

Zoning Board of Appeals

Public Hearing & Regular Meeting
Wednesday, May 13, 2015
Wolcott Town Hall, Council Chambers
7:00 P.M.

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MINUTES

Note: These are summary minutes. A tape recording of this meeting and full application are on file in the Wolcott Town Hall, Commission Secretary's Office.

Chairman Grant called the Public Hearing to order at 7:00 p.m.

MEMBERS PRESENT: Chairman Steven J. Grant, Paul Mazurek, Kenneth Barnes, John McCarthy and James Treanor

MEMBERS ABSENT: None

ALTERNATES PRESENT: Theodore Storlazzi and Anthony Lombardi

ALTERNATES ABSENT: None

ALSO PRESENT: Attorney Smith and Patrick O'Leary

PUBLIC HEARING:

- **APPEAL #1962 Appellant/Owner: Cumberland Farms, Inc.:1655 Meriden Rd, Wolcott, CT Property Locations: MAP 124B/LOT 161 and 1665 Meriden Rd, Wolcott, Ct: Map 124B/Lot164 and 180 Farview Ave: Map 124B/Lot 159 to construct a new convenience store of 4,738 square ft. and four gasoline dispensers and requesting the following variances:**
 - 1. Article 2 Section 25 Schedule B - General bulk standards #6.4: Minimum setback from a residential district boundary is 50'.**

Requesting a variance of 19.5 ft. to allow a 30.5 ft. building setback to the west residential district boundary line and a variance of 3 ft. to allow a 47 ft. building setback to the north residential district boundary line.
 - 2. Article 2 Section 25.8.2: In commercial districts no part of the area required for setback from a residence district boundary line shall be used for off-street parking or loading. (Per**

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Schedule B - general bulk standards #6.4: Minimum setback from a residential district boundary is 50'). Requesting a variance of 30 ft. to allow parking spaces to be set back 20 ft. from the west residential district boundary line and a variance of 25 ft. to allow the loading space to be set back 25 ft. from the north residential district boundary line.

3. **Article 3 Section 32.2.12.b: All building and other structures including canopies and pump islands and pumps for the retail sales of gasoline shall be set back not less than 50' from any street or other property line.** Requesting a variance of 17 ft. to allow canopies, pump islands and pumps for the retail sale of gasoline to be set back 33 ft. from the Meriden Road street line and a variance of 11 ft. to allow canopies, pump islands and pumps for the retail sale of gasoline to be set back 39 ft. from the Farview Ave. street line.
4. **Article 4 Section 42.7.6 Location Loading: No off street loading space or access aisles in connection therewith shall be located in the area required for setbacks from a street line or residence district boundary line or within 10' of any side line.** Requesting a variance of 25 ft. to allow the loading space and access aisle in connection therewith to be located 25 ft. from the north residential district boundary line.
5. **Article 4 Section 42.7.7: No parking space or access aisle in connection therewith shall extend within 10' of any street line or 5' of any side property line, except for permitted driveway entrances, and approved interconnection with adjoining properties.** Requesting a variance of 5 ft. to allow the southerly and easterly access aisles to be set back 5 ft. from the Meriden Road and Farview Ave. street lines.

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Application was denied per David Kalinowski CZEO's letter dated 4-27-2015 as it does not meet set back requirements (see variances requested above).

Chairman Grant requested the applicant to come forward.

Attorney Smith came forward to inform the commission that he is a Land Use Attorney with the Law firm Shipman and Goodwin and also a partner. He added that they are out of the Hartford office. He stated that he appears before them on behalf of Cumberland Farms Inc. considering a request for variance approvals associated with the redevelopment of three properties at the following locations: 1655 and 1665 Meriden Rd and 180 Farview Ave, to accommodate a convenience store and gas station use of the properties. He noted that he is going to give an overview before turning the floor over to Mr. O'Leary who is their engineer.

