

**Zoning Board of Appeals
Minutes of November 16, 2011
Bourne Town Hall, Lower Conference Room
Buzzards Bay MA 02532**

Lee Berger, Chairman
John Priestley, Jr., Vice Chairman
Judith Riordan, Clerk
Timothy Sawyer
Wade Keene (arrived at 7:35 pm)
John O'Brien
Harold Kalick
Thomas Armstrong

List of documents:

- #33-11 - Letter dated 11/15/11 from Bracken Engineering requesting continuance – 1 page
- #35-11 – Double sided internally illuminated sign plans dated 11/16/11 – 2 pages
- #35-11 – Light Meter Test dated 11/10/11 – 1 page

Meeting called to order

7:30 pm

Approval of minutes

Priestley MOVED and SECONDED by Riordan to table the approval of the 11/2/11 minutes until 12/7/11. UNANIMOUS VOTE.

7:35 p.m. - #33-11 – SPECIAL PERMIT - CONTINUED

Kevin and Nicole Lord c/o Bracken Engineering, Inc. Location: 7 Indian Trail, Sagamore Beach. Map 2.3, Parcel 26 in an R40 zoning district. Proposal: Applicant seeks special permit per Section 2457 for increasing gross floor area to a pre-existing non-conforming lot.

Sitting on the Board: Lee Berger, John Priestley, Tim Sawyer, Judith Riordan and Wade Keene. Also present John O'Brien, Harold Kalick and Tom Armstrong.

Don Bracken, engineer for applicant Kevin Lord, submitted a letter requesting a continuance until the next available meeting so they could have more time to resolve the property line issues.

Chm. Berger met with Coreen Moore. Not using the gross floor area for a one story garage is not a footnote, but is part of the definition of maximum gross floor area. He read into the

record the definition from the zoning bylaws. Ms. Moore told him that all garages are one story and if you have something over the garage, you count the first floor. She also said the Board doesn't have the authority to grant the special permit requested since you have to include the garage floor area, and by doing so the area would exceed the tables by more than 10%. John Priestley disagreed, but agreed to continue the discussion at the continued hearing.

Priestley MOVED and SECONDED by Riordan to continue the hearing for #33-11 Special Permit to 12/7/11 at 7:35 pm. VOTE 5-0.

7:40 p.m. - #35-11 – Special Permit - Continued

Carolyn Parker (agent)/VSH Realty – Cumberland Farms (CF). Location: 435 Shore Road, Monument Beach. Map 30.4, Parcel 167. Proposal: Applicant seeks to remove existing 6'x4' price sign from light pole. Replace the 6'x8' with new 3'x8' CF panel and a new 3'x8' LED price sign.

Sitting on the Board: Lee Berger, John Priestley, Tim Sawyer, Judith Riordan and Wade Keene. Also present John O'Brien, Harold Kalick and Tom Armstrong.

Manny Paiva, Planning Department Manager for Cumberland Farms, represented the applicant.

Issues from the last hearing:

- 1) Confirmation if the Board has authority to issue a special permit for a sign.

Chm. Berger spoke with Coreen Moore with regard to authority in the bylaws. There is no specific place in the bylaws that makes the Board of Appeals the Special Permit Granting Authority, although the bylaws seem to imply that it does have the authority. She agreed the bylaw needs to be written better. Chm. Berger stated he was inclined to grant the permit as it would reduce the signage on the premises and make it more conforming.

- 2) Request for Cumberland Farms to make the sign appear more colonial.

Revised plans dated November 9, 2011, show the sign looking more colonial, with architectural molding on top and bottom of the sign, and the pole encased. Portions of the sign would be opaque so that they are not seen at night.

- 3) Lower the brightness of the sign.

Sawyer asked if sign was two-sided as there is an apartment right next door. The applicant responded that the sign is close to the street and the building is further back. The revised proposal is to add an opaque film on the sign so it is not as bright.

Day and night copies of revised proposed Cumberland Farms sign submitted to the Board dated 11/9/11.

