



ZONING BOARD OF APPEALS MINUTES

October 8, 2014

The Lunenburg Zoning Board of Appeals held a public hearing on Wednesday, October 8, 2014 at 7:00 PM. The hearing was held at the Lunenburg Town Hall, 2nd Floor Conference Room, 17 Main Street, Lunenburg, MA. This was a continuance of the meeting held on September 10, 2014.

The petitioner Gary Archer, 70 Main Street, Ayer, MA 01432 was seeking a special permit to construct a gasoline service station with convenience store, drive thru and car wash. He also requested an increase of the sign sizes for the proposed site. The property is owned by Marcia K. Luoma, personal representative for the estate of Edward Riley and the property is located at 790 Massachusetts Avenue, Lunenburg, MA 01462

Board Members present: Donald F. Bowen, Chairman, Hans Wentrup, Alfred Gravelle, David Blatt, Paul Doherty and James Besarkarski (present but not voting).

Others Present: Attorney Robert Cirillo, 73 Sawyer Street, So. Lancaster, MA, Gary Archer, 70 Main Street, Ayer, MA, representatives from MHP Engineering and Greenman Pederson and many members of the general public were in attendance.

7:00 PM the public hearing was opened by Chairman Donald Bowen. Lisa Normandin, Board Secretary read four letters that were received from abutters into the public record. The were from, John & Carol McShane, 39 Riley Road, Sharon Donahue-35 Riley Road, Louise Boyle, 29 Riley Road, and Wendy Blatt, 44 Riley Road (attached) the content of the submitted letters were all in opposition to the petition. A letter received from Linda Gurney and one from Donald Gurney, 37 Riley Road was summarized by the applicants as they were lengthy letters. Mr. Bowen said he would allow public discussion **only** if was new data and not rehashing old business.

Paulette Beardmore-282 Pleasant Street said to date the Town has been a team player, she stated how many coffee shops there are and how many gas stations there were currently. She thinks the Town (Planning & Zoning Boards) has made serious mistakes in the past with approving projects. She included the Lunenburg Wal-Mart and the crime and police presence needed, Emerald Place (formerly Whalom Park) was build in the recession and no units selling, only rentals and not a lot of tax revenue and more recently two solar farms that she feels that only Leominster and Fitchburg are reaping the benefits.

She felt that a lot of tax revenue was lost and could have been negotiated better with Town officials. Alfred Gravelle was quick to point out that the ZBA was not involved with any of the aforementioned projects.

Elaine Mroz-64 Chestnut Street recognized the fact that it is a commercial area and the Riley's want to sell their land however she acknowledged the fact that the ZBA is in an awkward position because the land holds grandfathered status. She felt the Town would be at a personal disadvantage by allowing this use.

Susan West-38 Riley Road insisted that the traffic on 2A leaving Stone Farm Estates will only be worse; she said she has to be extremely careful exiting right each morning, she cannot imagine the line of sight issues with a proposed gas station. Don Bowen agreed that the stone wall and brush would be a hindrance as he has visited the property multiple times but some of the issues could be addressed by the condominium board.

Alan Luoma the representative (owner of the property) said that the applicants have followed the by-laws to date has met with Building Official Michael Sauvageau several times to learn of their rights. He indicated that Gary Archer has spent thousands of dollars on engineering, traffic studies etc. He wanted the Board to hear the new presentation with regard to changes that were made to the plan by MHF Engineering and thought that the Board would be pleased with new plans. Mr. Luoma added that his wife Marsha walked to school before there were sidewalks in Town without any trouble. He felt the new post office/bank complex was a dangerous area and that project was approved

Attorney Robert Cirillo summarized the changes in the plan since the last meeting and turned it over to MHF. Huseyin Sevincgil, of MHF Engineering outlined quickly the changes that were made including: gas pumps were reduced from 10 to 8, the car wash has been eliminated and the building was reduced from 4440 square feet to 3940 square feet, in addition the buffer was increased by ten feet adding additional green space, the sign was reduced from 90.6 feet to 82.9 Sq. ft.

Heather Monticup was representing Greenman Pedersen, Inc. and said that their firm finalized the traffic study. She went into great detail about the data that was collected and talked about sight distances and speed measurements. Trip generation was covered with regard to similar business, i.e. donut shops with gas stations, conveniences store etc. and added that their firm deals with these types of studies often. The Board asked several questions of Ms. Monticup which she answered and concluded her presentation saying there were no sight issues with regard to the proposed site and felt that it was safe.

Amanda Risch-Fletcher Tilton of Worcester was representing Stone Farm LLC and the Stone Farm Condominium residents. She stated that there are approximately 100 residents in opposition to the project. Ms. Risch said that it is a split zoning district with the vast portion in the Limited Business Residential area. Under the Protective by-law a gas station and drive thru is prohibited without a special permit. While she appreciated the fact that the applicant removed the car wash and reduced the number of pumps the

commercial zone alone cannot accommodate all of the proposed uses. Her second point was that MGL Chapter 40 A (the Zoning Act) give Towns a wide range of discretion and that no one has a right or is entitled to a special permit simply by submitting an application. In the case of Sewell vs. the Zoning Board of Appeals of Carver she quoted "the ZBA refusal to grant a special permit and does not require detailed findings, if the Board finds any permissible reason to deny the application then its decision would be sustained. She felt that the application fails this test and in conclusion she said that it is not an appropriate location and it will significantly materially adversely affect the neighborhood and detract potential buyers. The sound impacts 24/7 coming from the site with regard to customers and food service in addition to trash and recycling vehicles and construction noise would greatly impact the neighbors. She contends that there has been no sound analysis in addition to the intrusive pylon sign and increased traffic as well as line of sight issues would significantly impact the area. She felt that it is not an appropriate location for the use and deviates from the past use (as a liquor store and private home).

Attorney Cirillo said that it was a difficult decision for the Board to make and there has been a lot of opposition but what use can be located there? It can become a restaurant without a drive thru. Michael Sauvageau and attorney Risch disagreed on the fact that the drive thru would be allowed as a right and Mr. Sauvageau stood corrected by her interpretation that in both the Limited business and commercial zones a special permit is required for a drive thru and it is not allowed by right.

Attorney Cirillo contends that any permitted use at the property would have an impact on the abutters, however, the owners are paying taxes and the (Riley Road) abutters should be aware that it is a commercial district. He contends that Mr. Archer has been in business a long time and wants to work with the Town in proposing a business that is allowed in an appropriate zone. He indicated that applicant is willing to work with the Board and the (Board) can regulate and work with the applicant to approve and allow Mr. Archer to move forward to the Planning Board for site plan review.

David Blatt had issues regarding the two driveways with regard to ingress and egress; he also felt that the trash receptacles should be moved further away from Riley Road. He also had concerns with snow removal and snow storage on the site. Huseyin Sevincgil, of MHF Engineering explained that the issues that Mr. Blatt had would be standard things that the Planning Board regulates, lighting, drainage and egress. Mr. Blatt had a problem with the size of the pylon sign, and had landscape and buffer as well as lighting issues. Huseyin Sevincgil explained that it is up to the Planning Board to approve the site plan.

Alfred Gravelle felt that the buffer from Riley Road could be increased and add visual buffer as well.