He noted that all three properties are located in a general commercial zone that permits a gas station use subject to a special use permit review and approval by the Planning and Zoning Commission. He also stated that he would like to note for the record that the Planning and Zoning commission early this year in December approved a zone change request by Cumberland Farms for 180 Fairview from where it went from residential to general commercial. During that process the Planning and Zoning commission was shown this proposal for the Cumberland Farms station. He noted that the proposal is to raze the existing, take down the existing Cumberland Farms located on 1655 Meriden road and to construct a new station and store updated and modernized located on all three properties combined. In that process they are eliminating or reducing a number of nonconformities associated with the gas station use. He advised the commission that he would like to turn over the floor to their engineer who is also a traffic engineer Mr. O'Leary from VHB who will walk through the proposal with particular emphasis on the reduction of the nonconformities associated with this proposal.

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Chairman Grant noted that Mr. Barnes would like to address something, at which time Mr. Barnes pointed out that his company and the department that he manages is currently in nomination with Cumberland Farms on a purchase and sale agreement for one of their properties in New Jersey. Although he has no personal or financial interest in that transaction and doesn't consider that being a conflict, he wanted everyone to know in case there were any objections.

Attorney Smith inquired if in his opinion Mr. Barnes can act objectively on this application, at which time Mr. Barnes replied absolutely. Attorney Smith noted that he wanted that stated for the record.

Mr. O'Leary came forward to state that he is a professional Engineer in the state of Connecticut and is a principal of Vanasse Hangen Brustlin, Inc., 100 Great Meadow Rd, Wethersfield, CT, 06109, at which time he handed out handouts to the commission members (**on file**) and he would like to discuss the existing conditions as the site sits today. Also, he explained the variances as noted in the submitted application which he went over verbatim (**on file**).

Attorney Smith noted that Mr. O'Leary stated that there is not a lot of landscape in the area and they know they did have trouble actually finding an area that they could have placed the signs and they did place them on three locations along Meriden Road and two on Farview. He added that he is pinch hitting for his partner Attorney Williams who did file the application and was working with your clerk and got involved when the signs were being posted and they added two more and he thinks that they covered the entire area with signage.

Chairman Grant questioned with respect to the building of the new facility, is it the plan to destroy or demolish the first building and then rebuild or was it to keep the place open and build at the same time.

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Mr. O'Leary stated at this point, they would like to try to maintain this facility during the construction and phase it appropriately. There are certain elements that cannot be done in phases, because there are elements of the design like taking down the development and removing of the asphalt. This is going to be part of the drainage facility for the site shown on the drawing (**on file**).

Chairman Grant inquired if it is true that the building structure is the same at the entire local site, at which time, Mr. O'Leary replied similar in context. He also added what type of building they were going to construct.

Chairman Grant inquired if there is not one cookie cutter size which they are able to tailor the size based on the lot and the layout of the property and the characteristic, at which time Mr. O'Leary indicated which is exactly what they did with this site. They are proposing a 4,700 square foot store. He noted right now there on 4,900 approaching 5,000 sq. ft.

Chairman Grant said they are doubling what they have presently, at which time, Mr. O'Leary replied correct. Chairman Grant inquired if the proposed store is larger than the one on Wolcott road. Mr. O'Leary replied yes.

Chairman Grant pointed out that it is about 3,500 sq. ft.

Mr. O'Leary said he is familiar with the store and the square footage he doesn't know exactly but just by familiarization this one would be larger.

Mr. Grant referenced the hours and asked if this a 24 hour store, at which time Mr. O'Leary replied yes it is.

Mr. Lombardi stated that he is an alternate member on the Board and he wanted to thank them for the informative presentation. He noticed on the site plan and Mr. O'Leary touched on this, the fuel tankers entering the premises off of Farview as opposed to Meriden

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and he is wondering why that is the case and if it is necessary based on the nature of the plan.

Mr. O'Leary stated that the reason why they have it set up like that is in their minds is because they are early in the process and DOT will not comment at this point because they have not submitted a site plan on this site. He added if DOT approves that curve cut, then they will have the opportunity to bring the tankers into the site in this manner. In the event DOT will not approve this curb cut then they will be forced to use this portion of Farview. He added that it is a combination site plan issue and DOT issue.

Mr. Lombardi noted that he understands and as a traffic engineer he could appreciate the fact that there is difference in the density on either road Meriden Rd versus Farview. Mr. Lombardi questioned when the construction would be completed. It leaves them with quite a bit of space where the old store stood and he noticed that they're calling for an above ground storm water detention basin is that required is that suggested who brought that design to light and he is curious about that and whether that space could be utilized in a different way.

