

**APPROVED**  
**Town of Wallingford, VT Development Review Board (DRB)**  
**Findings of Fact, Conclusions of Law and Order**  
February 26, 2016

**Application #:** #16-01; demolish existing facility & construct Convenience Store & Gasoline Station

**Applicant:** Cumberland Farms Inc. (CF); Jon Anderson & Kevin Thatcher, Authorized Agents

**Applicant's Address:** 100 Crossing Blvd. Framingham, MA 01702 (508) 270-1466

**Agent Contact Information:** J. Anderson; Burak, Anderson, & Melloni, PLC, PO Box 787, Burlington VT 05402

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**Property Address:** 309 North Main St. (US Rt.7) Wallingford VT 05773

**Town Parcel:** # 7000309

### **INTRODUCTION**

The initial Permit Application was received by the Zoning Administrator (ZA) on 12/31/2015, and found incomplete. The Application was considered complete 1/7/16, and a Public Hearing date of 1/29/2016 was announced in the Rutland Herald, on January 8<sup>th</sup> and 12<sup>th</sup>, 2016. Abutting property owners were notified of the Public Hearing by registered mail on 1/12/2016. Notice was posted in three public locations. Due to a schedule conflict; the Hearing date was rescheduled for 2/5/2016. On 1/21/2016, the revised date was advertised in the Rutland Herald; abutting owners updated by registered mail; and notice posted in three public locations.

A Public Hearing was held at Town Offices on 2/5/2016. The Application and supporting documentation was reviewed, and testimony was introduced. The DRB voted to continue the meeting until 2/12/2016, with the purpose of continuing Deliberative Session, and a continued Public Hearing was scheduled for 2/19/2016. On 2/19/2016, the DRB accepted new and revised testimony and Application details at a Public Hearing; then closed the Hearing; and voted to continue deliberations until 2/26/2016. At all the Public Hearings and Deliberative Sessions, a quorum of the DRB was present. At all Public Hearings, the Agents for the Applicant, the ZA, and a specific list of Interested Parties were present and sworn in.

Jurisdiction is taken by Articles III, V, and VI of the Wallingford Zoning Ordinance, adopted 8/17/2015. Based on the papers and pleadings on record in this matter, and the testimony presented at said Hearings, the Wallingford Development Review Board hereby issues the following Findings of Fact, Conclusions of Law and Orders.

### **FINDINGS OF FACT**

1. The project is located on a 0.54 acres in the Town Neighborhood Commercial (NC) Zoning District.
2. First part of Application's Project is to remove the existing four fueling stations (2 multi-station pumps), all underground fuel storage tanks, 2212 sq. ft. building, miscellaneous storage structures, and paved surfaces.
3. Revised Application, Addendums, & Site Plans were submitted to the DRB on 2/19/2016. These Site Plans are titled "Proposed Convenience Store, 309 North Main Street (Rt.7), prepared for Cumberland Farms, Inc."; CHA (engineering firm) Project #30384, dated February 19, 2016 (19 pages). It details the second part of the Project; requesting replacement site improvements including: overall site plan; six fueling stations (3 multi-station pumps) under a larger canopy structure; underground gasoline/diesel, propane, and used food grease storage tanks; a 3552 sq. ft. cape style store/ building with exterior surveillance system; trash collection stations; exterior lighting (a separate exhibit, submitted 2/19/2016, provides example exterior illumination options); fencing; and signage. Other revisions/additions to the Application include a general project description (12/23/15); Trash Maintenance Plan (2/17/16); Hearing follow-up letter (2/19/16).

4. The requested Hours of Store operations OPEN to the PUBLIC are to be from 5:00 am through 12:00 am (midnight) Eastern time; every day of the year; with **more restrictive** hours and closure times at the discretion of CF management.
5. A copy of a VT agency of Natural Resources (DEC/Waste Management Division) Site Management Activities Completed (SMAC) letter, dated 5/5/1999, was submitted into testimony; which includes a statement that, in part... "does not release Cumberland Farms Inc. from any past or future liability associated with petroleum contamination remaining at the site". The property has a long history of gasoline station activity. There were no records of an entire site review on this issue presented in Hearings. Public testimony expressed contamination concerns in south west corner of the property.
6. The VT Agency of Transportation (VTRANS) has participated in the site review, and a Letter of Intent; accepting the project, with its access to US Rt. 7, is anticipated. The replacement site plan was engineered to improve the existing pedestrian and vehicle traffic patterns.
7. The replacement Store will be connected to Town water supply and sewage disposal systems.
8. Storm water is to be discharged from an on-site collection system, to existing town storm drainage systems.
9. In addition to oral Testimony, written testimony was introduced in Hearings; addressing removal of perimeter vegetation, trash, and landscaping concerns. These are attached in Town records of Public Hearings.

