

Town of Lincoln  
Zoning Board of Review  
Sitting as the Board of Appeals  
100 Old River Road, Lincoln, RI  
Minutes of October 28th, 2021 Meeting

**Present:** David DeAngelis- Chairman, Kazem Farhoumand, Lori Lyle- Vice Chairperson, Frank Spezzano, John Mancini, Stephen Kearns, Charles Ruggerio, Attorney DeSisto,

**Application:**

**Cumberland Farms, 165 Flanders Road, Westborough, MA 01581 – Application for Appeal of Planning Board Decision made on August 31, 2021 and recorded on September 22, 2021 regarding a gasoline station with accessories and a drive through restaurant to be located at 644 George Washington Highway, Lincoln, RI. 02865.**

**AP 31, Lot(s) 8, 9, 10**

**Zoned: BL-0.5**

**Chairman:** The Town of Lincoln Zoning Board of Review acting as The Board of Appeals for The Planning Board, there is one item on the agenda and that is the master plan denial issued by The Planning Board regarding the Cumberland Farms proposed to be built on George Washington Highway, over three lots 644,646,648. Let the record indicate all seven members of The Zoning Board are present this evening, two alternates Frank Spezzano and Kazem Farhoumand the voting members David DeAngelis- Chairman, Lori Lyle- Vice Chairperson, John Mancini, Stephen Kearns, Charles Ruggerio. The function this evening is not to rehear the denied application, this is not a rehearing of that matter, no new testimony and no public comment. The function is to come to one of two conclusions, as read in 45-23-70 - one it will reverse the decision of The Planning Board, or two it will affirm the decision. The appellant of the matter will have the opportunity to speak in front of The Board. The Board will be able to ask questions and have a discussion. In addition Mr. Ranaldi from the Town will also address The Board. Any discussion of the appellant's attorney or Mr. Ranaldi will have a maximum of 20 minutes. No opportunity for public comment. This board will either reverse or affirm the decision. Defined by State Law, a reversal would be if a.) This Board finds after review there was some procedural error, b.) Some clear error was made or c.) There was lack of support by weight of evidence by The Planning Board's decision. Absence of these would be an affirmation of The Planning Board.

**Attorney DeSisto:** Chairman conveyed all requirements

**Joelle Rocha Attorney for Appellant:** Provided the record, in referendum. This property is on 644-648 George Washington Highway, currently three separate vacant properties. All in access to minimum lot size for development and can be developed separately. They are all zoned BL-0.5, in the midst of limited manufacturing property around it. There is a 100 ft. Department of Transportation strip in front of properties and then the four lane George Washington Highway. The site plan is a proposed gas station and convenience store with a quick service food service and drive through. The gas station was submitted as a Special Use Permit but was not granted because of the initial denial. There is a right in/ right out onto George Washington Highway. The

Department of Transportation has jurisdiction, because it is a State Highway over permitting. There is also a full access driveway proposed on Blackstone Valley Place. The project required a master plan, preliminary plan, and final and Special Use Permit for the gas station and signage. Department of Transportation and Department of Environmental Management approval those would be done in between master plan and preliminary plan. The denial was for master plan review. We submitted more than what was needed for the master plan, and a full traffic study was submitted which was not required. Supplemental memos were submitted based on questions that came up at The Planning Board meetings. A revised site plan based on comments from an abutter on the location of the tanks, tanks were shifted more central.

**Chairman:** The traffic study was bell curve or scaling relative to covid related traffic, with no school and businesses shut down. How accurate can that study be if it was during covid? I'm not putting less value on the traffic study. It seems that a lot of time was put into the traffic study when it is very difficult when it is a time no one has faced before

**Joelle Rocha Attorney for Appellant:** Traffic counts and provided factors adjusting for covid. They were able to get data going back pre covid. Supplemental traffic report took data from pre-covid March 2019. To make sure, the analysis in the traffic study with those numbers took compassion from pre covid and during covid in the location to adjust for findings. There was no large difference in the year difference.

**Chairman:** Information from the people that live there also. Was any weight put into their testimony which was part of the evidence we reviewed? Folks from the public came out to the meeting to discuss traffic. Residents that live there and travel that road I'd imagine would hold a lot of weight, and a fair understanding of the traffic.

