



TOWN OF AMENIA

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ZONING BOARD OF APPEALS MEETING WEDNESDAY, JANUARY 23, 2013

PRESENT: Chairman Leo Blackman
Kevin Cassone
David Menegat
Ian MacDonald, Attorney

ABSENT: David Rosenberg

MOTION TO OPEN THE ZBA MEETING OF JANUARY 23, 2013 was made by Leo Blackman, seconded by Kevin Cassone

VOTE TAKEN - MOTION CARRIED

PUBLIC HEARING:

Cumberland Farms **Revised Canopy Design** **3333 Route 343**
Amenia, NY

MOTION TO OPEN THE PUBLIC HEARING FOR CUMBERLAND FARMS was made by Leo Blackman, seconded by David Menegat

VOTE TAKEN - MOTION CARRIED

Chairman Blackman told the Board at the last meeting the Board looked at the Cumberland Farms proposal and made some suggestions. Tim O'Brien from Bohler Engineering representing Cumberland Farms introduced himself to the Board. At the last meeting the canopy and the previously proposed signage was discussed as to what required variances. All of the signs have been revised so that variances are no longer required. Two months ago at the ZBA meeting it was discussed with great detail reviewing the canopy signage and at that time it was the Boards and the Code Enforcement Officer's opinion that that sign would be considered an awning. Then there was a discussion about the signage. Cumberland has addressed dimensional

concerns regarding the canopy. Mr. O'Brien then showed the Board drawings of the existing canopy, and showed what the proposed canopy would look like. Cumberland has done away with the box around the signage, now it is individual letters, so it is more defined and smoother. The sign will be externally lit as previously shown. Per the definition in the Town's Code, the valance portion of an awning is allowed to be 12 square feet. Because this is a canopy it actually has 4 valances, we are here for a clarification or the Board's decision that these are valances. Mr. O'Brien spoke with Cumberland Farms and asked them to come back with less than what the code states. They have come back with 11 square feet. Kevin Cassone asked if they were asking for one or two signs. Mr. O'Brien stated they were asking for two one on each side. The box around the signage has been removed and we brought the color band around the canopy all the way.

Mr. Blackman stated he had three points that he wanted the Board to comment on.

1. Was glad to see the sign was reduced to 11 square feet – so fits an awning sign. Is the Board OK if it is defined as an awning with having signage on two sides, rather than one?
2. This would set a precedent for future signage on a canopy, which does not exist at present.
3. Does the awning sign in the code address illumination?

Attorney MacDonald stated that the illumination applies to all signs, they cannot be internally illuminated. Mr. Blackman wanted to make sure that an awning wasn't treated separately in terms of illumination. Kevin Cassone stated since there is nothing in the Code for canopy and awning to fit, the Town Board was looking at this. David Menegat stated he would prefer only one side, but traffic comes from two sides. He went on to say as long as they have complied with the size, he would not have a problem with it. Mr. Cassone agreed and stated he was happy they had made it smaller. Mr. Blackman felt it was much more discrete than it was however Cumberland Farms has the tall sign and has the sign with the gas prices, both of which can be seen from two sides. This seems to me to be a bit redundant as you can see Cumberland Farms on approach from either side.

MOTION TO OPEN TO PUBLIC COMMENTS was made by Leo Blackman, seconded by David Menegat

Larry Havens – Mr. Havens asked if the sign that posts the gas prices is changing. Mr. O'Brien told him that was a lot smaller. Mr. Havens asked if that was part of this application. Mr. Blackman stated it was part of this application; however that was being reviewed by the Planning Board. Kevin Cassone interjected all the other signs exceeded what the code demanded and they are all being made smaller. The pole sign will be lowered and will not be on the east

side of the property by the house but will be located on the west side of the property by the creek.

Mr. Havens then asked if the Cumberland Farms sign will be on the price sign in addition to the awning signs. Mr. O'Brien stated yes, however it works out to be half of the signage originally proposed. Mr. Havens continued there are no signs on the Cumberland Farms canopy in Great Barrington, Massachusetts. They also have a single pole sign with only unleaded gas price and no Cumberland Farms sign. The only Cumberland Farms sign is over the door on the building. He went on to ask if the price sign was illuminated, then the canopy plus all the lights from the canopy going straight down. Mr. O'Brien stated externally illuminated for the price sign, however the lights are recessed in the canopy so you don't have that bright lighting. Ian MacDonald asked if there was illumination on the canopy logo now. Mr. O'Brien stated no.

Chairman Blackman suggested a Resolution to the Town Board to address this in a more permanent way, since there are two gas stations in the Town. Kevin Cassone agreed that it should be defined. Mr. Blackman is wondering about the illumination on the canopy as there is illumination on the price sign and the bigger standing sign. There will be no problem finding this at night. The canopy will be lit anyway for safety reasons. He asked Attorney MacDonald to read the section of the Code on awnings and illumination. Mr. MacDonald read the two sections.