#### CONCLUSIONS OF LAW

1. Application 16-01 is subject to the Wallingford Zoning Ordinance adopted 8/17/2015. Town flood plain and subdivision ordinances do not apply to this Application.
2. Wallingford has adopted formal zoning, subdivision, and flood plain Ordinances, and that Town jurisdiction is subject to any VT & Federal applicable jurisdiction that this Project may require.
3. That Article III of Zoning Ordinance establishes the Project to be in the NC Zoning District, and Article IV identifies the Application for a gasoline station to be subject to Conditional Use & Site Plan Approval, but not prohibited under provisions in Article IV of Town Ordinance.
4. Article V of the Town ordinance requires DRB review of a Conditional Use application to meet the specified General Standards. The DRB finds the Application does not adversely affect the following:
  - a. **Capacity of existing or Planned Community Facilities:** The DRB finds the Application upgrades a pre-existing & obsolete store that offers important local services. The community is better served by the improved parking, traffic & safety design; increased employment opportunity; and that the Project adds significant appeal to a Designated Village Center.
  - b. **Character of the Area Affected:** The Applicant has been attentive and responsive to the major local issues identified in the Public Review. The Project design improves neighborhood aesthetics, regular maintenance (including site trash) by CF management, site security to deter criminal activity, and same or reduced general lighting impact to residential neighbors.
  - c. **Traffic on Roadways in the Vicinity:** The Project is not expected to significantly increase existing store traffic. The ingress/exit traffic to the site is expected to be a significant improvement over existing use. US Rt. 7 roadside truck parking remains a concern, but is not within the jurisdiction of the Town of Wallingford to regulate. A new side walk and marked Pedestrian Crossing on the northeast corner of the property, as designated by VTRANS, to come off of this intersection of US Rt. 7 and north-west onto Maple Street, is designed to improve this walking pattern.
  - d. **By Laws in Effect:** This Application addresses both a preexisting ordinance exemption (Article V) for the property, as well as review of the existing regulations in place at time of Application. The Application does not conflict with present Town by-laws in this Neighborhood/Commercial location.

### DECISION & ORDER

Based on the Findings of Fact and Conclusions stated, the **Motion** was made to **APPROVE Application 16-01 WITH THE FOLLOWING CONDITIONS:**

1. **That the Project will Conform** to the details and specifications included in Application #16-01, its Attachments & Addendums referenced, and Site Plans dated 2/19/2016. Any DRB Conditions of this Permit Approval are to be included into the afore referenced Application, without additional Hearings. The Zoning Administrator, accompanied by any Town agent selected, is granted permission to access the Project to review compliance, at reasonable times by giving advance notice to the Applicant. Any revision or alteration to the Project will require advance Town notice and approval.
2. That this **Approval is Conditional** on the Applicant securing all other Town, VT, and Federal permits that the Project may require. Pursuant to Article V of the Zoning Ordinance; this Permit is not effective until a VT Waste Water Permit and VTRANS Letter of Intent is received and recorded.
3. That **Soil Tests will be Conducted**, at start of construction operations, in the south west section of the property, and any sections of property that exhibit contamination, by an independent & qualified engineering consultant (acceptable to Town), to document a representative & over all on-site analysis of any soil contamination issues. Testing to be at Applicant expense, and all documentation presented within 10 calendar days to the Town. Any significant contamination issues identified, upon Town decision, may suspend or void this Approval until the contamination issue is resolved by VT regulations and/or mutual agreement with the Town.
4. The **Approved OPEN (to the Public) HOURS of OPERATION** will be between 5:00 am through 12:00 am (midnight) Eastern Time. Any increase to these Hours of Operation will require a new Permit application and review by the Town DRB.
  - a. This does not prohibit authorized store personal to occupy the premises during other hours for the purposes of office, stocking, or maintenance activities.
  - b. Fuel deliveries or facility maintenance visits are not restricted to Open Hours of Operation, providing these do not result in a regular disturbance to the neighborhood.
  - c. Deliveries to the convenience store for inventory related goods and services are restricted to Open Hours of Operation. Delivery vehicles are to be parked on premises while unloading.
5. The **Exterior Sign/Advertisements** are approved as follows:
  - a. That the existing free standing illuminated Business Sign, located in the northeast corner of the property, may be replaced with the proposed internally/LED illuminated Business Sign design described in Sheet CFG13.0 of the Site Plan (2/19/16).
  - b. That one (1) Temporary non-illuminated sign display, one or two sided, may be displayed off the west side of the free standing Business Sign (per Sheet CFG13.0). This temporary sign must conform to Article IX of Zoning Ordinance for a temporary sign.
  - c. That the internally illuminated Store Entrance Sign, as detailed in Sheet A.1 of the Site Plan; OR the internally illuminated Lettered Signage (as submitted in the testimony at the 2/19/16 Public Hearing) is approved.
  - d. That LED illuminated gas pump top signs, as presently permitted in size or design for the existing facility, is permitted.
  - e. That Window advertising/signs conform to Article IX of the Ordinance.
  - f. That the pump island canopy will not have any signage or back lighting.
  - g. Any other exterior signage or advertising is subject to Article IX of Town Zoning Ordinance
6. The **Exterior Construction Hours of the Project** are limited between 6:00 am and 7:00 pm Eastern time.