**Joelle Rocha Attorney for Appellant:** Traffic engineers don't go out and poll, they have to stand by. The testimony was limited and stated there was some backup on Blackstone Valley Place. The law, when it comes to traffic, testimonies have no force in respect to application. (Based on the Tewey Case). An increase in traffic does not adversely affect the welfare of location and that is where the expert testimony comes in.

**Member Mancini:** The traffic study is not required until preliminary, why was it submitted, did The Planning Board ask?

**Joelle Rocha Attorney for Appellant:** There had been traffic questions and we already had it done so we gave it.

**Member Mancini:** I did not focus too much on traffic because as far as I'm concerned it is meant for preliminary level.

**Joelle Rocha Attorney for Appellant:** The whole study is required for the Department of Transportation in between master and preliminary plans. Because there is a change in traffic at the High School we will incorporate that data when we submit a permit before the Department of Transportation and if approved when we come back to The Planning Board. That traffic report we would update at the next level

**Member Kearns:** Have any other traffic studies been done on George Washington Highway?

**Joelle Rocha Attorney for Appellant:** that would have been noted in the traffic study, there has been no recent development in that intersection, nothing additional in that data.

**Member Kearns:** Was there one for the High School location?

**Joelle Rocha Attorney for Appellant:** You would have to ask The Town, but I don't know if it was done for that intersection.

**Member Kearns:** I was just trying to clarify for pre- covid idea, if there was anything we could rely on pre covid.

**Member Farhoumand:** The intersection for the High School was probably the last time a traffic study was done. Do we know level of service at that intersection?

**Joelle Rocha Attorney for Appellant:** it is in the traffic report, they are pretty standard B or C, and after the same.

**Chairman:** What is the point with the traffic study?

**Joelle Rocha Attorney for Appellant:** There were only a few grounds for the denial.1.

- was a broad statement about traffic, which is another issue, there was no concrete statement as to the issue with the traffic, there were no issues with the level of service.

2- The other grounds for denial were based on the fact that it does not fit in the area.

This is BL- 05 and is surrounded by ML-05, it is important to note this area. Across the highway are residential but it is zoned that way, that strip is for future commercial development. It is zoned business and residential across the street. To say it does not fit in that area is not consistent with the Zoning Ordinance or Comprehensive Plan. The Planning Board made two inconsistent decisions, approval of the Special Use Permit, for the gas station and found that the proposal was consistent with the Comprehensive Plan, and later that evening said it is not consistent with the area. Other issues were the headlight across the street, the headlights sweep across the street to two residential homes that are about 300ft away, they were not present at any of the meetings- they did get notice. Currently three commercial driveways are coming out on George Washington Highway. We proposed two to the Department of Transportation, the Department of Transportation said no, one way in, one way out driveway, thoroughly reviewed. 100 ft. Department of Transportation owns, coming out the concern was the sweep of headlights to the houses 300ft across the street. We cannot block with bushes or anything, the two property owners we will mitigate if there is an issue. On the site where the gas pumps are, we talked to the Department of Transportation to put a vegetative buffer to block headlights, it is part of the landscape plan.

**Chairman** Neighbor came out about headlight glare?

**Joelle Rocha Attorney for Appellant:** Yes they are at intersection

**Chairman:** what could that be classified, as far as impact on neighbor-quality of life, impacted by change of environment?

**Joelle Rocha Attorney for Appellant:** no, we thought he was initially at one of the properties across the street, but he is actually at the intersection that we cannot do much about and he does have a vegetative buffer. It is the other two houses that could potentially have headlight sweep but we don't think so with elevation level.

**Member Farhoumand:** Mentioned the 100ft between the property line and the road, i thought it was 200ft right of way

**Joelle Rocha Attorney for Appellant:** 100ft because they are trying to sell it

**Member Farhoumand:** The lights, are they talking about when they are getting fuel or when they are leaving?

**Joelle Rocha Attorney for Appellant:** When getting fuel we can put a buffer and the elevations when getting fuel is not a direct shot, when asked it is the headlights leaving

and going on George Washington Highway, which no matter what there will be because it is a right out only.

**Member Kearns:** Questions about the fit, are there any incidents “the use by right” has ever been overruled by The Planning Board?