Mr. O'Leary stated that part of the reason is where the storm water management area is. It is their intent to incorporate a landscape berm around the storm water management area. It was an existing fueling facility so Cumberland Farm's intent is to maintain this as part of the property and not develop it so they are trying to find an effective relief which would also help in the site design. They are waiting to get some more G-O-Tec results back. He noted that they're not out there to drill on the site right now for Cumberland Farms. He added that they will be doing some more testing should they be moving forward here. He noted that they do not want a wet detention basin there and they hope it will be a dry basin to infiltrate stormwater back and recharge ground water which is important and they will have an effective landscape design and it could look every nice for the community out there on the main road as well as a buffer for the neighbors.

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Mr. Lombardi pointed out that he wanted to thank Mr. O'Leary for his answer.

Mr. Barnes stated that he wanted to thank Cumberland Farms for considering such a large investment in their town, at which time, he indicated that he has some concerns and several questions. They mentioned restriction on hours for delivery and trash pickup, and asked if there is any. Mr. O'Leary stated that this is handled as part of the special use permit criteria as opposed to being part of ZBA. Mr. O'Leary said they don't want to do it during peak time.

Attorney Smith noted that those are generally the types of conditions that Planning and Zoning would consider if they were able to get the variance approval from this Board and then they would go to Planning and Zoning for the special use permit as part of the special use permit process and they can include conditions on their approval as well as this Board can with variances. He pointed out that he would like to state for the record before this Board that if they do get to the next step, indicating to Planning and Zoning that their comments to the hours that they are suggesting for this Board would probably be expected by Planning and Zoning.

Mr. Barnes inquired if they completed any grading or drainage plans yet. He noted that there is a pretty large slope on all of these properties which he noticed when he was on site. He questioned if they were going to place a retaining wall there and what does it look like. Mr. O'Leary said they are not anticipating any retaining walls for this site. Mr. O'Leary stated that their intent is to have a level site.

Mr. Barnes inquired if they could move their existing tanks over by 10 to 20 ft. and move the curb over 10 to 20 ft. to allow safer deliveries for gasoline but not having them by the store front parking in the islands.

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Mr. O'Leary said it is something that they could do.

Mr. Barnes stated that what they are charge of is to minimize the variances as much as they can. He inquired if they could consider reducing the size of the store and reduce some of the variances that they are requesting.

Mr. O'Leary stated a reduction in the size of the store and taking 5 ft. off the store is going to have very little impact on the number of variances they are requesting. He added that they will probably need all five variances even if they reduce the store. He stated that alternately what it really comes down to for Cumberland Farms was to make the investment here and be able to pay off that investment and essentially this is the size they need.

Mr. Barnes inquired if they had a floor plan for the 4,738 ft. that goes with this proposal. Mr. O'Leary said he does not have one as part of this presentation, He thought this was included in the site plan packet at which time, Mr. Barnes said no.

Attorney Smith stated that he wanted to point out that the understanding to reduce the requested variances is almost like wetlands trying to reduce potential impact as with wetlands there isn't impact. So the effect to try to reduce the variances he thinks that's what he heard, for Cumberland farms to make this work from a financial stand point the thoughts to reduce the size of the store any further as Mr. O'Leary indicated taking 5 ft. off a certain side would not reduce the number of variances. He noted that the scope of those variances makes a big difference for Cumberland relative to whether they can make the site. Basically this is a redevelopment of two old stations that were, one existing and one that was old so it is almost like adapt reuse so to speak on a very small scale. The best response that they could give them is that from a financial stand point this would have to work to provide the ability to redevelop this site.

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Mr. Barnes stated that they have a wonderful Cumberland Farms on Wolcott road and its 4,700 sq. ft. and there is a lot of room to move around. He wishes that they could do that here.

Attorney Smith said that would probably be very legitimate if this was 3 vacant lots and they didn't have existing tanks and a station on 1665 and having to deal with two different sites essentially they need to be addressed during this redevelopment, at this time Mr. Barnes said yes and he understands.