**7. The General Site Maintenance:**

- a. The CF Trash Maintenance Plan, dated 2/17/2016, is accepted as a condition of this approval, providing it proves adequate to maintain the Site and its Trash receptacles. Regular Maintenance Records of compliance efforts, as referenced in the Plan; are to be maintained, and available to the ZA upon written request.
- b. The Trash Receptacle Plan is to be amended to include a minimum of two (2) additional collection sites. These are to be located close as to the sidewalk and pedestrian traffic patterns on the south and north east corners of the Project site to be effective.
- c. The Landscaping (as detailed in Site Plan Sheet CFG08.0) is to be regularly maintained, and vegetation replanted as necessary.

**8. The Property Security:**

- a. The Fencing, as detailed in Site Plan Sheet CFG04.4 (2/19/16) is approved. Fencing is to be maintained and repaired (including removal of graffiti) on a regular basis.
- b. The exterior CF Security Camera plan, as detailed in Site Plan Sheet SCI.1, did not detail the camera coverage or capability, and continued to show an outside café area that has been removed from the application. Prior to final construction, the DRB requires a revised security camera plan that details exterior night & day video coverage of the traveled and rear (west) exterior of the premises, including the pump island area, with a multi-day continuous recording capability. This minor redesign shall not require additional Hearings.
- c. The night lighting plan for Closed Hours of Operation (marked RL-3417-S4, 3 of 6) is approved. This plan details subdued illumination around the general building and lot area. The full lighting Plan for Open Hours of Operation is approved.

**9.** That the Findings of Fact, Conclusions of Law, and this Order(s) are based on the representations made by the Applicant; in its written submissions and the Hearing testimony presented. Any errors of fact or misrepresentations may be cause for this Order to be rescinded or deemed void.

**10.** That the approval of this Town Permit with Conditions does not release the Applicant, its agents, subcontractors or assigns from obtaining and complying with, any and all other Town, State or Federal regulations and permit requirements that the Project may require. Failure to comply are grounds for revocation of this approval and possible zoning violations.

The following Development Review Board Members have voted on the Motion as indicated, and direct the Zoning Administrator to issue a Permit with Conditions, with referenced Site Plan, Addendums, and this Decision attached. The DRB Chairman is authorized to acknowledge the Decision on behalf of the quorum of the DRB.

Nathan Astin: Approve William Brooks III: Approve Jillian Burkett: Approve Dereck Farmer: Approve  
CarolAnn Martin: Approve

Decisions of the Development Review Board may be appealed to VT Environmental Court; in accordance with 24 VSA Section 4471.

Approved for the Wallingford DRB this 24 of March, 2016,

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Nathan Astin, Chairperson

Received by Wallingford's ZA this 24 March, 2016

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Jeffrey Biasuzzi, Zoning Administrator