James Besarkarski raised the issue of noise pollution with regard to a 24/7 business. Mr. Sevincgil indicated that a fence and landscape buffer would mitigate the sound but you cannot plant in the front of the property and you cannot put plantings in the wetland areas in the rear. He explained that now that the car wash has been eliminated it would not be as noisy. Mr. Besarkarski brought up the noise that comes from Conrad's restaurant however it is only open till 9 P.M. He was concerned with noise those abutters would hear with a business operating all night.

Hans Wentrup had serious issues with values of property with regard to the abutters across the street, and noted that Section 8.3.3.2.b) of the by-law states "Will not have a material adverse effect on the value of land and buildings in the neighborhood or on the amenities of the neighborhood". Mr. Wentrup felt that a 24/7 operation would affect the neighbors and with the amount of cars and the value of the land, the increase in lighting and the size of the sign at that location is not the intent of the by-law.

Paul Doherty agreed with Mr. Wentrup and said currently the property is becoming more dilapidated and is losing value and the owners are still paying taxes. It's too late to change the zoning and he added a Denny's could be constructed there and operate 24/7 and doesn't need a drive thru so he said "sometimes the devil you know is sometimes better than the one you don't" and that was his two cents.

Donald Bowen ran through his list of issues with regard to the project, he was satisfied with the Fannie Mae mortgage issue with relationship to owners not being able to get a mortgage on a property within a certain distance of a gas station, he acknowledged that a sidewalk is in existence so that was not a concern, acknowledged that there would not be a speaker issue because there would not be a speaker system at the business, he was happy with the fact that the carwash was eliminated so that the concern with icing issues was gone. He did feel that the hours were still excessive. He felt that that applicant did not address the issues with the signs regarding their size. He still felt however that there were line of sight issues, but, all in all he would still vote a hard no due to the fact that he was still not convinced that the abutters across the street would not be affected by the lighting/glare and the hours. He added that the two homes across the street would not be able to enjoy the peacefulness of the property in the evening and felt that the applicant could not satisfy one of the criteria in the by-law as Mr. Wentrup stated earlier.

Dave Blatt asked the applicant what he could do to mitigate the lighting and noise issues.

Mr. Archer said he would be happy to put up a fence and bushes to mitigate the noise; he wants to work with the board and the abutters. He wanted the business to be safe and non-intrusive. He is proud of the establishment he owns in Littleton and wants to run three shifts if the business warrants it.

Dave Blatt asked the applicant how important it is to him to be open 24/7. Mr. Archer said her would be willing to work with the Board. Attorney Cirillo then asked the Board to modify the hours from 24/7 to 5:00 am to 11:00 pm and withdrew the prior request.

Paul made a motion to accept the modified hours and it was seconded by David Blatt, all were in favor of the modification.

Paul Doherty then made a motion to approve the gas station/convenience store with drive thru for further discussion and recommend a reduction in the size of the pylon sign. David Blatt seconded the motion. Hans Wentrup asked the applicant if he would work with the Board to reduce the sign size and eliminate a pylon sign. Dave Blatt & Paul Doherty agreed with Mr. Wentrup. Mr. Archer agreed to rework the sign but indicated he must legally display the gas prices; he will work with the engineer to come up with a new design.

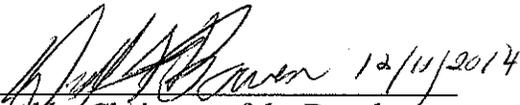
Hans Wentrup was pleased with the modification of the hours, however, felt the signs, lighting and making sure the entire site is in harmony with the neighborhood were still concerns for him.

Donald Bowen indicated that a continuance was in order due to the late hour. He reminded the engineers that all data must be submitted on week prior to the next hearing.

Paul Doherty made a motion to continue the meeting to November 12, 2014 at 7:30 P.M., David Blatt seconded the motion and all were in favor.

Hearing Adjourned at 10:07 P.M.

Minutes submitted by Lisa A. Normandin, Board Secretary

 12/11/2014
Approved by Chairman of the Board

39 Riley Road
Lunenburg, MA 01462

Sept. 11, 2014
7ED
SEP 17 2014

Dear Mr. Bowen:

BY.....

We are residents at Stone Farm Estates, 39 Riley Road. We purchased our condo in July 2013 and have enjoyed its serene setting in this lovely town since last October. When we bought the condo, we were aware of the former package store and the possibility another business might open there in the future.

Last night we attended the Zoning Board of Adjustment meeting held to consider a gas station/convenience store/car wash at 790 Mass Ave. We were impressed at how the meeting was conducted, allowing all interested parties the opportunity to be heard.

We are opposed to a gas station and car wash at that site. Our concerns were well expressed by other citizens, so we'll be brief in stating ours: we are concerned with safety and property values. The gas station and car wash pose *potential* problems of contaminants being discharged into a residential area: airborne fumes, liquid and chemical spills, and noise. On quiet evenings we can hear order calls from Conrad's, further from our home than the proposed gas station & car wash. That small business is only seasonal and its hours are quite limited, not 24/7 like the gas station and car wash.

We accept that some business may be legally conducted at 790 Mass Ave in compliance with present zoning laws. Not many businesses pose the potential multiple problems associated with a gas station and car wash. In addition to possible pollution, more vehicles in this busy part of Mass Ave pose a threat to the safety of current residents and other businesses

Our other legitimate concern is the threat to property values. The small-town character of Lunenburg, and this particular neighborhood with its blend of small businesses and homes, pre-school children and senior citizens, is not the place to locate a business much better suited to Summer Street and 2A west of Rt. 13.

We emphatically oppose the construction of a gas station and car wash in our neighborhood. We plan to attend the Oct. 8 ZBA meeting when this comes up again.

Sincerely,

Carol and John McShane

Carol McShane
John McShane

Sharon Donahue

35 Riley Road Lunenburg, MA 01462 USA

September 19, 2014

RECEIVED
SEP 20 2014

BY:

Donald F. Bowen, Chairman
Zoning Board of Appeals
Ritter Memorial Building
960 Massachusetts Avenue
Lunenburg, MA 01462

Dear Chairman Bowen;

Re: Gary Archer Petition

I am writing to bring up three issues in opposition to the proposed Gary Archer service station at 790 Massachusetts Avenue which were not raised at the September 10th meeting of the Zoning Board of Appeals namely: safety, hours of operation and signage.

Safety

In addition to the obvious concerns about lines of sight and automobile traffic, I have serious concerns about pedestrian safety. Many people currently walk along Massachusetts Avenue to attend church, go to the post office or the Lunenburg Library at the center of town. The current plans for this oversized gas station include a drive-up window capable of having a dozen cars at one time and two driveways facing Massachusetts Avenue which will have drivers entering and exiting from both driveways. Add to this mix, cars driving in just to stop in at the deli or to pump gas at one of five fueling stations. No one will be looking out for pedestrians. What's going to happen when mass gets out at St. Boniface and people decide to walk across this busy street to shop at the new convenience store? This is an accident waiting to happen.

