

New Map#

Office use only

Application #:

221-14

Map/Lot #

117-130, 131, 135

Date Submitted:

8/11/2021

**Application for Appeal
Zoning Board of Adjustment (ZBA), Franklin, New Hampshire**

VARIANCE

- A. Please complete the entire application. Failure to do so will delay processing it. The completed application and all supporting information must be submitted by the Deadline Date in order for your appeal to be heard at the next meeting of the Zoning Board.

PRINT legibly and in INK. The application must be signed and dated. The owner must sign the application or a letter of authorization from the owner must be attached. *You must be present at the meeting to speak for your application.*

This application is to be completed by anyone requesting a use or area VARIANCE from the ZBA. A variance is a relaxation or a waiver of any provision of the ordinance authorizing the landowner to use his or her land in a manner that would otherwise violate the ordinance and may be granted by the board of adjustment on appeal.

1. Location of the property for which the appeal is being applied:

Street Address: 192, 196 & 202 Central Street, Franklin, NH

Owner

Person Completing Application

2. Name: See attached list of property owners.

Francis X. Bruton, III, Esq., Attorney for the Applicant

Bruton & Berube, PLLC

Address:

601 Central Avenue

City/State/Zip:

Dover, NH 03820

Phone #:

(603) 749-4529

Email:

FX@brutonlaw.com

3. Zoning Classification: Low Density Business & Commercial (B-1)

4. Briefly describe the PROPOSED project, be specific:

The applicant intends to raise the existing structures and construct a building and canopy for the operation of a full service Cumberland Farms, with four dual sided pumps for gasoline and diesel.

5. Please attach to the application a plot plan, on an 8 1/2 x 11 sheet of paper, or survey plan that shows: the existing property lines; all existing and the proposed structure(s) and their setbacks from the property lines for both; any wetlands, ledge, flood area, septic systems, or other features that limit where the proposed structure(s) can be placed on the property. The Board reserves the right to require a formal survey plan to assist in the consideration of the application request.

6. Site has (Check appropriate response): ☒ City Water ☒ City Sewer ☐ Well ☐ Septic

7. Was a Variance previously granted for this site: ☐ Yes ☒ No

Please respond to whether the following is a true statement or a false statement and EXPLAIN your answers in DETAIL:

- B. A variance may be granted if all the following criteria are met:

1. The Variance will not be contrary to the public interest: ☐ True ☐ False

See attached narrative.

2. The Variance is consistent with the Spirit of the Ordinance: ☐ True ☐ False

See attached narrative.

3. Substantial Justice is done:

☐ True ☐ False

See attached narrative.

4. The Value of Surrounding properties are not diminished:

☐ True ☐ False

See attached narrative.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

A. For purposes of this subparagraph, "'unnecessary hardship' means that, owing to special conditions of the property that distinguish it from other properties in the area:

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

☐ True ☐ False

See attached narrative.

ii. The proposed use is a reasonable one.

☐ True ☐ False

See attached narrative.

B. If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

☐ True ☐ False

See attached narrative.

Your application is incomplete unless the following are submitted:

- i. Letter of authorization, if you are not the owner;
- ii. Plot Plan sketch (refer to Letter A #8);
- iii. Abutter's List, blank form attached; and
- iv. All fees are paid. \$100.00 application fee, plus \$6.70 per abutter for abutter's notices.

Note: The Zoning Administrator and/or the Zoning Board may require more information if necessary and may request a Site Visit to your property.

Signature of Applicant's Attorney

Date

Office Use Only:

Date of Submission:

8/11/2021

Fee Collected ☒ Yes ☐ No

Form of Pymt: ☐ Cash ☒ Check #

Date of hearing:

9/11/2021

Amount Paid

\$ 213.90

Decision:

☐ Granted

☐ Denied

Date Notice sent to applicant:

Comments, if Any:

APPLICATION FOR VARIANCE

Project Narrative

Cumberland Farms has been working, on a collaborative basis, with the city of Franklin to acquire an interest, in the form of either a fee interest or lease interest from the city of Franklin, in certain parcels owned by the city of Franklin and that parcel owned by the Elks Club. These parcels are located 192, 196 and 202 Central Street in Franklin. Cumberland Farms intends to development these parcels with a new Cumberland Farms convenience store and gas refueling station.