Mr. O'Leary added that the criteria here is the storage capacity of the store and any reduction that would happen will impact the storage, truck traffic, and deliveries to the site etc., at which time Mr. Barnes said he understands.

Mr. McCarthy stated that there is nothing out there that is conforming. He stated that he does realize what they are up against. He added that he didn't realize that they sat with the neighbors and took their desires into consideration.

Mr. O'Leary pointed out that he has not been in contact with those neighbors in a few months because they are not in the design process yet.

Chairman Grant referenced the zoning summary chart and the variances required page on the map, at which time Attorney Smith inquired if the members had a copy.

Chairman Grant stated what is on the agenda was published in the newspaper. For each of those five variances requested he would like Attorney Smith to go through them one by one and speak about the nonconformity and how they are making it limited or more conforming and how are they doing that and also the specific regulations that are involved.

Mr. O'Leary explained the variances as noted in the submitted application which he went over verbatim (on file).

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Attorney Smith stated that Judge Gruendel in the appellate court Verrillo which he thinks came out on March 15 went through all the different issues concerning variances with hardships and that involved a house on the shore line and they basically wanted to expand everything and one of their claims was that it bonafide under and the court addressed that and said no, Adolphson deal with reducing nonconformities and there is no attempt to reduce any nonconformities there and they were basically expanding their building footprint horizontally and vertically and the board there said no and there was no hardship and there was no exception that qualified, so the court upheld that decision when it went up to the trial court level and when it went to the appellate court.

Chairman Grant inquired if Attorney Smith could provide that article to the commission members.

Mr. McCarthy referenced the current building and stated it is quite a bit over lot coverage. Is he correct in understanding that once they combine the three parcels that the proposed building will not be over lot coverage, at which time, Mr. O'Leary replied that is correct.

Mr. McCarthy said the lot coverage noncormity that exists now will be eliminated, at which time Mr. O'Leary said that is correct.

McCarthy said he would like a clarification on every nonconformity; being addressed and its reducing in their proposal, at which time Mr. O'Leary said to the best of his knowledge every existing nonconformity is either being eliminated, so they do not need a variance or it is being reduced as he indicated in his proposal.

Mr. Barnes referenced two concrete pads and asked what they are.

Mr. O'Leary said he thinks it is a propane tank and it could be moved or relocated to another location and there is no shortage of land there.

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Mr. Barnes also had concerns with dumpsters.

Mr. O'Leary said for this site depending on what the neighbor use they would use the exact same fencing going around the dumpster.

At this time, Mr. McCarthy requested a 10 minute recess, at which time Chairman Grant said they will take a five minute recess.

Upon **MOTION** by John McCarthy, seconded by Paul Mazurek, it was unanimously voted to take a 5 minutes recess.

Chairman Grant called the meeting back to order at 8:55 pm.

Attorney Smith pointed out that Berillo that really for the record did involve the issues that they are talking about to reduce nonconformities please read it and he wanted to indicate there was a reference in that decision but the specific issues raised were what they were talking about tonight. He added by combining lots when lots are nonconforming and they do come together in common ownership by combining them it will reduce or eliminate conformities they automatically would merge and Cumberland Farms has every intent of merging those lots so those nonconformities which Mr. O'Leary walked through and he wanted to state that for the record.

Mr. Carthy questioned if there is somewhere in the regulation or in their proposal that speaks to buildings being higher than 30 ft. for every foot higher the side back must increase by 2 ft.

Mr. O'Leary said no there isn't. He added that no they have not addressed that in their proposal by height about height from Cumberland Farms particularly 28ft to 32ft depending on the size or location and believe they fall under those criteria. He believes that they fell under those 30 ft. criteria at which time Mr. McCarthy noted that someone mentioned to him that the proposal of the building would be 32 ft. Mr. O'Leary said that is the maximum for a building and the architect did that to avoid setback criteria that

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kept it at 28ft to 29 ft., at which time Mr. McCarthy stated that you are not proposing 32.8 ft. building and Mr. O'Leary said they are not proposing or requesting a variance for building height.

Chairman Grant said at this time if there are any members of the public that would like to address the application here tonight, if so please come forward and sign in.