Chairman Blackman felt the Board was comfortable with two sides, we are all in agreement this should be treated as an awning and the size of the sign is good. The lighting will be accepted with the caveat the Town Board should address this specifically as a revision to the Zoning Code. Mr. Cassone asked if other businesses with awnings have the goose neck lamps on top to light the logo on the exterior of the awning. Mr. Blackman said clearly before there was just the logo on the awning with no lights. Mr. O'Brien stated if it were on an awning, the lettering would either be darker or lighter and the light would go through the awning. There would be no lights. Mr. Havens added the neighbor to the east with the gooseneck light as long as there is a limit on the wattage there should be not the glare against that one valance that points towards the Cayea house. Mr. O'Brien has seen before where a restriction that the sign must be turned off ½ hour after the business is closed. Mr. Menegat agrees with Mr. Blackman that there does not need to be more lighting there. Mr. O'Brien showed the Board the light fixture with the shield that is on the light. Mr. Cassone felt that most of the lighting had already been looked over, with the exception of the lights under the canopy which nothing can be done as it is a safety feature. If the light lights up a neighbor's yard, they have a right to come to the Zoning Board and complain. Mr. O'Brien stated that could be a condition that after the sign is installed it must be looked at at night to make sure there is no reflections to the neighbors residence.

Chairman Blackman proposed that the Board rule that in this particular case that the closest category in the Zoning Code is an awning so we consider this canopy to be an awning for the purposes of the Zoning Code. We recommend that hereafter the Town Board come up with specific regulations for a canopy like this. We should accept the signs on two sides that are less than 12 square feet as proposed and that we accept the external illumination of the lights proposed with the provision that once they are installed if they prove an annoyance to the neighbors that they be adjusted. Attorney MacDonald said the Board would need to be careful about what would constitute an annoyance to the neighbors. If it is a permissible sign they can follow the illumination rules that are in the Code. Mr. Blackman stated this is not a normal sign and in this particular case the Zoning Code does not address gas station canopy. Because this signage is redundant and because this faces a house close by and the light is located high up, if this were an awning the light would be 8 feet above the ground. Mr. Menegat asked that since it is so close to a residential property, could we also do it just allowing the lighting on the opposite side. Mr. O'Brien stated that sign is a lot further away from that residence than the existing sign is. If there is an issue, Cumberland Farms I am sure would adjust the light.

Attorney MacDonald again told the Board the question that is presented to the Board is whether all four sides of the canopy are considered a valance under the Zoning Code. Mr. Blackman stated no it is not, however the closest thing is an awning, but the canopy is not like an awning on a storefront. This is just an interpretation. Mr. MacDonald continued that the Building Inspector and the Planning Board say it's an awning, so if it is an awning, how many valances does it have. He recommended that in your determination, if you agree with the Building Inspector that you mention that you agree that it is an awning.

Mr. Blackman felt there were three choices in terms of the lighting:

- Yes, Cumberland Farms can go ahead with lights on two sides – with provisions if the lights provide a problem with the neighbors they can be adjusted, turned off
- No lights at all as there were no lights before on the canopy and they are probably not needed at night as there are already two other signs
- Split the difference – they can have one illuminated sign and one non-illuminated sign, however that could be problematic.

Attorney MacDonald interjected that tonight we need to find out the Board's feelings on whether or not the canopy has how many valances. If a canopy is considered an awning under the Code awnings are allowed to have a sign on the valance. The question then becomes is a canopy an awning, how many valances does it have. It is then up to the Code to determine illumination. Mr. Blackman suggested saying that a canopy is not covered under the Zoning Code and is not intended to have signage or illumination. David Menegat felt that if the Board does allow the two signs they have the right to illuminate both signs. Larry Havens asked if there was a sign

over the doorway. Mr. Blackman stated yes there was. David Menegat felt that Cumberland Farms would rather have signage and no illumination rather than no signs and no illumination. Mr. MacDonald stated if you are proposing conditions and it was determined that the conditions are arbitrary and capricious there could be a legal problem. Kevin Cassone said that the Board is not giving Cumberland Farms a variance; we are making a determination on the canopy. Mr. Blackman stated that the gas station canopy is closer to an awning so the Board must judge it using that standard in terms of the amount of signage. The Board must do that or say the fact that it is not listed in the Zoning Code means that should not have signage or be illuminated or have signage and illumination. David Menegat added if the Board feels that strongly about the illumination factor then we must rule that no sign. Mr. Cassone added the Board then must rule it is not an awning, because once it is an awning Cumberland Farms will have a right under the Zoning Code to have signage. Attorney MacDonald stated the determination that is being appealed is that the canopy is an awning and the question is as an awning how many valances does it have. Mr. O'Brien went on to say if there is a problem with the lighting of the sign on the valance, then the Code Enforcement Officer can enforce that.