More specifically, the site is located on the northwest corner of the signalized intersection of West Bow Street (NH Route 127) and Central Street (NH Route 11). The proposed Cumberland Farms would be located on three parcels identified by the City of Franklin as Assessor's Map N8, Lots 117-130, 117-131 and 117-135, which combine for a total area of 1.73 acres and are all fully developed. Lot 130 (192 Central Street) is currently the location of an existing 5,328 square foot (sf) Elks Lodge building. Lot 131 (196 Central Street), is currently the location of a 1,994-sf former restaurant building. Lot 135 (202 Central Street), is currently the location of a former hardware store. The site is bounded by Central Street to the south, West Bow Street to the west, commercial uses to the north and St. Paul's Parish to the east.

Although Cumberland Farms, Inc. will purchase Lot 130 (Elks building lot), the City of Franklin will retain ownership of the other two (2) lots and will enter into a long-term lease with Cumberland Farms, Inc. for use of the two other lots. This arrangement has been made between Cumberland Farms, Inc. and the City of Franklin in order for the lots to be developed, while, concurrently, the City can continue its environmental remediation of the other two lots.

The project itself will involve raising all existing structure on the three lots referenced above pursuant to a demolition plan included herein. Thereafter, a full-service Cumberland Farms store will be constructed, comprised of a +/- 4,650 sq. ft. convenience store, with four (4) dual-sided gasoline dispensers with two (2) of those 4 being 3+1 vehicle diesel dispensers and a full fire-suppression canopy above all dispensers. The aggregate size of the lots utilized for the project provides sufficient area for the intended uses and associated traffic flow.

The site is located in the Low-Density Business and Commercial (B-1) District, which is intended for high-value business, commercial and restricted residential uses. The uses specifically permitted within the B-1 District include retail businesses, restaurants and shopping centers. The uses that are permitted within the B-1 District upon issuance of a Special Use Permit from the Planning Board, include motor vehicle-oriented businesses and bulk fuel sales and storage.

In addition, this site is located in the City's Historic District and has already been reviewed by the Franklin Heritage Commission. As a result of this review, based upon certain design changes request by the Commission, and made by Cumberland Farms, Inc., the project has received the Commission's approval, which includes approval of the design and materials for

the structure and a waiver of the Commissions regulations in order to permit the signage on the building and on the freestanding sign, where certain portions of the signage will be internally (LED) illuminated.

The project has been submitted to the Planning Board for Site plan and Special Use Permit approval. The Special Use Permit is necessary given the use as a gas refueling station.

Given the unique characteristics of these lots, where continuing environmental remediation, and thus the leasing of the lots to Cumberland Farms, Inc. is necessary, the canopy structure that will sit above the gas fueling dispensers and will cross all three lots (see canopy depicted on enclosed plan), thus there will be no side-yard setback, where fifteen (15) feet is required. As such, Cumberland Farms, Inc. is seeking a variance from *Section 305-14, Lot and yard requirements*, of the zoning ordinance.