**Joelle Rocha Attorney for Appellant:** Yes when the decision doesn't rely on use.

**Member Kearns:** You mentioned about 20 uses by “right” that could go there, what about a daycare, church or liquor store, by right it could go there and The Planning Board has no jurisdiction.

**Joelle Rocha Attorney for Appellant:** Correct, The Planning Board would have no jurisdiction.

**Member Kearns:** Why did the client determine the use needed and asset to the location that a gas station would be used, considering there is one down the street?

**Chairman:** Can we stick with whether there was a procedural error, some clear error was made or there was lack of support by weight of evidence by The Planning Board. I'm concerned with The Planning Board denying the application. The Planning Board bases their decision on finding, like The Zoning Board and their standards but The Planning Board has findings. Your issue with required findings are The Planning Board denied based on consistency with The Comprehensive Plan.

**Joelle Rocha Attorney for Appellant:** But if you read the rest it has nothing to do with The Comprehensive Plan. In that subsection.

**Chairman:** The general purpose of land development and subdivision rules and regulations.

**Joelle Rocha Attorney for Appellant:** In decision?

**Chairman:** No as a statute. We need to know what your issue with The Planning Board is, we know you're here for clear error and support of weighted evidence, as it pertains to the findings and the finding with consistency with The Comprehensive Plan.

1, 4-no, 6- no, 2, 3 -no, 5- have access to a stream. So it is really 1 and 5, and maybe 7. Seven and eight are based on site work and construction, it seems as if number one would pertain.

**Joelle Rocha Attorney for Appellant:** the evidence for The Comprehensive Plan none are inconsistent.

**Chairman:** If someone turns a document to The Board here I mark it as an exhibit and that gets entered as evidence. A person from the public submitted a notarized letter or email, I mark it as evidence. Testimony is considered evidence. What is the standard here?

**Joelle Rocha Attorney for Appellant:** For The Planning Board to weigh all evidence except the expert stuff

**Chairman:** So it is considered evidence

**Joelle Rocha Attorney for Appellant:** It is but it has to detail what they rely on in their findings so what happened here was they said it is not consistent with The Comprehensive Plan, but there was no why. Why is it not consistent with The Comprehensive Plan?

**Chairman:** The major is The Comprehensive Plan. Seems to be why it was denied based on it not fitting into The Comprehensive Plan. With regards to The Comprehensive Plan refers to a little better definition when it speaks to general purpose of land development there are seven of those

**Joelle Rocha Attorney for Appellant:** No it stands by itself. Those are separate.

**Chairman:** These regulations are intended to address the following. Well integrated to the neighborhood and with natural features and which concentrates best support for usage. Indicated just because the area can support it, and The Comprehensive Plan said we should have this, this indicates it should be in areas that best support it.

**Attorney DeSisto:** According to the General Purpose of Land Development and Subdivision Review Rules and Regulations Section one, if The Board finds that the project does not protect and support the existing environment and mitigates of all negative impacts on the existing environment, it does site to that part of the subdivision regulations that was Chairman just quoted from.

**Joelle Rocha Attorney for Appellant:** The problem with that is again you can't just say that so then you look at testimony and evidence as far as design we have plenty testimony

**Chairman:** So you agree what I just read is an element of The Comprehensive Plan.

**Joelle Rocha Attorney for Appellant:** No it stands by itself, the subdivision regulations are two separate things.

**Member Ruggerio:** Is that why that supports one and seven, is it your position? That this isn't sufficient. That "why", is not sufficient evidence?

**Joelle Rocha Attorney for Appellant:** correct

**Member Ruggerio:** The "why", there is no support on record for that.

**Joelle Rocha Attorney for Appellant:** There is support that they are office building but you have to say why, for specific reasons (design, etc.)

**Member Ruggerio:** That "why", doesn't really address the standards for nature characteristics?

**Joelle Rocha Attorney for Appellant:** Right

**Chairman:** I'm putting a lot of weight, and I'm sure members of the public came to the hearings and only some are on the record. When you have Cumberland Farms, a large corporation that can hire people, when the 9am-5pm average citizen comes out because they are concerned about their quality of life I don't think that should be overlooked.

**Joelle Rocha Attorney for Appellant:** But, then you are putting yourself in the position of The Planning Board. It is up to them not up to this Board.

