

New Map# _____
Map/Lot # _____

Office use only

Application #: 224-02
Date Submitted: _____

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

RECEIVED

FEB 13 2024

VARIANCE

Please complete the entire application. Failure to do so will delay processing it. Nine (9) color copies of the completed application and all supporting information, collated into 9 individual packets, 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: <u>See attached list of property owners.</u> | <u>Francis X. Bruton, III, Esq., Atty for the Applicant</u> |
| | <u>Bruton & Berube, PLLC</u> |
| Address: _____ | <u>601 Central Avenue</u> |
| City/State/Zip: _____ | <u>Dover, NH 03820</u> |
| Phone #: _____ | <u>(603) 749-4529</u> |
| Email: _____ | <u>FX@brutonlaw.com</u> |

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 ½ 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.

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

Dawn Johnson

Signature of Applicant

2/6/24

Date

Office Use Only:

Date of Submission: 2/13/2024

Fee Collected ☒ Yes ☐ No

Form of Pymt: ☐ Cash ☒ Check #

Date of hearing: 3/6/2024

Amount Paid

\$ 310.00

Decision: ☐ Granted ☐ Denied

Date Notice sent to applicant:

Comments, if Any:

List of Owners of Record

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

Cumberland Farms, Inc.
165 Flanders Road
Westborough, MA 01581

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

City of Franklin
316 Central Street
Franklin, NH 03235

APPLICATION FOR VARIANCE

Project Narrative

Over the last few years, Cumberland Farms, Inc. has worked, on a collaborative basis, with the City of Franklin to acquire a lease interest from the City of Franklin over parcels owned by the City of Franklin, and to acquire a fee interest in a certain parcel that was previously owned by the Elks Club. The City of Franklin also recently completed a lot line adjustment where 1,540 sq ft was conveyed from Map 117, lot 135 to Map 117, Lot 296, which lots are both owned by the City of Franklin. The parcels subject to this application are located at 192, 196 and 202 Central Street in Franklin. Cumberland Farms intends to develop these parcels with a new Cumberland Farms convenience store and gas refueling station. On January 3, 2022 Cumberland Farms, Inc. acquired the property formerly owned by the Elks (Map 117, Lot 130) and now has in place a lease interest from the City of Franklin over land represented as Map 117, Lots 131 and 135.

At its meeting on August 4, 2021, the ZBA granted variances for the project, however, the construction of the project has not yet commenced. The City Planner, Mr. Seth Creighton, has determined that the previous variances have lapsed, and, as such, Cumberland Farms, Inc. seeks to have the ZBA re-grant the previous variances for the project to now proceed.

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 the three parcels identified by the City of Franklin as Assessor's Map 117, Lots 130, 131 and 135, which combine for a total area of approximately 1.70 acres. Lot 130 (192 Central Street) is currently the location of an existing 5,328 square foot (sf) building which previously served as the 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.

Since Cumberland Farms, Inc.'s last application, and as part of its collaborative efforts with the City of Franklin, it purchased Lot 130 (the Elks building lot), and the City of Franklin purchased Lot 135 and retained ownership of Lot 131. Cumberland Farms, Inc. has also entered a long-term ground lease with the City of Franklin for the use of the lots owned by the City for its project proposed. Specifically, 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 structures on the three lots referenced above. 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 reviewed by the Planning Board and, at its meeting on August 25, 2021, Cumberland Farms, Inc. was granted 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 sounding 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.

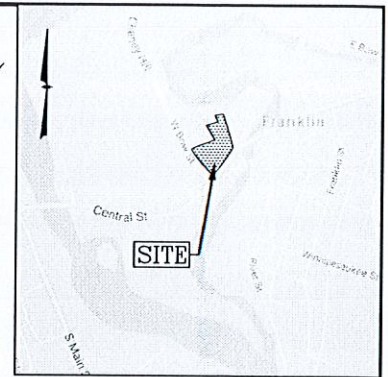
and

(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.

LEGEND

UTILITY POLE	VCC	VERTICAL GRANITE CURB
DRAIN MANHOLE	LSA	LANDSCAPED AREA
SEWER MANHOLE	PL	PLASTIC
CATCH BASIN	CS	COATED STEEL
WATER VALVE	CI	CAST IRON
HYDRANT	— 6 —	GAS LINE
WATER SHUTOFF	— 12 —	WATER LINE
GAS VALVE	— 200 —	SPOT ELEVATION
GAS METER	— 200 —	CONTOUR ELEVATION
ELECTRIC METER	— 200 —	OVERHEAD SERVICE WIRES
TRAFFIC SIGNAL	— 200 —	DOUBLE SOLID YELLOW LINE
HAND HOLE	— 200 —	SINGLE SOLID WHITE LINE
MONITORING WELL		
LIGHT POLE		



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.