For the reasons set forth herein, the Applicant respectfully submits that the grant of the variance is reasonable and can be supported by the following evidence:

Variance Requirements:

1. The variance will not be contrary to the public interest.

The Applicant respectfully submits that the proposed use represents a reasonable use of the property in question. By permitting the use, the public interest is served by permitting orderly development in an area where such development has already occurred, all consistent with the B-1 Zone. In addition, the proposed plan will result in the removal of all existing building. The new facility will dramatically reduce impervious coverage on the site, going from 89% coverage down to 59.7% coverage. In addition, the project will provide for integrated on-site drainage features. All of these reasons are consistent with the purpose behind the B-1 Zone, which provides for high-value business and commercial uses in order to "...encourage the growth of this type of use in the proximity of key locations and major municipal highways." In addition, the location of the convenience store and refueling station, as depicted on the enclosed plan, represents a context sensitive design considering the surrounding properties within the area. It is respectfully submitted that the proposed project will be consistent with surrounding properties, despite the lack of set-backs for the canopy between the lots. As such, the proposed use will not be contrary to the public interest, as the use will not "alter the essential character of the locality." See Chester Rod and Gun Club, Inc. v. Town of Chester, 152 NH 577 (2005). Granting the variance will permit the use of the lot as intended and consistent with the purposes of the specific zone.

2. The spirit of the Ordinance will be observed.

The Applicant respectfully submits that if the variance is granted, the spirit of the ordinance would be observed as the use in question is suitable, considering configuration of the lot and given the need to locate the canopy in the depicted location in order to maintain and provide for safe traffic flow through the project, and therefore results in an encouragement of the most appropriate use of the land. In addition, by allowing the location of the canopy, as depicted

on the plan, the purpose of the zone, allowing for high value business and commercial activity will be observed. To be contrary to the public interest or injurious to the public rights of others, the variance must unduly and in a marked degree conflict with the ordinance, such that it violates the ordinance's basic zoning objectives. See Chester Rod and Gun Club, Inc. v. Town of Chester, 152 NH 577, at 581 (2005). It is respectfully submitted, that given the reasons set forth above, the granting of the variance will promote the ordinance's basic zoning objectives.

3. Granting the variance will result in substantial justice.

The grant of the variance would due substantial justice as it would allow the property to be utilized in a similar fashion to other properties located within the area, by allowing the location of a structure, in a location that is consistent with the intent of the ordinance, while removing the existing structures, decreasing impervious coverage, increasing an integrated drainage system, and reviving the area in general. This test considers whether the benefit to the Applicant outweighs the burden to the public. See Farrar v. City of Keene, 158 NH 684, 692 (2009). In this instance, given the proposed location of the structure, and the need for the leasing of the properties, given the need for environmental remediation by the City, there will be no burden to the public whatsoever. Accordingly, the benefit to the Applicant would exceed the burden to the public, thus resulting in substantial justice being done.

4. Granting the variance will not diminish the values of the surrounding properties.

It is respectfully submitted that all of the surrounding properties have a value associated with them that is premised upon the existence of the same type of structure to be located upon this property. In this instance, the location of the structure in the area sought by the Applicant will have no negative affect upon any abutter with respect to its property, as the use will be consistent with other uses in the near vicinity, and consistent with the intent of the existing zoning. To the contrary, given project proposed, with the removal of existing structures and the addition of an entirely new structures, it is respectfully submitted that the value of surrounding properties will be enhanced.

5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship. Unnecessary hardship means:

Owing to special conditions of the property that distinguish it from other properties in the area,

- (a) no fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property.**

As one can see from the plan, and given the need for continuing environmental remediation by the City, the parcels in this case are unique. As a result of the proposed plan of improvements, the lot is not going to be overcrowded as the proposed project will meet all applicable setbacks, other than for the canopy, and as illustrated above, the impervious surface area will be dramatically reduced and drainage will be improved. The general purpose of the

ordinance is to promote orderly development and to protect the health, safety and general welfare of the public. In this instance, the Applicant seeks to locate a convenience store, gas refueling station with a canopy. The canopy will not only provide shelter, but also contain a state-of-the-art fire suppression system for the associated refueling use. As such, the purpose of the ordinance and the purposes of the specific restrictions as to side-yard setback, as to the canopy, will be preserved given the design of the proposed structure, and in considering the context of the need for the continuing environmental remediate and the surrounding uses. Thus, the Applicant respectfully submits that there is no substantial relationship between the general public purpose of the ordinance, and the specific application of the side-yard setback restrictions, given the proposed use submitted by the Applicant.

and

(b) the proposed use is a reasonable one.

