

TOWN OF BOURNE Planning Board



APPLICATION FOR EXTENSION OF A SPECIAL PERMIT

(PLEASE PRINT OR TYPE THIS FORM)

Permit # 06-2016C

To: Bourne Planning Board
Bourne, MA 02532

Date: 1.11.24

1. Name of Applicant: Cumberland Farms, Inc. Phone: (508) 740-1431
Address: 165 Flanders Rd., Westborough, MA 01581 Email: Dawn.Johnson@eg-america.com

2. Owner (if different)*: _____ Phone: _____

**Attach written authorization signed by owner or proof of site control*

3. The premises affected is at (address): 2, 4 & 6 MacArthur Blvd., Bourne, MA 02532
ZONING DISTRICT: B-2 MAP: 24 PARCELS: 19, 22 & 23

4. Length of extension requested: One (1) Year

5. Reason for extension: See attached letter in support of request for extension.

6. Date of Original Decision and any other granted extensions: February 4, 2022

6a. Recording information: Date April 11, 2022 Book 35038 Page 87

7. Generally state or attach information necessary for the Planning Board to make a determination for your request: Please see attached letter in support of request for extension.

8. Attachments:

Originally Approved Site Plan: _____

Originally Approved Ground floor and/or architectural elevations: _____

Certified List of Abutters (2 Copies): _____

9. Signature of Applicant or Authorized Representative:

Date: 1/11/24

RECEIVED
2024 JAN 17 PM 2:16
TOWN CLERK BOURNE

100 Summer Street
Boston, MA 02110

PH 617.488.8236
FX 617.824.2020
dtroyer@pierceatwood.com
www.pierceatwood.com

Admitted in: MA

January 11, 2024

VIA FEDERAL EXPRESS MAIL and Email jcopeland@townofbourne.com)

Town of Bourne Planning Board
24 Perry Avenue
Buzzards Bay, MA 02532
Attention: Jennifer Copeland

**Re: Request for Extension of Site Plan Review/Special Permit No. 06-2016B
2, 4 & 6 MacArthur Boulevard, Bourne, Massachusetts
Map 24, Parcels 19, 22 & 23**

Dear Honorable Members of the Planning Board:

As you are aware, this firm is counsel to Cumberland, Farms, Inc. (“CFI”). This letter is submitted to the Town of Bourne Planning Board (“Board”) to request an extension of Site Plan Review/Special Permit Decision No. 06-2016B (“SPR/SP Permit”) pursuant to G.L. c. 40A, § 9 and Section 1333 of the Town of Bourne Zoning Bylaw (“Bylaw”).

Section 1333 of the Bylaw provides:

Lapse of Special Permit. If the rights authorized by special permit are not exercised within two years of the date of grant of such permit, such rights shall lapse and no longer be of any further force or effect, provided however, that time spent awaiting the determination of an appeal under Section 17 of General Laws C40A shall not be counted as part of said two year period, and provided further, the Special Permit Granting Authority, if substantial use has not commenced, or if in the case of a permit for construction, if construction has not begun, may for good cause, by a majority vote, grant the holder of said special permit additional time, to time certain, to exercise the rights under said permit, provided the holder of the permit has timely requested such extension in writing to the Special Permit Granting Authority.

On February 4, 2022, the Board issued and filed with the Town’s Clerk’s office the SPR/SP Permit which granted CFI’s application for Site Plan/Special Permit to raze the existing buildings and construct a new 8,153 sq ft. convenience store, restaurant uses, a drive thru window and a self-service gasoline sales on property located at 2, 4 & 6 MacArthur Blvd

January 11, 2024

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(“Property” or “Site”) as well as a special permit for alternative configurations on the Property. (See copy of SPR/SP Permit decision appended hereto as **Attachment “A”**).

Subsequent to the Board’s decision and in further connection with CFI’s project, CFI filed an Application for Modification of Variance Decision for height with the Zoning Board of Appeals (“ZBA”) and the ZBA conducted a hearing on CFI’s variance application and granted the Variance on April 6, 2022.