**Attorney DeSisto:** I will get to the standard of proof when we get there

**Chairman:** Can we wrap up, are there any questions for Attorney Joelle Rocha?

No questions

**Albert Ranaldi Town Planner and Administrator for The Planning Board and sits on the Technical Review Committee:** Back in June the application was certified as complete, first hearing was June 23rd, July 28th held a public info meeting and review and August 31st they had another review and ultimately the denial. There were 11 people that came and out of 11, 8 mentioned the change in the area, 6 of them talked about traffic and the required findings of number one that's how it was translated from The Board. We did have 11 people that came from all different parts of town and two that submitted emails and gave them to The Board for the record. Also wanted to add, number seven the standards of preservation for natural features of the community that's where the finding that it would not be attractive in Town came about.

**Chairman:** Any questions for Mr. Ranaldi?

**Member Ruggerio:** The Technical Review Committee recommended approval?

**Albert Ranaldi:** Yes, they look at all projects from a technical perspective, do they meet or not.

**Member Ruggerio:** Did they look at the ML-05?

**Albert Ranaldi:** No they did not, they did not have public input when they formed their first opinion, when they received the public input again they looked at the balance of commercial versus residential

**Member Ruggerio:** And that was con with The Comprehensive Plan

**Albert Ranaldi:** yes, it is more toward the technical end they do not subject any subjectivity.

**Member Ruggerio:** There was public input before they thought of consistency to The Comprehensive Plan.

**Albert Ranaldi:** Yes.

**Vice Chairperson Lyle:** Narragansett Bay approved, water approved by Lincoln Water Commission?

**Albert Ranaldi:** I believe there is a Narragansett Bay intersection that is provided, they did receive a letter.

**Vice Chairperson Lyle:** I thought they were waiting for local approval

**Albert Ranaldi:** That would be in master plan checklist on the record

**Chairman:** Any more questions for Mr. Ranaldi?

**Joelle Rocha Attorney for Appellant:** The idea that public input has consistency to The Comprehensive Plan

**Chairman:** I'm going to read from your brief you said that The Planning Board should have written that in the decision about how the public coming out to testify is evidence.

**Joelle Rocha Attorney for Appellant:** it is evidence before The Planning Board

**Chairman:** yes, and you indicated that The Planning Board should have included that in the decision.

**Joelle Rocha Attorney for Appellant:** right, if that is what they rely on.

**Chairman:** RI General Law, board of appeals job is not to substitute judgement of that of The Planning Board but must indicate based on findings of record. Everything that happened.

**Joelle Rocha Attorney for Appellant:** Incorrect

**Attorney DeSisto:** Mrs. Rocha is doing a rebuttal based on Mr. Ranaldi.

**Joelle Rocha Attorney for Appellant:** it is not this Board's job, the job of this Board is not to search the record. What The Planning Board said they relied on, in the decision what did they rely on. It is not for this Board to say "so and so said this" ', at the end of the day based on the evidence and their decision was not supported.

**Attorney DeSisto:** The Chair is correct, this Board, it is not the job of The Board to substitute its judgment to that of The Planning Board, and that goes to how they determined which evidence is relevant and which wasn't because The Planning Board made determinations here and secondly really what you're looking at here is the clear error/ lack of support of weight of evidence in record, what argument was there and it wasn't support. First thing is, weight of evidence you want to take a look at the definition Caswell verse George Sherman RI 1981 weight of evidence means such relevant evidence of such mind sees accurate meaning is more than a little and less than preponderance. Another case is Restivo versus Lynch RI 1998, there is no

significance to expert testimony, it may be accepted or rejected (in this case would be by the planning board) particularly if there is persuasive testimony in the observed effects thereof. So please keep these cases in mind when you make the decision as to whether there is or not substantial weight to what The Planning Board did. The Comprehensive Plan is one factor but there are other factors too. Section 5 in subdivision regulations is what The Planning Board relies on, requiring findings. Similar to findings of Dimensional Variance and Special Use Permits in The Zoning Ordinance, The Planning Board has to look at Section 5 when they look at major land developments. In the introductory paragraph in Section 5 all administrative both minor and major applications shall address each of the general purposes in Section 1, that is what you heard from The Chair. The Planning Board shall make positive findings in 1-8; Section 1 has general purposes. What the chair quoted in Section 3-4; protecting the environment and negative impacts, Section 4 general purpose supports land developments that are best supported and are similar in characteristics of the surrounding neighborhood. Substantial weight in record to support what The Planning Board came up with.

