



# TOWN OF WARE

Planning Department  
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## Planning Board Minutes

March 05, 2014

Planning Board Members present: Rick Starodoj, Chris DiMarzio, Fred Urban, Joe Knight, Dave Kopacz  
Planning Board Members absent: John Chabot (Alternate)  
Staff present: Karen Cullen, Director of Planning and Community Development  
Maggie Sorel, Administrative Assistant  
Public: Douglas Imbier, Don Pulchtopok, Todd Marion, Michael Hannum, Fred Kozyra, George Staiti, Stuart Beckly

**7:00** Meeting opened

**DIMARZIO** Motion to approve the minutes of the January 15 and February 19 meetings as submitted;  
**URBAN** Second;  
**ACTION** All in favor. Note, the hard copy of the minutes is not available tonight; the Board will sign them at the next meeting.

**7:05** [FRED KOZYRA – INFORMATION ON STATUS OF WINSLOW ROAD](#)  
Fred Kozyra inquired what the status of Winslow Road is and what would be required of him to get endorsement of an ANR to subdivide the property into 6 or 7 building lots.

**DIMARZIO** Winslow Road is a town way but the Town does not need to improve it. If you buy land and want to build on it, the DPW director and Fire Department will be able to tell you what needs to be done to the road for compliance as far as passage and safety and drainage standards. It is not a Chapter 90 Road so money is not received by state for Winslow Road.

**STARODOJ** We can endorse an ANR for someone to create lots with proper area and frontage but that does not mean it is a building lot. There are all the other factors such as wetlands, road drainage, and accessibility by fire and safety. If we were to endorse a plan today with the road as it exists, we would require that there be a note on the plan stating that the lots are non-buildable, for lack of adequate access. If you sold a lot to someone who wanted a building permit, then they would be responsible for improving the road to their lot to gain access.

**CULLEN** There is a lot of case law on these types of situations, and the result is clear – it is the responsibility of the developer (usually the person subdividing the land) to improve the road to the town's standards as set forth in the subdivision regulations. This makes it a subdivision and not an ANR process.

**DIMARZIO** We suggest that you speak with the DPW Director to find out what his standards for improving this road would be, so you can make an informed decision about purchasing the property.

**7:15** [Public Hearing – Special Permit for 290 OSBORNE ROAD; PB-SP-2013-005](#)  
The Applicants have submitted a written request to Withdraw the Application Without Prejudice. Therefore the public hearing is cancelled.

7:16

**Public Hearing – Major Site Plan Review for CUMBERLAND FARMS; SPA-2014-001**

PB Chairman Rick Starodaj announced a Conflict of Interest and excused himself from hearing; PB Vice Chairman Chris DiMarzio took over as Chairman for this hearing.

The applicant's team consisted of:

- Thomas R Reidy, Bacon/Wilson PC (attorney; primary contact)
- Luke DiStefano, Bohler Engineering (site design)
- Steve Savaria, Fuss & O'Neill (traffic engineer)
- Tracey Roll, T.M. Crowley & Associates (site developer)
- Megan Moore, Robert Meo, Cumberland Farms (retail operations)

Mr. Reidy gave a general overview of the application and introduced the members of the team.

**Summary Description of Application:**

This application is to construct a new auto fuel station with a convenience store on undeveloped land at the corner of Route 32 and Fourth Avenue. The auto fuel station will have four pump islands with eight fueling stations, all of which will be covered by a flat top canopy housing state-of-the-art lighting and fire suppression system. The 4,513 square foot convenience store will be nestled into the hillside with a retaining wall up to 20+/- feet high behind the building. The store will be open 24 hours a day and will have limited (i.e. packaged) food service in addition to standard grocery and other items. The site has 23 parking spaces excluding the fueling stations. Drainage will be handled with a surface infiltration basin and an underground infiltration system.

**The following materials which were submitted as part of the application:**

1. The site plan set prepared by Bohler Engineering;
2. Drainage Report prepared by Bohler Engineering,
3. Traffic Impact Study prepared by Fuss & O'Neill
4. Packet including application form, narrative, and community impact reports.
5. Truck Routing Plan submitted at the public hearing 3/5/2014.

**Reports were received from the following departments and were reviewed during the hearing:**

- Planning Department
- Department of Public Works
- Fire Department
- Building Department
- Health Department

**Waivers requested by the applicant:**

**§7.4.5.A** – locus plan

**§6.1.2.H.1** – width of driveway

**§6.1.2.H.2** – grade of driveway within 40 feet of the intersection with road

**Points noted by the applicant team:**

- Traffic impact – given the existence of the Cumberland Farms down the street, the impact to traffic should be minimal although a small increase is expected.
- There are three curb cuts: two on West Street and one on Fourth Avenue.