PUBLIC COMMENT:

- 1) Cheryl Gibran, from 1 Lakeside Drive, Wolcott, CT came forward to state that she uses Cumberland Farms as a business and Wolcott's objective is to encourage business out of town to help with their taxes. But the corner property has been commercially zoned on Fairview and Meriden Rd is an eye sore right now. She noted that they are looking forward to this property being improved. She feels as a tax payer that this area and nine variances that Cumberland Farms is asking for are excessive. To her even the five variances raise a red flag for the safety of not just the residents but also the customers that are going to be driving in and out of Cumberland Farms. Therefore she is asking for the Zoning Board of Appeals to make the decision not to approve the five variances put forth by Cumberland Farms. Obviously the building and the adjacent gas pumps and loading dock are two big for the area purchased. The Town of Wolcott has made specific zoning regulations for a reason for the safety of their tax payers, please turn down these variances and let Cumberland Farms propose a site plan that is safe for all of them.
- 2) Tom Shea from 11 Anita Terrace, Wolcott, came forward to state that he has questions, problems and concerns:
 1. The proposal that it going from 1,500 sq. ft. to 4,500 sq. ft. is that accurate. Chairman Grant said 2,400 sq. ft. He said the building is going to increase 3 times the size. He said that he believes they are doubling their gross business

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which means that in their area they will have double the number of cars than what they have. He wanted to compliment one of the board members that visited the site and wanted to thank him.

2- Entering/existing on Farview are extreme concerns. He noted that his wife and he travel that road numerous times during the day. He added that it was compounded when the Duncan Donuts came in and they are very good neighbors, however their drive-thru dumps onto Farview right now about the same area where Cumberland Farms is going to dump onto Farview . He also noted that a bus sits there and waits for his time to leave on this route. If they have people existing from Duncan Donuts they cannot see people coming from Meriden road going up Farview, it's a hazard. His other concern is waiting at the traffic light. He wants to know how many cars will be running through Cumberland Farms to avoid that traffic light. He mentioned that the store on Wolcott road is adequate at a smaller dimension why can't that work on Meriden road to ease out that difficulty. It almost seems like a threat that if they don't improve then they will just forget the project and walk away that to him is not a very good neighbor that would work within the system, He would like them to compromise on the size, exits on Farview and it would work a lot better. He noted that he lives in that area and he travels that area and the road is a mess with I-84 being reconstructed and that is the dumping ground for the alternate route coming from Byman road, which a traffic light was placed there. He added that Cumberland Farms have been a good neighbor. He said he would like a compromise and he would like to see a new Cumberland Farms built and he would like the size to stay the same.

Mr. Corbett, 24 Rosemary, Wolcott came forward and referenced the Zoning Board of Appeals rules and regulations. If any portion of the property effected by the decision of such commission boards or agency is within 500 feet of boundary of an adjoining municipality such notice

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shall be made by certified mail return receipt requested and should be mailed within 7 days of the date of receipt of the application. He inquired if such notices were sent out and they were not. He also questioned the height of the building because it states 32ft. and he is wondering if they are requesting a variance for that, at which time Attorney Smith replied no.

Michelle Larock, 129 Farview Ave, Wolcott, CT came forward state that she has concerns with traffic, two exits and entrances onto Farview.

Richard Lathrop, 12 Chesterfield Ave, Wolcott came forward to state that he lived there as long as Cumberland Farms has been there. He pointed out that there always has been a problem with garbage, noise, and drainage. He added that zoning has done nothing in this neighborhood to alleviate these problems. He said the plan that they have now addresses 90% of the difficulties that they had for 30 years and he said he doesn't know what the problem is approving their plan; it is a good plan.

Mr. McCarthy stated that he would like the Chairman to remind the people here tonight, that they are not allowed to consider in their decision the following traffic, garage, exits, lights etc.

Chairman Grant stated if they were to approve some or all variances there will be a formal site plan that will be put forth and this will go back to Planning and Zoning regarding the above issues that the neighbors have. He added that this tonight is not the place for these issues to be addressed.

Mr. Barnes noted that he disagrees and he believes it is under the provisions of this board to take in consideration any safety concerns that they believe that would impact property values in the surrounding area.