**Chairman:** Questions?

**Member Ruggerio:** With respect to the reasoning of why it was denied, is there an obligation to indicate what evidence it relied on in making that decision? Whether testimony or evidence in the record that was specifically indicated, how that impacted the standard.

**Attorney DeSisto:** How specific does the decision have to be when you have the record in front of you? Page 3 Sub-Section 7 The Boards findings based on Subdivision Plan and testimony it is specific but it can always be more specific. As long as you have the record before you, you can make a determination from there.

**Chairman:** Questions?

**Vice Chairperson Lyle:** Clarifying abutters' concern was not only lights but a leak coming on to the land. Also the traffic concern from lights wouldn't apply to just any business, if it was an office or manufacturer there would not be lights late at night.

**Chairman:** Motion to affirm decision of The Planning Board based on the following; we reviewed record and testimony and was to make a decision based on does evidence exist to support The Planning Board's decision of denial. And we have heard from the Town Solicitor that the threshold for that evidence is not defined as very high, it is whether reasonable evidence exists on the record. We heard testimony from the appellant's attorney, that this appeal was heard tonight based on a combination of rationale that there was clear error from The Planning Board's proceedings and lack of support by weight of support on record as it pertains to The Planning Board's decision. Section 7 The Planning Board, where they refer to testimony at the hearing is in the language of the decision. This says to me that they are referring to the testimony at the hearing which would include testimony by citizens of Lincoln. Corporations have funding to fund traffic studies but the average citizen comes out to speak on things of their concern, this is evidence enough that they are concerned with changes in their neighborhood. That is defined in the regulation that The Planning Board looks at to promote the protection of the existing natural environment and minimizes all significant negative impacts of any development on the existing environment. So when you have folks that come out and talk about how they feel this will affect them; Chairman reads

testimony; 46 year resident concerned about increased noise. Not my role to define noise. Mark, resident 32 years, concerned about keeping open space as is. Sandra, a 20 year resident, agrees with what people have said about traffic. Janet, a resident uses the intersection on Old River Rd and George Washington Highway always, concerned about light pollution and trash generation. To me, I present a motion to affirm The Planning Board decision because I feel the folks that provided testimony on how it will provide a negative impact that can be considered evidence and that is what we're looking for, is there any evidence on the record that supports The Planning Board decision. Is it in their decision that they took in consideration the testimony of the people? In Section 7 based on submitted plans and testimony at the hearing. My motion is to affirm the decision of The Planning Board to deny the master plan application.

**Second by Vice Chairperson Lyle**

**Chairman:** Clarify vote "aye" agrees with the affirmation/ deny The Planning Board application. In support of motion to affirm decision and deny application.

**Member Ruggerio:** Is there a discussion on the motion? Question: in the event that The Board finds the decision needs clarity could we remand back to The Planning Board for more specific findings?

**Attorney DeSisto:** No

**Member Kearns:** The attorney brought up the inconsistency of The Planning Board to approve the Special Use permit to go further, one of the standards for the Special Use permit is to be in compliance to The Comprehensive Plan and then later on they go further and it is not approved based on not fitting with The Comprehensive Plan, however when it came down to the testimony of the people that The Planning Board took that into consideration, even though the Technical Review Committee approved it they are looking at it from a technical point of view, not the whole scope of what needs to be in consideration of the decision.

**Chairman:** Polls the board

**Member Ruggerio-no**

**Member Mancini-aye**

**Member Kearns-aye**

**Chairman:** Does Member Ruggerio need substantiation based on the no

**Attorney DeSisto -no**

**Vice Chairperson Lyle-aye**

**Chairman-aye**

**Four affirmations and one negative.**

**Attorney DeSisto:** A decision will be drafted and signed by The Chair. Zoning Official Hervieux will get record together if there is an appeal to superior court

**Motion to adjourn Vice Chairperson Lyle, Second by Member Kearns**

**Meeting adjourned.**