Separately, and as this Board is aware, CFI had appealed a condition of the original Site Plan Review/Special Permit issued by the Board in January 2017 in association with its proposed redevelopment of the Property to the Land Court in the matter captioned *Cumberland Farms, Inc. v. Daniel Doucette et al.*, Land Court Case No. 17 MISC 000063 (KFS). Due to the Board’s granting of the SPR/SP Permit, CFI and the Town filed a Stipulation of Dismissal of the Land Court matter on July 25, 2022 after CFI obtained all necessary municipal approvals to proceed with the Project subject to the SPR/SP Permit. This was more than (5) five months after the SPR/SP Permit was granted, limiting the time period in which CFI could validly exercise its rights under the SPR/SP Permit.

Additionally, on January 27, 2023, CFI received notice from the Bourne Historical Commission that a structure located on 6 MacArthur Boulevard was found to include a “historically significant building”. In order to allow interested property owners or townspersons to seek out persons who might be willing to purchase, preserve, rehabilitate or restore the structure, CFI agreed to a demolition delay of eight (8) months being imposed on the Property. (A copy of the Bourne Historical Commission January 27, 2023 letter is appended hereto as **Attachment “B”**). In accordance with the Town of Bourne Bylaws §3.14.1 (“Demolition Delay Bylaw”), CFI was prohibited from demolishing the structure on 6 MacArthur Boulevard and from proceeding with its project until September 27, 2023.

On April 19, 2023, CFI sought and obtained an extension of the Variance from the ZBA due to the Historical Commission’s Demolition Delay and to afford the Town and the VFW, who agreed to relocate the structure, the ability to secure funds for the hiring of a company who can relocate the structure.

On September 27, 2023, the demolition delay issued by the Historical Commission had expired, however the VFW ran into issues with securing a company who could remove the structure from the Property. As a result, and in an effort to assist the VFW and the Historical Commission, CFI granting the VFW additional time to secure a new company to relocate the structure. As a result, CFI needed to seek and obtain an additional extension from the ZBA for the height variance which was granted on November 30, 2023.

As of the end of 2023, CFI had completed the demolition of existing buildings located at 6 MacArthur Blvd and the VFW was able to secure a new company who removed the structure in late November, early December 2023.

January 11, 2024

Page 2

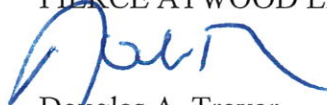
Furthermore, in connection with CFI's Project, it needs to seek and obtain curb cut approvals from MADOT in connection with access to the Site. CFI has filed for such approvals and is still engaged with MADOT regarding same.

The current 2-year deadline for the SPR/SP Permit is February 4, 2024 if substantial use has not commenced, or if in the case of a permit for construction, if construction has not begun. To the extent the Board find that such substantial use has not commenced and/or construction has not begun, CFI respectfully submits that, as provided above, it has shown good cause as to the reason for its delay and respectfully request that the Board, by a majority vote, grant CFI additional time, i.e., until February 4, 2025, to exercise its rights under the SPR/SPR Permit.

Thank you for your consideration of this matter. Should you have any questions or require any additional information concerning this matter, please do not hesitate to contact me.

Sincerely,

PIERCE ATWOOD LLP



Douglas A. Troyer

cc: Cumberland Farms, Inc. (*via email only*)
Ken Murphy (via email only kmurphy@townofbourne.com)

RECEIVED
TOWN CLERK DESK
JAN 17 PM 2:16

ATTACHMENT "A"



TOWN OF BOURNE

24 Perry Avenue
Buzzards Bay, Massachusetts 02532
Telephone 508-759-0600



PLANNING BOARD NOTICE OF DECISION

Site Plan Review/Special Permit No. 06-2016B

The Planning Board (Board), acting in their capacity as Special Permit Granting Authority in accordance with the Zoning Bylaw of the Town of Bourne, held a Public Hearing via Zoom on December 23, 2021 and January 13, 2022 concerning the following matter as more fully set forth in an Application for Site Plan/Special Permit dated October 14, 2021 along with all Plans, Reports and Memorandum filed therewith, all of which are on file for public inspection at the offices of the Planning Board, Town Hall, 24 Perry Avenue, Buzzards Bay, Massachusetts.

