

Town of Reading Zoning Board of Appeals
The Decision of the Board of Appeals on the Petition of

Cumberland Farms Inc.
For The Property Located At
303 Salem Street, Reading, Massachusetts

June 7, 2012
Case No. 12-09

The Reading Zoning Board of Appeals (The “Board”) held a public hearing in the Selectmen’s Meeting Room at Town Hall, 16 Lowell Street in Reading, Massachusetts on Thursday, June 7, 2012 to hear the petition of Cumberland Farms Inc., (the “Petitioner”) who sought a Variance under Section 6.2.3.14 of the Zoning By-Laws in order to install two free standing signs at a height of seventeen feet, four inches on an existing canopy on a lot located at 303 Salem Street in Reading, Massachusetts (the “Property”).

The Property is located in a Business B Zoning District in which only one free standing sign is allowed at a maximum height of fourteen feet. As part of a company-wide upgrade and reimaging program, the Petitioner proposed to install two new signs depicting a gas price on the northwest and Southeast on their existing canopy at a maximum height of seventeen feet, four inches as shown on a four sheet set of drawings entitled “Cumberland Farms, Reading, Massachusetts, 303 Salem Street, Route 129 at Torre Street, L#0634, Store #3377, Gas Station # 852124, cover dated May 16, 2012.

The Community Planning and Development Commission, in its decision issued May 7, 2012, approved all proposed interior and exterior improvements on condition the proposed signage on the plans dated April 30, 2012 were not approved with their decision, thus requiring the Petitioner to apply for a signage variance from the Zoning Board.

The Board may grant a Variance from the By-Laws if it determines that each of the following conditions are met: (1) particular circumstances exist relating to the soil conditions, shape or topography of the land or structure that are the subject of the petition, but do not generally affect the zoning district in which it is located; (2) literal enforcement of the zoning ordinance would involve a substantial hardship, financial or otherwise; (3) desirable relief can be granted without substantial detriment to the public good; and (4) the requested relief does not nullify or substantially derogate the intent or purpose of the zoning ordinance.

Attorney John Smolak of Smolak & Vaughan LLP made a presentation on behalf of the Petitioner, detailing the plans for the proposed signage and its compliance with the variance criteria. The meeting was then opened for public comment where some negative concerns were expressed and discussed.

Following the presentation and public input, the Board determined that:

- (1) The unusual shape of the corner lot and the resulting location of the existing canopy structure greatly limit the possible locations for visible free standing signage. The shape

of the property and required setbacks precludes any opportunity to install a free standing sign visible to arriving patrons from all directions.

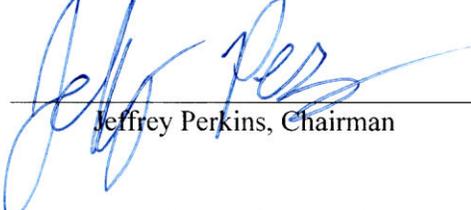
- (2) Literal enforcement of the Zoning By-Laws would involve significant changes to the property to provide free standing signage separate from the existing canopy.
- (3) The proposed signage will be less than that currently existing on site and significantly less than the total square footage of sign area allowed by the Zoning By-Laws. The addition will not change the character of the neighborhood, thus relief can be granted without detriment to the public good.
- (4) Although the Free Standing signs will be located at a height greater than fourteen feet, the existing canopy is at seventeen feet, four and one half inches and will remain unchanged, thus relief can be granted without nullifying or derogating from the intent or purpose of the zoning ordinance.

Upon a duly made motion and seconded, the Board voted (5-0-0) to grant the Petitioner's request for a variance under Section 6.2.3.14 of the By-Laws in order to install two free standing sign at a height of seventeen feet, four and one half inches, as depicted on the referenced Plans on condition that no additional signage shall be installed or proposed signage modified from that depicted on the plans referenced herein, without review and approval of the Zoning Board of Appeals.

Any person aggrieved by this decision of the Board may appeal to the appropriate court pursuant to M.G.L. c. 40A, § 17, within twenty (20) days after the date of filing this Decision with the Town Clerk. Notice of appeal with a copy of the complaint must also be filed with the Town Clerk within twenty (20) days as provided in § 17.

This Variance shall not take effect until a copy of this Decision, bearing certification of the Town Clerk that twenty (20) days have elapsed after the Decision was filed in the Office of the Town Clerk and no appeal has been filed, or if an appeal has been filed within such time, that it has been dismissed or denied, is recorded in the Middlesex South District Registry of Deeds and indexed in the Grantor's Index under the name of the owner of record, or is recorded and noted on the Owner's Certificate of Title. The fee for recording or registering shall be paid by the Owner or Petitioner. Any person exercising rights under a duly appealed Variance does so at the risk that a court may reverse the variance and order undo any construction performed under the variance.

ON BEHALF OF THE READING ZONING BOARD OF APPEALS



Jeffrey Perkins, Chairman

Zoning Board Members Voting on the Motion: John Miles, Jeffrey Perkins, John Jarema, Damase Caouette, Kristin Cataldo