Hours of Operation

In order to make a profit, Mr. Archer will be asking the town to grant him permission to keep this station open 24 hours a day/7 days a week. This is fine for the new Mobil station on Lancaster Road since the station is surrounded by other commercial businesses. At 790 Massachusetts the proposed station will abut residential homes. The bright lights and added traffic and noise of the proposed car wash will reduce the quality of life for the surrounding home owners trying to sleep at night. The current commercial businesses along Massachusetts Avenue including the Asian Imperial, a Gulf Station, new Dippin Donuts, and Conrad's all close their doors by 11:00 pm. There is just no need to granted extended hours.

Signage

The Lunenburg Planning Board is looking for ways to maintain and improve the rural, village look of the town center. Mr. Archer, who admits to modeling the proposed gas station/convenience store/deli/car wash after the Lancaster Road Mobil station, is seeking permission for the largest, neon sign possible to advertise multiple vendors. (See attached color photographs). This will be the very first neon sign visitors will see approaching Lunenburg town center traveling eastbound on Route 2A. Once installed and illuminated 24/7 there is no question it will destroy any hopes of matching the criteria for the Village District Bylaws.

For these three reasons as well as many other objections, I strongly urge the Zoning Board to vote "No" on this proposal.

Thank you for reading this letter at the October 8th meeting for all participants to consider.

Sincerely,



Sharon Donahue

Mobil

 HONEY FARMS

 DONUTS
DRIVE THRU

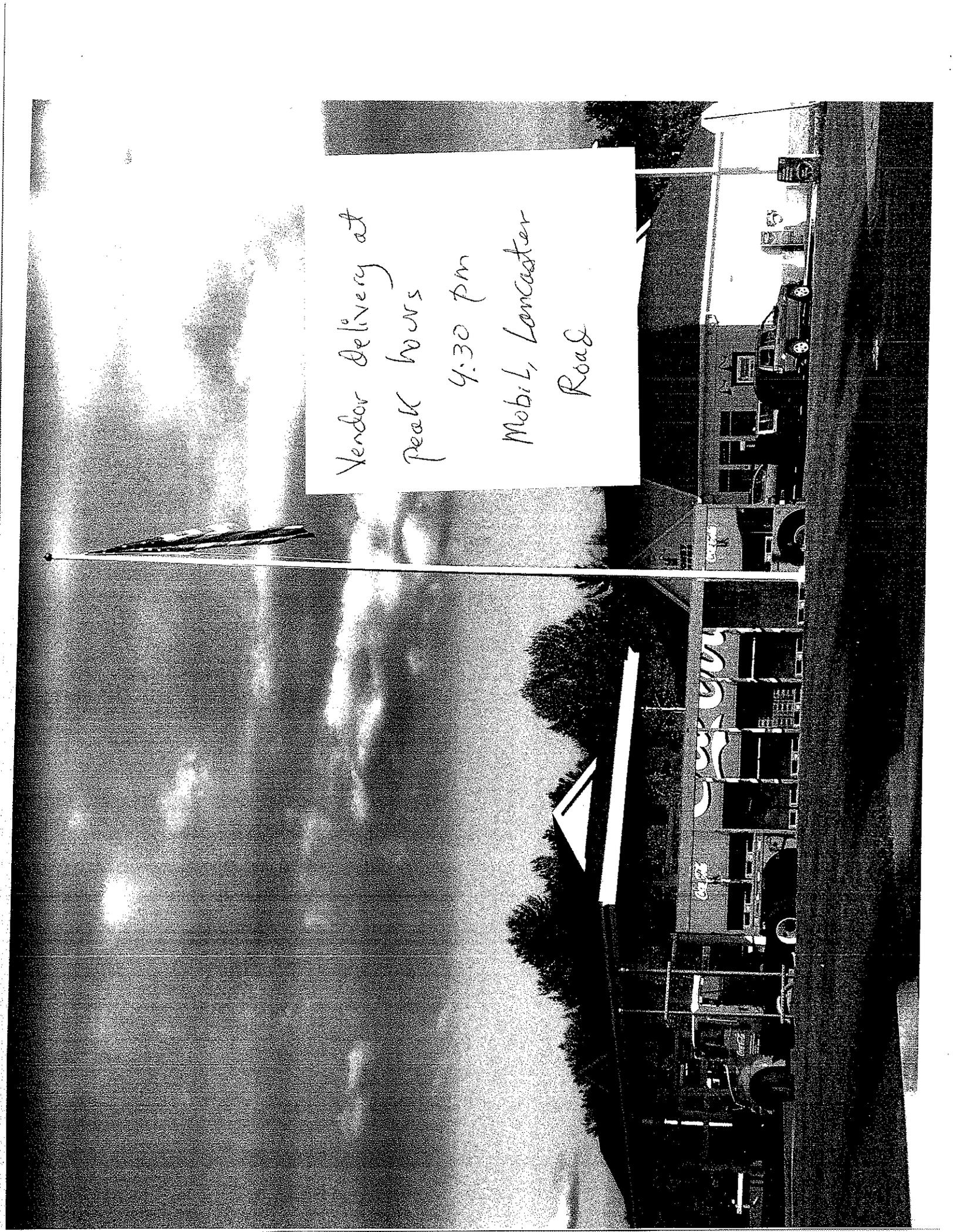
Regular - Tax Included

Diesel - Tax Included

Beer & Wine

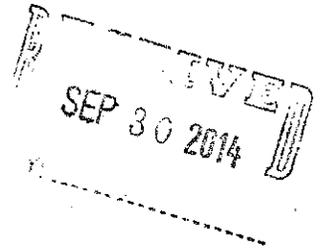
Towering Sign
Adding "car wash" will
display seven ads
on an already
cluttered sign
←

Vendor delivery at
peak hours
4:30 pm
Mobil, Lancaster
Road



Donald G. Gurney
37 Riley Road
Lunenburg, Massachusetts 01462-1358

September 29, 2014



Zoning Board of Appeals
Town of Lunenburg
Ritter Memorial Building
970 Massachusetts Avenue
Lunenburg, Massachusetts 01462

Dear Chairman and Members of
the Zoning Board of Appeals,

Application of Gary Archer for Special Permit

I am enclosing for inclusion in the minutes of the meeting and public hearing of the Zoning Board of Appeals of the Town of Lunenburg held at Town Hall on Wednesday, September 10, 2014, a copy of the remarks I made at the meeting and public hearing.

I appreciated having the opportunity to speak at the September 10, 2014 meeting and public hearing and respectfully request permission to speak at the October 8, 2014 meeting and public hearing for the purpose of again urging you to deny the application of Mr. Archer for a Special Permit relating to 790 Massachusetts Avenue, Lunenburg, Massachusetts.

Thank you for your attention to the foregoing.

With best regards,

Very truly yours,

Donald G. Gurney
Donald G. Gurney

REMARKS OF DONALD G. GURNEY AT PUBLIC HEARING OF LUNENBURG ZONING
BOARD OF APPEALS – SEPTEMBER 10, 2014 AT 7:00 P.M.

Mr. Chairman and Members of the Zoning Board of Appeals.

My name is Donald Gurney. I live at 37 Riley Road in the Town of Lunenburg. Riley Road enters Massachusetts Avenue just to the west of the Riley Package Store site.

I am here to urge you to deny the Special Permit requested by Mr. Gary Archer of Ayer.