Able Applied Technologies Light Meter Test dated 11/10/11 submitted. The minimum brightness default setting from the manufacturer is 6, using light meter located directly in front of the display 9 ft away in complete darkness.

4) Dim lights at nighttime

LED light mechanism comes out of factory set at 6. CF had another case in which they dimmed the setting a notch which satisfied the request. Mr. Paiva cautioned that if the sign is set too low (lower than 4), it would flicker. Cumberland Farms is okay with setting the mechanism at 4.

Jim Mulvey asked that if the Board feels there should be an adjustment, who from Cumberland Farms would adjust. Mr. Paiva said he would personally change by remote, upon receiving a call from the Building Inspector.

Question raised about the hours of operation of the Cumberland Farms store. Mr. Paiva believed it is 24 hours, but Sawyer said he thought it closed at 11 pm. Mr. Paiva said if the store does close, the Cumberland Farms sign would be turned off while the store was closed.

Chm. Berger asked the 5 regular Board members their thoughts: Sawyer – start at 5; Keene – start at 6; Berger – start at 4; Priestly – start at lowest setting it doesn't flicker; Riordan – start at 5.

Priestley MOVED and SECONDED by Riordan to close public hearing. VOTE 5-0.

Priestley MOVED and SECONDED by Riordan to find that the proposed sign will not be substantially more detrimental to the neighborhood than is the existing nonconforming use, and approve Special Permit #35-11 to delete current price sign and in its place erect a sign in accordance with plans submitted dated 11/9/11 by Graphic Impact (2 pages: daylight/nighttime) and require setting to be at a maximum brightness setting of 5 at night, in accordance with the light meter test set forth in the letter from "able Applied Technologies" dated November 10, 2011, and further conditions that the brightness of the sign be subject to review and amendment by the Board of Appeals, and that the lights in the sign be turned off when the store is closed. VOTE 5-0.

New Business:

Hideaway Village Condominium Association – Continued discussion with Mr. Horne, General Manager of HAVCA

Continued discussion with Mr. Ronnie Horne, General Manager. Mr. Sean Silva, President of Association, was also present at tonight's meeting.

Chm. Berger said the basic concern of the Board is notification of all affected abutters. When there is an application from anyone in Hideaway Village (HAV), the abutter list includes residents who surround HAV, but does not include the residents who live right next to the applicant, inside of HAV. Chm. Berger asked how the Association Board of Directors gets abutters involved and make them aware of potential rights to go to Court and appeal the ZBA decision (maybe they signed away their rights in the condo documents – the Board had requested a copy of those documents. Mr. Silva said the only thing that would address the issue would be their construction application policy. Mr. Silva said the Association notifies all abutters who they feel would be affected by construction. If after 30 days, no one answers they lose their right of appeal.

If there is potential for a negative impact, notification comes from the Association.

Chm. Berger said the ZBA looks at different issues from the Association, including public safety, and the neighbors have rights of appeal to the Courts from a Board of Appeals decision, but perhaps not from an Association decision. If the neighbors do not know about a Board of Appeals meeting, how will they know they can voice objections at such a meeting?

Chm. Berger suggested a notification procedure done by the Association. Since the Association notifies “all affected persons” for its construction procedure, that same letter could include a statement that if the Association approves the proposal, the applicant will still be required to obtain a special permit from the Board of Appeals; and the “affected persons” have the right to attend the hearing of the Board of Appeals, and should contact the Board of Appeals at the Town Clerk’s office to learn the date and time and place of the hearing.

Jim Mulvey inquired about the process for legal notification of abutters, which was explained by Roger LaPorte.

Chm. Berger requested HAVCA present him with a draft of the Association’s proposed notice to the affected persons for his review. He will edit and send to the Association for final review. Mr. Silva said the Association Board of Directors may not agree to the exact wording, but understands the ZBA’s concerns and will work with the Board.

Old Business

None.

Public Comment

None.

Adjournment

Priestly MOVED and SECONDED by Sawyer to adjourn. Meeting adjourned at 8:35 pm.
UNANIMOUS VOTE.

Respectfully submitted - Lisa Groezinger, sec.