- The grade at the Fourth Avenue driveway exceeds the zoning bylaw's limit of 5%; it is 7%. It cannot be reduced without impacting the grades on the rest of the site to the point where they won't be in compliance, and since this is a secondary driveway we don't see a problem with it. A waiver is being sought for this.
- There are 23 parking spaces on the site, calculated at 1 per 200 sf GFA (requirement for automotive sales and service, the most similar category to this use in the zoning table).
- There is a 60'x24' area designated for a loading zone and trash removal; dumpsters will be enclosed in a fenced/gated structure.
- State of the art lighting is proposed with minimal lighting spilling onto abutting properties; seeking variance since light levels exceed the limit imposed in the zoning bylaw, particularly under the canopy where it's important for people to be able to clearly see, and also important for the employees to clearly see the customers pumping gas.
- Signage proposed includes a freestanding sign which requires a variance for size, directional signs which also need a variance, and four wall signs – two on the building and two on the canopy.
- Fuel delivery will be by Cumberland Farm's own fleet of trucks and they can control delivery times. Typically 4-5 deliveries per week, which last up to 45 minutes. There is an area on the site specifically designated for fuel delivery vehicles, thus there should not be any impact on traffic circulation on the site.
- There will be two underground fuel storage tanks with 20,000 gallon capacity each.
- There will be a 24' x 137' canopy with four fueling stations (double sided) so that eight cars can fuel at once.
- The site is designed so the employees at the cashier station can see each of the fueling stations.
- There can be a shut off valve installed in the underground infiltration system to close off the drainage system in the event there is a fuel spill. This will hold 800 gallons of fuel.
- The site is served by town water and sewer.
- All utilities will be underground.
- The retaining wall will be similar to the one at Gibbs Crossing and will be up to 25' high near Fourth Avenue and slope down to 14', with a six foot high white vinyl fence on top of the retaining wall.
- There are stop signs at each exit, and there are no conflicts with pedestrians expected.
- Noted there is no stop sign at the end of Fourth Avenue, the applicant offered to install one.
- The stormwater management systems consists of one small detention pond and an underground infiltration system.
- The store will be built on the middle of the site and has 4,513 sf (gross); the building was designed to have a New England character on the exterior.
- The timeline for construction is 90 days from start to finish; they hope to be under construction this summer and open for business this fall.
- The current store at the corner of West Street and Robbins Road will be closed, the fuel tanks will be removed, the canopy will be removed, and the building will remain. The site will be put up for sale but with a provision that no competing business can occupy the site.

Abutter concerns:

- Direct abutter on Fourth Avenue (Wojcik estate) concerned about financial impact and retaining wall.

- Applicant explained that there will not be any impact on abutting properties; whatever conditions exist at this time, will be the same after construction.

Planning Board discussion & concerns:

- Impact to the abutter regarding the retaining wall; it is the applicant's responsibility to ensure there is no adverse impact to any abutting properties from the construction of the wall. The Board discussed the need for vegetation at the top of the wall to screen the fence and the site; noted as a potential condition of approval.
- The Board questioned the applicant about the location of the retaining wall, since the site plan they are being asked to approve includes a note stating the retaining wall is not yet designed and its location is not yet determined. The applicant stated it will cost a significant amount to design and build and they did not want to spend that money if the Planning Board is not going to approve the application. The Board felt this can be addressed in a condition of approval, with a tolerance of 2 feet for adjustment of the wall location.
- Discussion about the location of the retaining wall in relation to the back of the building and the Fire Department's comment about complying with a regulation regarding distance between the building and retaining wall; this issue cannot be resolved by the Board and the applicant was advised to contact the Deputy Fire Chief directly to discuss it and figure out how to resolve it.
- Impact of landscaping at the exits in regard to blocking the view of drivers; noted maintenance of this landscaping to preserve visibility as a potential condition.
- Snow storage; upon asking the applicant stated snow will be stored on the various grassed areas on the site. The Board felt this may not be sufficient after some storms; noted a potential condition to remove snow from the site if necessary to maintain the accessibility of all parking areas.
- The Board felt it was important to protect the groundwater from potential contamination from a fuel spill and thus want the gate valve installed in the underground drainage system; this will be a condition of approval.
- The Board also felt that maintenance of the drainage system is important and is the responsibility of the owner; noted this will be a condition as well.
- Discussion regarding the West Street entrances and potential problems with pedestrians. The Board felt it is important for there to be marked crosswalks to alert drivers at these exits as places where pedestrians may be found; noted this as a condition of approval.
- The Board asked what will happen if MADOT requires a single curb cut on West Street; the applicant replied they would have to return to the PB for a modification of the site plan.
- The Board, knowing the freestanding sign will be before the ZBA for a variance request, thought it would be prudent to note that some measure of deviation in location was acceptable in the event the ZBA required it to be moved; will be a condition of approval.
- Karen Cullen noted the construction detail for the driveway aprons did not meet the requirements; the applicant agreed to build as required; noted this will be a condition of approval.
- Discussion about circulation of delivery trucks into, around, and out of the site. The applicant submitted a small site plan showing the truck routing plan; the Board noted there should be a condition that all delivery truck drivers be given a copy of this plan and required to follow it.
- The Board asked about the weekly construction schedule and decided to set it as a condition as they always do: Hours of construction shall be limited to Monday through Friday from

7:00 am to 7:00 pm, and Saturday from 7:00 am to 4:00 pm. No work shall take place on the site on Sundays or Holidays.

