

COMMONWEALTH OF MASSACHUSETTS  
CITY OF GARDNER  
ZONING BOARD OF APPEALS  
**DECISION**

RECEIVED  
2015 MAR 30 PM 12 40  
CITY CLERK'S OFFICE  
GARDNER, MA

NAME: Cumberland Farms, Inc.  
ADDRESS: 100 Crossing Boulevard  
Framingham, MA 01702

DECISION OF THE BOARD OF APPEALS REGARDING THE USE OF THE PREMISES LOCATED AT FOLLOWING PARCELS:

**Parcel ID #M22-10-1, M22-10-39, M22-10-40 and M22-10-41; Main Street**

IN THE CITY OF GARDNER, THE PREMISES BEING MORE PARTICULARLY DESCRIBED IN THE FOLLOWING DEEDS DULY RECORDED IN WORCESTER DISTRICT REGISTRY OF DEEDS:

Parcel M22-10-1	Book: 13175	Page: 37
Parcel M22-10-39	Book: 48349	Page: 327
Parcel M22-10-40	Book: 51658	Page: 255
Parcel M22-10-41	Book: 16322	Page: 217

ON APPLICATION DATED December 16, 2014 for a SPECIAL PERMIT to: construct a 4738 square foot retail store with 12 fuel dispensing facility at Parcel ID #M22-10-1, M22-10-39, M22-10-40 and M22-10-41, Main Street located in the Commercial 1 and Industrial 1 zoning districts is denied as it does not comply with Chapter 675, Article 410.A, Table of Uses, #40 of the Gardner City Code. The Zoning Code states that your proposed use #40 Motor vehicle light service requires a Special Permit in the Commercial 1 and Industrial 1 zoning district.

The Gardner Zoning Board of Appeals at its March 17, 2015 meeting voted unanimously to grant, with conditions, a Special Permit to Cumberland Farms Inc. to construct a 4738 square foot retail store with 12 fuel dispensing facility at Parcel ID #M22-10-1, M22-10-39, M22-10-40 and M22-10-41, Main Street, Gardner, MA.

The Public Hearing was held on January 20, 2015 and continued to February 17, 2015.

The Applicant proposes a retail convenience store with gasoline filling station. It is to be located on property consisting of approximately 2 acres and will involve the razing of three existing structure – a former dry cleaner, a bar and a multifamily dwelling. The proposed building will be 4738 square feet with gasoline filling station consisting of six fueling stations (12 fueling positions) including one diesel dispenser. The store will sell the typical convenience retail type products. It will not have a drive through. It will be open 24 hours a day. The site provides for 21 parking spaces. The project has received site plan approval from the Planning Board.

Approved site plan of record is the titled "Site Plan Set for Cumberland Farms, Store # TBD, Station # TBD, 124-150 Main Street (RT-68), Gardner, MA 01440, prepared by Civil Design Group, LLC. , dated August 6, 2014, latest revision date 1/29/2015.

At the Public Hearing, the applicant addressed the specific criteria for a Special Permit as outlined in Section 675-1170 of the City Code and are as summarized below:

1. The proposal is suitably located in the neighborhood and compatible with the neighborhood, existing uses and other uses permitted by right in the same district. The parcel is in an assemblage of 4 parcels and is in two different zoning districts – Commercial 1 and Industrial 1. The convenience store will be located in the Commercial 1 district. The building was rotated and moved from the Applicant's initial and preferred siting and sits nearer the street line of Main Street. This business will be surrounded by other commercial and retail businesses up and down Main Street.
2. The proposal provides for safe vehicular and pedestrian movement within the site and in relation to adjacent streets, property and improvements. The project includes appropriately sized, illuminated, sited, clear and simple signage. Adequate lighting design exists. Adequate parking exists for employees and customers, as well as sufficient turning areas for delivery truck have been designed into the project.
3. Adequate off-street parking has been designed into the project for the off-loading of goods incidental to the normal operation of the retail store. A 25.5'x50' loading zone exists for this purpose.
4. The proposal provides for the adequate and appropriate facilities and utilities for the proper operations of the proposed use and disposal of sewerage, refuse, other waster products, and other methods of drainage of surface water. The building will be connected to the public sewer system and municipal water system. Appropriate grease traps will be installed. The stormwater design has been reviewed and approved by the City Engineer.
5. The proposal shall not constitute a nuisance due to air and water pollution, erosion, flood, noise, odor, dust, vibrations, lights or other structures. Great care was given by the Applicant to minimize impacts on abutters. The lighting plan specifically eliminates light trespass while maintaining site safety. Efforts were made by Applicant to address potential noise issues related to the mechanical on the roof and effect on the direct abutter to the north. A condition to the granting of the Special Permit addresses this concern.
6. The proposal shall not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians. The signage proposed, in conjunction with the site lighting will ameliorate any hazards at the site. The removal of the vacant and blighted buildings is actually probably a removal of a potential hazard to the neighborhood.
7. The redevelopment of this section of Main Street, or any blighted property should be in harmony with the general purpose and intent of the Ordinance.
8. The proposal will have a significant positive impact city services, tax base, and employment opportunities.

9. The proposal is consistent with the City's Urban Renewal Plan.

The Special Permit is granted with the following conditions:

- The hours of operation for the earth alteration site work are as follows:  
 Monday-Friday 7-5  
 Saturday 8-3  
 No Sundays or holidays  
 Work outside these hours will require approval of the Building Commissioner.

Prior to the commencement of work, contractor to consult with the School Department and alter the hours of work according if in the opinion of the School Officials the work will conflict with school traffic and raise a safety issue

- Noise from Mechanicals – Once the retail building is completed, and should the store or the City receive a noise complaint regarding the mechanicals located on the roof of the retail store, all parties, i.e. the applicant, owner, City and complainant shall meet to resolve the issue.

ANY PERSON AGGRIEVED BY A DECISION OF THE BOARD OF APPEALS OR ANY SPECIAL PERMIT/VARIANCE GRANTING AUTHORITY, WHETHER OR NOT PREVIOUSLY A PARTY TO THE PROCEEDING, OR ANY MUNICIPAL OFFICER OR BOARD MAY APPEAL EITHER TO THE SUPERIOR COURT, DISTRICT COURT, OR LAND COURT DEPARTMENT OF THE TRIAL COURT FOR THE COUNTY IN WHICH THE LAND CONCERNED IS SITUATED BY BRINGING AN ACTION WITHIN TWENTY (20) DAYS AFTER THE DECISION HAS BEEN FILED IN THE OFFICE OF THE CITY OR TOWN CLERK. (M.G.L. SECTION 17, CHAPTER 40A)

A COPY OF THIS DECISION HAS THIS DAY BEEN FILED WITH THE PLANNING BOARD AND THE CITY CLERK, CITY OF GARDNER:

CERTIFIED THIS 30 DAY OF MARCH, 2015

Raymond F. LaFond  
Raymond F. LaFond, Chairman

Randall W. Heglin  
Randall W. Heglin, Clerk

Michael D. Gerry  
Michael D. Gerry, Third Member

I, Alan L. Agnelli, City Clerk, City of Gardner, hereby certify the attached decision by the Zoning Board of Appeals was filed with my office on MARCH 30, 2015 and that twenty days have elapsed since the filing of said decision with my office and that no appeal concerning said decision has been filed or that any appeal that has been filed has been dismissed or denied.

21-April-2015  
Dated

Alan L. Agnelli  
Alan L. Agnelli, City Clerk