

Franklin Zoning Board of Appeals
For Meeting Held On
Thursday, August 13, 2009
355 East Central Street
Franklin, MA 02038

Members Present
Bruce Hunchard
Bernard Mullaney
Robert Acevedo
Seth Jackson

7:30PM- 828 West Central St – Unionville GS, LLC

Applicant is seeking approval for building permits to construct a one-story convenient store/gas station. This is denied without the following variances:

1. To allow construction within the sixty (60.00') foot set back from the Rt. 140 By-pass, a right-of-way which exceeds seventy-five (75.00') feet or more in width, including a proposed building, with canopy, within twenty-six (26.00' +/-) feet plus or minus, a retaining wall within four (4.00' +/-) feet, plus or minus, and signage within nine (9.00'+/-) feet, plus or minus, where Sixty (60.00') feet is required.
2. To allow construction within the forty (40.00') foot front setback from West Central Street, including the proposed sub-surface fuel storage tanks within eleven (11.00'+/-) feet, plus or minus; a retaining wall within sixteen (16.00' +/-) feet, plus or minus; and a sign within nine (9.00' +/-) feet, plus or minus, where forty (40.00') feet is required.
3. To allow construction within the twenty (20.00') foot side setback requirement from West Central Street of the proposed retaining wall within one (1.00' +/-) feet, plus or minus where twenty (20.00') feet is required.
4. Also, seeking relief from Section 185-30 for tree planting and Section 185-35 from screening requirements.

Abutter Present

Appearing before the board is Richard Cornetta attorney representing the applicant Unionville GS, LLC and joining me this evening is Margaret Ranieri Franklin resident and principal of Unionville GS, LLC. Would also like to offer the apologies of my client Donald Ranieri who could not be present this evening. Also, not present this evening is Mr. Neilson who could be available for the Board at a subsequent meeting to address any technical concerns. The site itself is 828 West Central Street, it is the area that borders both West Central as well as the 140 by-pass. The site itself consist of approximately 42, 000 square feet located in the zoning district Business. This site has been brought before this Board in 2005. The applicant applied for certain dimensional relief very similar to what we are filing before this Board tonight. Proposing the construction of a single story building approximately 2,520 square footage and proposed to be a gas station, mini mart, self service with a coffee shop and drive thru. This is the exact size of the building that was proposed back in 2005. Along with the site they are also proposing a paved concrete area to accommodate the parking of fourteen vehicles as well as six service stations for distribution of fuel. Also, note on the plan it calls for a drive thru which begins on the westerly portion of the site and wraps around to the easterly back side of the building where the vehicle service establishment is being proposed. The site itself will have two access points off of West Central Street. Also, going to be four subsurface fuel tanks, three of which will be 8,000 gallons in size and the fourth being 15,000 gallons in size. The request that we are seeking this evening is categorized into four areas. The first of which is to allow the construction within that 60-foot setback area from the Rt. 140 area. What we are specifically proposing is the building would be within that 60-foot setback with the buildings canopy. The canopy would be for the proposed drive thru so we are seeking relief 26 feet to that boundary line. Secondly, under that same heading we are seeking relief for the construction of a retaining wall to be located within four feet plus or minus of the boundary line. If you are looking at the plan it's located on the easterly boundary of the site. Lastly, within that same 60-foot off set area we are seeking to