RECEIVED
2022 FEB 15 10:57
TOWN CLERK OF BOURNE

Applicant: Cumberland Farms, Inc., 100 Crossing Blvd., Framingham, MA 01702
Owner of Property: Cumberland Farms, Inc.:
Parcel 23 - #2 MacArthur Blvd - 165 Flanders Road, Westborough, MA 01581
Parcel 22 - #4 MacArthur Blvd., Bourne, MA 02532
Parcel 19 - #6 MacArthur Blvd., Bourne, MA 02532
Subject Property: 2, 4 & 6 MacArthur Blvd., Bourne, MA 02532, Map 24 - Parcels 23, 22 & 19
Date of Hearing: Opened December 23, 2021 continued to January 13, 2022 and closed on January 13, 2022. Decision, deliberation and vote January 27, 2022.
Place of Hearing: Zoom Remote Access Meeting December 23, 2021 Meeting ID 816 0713 8235 Passcode 918669 and January 13, 2022 Meeting ID 875 1507 5108 Passcode p30hD3. January 27, 2022 Meeting ID 899 1291 6327 Passcode 087772

I. PROCEDURAL HISTORY

- A. The application is to modify the January 25, 2017 SPR/SP as amended by Decision dated April 4, 2018 submitted by the applicant Cumberland Farms, Inc. relating to 2, 4, & 6 MacArthur Blvd., Bourne, MA Map 24.0 Parcels 23, 22 & 19.
- B. The site is located totally within the B2 Business District, which allows the proposed uses as stated below.
- C. The project is being reviewed per the Town of Bourne Zoning Bylaw ("Bylaw") Section(s) 1230 Site Plan Review-Special Permit, 1330 Special Permits Criteria, 3340 Egress Standards, and 4500 Motor Vehicle Service. Section 2220 Use Regulation Schedule authorizes the Planning Board as the Special Permit Granting Authority.

I hereby certify that 20 days have elapsed after the decision was filed in the office of the Town Clerk of Bourne and no appeal has been filed in accordance with Section 17, Chapter 40A of the Massachusetts General Laws.

Town Clerk of Bourne

- D. This Site Plan/Special Permit application is accompanied by the following plans from Harrison French & Associates, LTC (Architect), Coastal Engineering Company, Inc. (Civil Engineer), Hawk Design, Inc. (Landscape Architect), and Red Leonard Associates (Lighting):

CFG 01.0 Cover Sheet, 12/9/21
CFG 02.0 Existing Conditions Plan, 10/5/21
CFG 03.0 Site Demolition Plan, 12/9/21
CFG 04.0 Layout & Materials Plan, 12/9/21
CFG 05.0 Grading & Drainage Plan, 12/9/21
CFG 06.0 Erosion Control Plan, 12/8/21
CFG 07.0 Site Utility Plan, 12/9/21
CFG 08.0 Site Planting Plan, 12/9/21
CFG 09.0 Drainage Details, 12/8/21
CFG 09.1 Site Details, 12/8/21
CFG 09.2 Site & MassDOT Details, 12/8/21
CFG 10.0 Lighting Plan
CFG 10.1 Lighting Details – 1
CFG 10.2 Lighting Details – 2
CFG 12.0 Gas Station Canopy Elevation 9/23/21
CFG 12.1 Gas Station Canopy Details 9/23/21
CFG 13.0 Pylon Signage 12/9/21
A-000 Exterior Building Signage 12/9/21
A-000.2 Drive Thru Signage 9/28/21
A-101 Floor Plan, 12/9/21
A-130 Exterior Reflected Ceiling Plan, 9/28/21
A-200 Exterior Elevations, 12/9/21
A-201 Exterior Elevations, 12/9/21

and accompanied by:

Fire Truck and Fuel Truck Access Sheet 1 & 2 from McMahon Associates, Inc. dated 12/8/21
Stormwater Management Report from Coastal Engineering Company, Inc. dated 10/1/21
Traffic Study Report from McMahon Associates, Inc. dated October 2021
Traffic Study Appendix from McMahon Associates, Inc. dated October 2021

II. FINDINGS OF FACT

Based upon its review of the exhibits, testimony of witnesses and the record of the proceedings, the Planning Board found and concluded that:

- A. The Applicant has shown sufficient evidence to support findings consistent with the granting of the Special Permit/Site Plan under the Bylaw. The Property will undergo a significant aesthetic upgrade by the removal of the blighted buildings and improved building design, lighting and on-site maintenance and improvements, which are beneficial to the Town, the surrounding neighboring area and community at-large. The applicant has also provided improved safety by the elimination of access and egress into the rotary and has improved ingress from the rotary on to the site. The use of the Site as a retail convenience store, restaurants, with a fast food, takeout with a drive through window and

self-service gasoline sales, will not have adverse effects which over balance its beneficial effects for either the neighborhood or the Town.