First and foremost, by its very nature, the proposed gasoline station, convenience store and carwash complex is an inappropriate use to be located in our clearly residential neighborhood near the Town Center. In my letter published in of *The Lunenburg Ledger* on September 5, 2014, I compared the proposed gasoline station and convenience store to the Cumberland Farms at King's Corner in north Leominster but noted that the complex proposed by Mr. Archer would be even larger given the addition of a drive-through window and a carwash. But the size of this proposed gasoline station, convenience store and carwash complex is **not** the issue. The issue is that this complex should not be a permitted use in a residential neighborhood in the historic and aesthetically beautiful center of the Town of Lunenburg. Moreover, it is my understanding that this use would **not** be permitted at all under the Village District Protective Bylaw to approved at Town Meeting in Spring 2015.

Secondly, the proposed gasoline station, convenience store and carwash complex raises significant public safety issues because the site is located on a heavily trafficked and dangerous stretch of Route 2A. To the west is a hill and a sharp left to right curve. The Riley Package Store site itself is on another curve from right to left with poor sight lines. I can assure you that the most dangerous thing I do on a daily basis is to make a left turn exiting Riley Road. The cars coming from the west are not visible until they cross over the hill to my left, and, because of the poor sight lines, I have to pull almost onto Route 2A to see the cars coming from the east. The proposed gasoline station, convenience store and carwash complex would only exacerbate the danger.

Third, the proposed gasoline station, convenience store and carwash complex raises significant environmental issues, not only to the nearby wetlands but also to the adjacent properties. Aside from the danger of leaking gasoline tanks, I am concerned about pollution from gasoline spilled on the gasoline station apron, from "gray water" discharges from the car wash and from the disposal of snow with chemicals and salt during the wintertime.

For these reasons, I urge you to deny the Special Permit requested by Mr. Archer.

Thank you.

cell 978-424-3937
582-5517

Linda Marble Gurney
37 Riley Road
Lunenburg, MA 01462
September 29, 2014

RECEIVED
SEP 30 2014

Zoning Board of Appeals of the Town of Lunenburg

Mr. Donald Bowen, Chairman

Ritter Memorial Building

960 Massachusetts Avenue

Lunenburg, MA 01462

Dear Mr. Bowen and Members of the ZBA:

I am writing in regard to the application of Gary Archer for a special permit to construct a 24-hour gas station, convenience store with drive-through, and car wash at 790 Massachusetts Avenue. I respectfully request that this letter be entered into the minutes of the public hearing to be held by the ZBA on October 8, 2014, including Exhibits. You have my permission to summarize.

I am writing as a real estate professional and as an almost life-long resident of Lunenburg. After graduating from Lunenburg High School, then college, I taught English at LHS for three years. While my children were growing, I began a career as a real estate agent. I owned my own real estate business, Marble Associates, for eight years, and now continue 35+ years of full-time representation of buyers and sellers. Since 2008, my husband, Donald, and I have been residents at Stone Farm Estates.

The goal of situating any structure on any real estate (land) is termed the **HIGHEST AND BEST USE**.

- Spot zoning permitted the continued commercial use of Mr. Riley's former package store at 790 Massachusetts Avenue, in a converted barn to which the family home was later added.
- The site was the farm of Stillman Stone, a Town Clerk and long time Lunenburg Selectman, who purchased the land after fighting in the Civil War. He died in 1931 at the age of 95.
- The neighborhood is now primarily RESIDENTIAL, enhanced by local small businesses: the Bon Jour Day Care center, Sawyer-Miller-Masciarelli Funeral Home, Conrad's seasonal drive-in restaurant, and also by St. Boniface Roman Catholic Church (which has a day care center), and Marshall Park.
- **HIGHEST AND BEST USE** should blend with and complement the existing RESIDENTIAL and HISTORICAL character of the neighborhood.

- Preservation of the character of the Lunenburg Village District is a planning proposal currently underway. A 24-hour five-island ten-pump gas station/convenience store/drive-through window/car wash complex, tearing down and replacing the existing structure, within a half mile of the town Center, is antithetical to this planning project, and to the area in general.

Quiet enjoyment:

“the right to enjoy and use premises (particularly a residence) in peace and without interference”.

Residents and tenants of housing in residential districts are entitled to the RIGHT OF QUIET ENJOYMENT, which is a key concept of English Common Law embodied in the current laws of the Commonwealth of Massachusetts.

- Noise and increased traffic from the applicant’s proposed use would impact the quiet enjoyment of neighbors.
- High density 24-hour lighting would adversely affect quiet enjoyment in several directions; intrusive light will penetrate the wooded buffer between the proposed project and Stone Farm Estates from October-May, over half the year, when the deciduous trees have lost their leaves. Both sides of Massachusetts Avenue be negatively impacted by all-night lighting.
- 36’ HIGH 30 SQ. FT. ILLUMINATED SIGN has a glaring, anti-residential, anti village appearance.

PROPERTY VALUES: A person’s home is “his castle”, and a homeowner may reasonably expect an amount of appreciation of one’s property’s value. Proximity to a gas station decreases the value, the desirability, and the marketability of a residence.

- **LOCATION, LOCATION, LOCATION,** one’s best hope for increased value, does not include a nearby 24-hour gas station complex.
- **FHA guidelines (Exhibit A)** “Unacceptable locations” have for many years specifically stipulated that a property within 300 feet of a gas station was ineligible for an FHA insured mortgage.
- 70 property owners, all within the 300-foot limit, were sent notice of the ZBA hearing.
- **Appraisal standards:** An appraiser professionally valuing a property submits as part of the package “neighborhood view” photos, typically in all directions from the subject property. Appraisers and lenders determine whether anything in the neighborhood poses a risk to the property’s funding investment. A gas station is a “sore thumb” in a neighborhood view.
- **A property at 785 Massachusetts Avenue, directly facing the proposed project, was sold in April of 2014 for \$186,000 and funded by a VA mortgage of \$189,999. (Exhibit E, pp.5-7)).** Had the proposed use been known, it is unlikely the property with a front yard view of a 24-hour gas station complex would have sold, or been funded, except at a heavily discounted price. An adjacent home at 779 Massachusetts Avenue stands to lose substantial equity as well if this permit is approved.

An interesting note in the town website shows a Planning Review of 2010 (Exhibit B, attached) which includes the statement under the heading “Challenge Now”: **MAINTAINING CHARACTER, PARTICULARLY OF CENTER. (Exhibit C) I submit that your approval of this application would be in direct conflict with this planning goal.**

From the Lunenburg protective By-Law, 8.3.3.2. In granting any Special Permit, the Board of Appeals shall assure that the proposed use:

a. Will not be injurious or dangerous to the public health or unduly hazardous because of traffic congestion, danger of fire or explosion or other reasons.