Chairman Blackman stated the Board is trying to figure out how to treat a canopy. It seems that the closest thing to say is an awning, but it is not an awning so we think it should be treated like an awning with this condition or we say it is not an awning, it should not have any signage applied to it because there is no signage allowance in the Zoning Code for this type of structure. He continued back to square one, we have the Zoning Code that tries to make the hamlets unique and there is a Historic District Overlay. So the intent is not look like a strip mall. If the Board accepts that there is no place for a canopy, it exists but was not envisioned by the Zoning Code as there should not be a gas station canopy of that sort in the middle of the HDO. For the canopy itself there is no requirement that it have any signage or illumination. Cumberland Farms is asking for more signage even though there is less signage on the whole property. We are being asked to give them signage where there was no signage before. The Board must decide what is the fair and appropriate thing to do. Attorney MacDonald stated the Board could impose a condition and justify it because it is higher than an awning. Mr. Blackman stated he had no problem with the sign; he has a problem with the lighting. He continued in terms of square footage of signage we feel it can be treated most like an awning which gives them more signage than if it were a building sign. Allow signage on two approach sides of the canopy seems OK, but we feel that it should not be externally illuminated. Mr. Cassone added unlike awnings, they are not 17' in the air. Again Mr. Blackman stated it is closest to an awning, but not an awning and the Board felt that two non-illuminated signs are appropriate. The Board agreed.

Kevin Cassone felt if there were no signs and we agreed to let them have just the green stripe around the canopy because what is done here will be watched and directly interpreted by the other gas station in town. If we allow Cumberland Farms to have the two sides on their canopy,

Gasland will also want two sides on their canopy and they have two canopies which would mean 4 signs and they are also in the Historic District Overlay.

Chairman Blackman proposed that the Board says in the opinion of the ZBA that our interpretation of the Zoning Code would be that in the hamlet in the Historic Overlay District the reason that gas station canopies was not mentioned in the Code was because they are not appropriate to a hamlet and they are not entitled to illuminated signage. They may already exist and be allowed to continue to exist but that it is not a justification for additional signage for the commercial owner. It is not the right thing for the center of the hamlet. While we are happy with the other signage on the property, there is simply no permission in the Code for signage on a gas station canopy. It was not addressed in the Zoning Code and the Board feels that just because there is another structure to put a sign on that there is not any entitlement to have extra signage. There should be no other graphics and no illumination. The canopy is not a building and it is not an awning. David Menegat and Kevin Cassone agreed.

MOTION TO CLOSE THE PUBLIC HEARING was made by Leo Blackman, seconded by Kevin Cassone

VOTE TAKEN - MOTION CARRIED

MOTION TO MAKE THE DETERMINATION THAT CANOPIES ARE NOT COVERED IN THE ZONING CODE BECAUSE THEY ARE NOT INTENDED TO BE IN THE HAMLET-HISTORIC DISTRICT OVERLAY AND THAT IF THEY ARE GRANDFATHERED-CONTINUE TO EXIST- WE THINK THAT SIGNAGE AND ILLUMINATION ON THEM IS A DETRIMENT TO THE CHARACTER OF THE HAMLET AND THE HISTORIC DISTRICT AND THEY SHOULD NOT BE ALLOWED AND WE FEEL THE PROPOSED SIGNS FOR CUMBERLAND FARMS ARE MORE THAN ADEQUATE IN TERMS OF WHAT THE OTHER SIGNAGE THEY ARE PROPOSING AND THE NON SIGNAGE LIGHTING IN THE CANOPY was made by Leo Blackman, seconded by Kevin Cassone

VOTE TAKEN - MOTION CARRIED

BEA BOYD

Use Variance/With Hardship

3457 Route 22

Dover Plains, NY

Kevin Cassone asked if the ZBA should be looking at the old Zoning Code in reference to this variance. Leo Blackman asked does the old code have a different lot size requirement for a single house. Also what obligation does the ZBA have to the applicant if there have been more complaints and the former Zoning Officer had given her information that was incorrect? Public Hearing was set for February 13, 2013.

Gasland

Area Variance/Sign

**4941 Route 22
Amenia, NY**

The Area Variance/Sign was withdrawn by applicant.

MOTION TO CLOSE THE ZONING BOARD OF APPEALS was made by Leo Blackman,
seconded by David Menegat

Respectfully submitted,

Susan M. Metcalfe
Zoning Board of Appeals Secretary

The foregoing represents unapproved minutes of the Town of Amenia Planning Board from a meeting held on
January 23, 2013 and are not to be construed as the final official minutes until so approved.

Approved - February 13, 2013

Approved with: deletions, corrections, and additions