construct and install a sign, which including 9 feet of that area, and that sign can be located again on the easterly boundary of the site almost to West Central Street boundary. Under the second general category of variances that we are seeking is to allow the construction within the forty-foot front setback from West Central Street. I should pause here for the moment because I keep referring to front offset and side offsets. We are considering under the town code that because this property borders both the 140 by-pass and the West Central Street we are considering the greater of side between the front setback and the side setback. Under the code we are required to do so. So, under this category we are going to seek to have all of our construction at least outside of that 40-foot area along West Central Street. However, those tanks would be underground, they are sub surfaced tanks within 11 feet of that boundary line. Secondly, we are looking for that same sign that I mentioned earlier, within 9 feet of the West Central Street boundary. Lastly, there is a retaining wall along the western boundary line that is within 16 feet of the West Central Street roadway. Under the third category of variances that we are seeking is to allow the construction within the 20-foot side setback requirement from West Central Street. Again, if we are considering West Central Street the frontage for this particular dimensional issue we are looking at the westerly boundary line of the property and we are seeking to construct a retaining wall within that 20-foot setback area. Like to explain that the site back in 2005 once it was approved there was significant improvements that were also placed on the property, which has been, detailed in the material that was filed as well as the plan. There is a retaining wall that runs along the back portion of the property as well as it runs along the westerly boundary of the property. In addition the applicant also had taken steps for the installation of sewer line as well as water line as well as making curb cuts along West Central Street. None of the building has been constructed. We are proposing to remove that retaining wall closer to the westerly boundary line of the property. Back in 2005 a lot of the relief that was applied for and acquired are very similar to what we are asking for today. Attorney Cornetta - the question is why are we before you if we had the relief that we sought back in 2005? Well we were concerned because back in 2005 when this was done the entire site was not built out, though there were significant improvements made the retaining wall and utilities that were installed, the building was never constructed. Concern of the applicant was that the variances may have lapsed. We don't believe that to be the case but felt if we came back before the ZBA where we are asking you to move the retaining wall we felt it was more appropriate for us to address the entire site in its locality and almost restate all of the variances that were granted in the past and that we are now seeking another decision. Abutter James C. Johnson Jr., property located at 789 West Central Street, Franklin, MA presented the Board with a letter dated August 13, 2009. Mr. Johnson read his letter into the minutes. Board to abutter - a couple of questions because you mentioned in the presentation. The applicant is not before the Board requesting relief to build a gas station; they can do that by right. The other thing, the convenience store, because it's zoned business they are able to put that in. Response: Mr. Johnson states that his principle objection would be to the fourth requested variance - screening etc. Board - points out that the BJ's and the Mobile is within a quarter mile but the other two mentioned in your letter is well past the quarter mile. Response: Mr. Johnson will amend his statement to those approximately. Attorney Cornetta - Getting to the point that Mr. Johnson has raised of demonstrating a hardship, I would suggest that if you look at the criteria set forth in Chapter 40A Section 10 it seems to me that the retaining wall by their very definition seems to meet that criteria. Because you are talking about need, topography, of the site. So a retaining wall is required because of the topography it seems only natural that you do it in such a manner that might encroach upon some of those setback requirements. So mentioning the hardship I would suggest that the hardship in fact does matter for a lot of the relief that we are proposing as to these retaining walls. As to the hardship that is involved with all of our construction at the proposed and within the 60 foot offset area back when the 140 bypass was constructed there was a number of eminent domain takings and this property was diminished by the taking of the Commonwealth to create this bypass. So by reducing the size of the site to those takings as well as expanding the roadway the bypass roadway beyond that 75-foot width has created in our bylaw this hardship now for this particular site because of its location to this bypass area. This is very unique in this property in its

location as there are not many properties that are situated in such a manor along this particular bypass area. I would also mention if you look at the configuration of the site really where that 60 foot bypass area or off set area is really toward the back of the site so we don't have the same safety site concerns that we would have when you have a structure so close to a particular roadway at that width. We are talking about a site that drops off quite dramatically from the bypass area. So I would ask the Board as they did in 2005 to consider and recognize that the hardship does exist and that there is no public detriment by allowing this particular conscionable including the retaining walls and the sub surfaced storage tanks as we proposed. Board-Another issue brought up by Mr. Johnson was the parking. Parking is determined by the amount of square footage of the retail space you propose to service. Response: We are proposing fourteen spaces and under the by-law according to the letter of the law thirteen spaces are required so we have one additional space, ample parking. The Board is in receipt of a letter dated August 6, 2009 from the Conservation Commission and read into the minutes. Attorney Cornetta states that a suggestion that there was some compensation paid to some eminent domain I find to be irrelevant. We will have an engineer available at the next continued meeting. The Board would like to see the difference in the plans. Mr. Johnson- Satisfied with the questions that the Board asked. Motion by Bernard Mullaney to continue the public hearing till August 27, 2009 at 7:40pm. Seconded by Robert Acevedo. Unanimous by the board.

General Discussion:

Motion by Bernard Mullaney to approve the minutes of June 25, 2009. Seconded by Robert Acevedo. Unanimous by the board.

The board is in receipt of a letter dated July 23, 2009 from David Roche Building Commissioner in regards to Lakeview Terrace Subdivision Plan (see attached).

The board was provided the ZBA calendar for 2010. Motion by Bernard Mullaney to approve the ZBA dates for 2010. Seconded by Robert Acevedo. Unanimous by the board.

Motion by Bernard Mullaney to adjourn. Seconded by Robert Acevedo. Unanimous by the board.