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Judy Cowan, 24 Pratte Lane, Wolcott, CT came forward to state that she wrote a letter (see attached).

Chuck Marsella, 10 Dixie Lane, Wolcott, CT came forward to state that he has been approached by quite a few members from the lake area and being a member of the Town Council. They have legitimate concerns like: lighting, and safety. He added that it is going to be a great improvement and let's do it right for the area.

Mr. Corbett also stated in the zoning rules it is improper for Zoning Board of Appeals to grant a variance solely on the basis that variances would improve the neighborhood without another finding of hardship 51 cs 190, that's your rules, not mine.

Mr. Barnes inquired if the applicant had a traffic study, at which time; Mr. O'Leary replied no they have not as part of the application.

Lorraine Shea, 11 Anita Terrance came forward to state that she has concerns with the two new exits onto Farview.

Dana Iasevoli, 176 Farview Ave, Wolcott came forward to state that she purchased her house next to a residential home, not commercial property; and she never expected being the third house on the street that the house next to her would be approved to be rezoned to commercial and that shouldn't be a factor. She added that she never signed up to live next door to a Cumberland Farms.

Mr. McCarthy pointed out that this board did not approve of the zone change on this property and it was done by another board and it's been done and it is now a commercial piece of property regardless what happens.

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CLOSE/CONT. PUBLIC HEARING:

Upon **MOTION** by John McCarthy, seconded by Kenneth Barnes, it was unanimously voted to **continue** the public hearing until June 10th 2015 in the Town Council Chambers at 7:00 pm.

Chairman Grant continued the Public Hearing on Appeal #1962 at 9:55 p.m.

REGULAR MEETING:

Chairman Grant called the regular meeting to order.

APPROVAL OF MINUTES:

- **Public Hearing & Regular Meeting – April 10, 2013 and Organizational Meeting March 11, 2014**

Upon **MOTION** by John McCarthy, seconded by Kenneth Barnes, I was unanimously voted to **approve** the Public Hearing and Regular Meeting minutes of April 10, 2013 and the Organizational meeting on March 11, 2014.

Chairman Grant indicated the next item on the Agenda is Correspondence.

CORRESPONDENCE (on file):

Chairman Grant noted that he received the following letters: (see attached)

- 1) Dana Iasevoli on 176 Farview
- 2) Patricia Schaaf on 169 Farview
- 3) Margaret & Scott Miller on 28 Rosemary Lane
- 4) Judy Cowan on 24 Pratte Lane

Chairman Grant indicated next on the agenda is old business.

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OLD BUSINESS:

There was no old business.

NEW BUSINESS:

- **DISCUSSION & POSSIBLE ACTION ON APPEAL #1962**

APPEAL #1962 Appellant/Owner: Cumberland Farms, Inc.:1655 Meriden Rd, Wolcott, CT Property Locations: MAP 124B/LOT 161 and 1665 Meriden Rd, Wolcott, Ct: Map 124B/Lot164 and 180 Farview Ave: Map 124B/Lot 159 to construct a new convenience store of 4,738 square ft. and four gasoline dispensers and requesting variances.

Upon **MOTION** by John McCarthy, seconded by Kenneth Barnes, it was unanimously voted to **TABLE** APPEAL #1962 - Appellant/Owner: Cumberland Farms, Inc.:1655 Meriden Rd, Wolcott, CT Property Locations: MAP 124B/LOT 161 and 1665 Meriden Rd, Wolcott, Ct: Map 124B/Lot164 and 180 Farview Ave: Map 124B/Lot 159 to construct a new convenience store of 4,738 square ft. and four gasoline dispensers.

NEW APPLICATIONS:

There were no new applications on file to date.

Chairman Grant indicated the next item on the Agenda is Executive Session.

EXECUTIVE SESSION:

No Executive Session was held.

Chairman Grant indicated the next item on the Agenda is Adjournment.

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ADJOURNMENT:

Upon **MOTION** made by John McCarthy, seconded by Paul Mazurek, it was unanimously voted to **adjourn** the meeting at 10:15 p.m.

APPROVED:

Dolores Distiso
Commission Secretary
ZONING BOARD OF APPEALS

Steven J. Grant
Chairman
ZONING BOARD OF APPEALS