The proposed use is reasonable as it provides for the location of a convenience store and gas refueling stations within an area that is suitable for such a project given the other businesses located in the area. The proposed structures will allow the use of the property in a manner that is anticipated within the B-1 Zone, and will result in the removal of the existing structures and the redevelopment of the lot, lessening surface coverage and dramatically increasing on-site drainage, making the use reasonable.

List of Owners of Record

192 Central Street, Franklin, NH
Map 117, Lot 130

Franklin Lodge of Elks #1280
Benevolent and Protective Order
Of Elks of the United States of America
192 Central Street
Franklin, NH 03235

196 Central Street, Franklin, NH
Map 117, Lot 131

City of Franklin
316 Central Street
Franklin, NH 03235

202 Central Street, Franklin, NH
Map 117, Lot 135

Lenard M. Burke, Trustee
Lenard M. Burke Trust
428 North Road
Franklin, NH 03235

672:3 Abutter. – "Abutter" means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board. For purposes of receiving testimony only, and not for purposes of notification, the term "abutter" shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a condominium or other collective form of ownership, the term abutter means the officers of the collective or association, as defined in RSA 356-B:3, XXIII. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a manufactured housing park form of ownership as defined in RSA 205-A:1, II, the term "abutter" includes the manufactured housing park owner and the tenants who own manufactured housing which adjoins or is directly across the street or stream from the land under consideration by the local land use board.

ABUTTERS & NOTIFICATION LIST
For
CUMBERLAND FARMS
192, 196, & 202 CENTRAL STREET
MAP 117 LOTS 130, 131, & 135
FRANKLIN, NH
GPI # MAX-0428317
AS OF 7/13/21

| <u>MAP-LOT #</u> | <u>NAME & ADDRESS</u> |
|-----------------------------|---|
| 117-130-00 (SUBJECT PARCEL) | FRANKLIN LODGE BPOE #1280 125 SOUTH MAIN STREET FRANKLIN, NH 03235 |
| 117-131-00 (SUBJECT PARCEL) | CITY OF FRANKLIN |
| 117-274-00 | 316 CENTRAL STREET |
| 117-296-00 | FRANKLIN, NH 03235 |
| 117-135-00 (SUBJECT PARCEL) | M. LENARD BIRKE TRUST M. LENARD BIRKE TRUSTEE 428 NORTH ROAD FRANKLIN, NH 03235 |
| 117-133-00 | DENNIS W. DONAHUE 29 WEST BOW STREET FRANKLIN, NH 03235 |
| 117-134-00 | TIMOTHY B. ALBERTS ONE DOUPHINETT STREET FRANKLIN, NH 03235 |
| 117-137-00 | UNITARIAN CHURCH OF FRANKLIN P.O. BOX 562 FRANKLIN, NH 03235 |
| 117-138-00 | FRANKLIN HOME FOR THE AGED ASS ATTN: MEG MILLER 22-24 PEABODY PLACE FRANKLIN, NH 03235 |
| 117-263-00 | ALEXIS KORAKAS |
| 117-265-00 | 185 CENTRAL STREET FRANKLIN, NH 03235 |
| 117-266-00 | GREATER TILTON AREA FAMILY RESOURCE CENTER 5 PROSPECT STREET TILTON, NH 03276 |
| 117-267-00 | BB REALTY TRUST CHRIS BITSAS TRUSTEE P.O. BOX 194 LONDONDERRY, NH 03053 |
| 117-272-00 | PRIMAL HARDWARE, LLC 181 CENTRAL STREET FRANKLIN, NH 03235 |