Given the uncertainty surrounding the retaining wall in relation to the building, the Board decided to keep the public hearing open to the next meeting to allow the applicant to discuss the matter with the Fire Department and come to some suitable conclusion as to how to deal with it.

**KOPACZ** Motion to continue the Public Hearing for SPA-2014-001 to March 19, 2014 @ 7:30 PM;  
**URBAN** Second;  
**ACTION** All in favor (4/0/0).

**9:00 pm** **Rick Starodoj re-joined the meeting**

**PENNYBROOK ESTATES**

Todd Marion, the developer of the subdivision, was present to discuss the issue of the covenant, the house under construction, and the monetary surety.

The surety is still in place with the bank for \$250,000

Town of Ware DPW estimated the work would cost \$527,000 to complete, including milling of the existing pavement, in the event the Town ended up having to complete the subdivision to the specs of the approved plan.

Todd Marion disagrees that the road would need to be milled and indicated that another section of the curb and the sidewalk will be put in this spring.

**DIMARZIO** Explained to owner that a Municipality has to pay more to have a project finished because of prevailing wage. Suggested owner meet with Thom Martens and come up with a fair/realistic cost to finish project. The PB recognizes the efforts of the owner and the economic downturn but the PB has a responsibility to the taxpayers in Ware to have enough money available through the surety to finish the project if it goes defunct.

A Certificate of Occupancy cannot be issued by the Building Commissioner for the new home at #8 Coldbrook Drive until the lot is released by the Planning Board. The PB would like the surety bond to be increased before they sign a release on this lot. The Board requested the owner to work with their bank to investigate the cost of increasing surety bond, either up to \$500,000 or whatever is agreed upon as the total cost, which would allow the Board to release the entire covenant, or by an incremental amount to allow release on a lot by lot basis.

Karen Cullen will prepare a release of lot that is being built on for the March 19<sup>th</sup> meeting.

**9:30 pm** **DISCUSSION ON ZONING AMENDMENTS FOR ATM 2014**

The Board had reviewed the amendments in full at their last meeting; after a brief review of the other amendments, this discussion focused on the modifications to the section on replacing existing mobile homes on individual lots around town (§4.8.7). Chris DiMarzio thought the amendment should be revised to include replacing an existing mobile home with another mobile home. He stated that mobile homes allow an economic alternative for seniors and low income families to own their own home, and felt as long as a mobile home meets the building code, they should be allowed anywhere. Chris noted he recognizes the bylaw doesn't allow it at this time and the town is unlikely to change that (in the prohibited use section). There was

discussion about the age of mobile homes being brought into town, whether there was potential to include a cut-off date somehow to avoid older homes with significant problems from coming in. The general consensus was to research the issue, discuss it with the Building Commissioner to see if mobile homes are required to meet current building codes, and see what other towns have done. There was also some discussion on the terms “mobile home” vs. “manufactured home”; general agreement to change from “mobile home” to “manufactured home” if it could be done without impact to other sections of the bylaw. *[Editor’s note: this change was not made due to differences in use of the terminology in various sectors of the industry and the lack of time to investigate ramifications of making the change.]*

Karen noted two other editorial modifications to the draft which will be published next week.

**KNIGHT** Motion to publish public hearing ad in the Ware River News for the proposed zoning amendments as discussed this evening.

**DIMARZIO** Second  
**ACTION** All in favor (5/0/0).

**10:15 pm** **KULARSKI – ANR**

In 2012, the PB approved and endorsed an ANR for Kularski property on Osborne Road with the condition that the lots needed to be combined (boundary line adjustment) since the area being split off of LaGrant’s property (“Parcel A”), did not meet the area requirements for a buildable lot and the applicant said the purpose was to combine the two parcels.

In 2013, another ANR was presented to the PB for the same property “to fix an error in the previous ANR”; but the applicant (Kularski) did not want to pay the fee for the ANR, so it was held until fee was paid. The fee was never paid and no action was taken on the ANR. Karen noted that this ANR is not eligible for endorsement since it would create a parcel with no frontage, and frontage is by law the one thing the Board must verify exists. The Assessors found that there were two new deeds recorded for this property, with two separate owners. They are questioning the Planning Department what to do with this. The Planning Board agreed it was appropriate for Karen Cullen to write a letter to the Assessors describing what happened regarding the ANR’s and what the recommended course of action is – inform the affected owners (LaGrant and the two Kularski’s who own the parcel created by the 2012 ANR) that a new deed needs to be recorded that includes the entire parcel as shown on the 2012 ANR.

**NEXT PB MEETINGS**

**March 19, 2013**

Public Hearing: Tri-County PB-SP-2014-001 UHAUL Rental  
Continuation Cumberland Farms public hearing PB-SPA-2014-001

**April 2, 2013**

Hearing for Zoning Amendments

**KOPACZ** Motion to adjourn at 10:20 PM

**KNIGHT** Second  
**ACTION** All in favor (5/0/0).

**Minutes Approved on:** \_\_\_\_\_

Starodoj \_\_\_\_\_

DiMarzio \_\_\_\_\_

Urban \_\_\_\_\_

Kopacz \_\_\_\_\_

Knight \_\_\_\_\_