- B. Notice of the public hearing was given as provided by Massachusetts General Laws, c. 40A, § 11, by mailing and publication. The public hearing was opened on December 23, 2021 and continued to January 13, 2022. The public hearing was closed on January 13, 2022.

III. STATEMENT OF APPLICABLE LAW

Based on the special permit criteria set forth in Section 1331, and the special permit requirements for Motor Vehicle Services set forth in Section 4500, and its review of the exhibits, testimony of witnesses and the record of the proceedings, the Planning Board finds that the project is consistent with decision criteria as follows:

1. That the Applicant has met the following Special Permit criteria as set for in Section 1331 of the Bylaw as follows:
 - a. Pedestrian and vehicular flow and safety;
 - b. Adequacy of utilities and other public services;
 - c. No unusual impact on natural environment;
 - d. Impact upon nearby developed premises is minimal;
 - e. Visual compatibility with the surroundings;
 - f. Is not located in Water Resource Districts, therefore not applicable; and
 - g. Is not applicable to the Town's needs for year-round housing available for persons of all income levels.

2. The Applicant's project is in conformity with the requirements for Motor Vehicle Services Section 4500 as follows:
 - a. **4510. Egress.**
 - i. The vehicular entrance or exit is located not to create unusual hazard
 - ii. Egressing vehicles shall have at least 400 feet visibility
 - iii. No vehicular entrance or exit is located within ten feet of a side lot line
 - iv. Nor within 50 feet of the midpoint of the arc connecting sidelines of intersecting streets.
 - v. The entrances and exit do not occupy more than 40% of lot frontage
 - vi. And are clearly channeled through use of curbed areas.

 - b. **4520. Pedestrian Relationship.** The vehicular entrance or exit is not located as to cross a major pedestrian flow, such as sidewalks, churches, schools, recreation areas, or compact retail districts.

 - c. **4530. Queues.** There is adequate space off-street for not fewer than two cars to await service per filling position.

3. Applicant has requested a Special Permit for Alternative Configuration under Section 3344 for the following exceptions to Egress Standards for high intensity uses in Section 3341:
 - a. Minimum curb radius required on north entry to MacArthur Blvd: 50 ft. required, - 30 ft. provided.
 - b. Acceleration lane required at reentry to MacArthur Blvd: Not provided

The two above deficiencies are minor and require final approval by MassDOT. The alternative configuration is common to businesses on MacArthur Blvd which have received MassDOT approval. Speed limit in affected area is 35 mph. The alternative does not require necessity of public expenditure, will provide egress safety superior to that which could be achieved through compliance with Section 3341, and does not circumvent the intent of the Subdivision Control Law.

4. The Planning Board finds that pursuant to Section 1238.A.4.b the landscaping provided provides sufficient landscaping to minimize the visibility of parking areas from the public ways.

IV. MOTION

Elmer Clegg made a **MOTION, SECONDED** by Elizabeth Brown to **APPROVE** the above referenced project per the following:

- (1) Site Plan/Special Permit #06-2016B under Sections 1233(c), 1300, 2200, and 4500 to raze the existing buildings and construct a new 8,153 sq. ft. convenience store, restaurant uses, a drive thru window and a 10 island self-service gasoline sales on the property located 2, 4 & 6 MacArthur Blvd, Bourne, MA 02532 in a B-2 Zoning District, and
- (2) A Special Permit under Section 3340 for alternative configurations on the property located 2, 4 & 6 MacArthur Blvd, Bourne, MA 02532 in a B-2 Zoning District, based on the findings listed in this decision and subject to the following conditions.

V. CONDITIONS

1. All plans and documents submitted with the application are incorporated as part of this decision.
2. Before an occupancy permit is issued the following is required:
 - a. The submission of an as-built site plan depicting final locations of all structures and site-related appurtenances.
 - b. A copy of the Notice of Intent with the EPA for disturbance of greater than one acre during construction.
 - c. A copy of the MassDOT curb cut approval shall be submitted and reviewed for consistency.
3. Light overspill shall be maintained as approved, any changes to lighting fixtures size, type or illumination must be reviewed and approved by the Planning Board.
4. The project must meet all requirements of the Bourne Fire Department including but not limited to the installation of a fire alarm system, fire suppression system and Knox box/boxes.