The written application for a special permit (EXHIBIT C) submitted by Mr. Archer addresses:

(a). "Unduly injurious/hazardous" by stating that the applicant has run two other gas stations...and that design meets standards, etc." No studies are submitted which directly address key points of public health, public safety, and traffic congestion (although a completed traffic study was supposed to have been part of the application);

b. Will not have a material adverse effect on the value of land and buildings in the neighborhood or on the amenities of the neighborhood

The written application for a special permit submitted by Mr. Archer addresses:

(b.) "value of land and buildings in the neighborhood" subjectively states that "well run gas station and convenience store will positively affect the neighboring area with a look and fit that will complement the community. The applicant intends to have a drive through for Coffee Shop as well as a sandwich offering. The applicant does not wish to restrict his hours of operation...." An objective independent appraisal study should be submitted by the applicant, which is unlikely to substantiate this position. The notice to abutters was sent to 70 properties. This is a significant number of affected neighbors, in addition to other residents of the town of Lunenburg who perceive this urbanization of Lunenburg as detrimental to the community as a whole.

c. Will be operated with reasonable regard for order and sightliness, if an open use.

The written application for a special permit submitted by Mr. Archer addresses:

(c.) "will be operated with reasonable regard...." The applicant's history may satisfy this one condition. *Verifications from Ayer and Littleton should be submitted.*

d. Will not produce noise, vibration, smoke, dust, odor, heat or glare observable at the lot lines in amounts clearly detrimental to the normal use of adjacent property.

The written application for a special permit submitted by Mr. Archer addresses:

(d). "hazard to vehicles or pedestrians" refers back to subjective (b.) answer. With a 40 miles per hour speed limit, 10,000 cars daily, per real estate listing statistic (which would increase with this use), with no sidewalk, sight lines west and east impacted by curves, a day-night gas station in this location, without substantial traffic control changes to Route 2A, is a distinct hazard to vehicles and pedestrians. (See photos, EXHIBIT E)

Further, 8.4 (a). Standards: the Board shall find that

- the specific site is an appropriate location for such building or alterations
- the proposed building or alteration is compatible with the existing neighborhood
- the granting of the special permit will not unreasonably diminish the available light, air, sunlight, and other amenities; and
- there will be no nuisance or serious hazard to vehicles or pedestrians

Standards: Is this site an appropriate location for a large gas station/convenience store/drive-through window/carwash complex? **No.** Is it compatible with the existing neighborhood? **No.** Will there be serious hazards to vehicles and pedestrians? **Yes.** It does **NOT** meet the standards for approval.

FACTS AND CONCERNS:

- **Carwash** A carwash is often noisy when in operation. A winter hazard is icing on exit from the facility, and continuing onto the main roadway. Disposal of gray water is an environmental concern.
- **Pedestrian safety** A sidewalk from the Center stops at the east end of 790 Mass. Ave. Numerous residents use the sidewalk for strolls, exercise, dog walks, attending events at Marshall Park and the Center. Crossing 2A to attend events/masses at St. Boniface Church, or to attend a funeral at the funeral home, is difficult without a gas station. The additional traffic entering the gas station/carwash facility increases pedestrian danger. The convenience store may attract young people crossing the street from Marshall Park or the church. This safety issue is very serious.
- **Drive-through window** In addition to the noise of speakers at order stations, the possible back up of vehicles onto 2A at peak traffic times is a safety concern.
- **Crime** In its first year of operation, on 2/12/14 at approximately 2:30 AM, the Honey Farms 24 hour gas station (cited as comparable to the Archer proposal) was robbed. A 24 hour business is apt to be a target of crime. (Exhibit D)
- **Highest and Best use** The 790 Mass. Ave. property could blend with the neighborhood with most of the presently permitted commercial uses, and best with the allowed residential-limited commercial uses, consistent with the area's surrounding zoning. A gas station is not automatically allowed in Lunenburg's commercial districts due to its unique aspect. The commercial spot zoning of the site was intended to enable Ed Riley to maintain his package store and perhaps to re-sell it. It was never contemplated to house a gas station. **IF a gas station were an automatically allowed right, this hearing would not be required. The foresight of the town zoning regulations asks the ZBA to determine what is right and appropriate, to protect the town of Lunenburg and to act in the best interests of its residents and taxpayers.**

COMPARISON TO HONEY FARMS GAS STATION (HF) AT 134 Leominster Shirley Road and the Archer proposal (AP) at 790 Mass. Ave:

- HF is in an area of several commercial properties, an industrial park, and shopping center vs. AP seeks to operate a similar facility in a primarily residential area within half a mile of Lunenburg Center
- HF enjoys a 5.19 acre commercial lot vs. AP proposes to build a larger project on the commercial 40,000 s.f. of 3.4 acres, 77% of which is limited commercial/residentially zoned
- HF has uninterrupted sight lines to the east plus 700'+ to a slight curve to the west vs. AP has 375' +- to a significant curve to the west plus 800' +- to a curve to the east
- HF serves vehicles exiting/entering a shopping center, industrial park, Routes 70-2-190 vs. AP would serve primarily 2A traffic, which already is served by gas stations and convenience stores

In conclusion, the residents of Stone Farm Estates and owners of other neighboring properties strongly oppose this application. With due respect to both the applicant and the Riley family, we submit that the proposal is an inappropriate project for 790 Massachusetts Avenue, and that the application should be denied. You, the members of the Zoning Board of Appeals, have this opportunity to preserve the character of our fine community, the quiet enjoyment and property values of nearby properties. None of us wants to see Route 2A in Lunenburg become the commercial equivalent of Route 2A in Ayer, Littleton, and Acton.

Thank you for your attention.

Sincerely,

A handwritten signature in cursive script that reads "Linda Marble Gurney". The signature is written in dark ink and is positioned above the printed name.

Linda Marble Gurney

1. [RTF]Frequently Asked Questions - HUD

www.hud.gov/.../...

United States Department of Housing and Urban Dev...

The new form is part of the **FHA** financing package and must be signed on or
Please address the eligibility of ~~properties located within 300 feet of a gas station....~~
Many properties will be ineligible for **FHA** financing under the **guideline** for ...

From HUD's form:

FAQ Section: For Your Protection: Get a Home Inspection Form

1. When is the use of the form "For Your Protection: Get a Home Inspection" mandatory?

The form is mandatory for loans with case numbers ordered on or after August 1, 1999, excluding refinance transactions and HECM's.

25. Please address the eligibility of properties located within 300 feet of a gas station.

This would not necessarily render the property unacceptable. The DE Underwriter is required to provide a written disclosure to the borrower that the property is located within 300 feet of a gas station.



All locations are not created equal and ~~some properties don't qualify~~ for FHA financing because of location issues. Have a read below directly from FHA's 4150.2 Handbook, Appendix D. This is important to keep in mind for appraisers, but it's good for real estate agents too when marketing a property. Are there any gas stations, Superfund sites or any other potential hazards nearby? Could these locations potentially impact the subject property's ability to qualify for FHA financing? You can cure basic FHA condition issues like broken windows and missing dishwashers, but location isn't too curable, is it? This underscores how important it is to know the local neighborhood market and definitely be aware of the types of commercial properties nearby too.

FHA guidelines require that a site be rejected if the property being appraised is subject to hazards, environmental contaminants, noxious odors, offensive sights or excessive noises to the point of endangering the physical improvements or affecting the livability of the property, its marketability, or the health and safety of its occupants. Rejection may also be appropriate if the future economic life of the property is shortened by obvious and compelling pressure to a higher use, making a long-term mortgage impractical.

