article X, construct several structures, some to within 5 feet of the wetlands, and
- 3) Within the 30' setback required by Article VI, construct several structures some to within 1 foot of the side and rear lot lines.

Tymula, Civil Engineer, MHF Design Consultants for Cumberland Farms passed out photos depicting new Cumberland Farms construction like those done in Concord, Greenland, Rollinsford, and Rochester to replace the current Gulf Station located on the corner of Gosling Road and Woodbury Avenue. The new gas station will have five stations with ten gas pumps instead of the current six stations with twelve pumps. The entrance and exits will change from three to two entrances. The auto repair bays will be removed, and replaced with a new colonial style building.

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Attorney Bruton said Newington has a unique 75' setback from pavement, which requires a variance for the parking area, as well as the building, canopy and signs.

They will also need a variance for the 30' setback requirement for the retaining wall at the back, which was designed to prevent erosion of disturbed building construction soils into the ditch at the back.

Lastly they will need a variance from the 25' do not disturb ordinance as well as the 100' structure setback from the wetlands so they may expand their building, pavement and dumpster area.

Justin Richardson expressed concern that there was nowhere to store snow during a heavy storm, as well as concern that road salt runoff would drain into the wetlands. Attorney Bruton said it is Cumberland Farms practice to remove excess snow off site during heavy storms. Mr. Tymula said currently there is little or no runoff treatment for the site, and they will be following the Town's storm water regulations, and installing an underground detention basis, deep sump pumps, or whatever else is required to treat runoff that might go into the wetlands.

Mr. Richardson asked what kind of treatment plan they had for gas and oil runoff. Mr. Tymula said they haven't worked out all the specifics of their management plan yet, but they might use deep sumps or storm water sceptors to trap contaminants.

Mr. Tymula said they had to push the building back to make room for delivery trucks. Ted Connors asked if there was sufficient room for the truck to turn, and Mr. Tymula said they did a turning plan.

Chair Matt Morton asked if the store would be open 24/7, and Mr. Tymula said it would.

Chair Morton asked if there was a second floor to the building and Mr. Tymula said it was just for the colonial appearance, and the top of the faux storage was for mechanicals.

Chair Matt Morton asked if they spoke with the abutter regarding the retaining wall, and Justin Richardson said there's a 30' setback requirement from the property line at the rear. Attorney Bruton said the retaining wall is on Cumberland Farm's property, then there is the ditch, and then there is ToysRUs. Town Planner, Tom Morgan said he sent out a notice, then spoke with Alicia Busconi, site manager of the Crossings at Fox on another matter, and she didn't express any objections.

Attorney Bruton said it would improve the appearance to the "gateway" entrance to Newington. Ted Reed from Sprague Energy said it would also improve safety to get rid of the third entrance.

Mr. Connors asked if they would be willing to build the sidewalk further up the side of Gosling Road. Attorney Bruton said they spoke with COAST bus service, and they asked them to only bring the sidewalk up to their property line.

Chair Morton asked Planning Board representative, Justin Richardson what the Planning Board's stance was on the issue. Mr. Richardson said so far there has been no agreement between the COAST, the City of Portsmouth, and the Planning Board on the bus stop issue. But the Planning Board sees the proposal as an improvement, and they're concerned with what will happen to the snow in a large storm, and obstructing

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the line of sight if pushed against the green curbing. Mr. Tymula reiterated that they planned on removing snow accumulations from the site.

Mr. Richardson asked who would maintain the sidewalks, and Mr. Tymula said the sidewalk is a right of way, but it benefits Cumberland Farms to maintain their sidewalks.

Mr. Connors asked about wetland disturbance, and Mr. Tymula said there are no wetlands on the site, just wetland buffers. Attorney Bruton said they will not be disturbing the area by replacing the below ground storage tanks. Chair Morton asked if they would have diesel pumps, and Attorney Bruton said they would have 31 diesel, but not the diesel for big rigs.

Mr. Connors asked what the construction and completion time frame was, and Attorney Bruton said they hope to start mid fall.

Ralph Estes expressed concern that they were asking for a lot of variances. Mr. Morgan said the 75' setback ordinance was established before his time. the current establishment is there under conditional use because there wouldn't be very many establishments in the mall area that would comply with the ordinance "except a Popsicle stand". Mr. Richardson said although he is also concerned about the setbacks on such a small lot, the upgrade to runoff treatment will be an improvement for the nearby wetlands.

Chair Morton wondered if the Planning Board stipulates storm water treatment in their approvals. Mr. Richardson said the site plan approval requires that proposals follow the Town regulations to remove 50% of pollutants.

Chair Morton then invited Attorney Bruton to read through his arguments that this project would meet the Five Criteria as submitted to the Board.

Mr. Richardson agreed the site would not be buildable without granting the variances, the proposal would improve the aesthetics,

Chair Morton asked if it would be possible to make a motion of approval that tied into the Planning Board site review.

***Ted Connors moved to grant Cumberland Farms application for variances as requested in accordance to their 6/11/13 Preliminary Site Plan, 2<sup>nd</sup> Revision, to be substantially complete within one year, subject to Site Plan approval from the Planning Board. Ralph Estes seconded, and all were in favor.***

B) Request by **Sprague Energy** for property located at **372 Shattuck Way, Tax Map 7, Lot 14**

- 1) Variance from Article X Section 4A in order to install riprap for bank stabilization within a tidal wetland; and
- 2) Special Exception to all surface impact of tidal wetland at an existing road and culvert crossing

Ted Reed, Senior Mechanical Engineer for Sprague Energy and Zack Jenkins from Appledore Engineering came before the Board with drawings and photos showing tidal erosion around a dam that was created in 1973. Nothing has been done to the area

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since then and the erosion is undermining the pilings that support oil pipes. Their plan is to remove the cement, and replace it with riprap and stone.

Chair Morton asked when they were proposing to start the project, and Mr. Reed said they would go to the next Conservation Commission meeting for a recommendation for their DES permit, and they expected it to take 90 days, around September or October.

Justin Richardson wondered why they needed a special exception if the variance would cover their needs, and Mr. Jenkins said they could remove their request for the special exception.

***Ralph Estes moved to grant Sprague Energy's application for variance as requested. Ted Connors seconded, and all were in favor.***

**Adjournment:** ***Ralph Estes*** motioned to adjourn, and Matt Morton seconded. All were in favor, and the meeting adjourned at 8:15 p.m.

**Next Meeting:** Joint Session with the Planning Board, Monday, July 22, 2013.  
Zoning Board, Monday, September 16, 2013

**Respectfully  
Submitted by:** Jane K. Kendall, Recording Secretary