WEST BOW STREET
ROUTE 127
(PUBLIC - VARIABLE WIDTH)

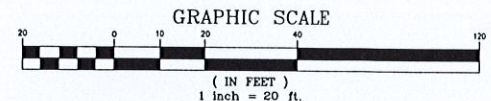
LOT 137
CHURCH
562
NH 03235
PAGE 1044
(RELIGIOUS)

OWNERS OF RECORD:

MAP 117 LOT 130
192 CENTRAL STREET
CUMBERLAND FARMS, INC
165 FLANDERS ROAD
WESTBOROUGH, MA 01581

MAP 117 LOT 131
196 CENTRAL STREET
CITY OF FRANKLIN
316 CENTRAL STREET
FRANKLIN, NH 03235

MAP 117 LOT 135
202 CENTRAL STREET
CITY OF FRANKLIN
316 CENTRAL STREET
FRANKLIN, NH 03235



GPI
603.893.0720

Engineering
Design
Planning
Construction Management
GPINET.COM

Greenman-Pedersen, Inc.
44 Stiles Road
Suite One
Salem, NH 03079

3,956 SQUARE FEET

1.698 ACRES

V# NEW

Store# NEW

Gas Station# NEW

200 CENTRAL STREET
FRANKLIN, NH 03235



CUMBERLAND FARMS INC.
165 FLANDERS ROAD
WESTBOROUGH, MA 01581

SITE PLAN OVERLAY

SCALE: 1"=20'
DATE: 7/2/2021
FILE: 4283SP.DWG
DRAWN BY: CPS
CHECKED BY: CMT

CFG04.1

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 LIST
FOR
CUMBERLAND FARMS, INC.
192, 196 & 202 CENTRAL STREET
MAP 117, LOTS 130, 131 & 135
FRANKLIN, NH
AS OF FEBRUARY 12, 2024**

MAP/LOT	NAME/ADDRESS
<u>OWNER/APPLICANT</u>	
MAP 117/LOT 130	CUMBERLAND FARMS, INC. 165 FLANDERS ROAD WESTBOROUGH, MA 01581
<u>OWNER/ABUTTER:</u>	
MAP 117/LOT 131	CITY OF FRANKLIN
MAP 117/LOT 135	316 CENTRAL STREET
MAP 117/LOT 274	FRANKLIN, NH 03235
MAP 117/LOT 296	
<u>ABUTTERS:</u>	
MAP 117/ LOT 133	DENNIS W. DONAHUE 29 WET BOW STREET FRANKLIN, NH 03235
MAP 117/LOT 134	TIMOTHY B. ALBERTS 1 DOUPHINETT STREET FRANKLIN, NH 03235
MAP 117/LOT 137	UNITARIAN CHURCH OF FRANKLIN PO BOX 562 FRANKLIN, NH 03235
MAP 117/LOT 138	FRANKLIN HOME OF THE AGED ATTN: HOWARD CHANDLER 24 PEABODY PLACE FRANKLIN, NH 03235
MAP 117/LOT 263 MAP 117/LOT 265	ALEXIS KORAKAS 185 CENTRAL STREET FRANKLIN, NH 03235
MAP 117/LOT 266	ARCHWAYS 5 PROSPECT STREET TILTON, NH 03276
MAP 117/LOT 267	JOSEPH M. STERNER MICHELLE STERNER, TRUSTEES STERNER FAMILY LIVING TRUST 13 PHEASANT LANE ATKINSON, NH 03811

**ABUTTERS LIST
FOR
CUMBERLAND FARMS, INC.
192, 196 & 202 CENTRAL STREET
MAP 117, LOTS 130, 131 & 135
FRANKLIN, NH
AS OF FEBRUARY 12, 2024**

MAP 117/LOT 272	PRIMAL HARDWARE, LLC 181 CENTRAL STREET FRANKLIN, NH 03235
MAP 117/LOT 275	LRMSR ONE, LLC C/O DOOR FUND, INC. PO BOX 717 SHIRLEY, MA 01464
MAP 117/LOT 276	PKD PROPERTIES, LLC PO BOX 88 BRISTOL, NH 03222
MAP 117/LOT 277	JOSEPH B. ST. JACQUES CHARLOTTE L ST. JACQUES ESTATE 24 WEST BOW STREET FRANKLIN, NH 03235
MAP 117/LOT 279	WEST BOW PROPERTY, LLC 36 GOVERNOR DINSMORE ROAD WINDHAM, NH 03087

ENGINEERS/SURVEYORS/ATTORNEY:

ENGINEER/SURVEYOR	CHRIS TYMULA, P.E. GREENMAN-PEDERSEN, INC. 44 STILES ROAD, SUITE ONE SALEM, NH 03079
ATTORNEY	FRANCIS X. BRUTON, III, ESQUIRE BRUTON & BERUBE, PLLC 601 CENTRAL AVENUE DOVER, NH 03820



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