ABUTTERS & NOTIFICATION LIST
For
CUMBERLAND FARMS
192, 196, & 202 CENTRAL STREET
MAP 117 LOTS 130, 131, & 135
FRANKLIN, NH
GPI # MAX-0428317
AS OF 7/13/21

| | |
|-------------------|---|
| 117-275-00 | ELM GROVE NORTH, LLC 440 HANOVER STREET MANCHESTER, NH 03104 |
| 117-276-00 | PKD PROPERTIES, LLC P.O. BOX 88 BRISTOL, NH 03222 |
| 117-277-00 | JOSEPH B. ST. JACQUES CHARLOTTE L. ST. JACQUES 24 WEST BOW STREET FRANKLIN, NH 03235 |
| 117-279-00 | WEST BOW PROPERTY, LLC 36 GOVERNOR DINSMORE ROAD WINDHAM, NH 03087 |
| ENGINEER/SURVEYOR | GREENMAN-PEDERSEN, INC. 44 STILES ROAD, SUITE ONE SALEM, NH 03079 |
| ATTORNEY | BRUTON & BERUBE, PLLC 601 CENTRAL AVENUE DOVER, NH 03820 |

**M. LENARD BIRKE TRUST
428 NORTH ROAD
FRANKLIN, NH 03235**

July 15, 2021

City of Franklin
Henry J. Proulx Center
124 Memorial Street
Franklin, NH 03235

**RE: Cumberland Farms, Inc.
192, 196 & 202 Central Street
Map 117, Lot 135**

To Whom it May Concern:

Please accept this correspondence as our written authorization for Francis X. Bruton, or any other representative from the law firm of Bruton & Berube, PLLC of Dover, New Hampshire to act on our behalf with respect to the proposed project within the City of Franklin. This representation shall include, but not be limited to, discussions with Town officials, meetings before any regulatory boards, telephone conferences, signing of any applications, and any and all other actions reasonably necessary to move the above-referenced project forward.

Should there be any questions regarding this authorization, please feel free to contact me.

Sincerely,

By:



M. Lenard Birke, Trustee

**FRANKLIN LODGE OF ELKS #1280
BENEVOLENT & PROTECTIVE ORDER
OF ELKS OF THE UNITED STATES OF AMERICA
192 CENTRAL STREET
FRANKLIN, NH 03235**

July 21, 2021

City of Franklin
Henry J. Proulx Center
124 Memorial Street
Franklin, NH 03235

**RE: Cumberland Farms, Inc.
192, 196 & 202 Central Street
Map 117, Lot 130**

To Whom it May Concern:

Please accept this correspondence as our written authorization for Francis X. Bruton, or any other representative from the law firm of Bruton & Berube, PLLC of Dover, New Hampshire to act on our behalf with respect to the proposed project within the City of Franklin. This representation shall include, but not be limited to, discussions with Town officials, meetings before any regulatory boards, telephone conferences, signing of any applications, and any and all other actions reasonably necessary to move the above-referenced project forward.

Should there be any questions regarding this authorization, please feel free to contact me.

Sincerely,

By: Joseph Giuvita
Name: Joseph Giuvita, Trustee



CITY OF FRANKLIN, NEW HAMPSHIRE

OFFICE OF THE CITY MANAGER

316 Central Street
Franklin, New Hampshire 03235
Telephone (603) 934-3900 ext. 250
Email citymgr@franklinnh.org

July 14, 2021

Seth Creighton, Planning and Zoning Director
City of Franklin
124 Memorial Street
Franklin, NH 03235

**Re: Cumberland Farms Inc.
192, 196 and 202 Central Street**

Dear Director Creighton,

In conjunction with the above project, please accept this correspondence as the City's written authorization for Attorney Francis X. Bruton or any other representative from the law firm of Bruton & Berube of Dover, New Hampshire, to act on behalf of the City with respect to the proposed project. Representation shall include, but will not necessarily be limited to, discussion with City officials, meetings before the City's regulatory boards, teleconferences, execution of applications and any and all other actions reasonably necessary to advance the project in the name of the City and/or Cumberland Farms.

This authorization shall continue in full force and effect until revoked in writing.