5. The landscaping must be maintained according to the approved plan on file with the Planning Board.
6. The applicant shall provide four (4) EV charging stations as shown of the approved Layout and Materials Plan (CFG04.0), and shall provide also a generator sufficient to provide gasoline service during a power outage. Both functions shall be provided before the occupancy permit is issued and shall be maintained for the life of the project.
7. Any deviation from this decision will require further approval by the Planning Board.

VI. VOTE ROLL - CALL **BOURNE PLANNING BOARD**

Mr. Doucette – yes	Mr. Carroll – no	Mr. Clegg – yes
Ms. Azarovitz – abstain	Mr. Gallo – yes	Mr. O'Connor – yes
Ms. Brown – yes	Ms. Goldstein – no	Mr. Farrell – yes
Mr. Meier, alternate – yes		

The motion carried 7-2-1.



Daniel Doucette, Planning Board Chair

IMPORTANT:

Any appeal from the decision of the Planning Board can be made only to the court, and must be made pursuant to M.G.L. c. 40A, § 17 as amended, and must be filed within twenty days after the date of the filing with the Town Clerk.

I hereby certify that 20 days have elapsed after the decision was filed in the office of the Town Clerk of Bourne and no appeal has been filed in accordance with Section 17, Chapter 40A of the Massachusetts General Laws.

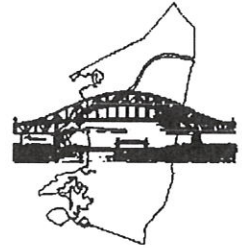


Town Clerk of Bourne



TOWN OF BOURNE

24 Perry Avenue
Buzzards Bay, Massachusetts 02532
Telephone 508-759-0600



February 4, 2022

Site Plan Review/Special Permit #06-2016B

NOTICE FOR RECORDING IN THE REGISTRY OF SITE PLAN REVIEW/SPECIAL PERMIT

Notice is hereby given that the Site Plan Review/Special Permit #06-2016B has been approved with the statutory requirements as set forth in Chapter 40A as amended:

Applicant: Cumberland Farms, Inc., 100 Crossing Blvd., Framingham, MA 01702
Owner of Property: Cumberland Farms, Inc.:
 Parcel 23 - #2 MacArthur Blvd - 165 Flanders Road, Westborough, MA 01581
 Parcel 22 - #4 MacArthur Blvd., Bourne, MA 02532
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The decision of said Board is on file with the papers and plans in the office of the Town Clerk.

Signed and certified this fourth day of February of the year 2022.

BOURNE PLANNING BOARD

Daniel Doucette, Chair

~~I hereby certify that 20 days have elapsed after the decision~~
I hereby certify that the Town Clerk for Filing of Decision in the Registry was filed in the office of the Town Clerk of Bourne and no appeal has been filed in accordance with Section 17, Chapter 40A of the Massachusetts General Laws.

Town Clerk

Town Clerk of Bourne

Cumberland Farms SPR/SP #06-2016B

JOHN F. MEADE, REGISTER
BARNSTABLE COUNTY REGISTRY OF DEEDS
RECEIVED & RECORDED ELECTRONICALLY

ATTACHMENT "B"

Bourne Historical Commission
30 Keene Street
P.O. Box 3131
Bourne, MA 02532

January 27, 2023

Douglas A. Troyer, Esq.
Moriarty Troyer & Malloy, LLC
One Adams Place
859 Willard Street, Suite 440
Quincy, MA 02169

Re: 6 MacArthur Boulevard, Bourne, MA 02532
Placed under a Demolition Delay Order for a period of Eight Months on January 24, 2023

Dear Mr. Troyer:

At their meeting on January 24, 2023, the Bourne Historical Commission found that 6 MacArthur Boulevard, Bourne, was an historically significant building and it would be detrimental to the historical and/or architectural heritage or resources of the Town of Bourne and it would be preferable to preserve this building.

Therefore, the Bourne Historical Commission voted unanimously to approve an order of Demolition Delay for 6 MacArthur Boulevard, Bourne, with the condition that the Demolition Delay Order would be for a term of Eight Months.

Sincerely,


Carl Georgeson
Chairman
Bourne Historical Commission