Personal comment from experience: In the summer of 2008, I had listed a brick single family house at 956 Main Street, Fitchburg, which abutted a gas station. A buyer applied for an FHA mortgage on the house. The mortgage was denied based on the proximity to a gas station. The house sold to a subsequent buyer with a private mortgage held by the seller.

EXHIBIT A p 2

Linda Marble Gurney

From: "Linda Marble Gurney" <linmarble@verizon.net>
Date: Monday, September 15, 2014 4:10 PM
To: "LINDA GURNEY" <linmarble@verizon.net>; "Donald Gurney" <DGurney@hawkins.com>
Subject: FHA appraisal instruction re: gas station

Excerpts from FHA appraisal guidelines

Unacceptable Locations

FHA guidelines require that a site be rejected if the property being appraised is subject to hazards, environmental contaminants, noxious odors, offensive sights or excessive noises *to the point of endangering the physical improvements or affecting the livability of the property, its marketability, or the health and safety of its occupants.* Rejection may also be appropriate if the future economic life of the property is shortened by obvious and compelling pressure to a higher use, making a long-term mortgage impractical.

The lender must clear the condition and may require an inspection or reject the property. If there is any doubt as to the severity, report the condition and submit the completed report. For those conditions that cannot be repaired, such as site factors, the appraised value is based upon the existing conditions.

Site Hazards And Nuisances

The appraiser must note and comment on all hazards and nuisances affecting the subject property that may endanger the health and safety of the occupants and/or the structural integrity or marketability of the property, including: heavy traffic, excessive hazard from smoke, fumes, odors, and stationary storage tanks containing flammable or explosive material.



This email is free from viruses and malware because avast! Antivirus protection is active.

EXHIBIT B

LUNENBURG

Fifty years of Planning – 1960/2010

Early Planning Board members, e.g., Harley and Colvin

Planning reports Master Plans

Strategic Planning

Sewer Plan

2A Report

418 Plan

Others, e.g., Strategic Plan, Natural Resource Planning

Plan Implementation

Zoning

Subdivision Control

49R

Assessment

Ahead of the times and change

50 years of dedicated committee and board members

Result

Well governed

Good services

Controls in place ahead of development

Flexible

Maintained/enhanced values

Challenge now

Staying current

Ready for new growth

~~**Maintaining character, particularly of Center**~~

Maintaining property values

Improving areas abutting 2A

Developing new tax revenues

Southern Lunenburg

Route 2A

Industrial property-South west of Town

Costs vs revenue

Evaluation

Done very well with limited budget

Opportunity to build on past studies

Should continue to be pro-active (South West. Property, station

Area, second drive-in)

Maintain staff – stay on top of new programs and funding

EXHIBIT C p1

ADDITIONAL INFORMATION REQUESTED RE: SPECIAL PERMIT 790 MASS. AVE.

12.

A. The use of the site as a full service gas station and convenience store will not be unduly injurious or dangerous to the public health or hazardous or otherwise cause any traffic congestion.

1. Unduly injurious/hazardous - The applicant and future owner presently operates two Mobil Stations one in Ayer, MA and the other in Littleton, MA and has done so for the past eighteen years. Archers Mobil is a second generation business that was established in 1966. He has always maintained them in a safe and clean manner. The storage tanks for the site are compliant with EPA and MA DEP. Standards. The entire construction of the site is in accordance with applicable standards design standards and designed by MHF Design Consultants and Engineers, an engineering firm specializing in the construction of gas stations. MHF has been involved in the design and construction of other gas stations in Lunenburg and the surrounding areas. The applicant has submitted in conjunction with this request for a special permit, a traffic study and an application with the conservation commission to address the impact to the area.

B. A well run convenience store and gas station will positively affect the neighboring area with a look and fit that will complement the community. The applicant intends to have a drive through for a Coffee shop as well as a sandwich offering. The applicant does not wish to restrict his hours of operation and would like to point out that the proposed site is isolated from the surrounding neighbors by non-buildable/land and/or roadways on all sides. Therefore, any potential negative affect of noise and sight are diminished over the area and the potential for vegetative buffer trees exists.

C. As stated above, the applicant operates two other facilities in a clean and safe manner and is routinely on site in these locations.

D. See Letter "B" above. The applicant is open to other suggestions of the Town Boards and the properties abutters.

EXHIBIT C p 2

Linda Marble Gurney

From: "Linda Marble Gurney" <H6342283@mlspin.net>
 Date: Sunday, August 24, 2014 12:26 PM
 To: <linmarble@verizon.net>
 Subject: 790-792 Massachusetts Ave, Lunenburg, MA

LINDA MARBLE GURNEY
 EXIT New Options Real Estate
 100 Erdman Way
 Leominster, MA 01453
 978-345-3948 x 103
 lindamg2007@gmail.com
 www.linmarble.com



MLS # 71623546 - Contingent - Financing
Commercial/Industrial - Commercial

790-792 Massachusetts Ave
Lunenburg, MA 01462-1326
Worcester County
 Directions: Rt 2A

List Price: **\$299,000**

Remarks

This Large 3.4 acre parcel located on busy RT 2A in Lunenburg. Property was once the Stone Farm Package Store and consists of a 5- 6 bedroom Cape Style residence attached to a historic post and beam barn. Per the owner's engineer, the property can be subdivided with town approval into 3 separate parcels. Sewer is available. Zoning is Commercial and Limited Business/Residential and would be a perfect location for retail plaza or commercial businesses. Traffic count exceeds 10,000 cars per day

Property Information

	# Units	Square Ft:	Assessed Value(s)	
Residential:	1	2000	Land: \$94,900	Space Available For: For Sale
Office:	1	608	Bldg: \$271,200	Lease Type: --
Retail:	1	800	Total: \$366,100	Lease Price Includes: --
Warehouse:	1	2870		Lease: No Exchange: No
Manufacturing:	0	0	# Buildings: 1	Sublet: No
			# Stories: 2	21E on File: No
Total:	2	6378	# Units:	

Disclosures: **Square footage and parking is estimated**

Drive in Doors:
 Loading Docks:

Expandable:
 Dividable:

Gross Annual Inc:
 Gross Annual Exp:

8/24/2014

EXHIBIT C p. 3

Ceiling Height:	Elevator:	Net Operating Inc:
# Restrooms:	Sprinklers:	Special Financing:
Hndcp Accessibl:	Railroad Siding:	Assc: Assoc Fee: \$

Lot Size: 148104	Frontage:	Traffic Count:
Acres: 3.4	Depth:	Lien & Encumb:
Survey:	Subdivide:	Undrgrnd Tank: Unknown
Plat Plan:	Parking Spaces: 21	Easements:
	Lender Owned: No	Short Sale w/Lndr.App.Reg: No

Features**Other Property Info**

Construction : Frame	Disclosure Declaration: No
Location: Suburban	Exclusions: Stove, refrigerator, washer, dryer, wood stove, store counter top.
Parking Features: 21+ Spaces	Year Established: 1983
Utilities: Public Water, Private Sewer, Sewer Available	Year Established Source: Public Record

Tax Information

Pin #: **M:059.0 B:0008 L:0000.0**
 Assessed: **\$366,100**
 Tax: **\$6333** Tax Year: **2012**
 Book: **627** Page: **139**
 Cert:
 Zoning Code: **C/LBR**
 Zone Desc: **Legal Conforming**
 Map: Block: Lot:

Office/Agent Information

Listing Office: **CENTURY 21 DeNault Realty** ☐ (978) **537-2112 Ext. 37**

Listing Agent: **Scott Simpson** ☐ (508) **331-2030**

Team Member:

Sale Office:

Sale Agent:

Compensation

Sub-Agent: **Not Offered**

Buyer Agent: **2.5**

Facilitator: **2.0**

Compensation Based On: **Gross/Full Sale Price**

Listing Agreement Type: **Exclusive Right to Sell**

Entry Only: **No**

Showing: Sub-Agent: **Sub-Agency Relationship Not Offered**

Showing: Buyer-Agent: **Call List Agent, Accompanied Showings, Sign**

Showing: Facilitator: **Call List Agent, Accompanied Showings, Sign**

Special Showing Instructions: **Call listing agent - accompanied showings only**

Firm Remarks

Buyer to assume remainder of Betterments. Family reserves 7 day right of first refusal.

