

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS

**IN THE MATTER OF:** GCCF New England, LLC  
c/o Cumberland Farms  
Petitioner

**PROPERTY OWNER:** Onilleva Realty LLC  
38 Summer Street  
Medway, MA 02053

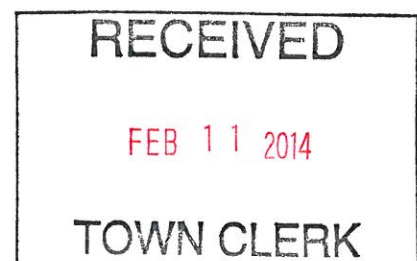
**OPINION OF THE BOARD**

**REQUEST VARIANCE**  
Intersection of Rte.109 and 38 Summer Street  
Medway, MA 02053

**Hearing:** August 21, 2013  
October 2, 2013  
October 16, 2013  
October 30, 2013  
**Decision:** November 20, 2013

**MEMBERS PRESENT:** David Cole, Chairman  
Arlene Doherty, Clerk  
Anthony Biocchi  
Carol Gould  
Craig Olsen

THE WRITTEN OPINION WAS DELIVERED ON FEBRUARY 5, 2014



*20 day appeal date  
March 3, 2014*

## OPINION OF THE BOARD

This is a proceeding of the Zoning Board of Appeals of the Town of Medway, MA (hereinafter the Board) acting under the Zoning By-Laws of the Town of Medway, MA, 02053 and the Massachusetts General Law Chapter 40A, as amended, in which the petitioners, GCCF New England, LLC c/o Cumberland Farms and their Attorney Peter Paulousky and Philip Henry, requests Variances to Sign Regulations (V.R) for a free-standing sign to be constructed at the intersection of Route 109 and 38 Summer St./Route 126, Medway, MA 02053.

### Hearing

Notice of the August 21, 2013 Public Hearing by the Zoning Board of Appeals in this matter was published in the Milford Daily News on August 7 and 14, 2013. Notice also was sent to all "parties in interest" and posted in the Town Hall as required by Massachusetts General Laws Chapter 40A, Section 11.

The August 21, 2013 hearing was opened and subsequently the Applicant requested a postponement of the hearing to enable some changes to be made in the application, including the addition of a further variance from the height regulation of the relevant sign. After some discussion, it was agreed between the Applicant and the Board that (a) an amendment to the application would be filed and advertised; (b) the applicant would bear the cost of the necessary advertisement; and (c) the hearing would be postponed to October 2, 2013 at 7:45 pm.

Notice of the October 2, 2013 Public Hearing by the Zoning Board of Appeals in this matter was published in the Milford Daily News on September 18 and 25, 2013. Notice also was sent to all "parties in interest" and posted in the Town Hall as required by Massachusetts General Laws Chapter 40A, Section 11. The hearing continuances were posted as required.

The Public Hearing, scheduled for October 2, 2013, was postponed at the request of the Applicant's representative, Mr. Peter Paulousky, due to only four Board members present. Mr. Paulousky agreed to confirm this request in writing and to grant any necessary waivers of the statutory deadline for the hearing.

The Public Hearings were held on October 16 and 30, 2013, and the record closed on October 30, 2013. At the hearing, no members of the public spoke in favor of the application. A few members of the public spoke in opposition and a petition submitted, signed by numerous persons living in the area, was read and accepted into the record. Also read into the record was a memorandum submitted by Suzy Affleck-Childs, Coordinator of the town's Planning and Economic Development Board in opposition to the requested variances.

### Hearing Summary

The Applicants, GCCF New England, LLC c/o Cumberland Farms, represented by Attorney Peter Paulousky and Mr. Philip Henry, came before the Board requesting variances to sign regulations (V.R), specifically sign surface area, height and internal illumination. The proposed site, located within the Commercial V zoning district, is at the intersection of two major roadways, Route 109 and Route 126 (38 Summer St.). The premises are currently under site plan review by the Planning and Economic Development Board for the proposed construction of a Cumberland Farms convenience store and retail gasoline facility, which is allowed in this district. However, the free-standing sign requested by the Applicant would require variances to be granted by the Zoning Board of Appeals. Medway Gardens currently operates its business at this location and will maintain ownership of all land and lease a section of the property necessary for the

proposed Cumberland Farms construction. The proposed free-standing sign would be 10 ft. in height with a total of 60 sf. of sign surface area (30 sf. per side) and internally illuminated. Attorney Paulousky pointed out that the portion of the height of the sign which exceeded the allowable 8 foot height restriction was essentially a roof canopy provided to ensure the sign was architecturally consistent with the buildings of the proposed development. Attorney Paulousky further argued that the variance in surface area of the sign was justified because the shape of the lot and the adjacent area lying behind the curb, but within the right-of-way, necessitates placing the sign a substantial distance (about 85 feet) from the nearest point on the roadway at the intersection. Further stated, was the long sight distance justified the requested variance for surface area and internal illumination to make the sign more easily visible at night.