Sincerely,

Judie Milner, City Manager

cc: Paul T. Fitzgerald, City Attorney

Franklin - The Three Rivers City

LEGEND

| | | |
|------------------|-----|--------------------------|
| UTILITY POLE | VGC | VERTICAL GRANITE CURB |
| DRAIN MANHOLE | LSA | LANDSCAPED AREA |
| SEWER MANHOLE | PL | PLASTIC |
| CATCH BASIN | CS | COATED STEEL |
| WATER VALVE | CI | CAST IRON |
| HYDRANT | G | GAS LINE |
| WATER SHUTOFF | W | WATER LINE |
| GAS VALVE | SE | SPOT ELEVATION |
| GAS METER | CE | CONTOUR ELEVATION |
| ELECTRIC METER | OWS | OVERHEAD SERVICE WIRES |
| TRAFFIC SIGNAL | DSY | DOUBLE SOLID YELLOW LINE |
| HAND HOLE | SW | SINGLE SOLID WHITE LINE |
| OBSERVATION WELL | | |
| LIGHT POLE | | |

MAP 117 LOT 133
N/F DENNIS W.
DONAHUE
29 WEST BOW STREET
FRANKLIN, NH 03235
BOOK 2450 PAGE 200
(USE: RESIDENTIAL)

MAP 117
LOT 130
30,293 Sq.Ft.
0.695 Ac.±

MAP 117 LOT 134
N/F WILLIAM J. &
CHRISTINA M. HAMEL
175 LAWNDALE AVENUE
FRANKLIN, NH 03235
BOOK 2876 PAGE 976
(USE: AUTO SERVICE)

MAP 117
LOT 135
37,317 Sq.Ft.
0.857 Ac.±

MAP 117 LOT 137
UNITARIAN CHURCH
PO BOX 562
FRANKLIN, NH 03235
BOOK 2329 PAGE 1044
(USE: RELIGIOUS)

MAP 117
LOT 131
7,887 Sq.Ft.
0.181 Ac.±

OWNERS OF RECORD:

MAP 117 LOT 130
192 CENTRAL STREET
FRANKLIN LODGE BPO#1280
192 CENTRAL STREET
FRANKLIN, NH 03235
BOOK 2320 PAGE 5

MAP 117 LOT 131
196 CENTRAL STREET
CITY OF FRANKLIN
316 CENTRAL STREET
FRANKLIN, NH 03235
BOOK 3478 PAGE 3

MAP 117 LOT 135
202 CENTRAL STREET
LENARD M. BIRKE TRUST
428 NORTH ROAD
FRANKLIN, NH 03235
BOOK 3246 PAGE 325

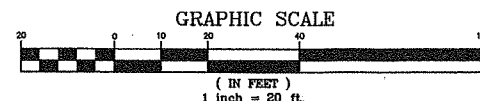


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LOCATION MAP (NOT TO SCALE)

NOTES:

- 1) THE PURPOSE OF THIS PLAN IS TO SHOW THE PROPOSED LIMITS OF SITE IMPROVEMENTS AND DEMOLITION ACTIVITIES OVERLAYED ON THE EXISTING CONDITIONS.
- 2) REFER TO SHEETS 5-11 OF 15 FOR ADDITIONAL LAYOUT AND DETAILED INFORMATION.



GPI Engineering Design Planning Construction Management
603.893.0720 GPINET.COM
Greenman-Pedersen, Inc.
44 Stiles Road
Suite One
Salem, NH 03079

192, 196 & 202 CENTRAL STREET
FRANKLIN, NH 03235

Cumberland Farms Inc.
165 FLANDERS ROAD
WESTBOROUGH, MA 01581
SCALE: 1"=20'
DATE: 7/2/2021
FILE: 4283SP.DWG
DRAWN BY: CPS
CHECKED BY: CMT

SITE PLAN OVERLAY CFG04.1

GPI PROJECT NO. 428317 SHEET 6 OF 14