EXHIBIT C P. 4

Market Information

Listing Date: **1/16/2014**

Listing Market Time: MLS# has been on for **220** day(s)

Days on Market: Property has been on the market for a total of **220** day(s)

Office Market Time: Office has listed this property for **220** day(s)

Expiration Date:

Cash Paid for Upgrades:

Original Price: **\$299,000**

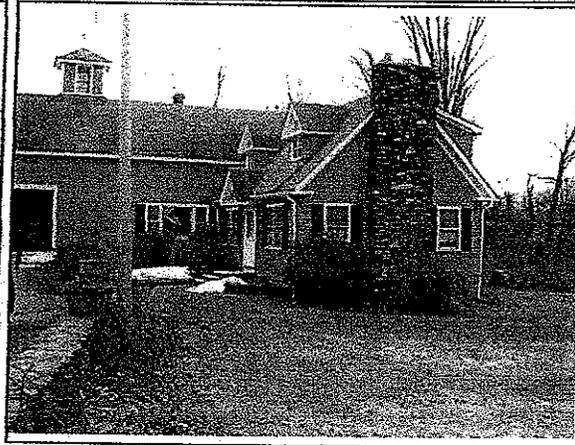
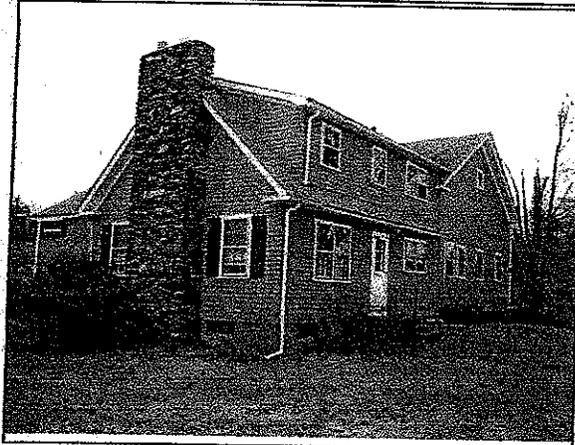
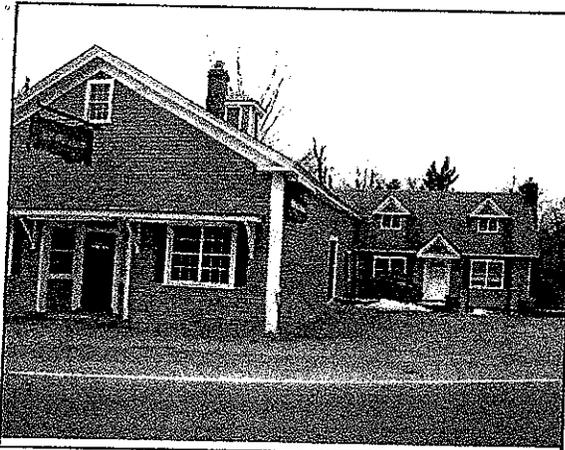
Seller Concessions at Closing:

Off Market Date:

Sale Date:

Offer Date: **1/16/2014**

EXHIBIT C p5



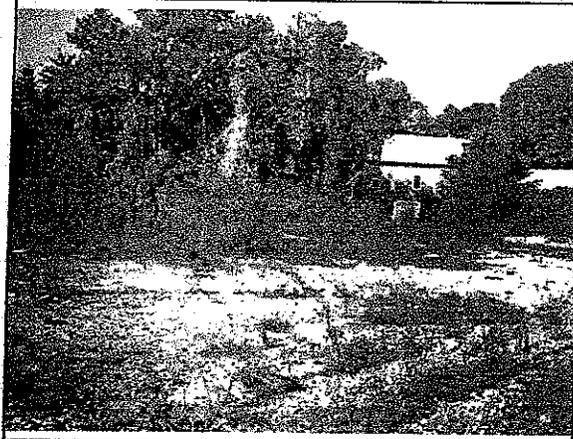
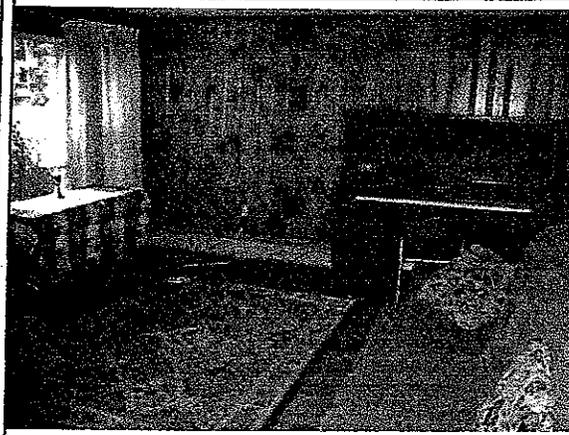
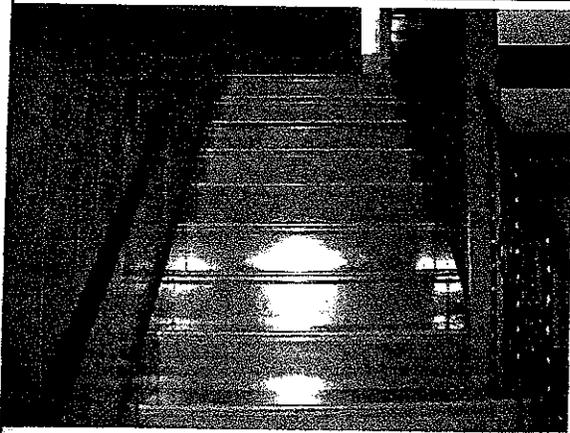
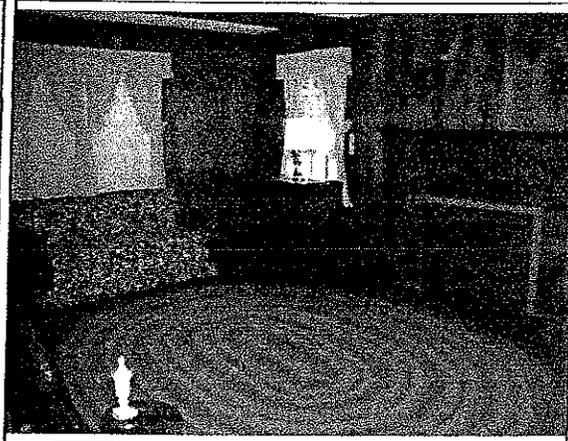
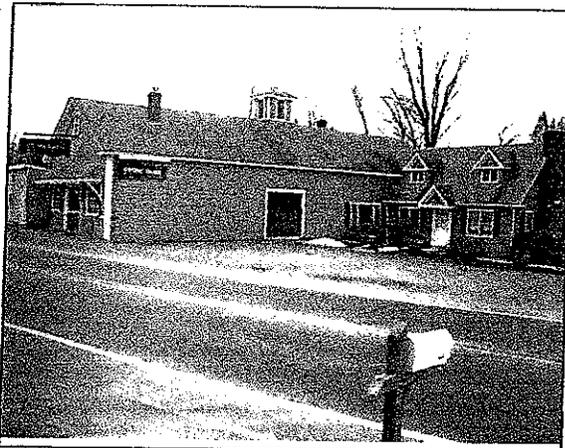
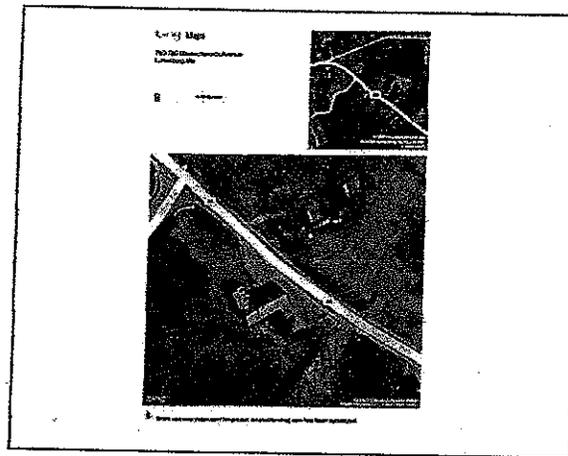