At this point, members of the Board indicated the need for more information on the application. In particular, since the Applicant had argued for the height variance to allow a roof canopy architecturally/atheistically consistent with buildings in the development, the Board wished to seek recommendations from the Design Review Committee to the proposed sign. The Board further requested information regarding the visibility of the proposed sign to passing motorists. The Applicant agreed to a continuation of the hearing to enable this information to be provided.

On October 30, 2013, the hearing continued with Attorney Peter Paulousky and Mr. Philip Henry appearing on behalf of the Applicant. Mr. Henry presented a detailed analysis of the location of the proposed sign in relationship to the travel lanes of the roadways adjacent the lot, and demonstrated that, because of the distance between the edge of the lot and the edge of the travel lanes, drivers would be viewing the sign from distances of about 95 feet, instead of about 63 feet that would be expected on a "normal" lot. Mr. Henry then pointed out that, despite the approximate 50% increase in viewing distance, the applicants were only requesting a 50% increase in total sign area, and thus approximately a 22% increase in the linear dimensions of the sign. Mr. Paulousky then discussed the history of the development, explaining that the present application reflected the results of discussions between the Applicant and the Design Review Committee, according to which the area of signage on the buildings in the development would be reduced while the area of the monument sign would be increased. A member of the Design Review Committee, present at the hearing, confirmed these discussions and stated that the consensus of the committee generally was in favor of the height and sign surface increase, but hadn't reached consensus on the internal illumination. But, the committee was scheduled to meet with the Applicant within a short time period and would provide the Board with their written recommendation. In response to a question from a Board member, Mr. Paulousky confirmed that the Applicant would not object to a condition tying a variance increasing the area of the free-standing sign to a decrease in the area of the signage on the buildings below that permitted by the Zoning By-Law. Mr. Paulousky also argued, with the aid of photographs showing internally and externally lit signs at night, that an internally illuminated sign produced a "cleaner" image which would assist drivers in reading the sign at the increased viewing distances required by the peculiarities of the lot.

The hearing then closed, but the record was left open for any correspondence from the Design Review Committee or Planning and Economic Development Board. Deliberations would commence at the next scheduled meeting.

On November 20, 2013 deliberations commenced and after much discussion, the following findings and decision were made.

**Findings:**

By Vote of 5-0:

1. The Applicant demonstrated circumstances relating to shape and topography, which do not generally affect other land in the zoning district.
2. The Applicant demonstrated that owing to circumstances relating to lot shape, namely the distance between the lot line and the actual edge of the roadway at the adjacent intersection, sight distances from the roadway to the proposed sign are substantially larger than they would be in the absence of such circumstances.
3. The Applicant demonstrated that due to above circumstances of the increased sight distances, staying within the provisions of the Zoning By-Law, would be a greater than usual decrease in visibility and would hinder motor vehicle operations adjacent the subject lot.
4. The portion of the sign exceeding the height requirements permitted by the Zoning By-Law is an ancillary structure and intended to harmonize architecturally with the proposed buildings on the site.
5. The grant of relief as to height and sign area would not substantially nullify or derogate from the intent and purpose of the Zoning By-Law.
6. The Applicant failed to demonstrate sufficient circumstances to justify a waiver of external illumination.
7. The Design Review Committee supports the additional height and sign area of the proposed sign.

**Relief Granted**

By Vote of 5-0:

Grant to GCCF New England, LLC, a free-standing sign to be placed at the intersection of Route 109 and 38 Summer Street/Route 126, Medway, MA 02053:

1. A Variance from the provisions of Zoning District CV, Section V.R.8, Table 5 to permit a total sign surface area of 60 square feet with each face not to exceed 30 square feet.
2. A Variance from the provisions of Zoning District CV, Section V.R.8, Table 5 to permit a sign height of 10 feet, 4 inches.

Above is subject to the following conditions and/or restrictions:

- a.) The sign shall be constructed substantially in accordance with Drawing CFG13.0 submitted to the Board;
- b.) The sign shall be placed at least 71 feet from any roadway; and
- c.) The increase in sign area from 40 to 60 square feet is conditioned upon a reduction of signage on buildings to 20% below that permitted by the Zoning By-Law.

**Relief Denied**

The Board does not grant any variance from zoning district CV, Section V.R.8 that the sign be externally illuminated.

The Board hereby makes a detailed record of its findings and proceedings relative to this petition, sets forth its reasons for its findings and decision, incorporates by reference any plan or diagram received by it, directs that this decision be filed in the office of the Town Clerk and be made a public record and that notice and copies of its decision be made forthwith to all parties or persons interested.

***IN ACCORDANCE WITH MASSACHUSETTS GENERAL LAW, CHAPTER 40A,  
SECTION 11 NO VARIANCE, SPECIAL PERMIT OR CONSTRUCTIVE GRANT OF A  
VARIANCE TAKES EFFECT UNTIL RECORDED IN THE REGISTRY OF DEEDS.***

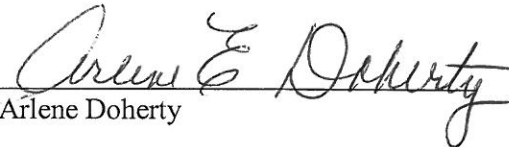


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David Cole, Chairman

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Anthony Biocchi



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