EXHIBIT C p.7



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Linda Marble Gurney, CRB, EXIT New Options RE, 978-345-3948 x 103

BREAKING NEWS (/BREAKINGNEWS)

HOT TOPICS: [High School Football](http://www.sentinelandenterprise.com/highschoolfootball) (<http://www.sentinelandenterprise.com/highschoolfootball>)

[Back To School](http://www.sentinelandenterprise.com/backtoschool) (<http://www.sentinelandenterprise.com/backtoschool>)

Lunenburg's Honey Farms robbed at knifepoint

Sentinel & Enterprise

UPDATED: 02/12/2014 01:31:36 PM EST

4 COMMENTS

LUNENBURG -- Lunenburg Police are investigating an armed robbery early Wednesday morning at the Honey Farms/Mobil service station on Leominster Shirley Road.

At approximately 2:30 a.m. Wednesday morning, a male suspect, wearing a hat and bandana, entered the store, brandished a knife, and demanded the clerk hand over an undetermined amount of money from the register.

The suspect also stole several carts of cigarettes.

The suspect is described as a white or Hispanic male between 5 feet 8 inches tall and 5 feet 10 inches tall with dark hair and a small build.

Anyone with information regarding the robbery is encouraged to contact police at 978-582-4150.



</portlet/article/html/imageDisplay.jsp?contentItemRelationshipId=5726262>

This man, captured on surveillance, is wanted for allegedly robbing the Honey Farms/Mobil service station on Leominster Shirley Road on Wednesday morning.

EXHIBIT D

EXHIBIT E

Proposed

317497
B MID 18" LEDS

Mobil

Archer's

DRIVE THRU
DUNKIN' DONUTS

Regular

Diesel

Car Wash

Proposed Archer Gas Station

(Photos of actual Mobil station on
Leominster-Shirley Road, cited as comparable):

4 pump islands vs 5; no car wash;

Fewer parking spaces.



EXISTING SMALLER COMPLEX ON LEOMINSTER-SHIRLEY ROAD



Present front view of 790 Mass. Ave.



Proposed future view plus pump-island, car wash



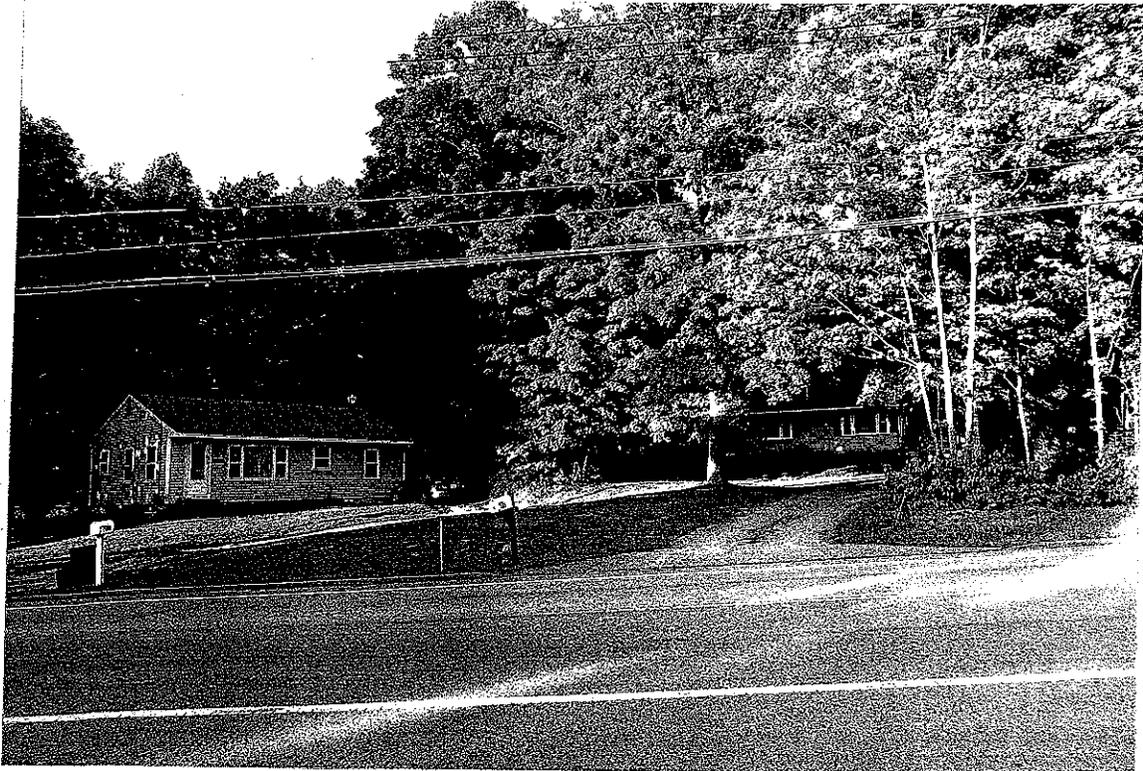
Present side view of 790 Mass. Ave. from Riley Road



Future proposed side view



779 and 785 Mass. Ave. residences will have full front view



Abutters to east side of gas station



MORTGAGE

WHEN RECORDED, MAIL TO:
RESIDENTIAL MORTGAGE SERVICES, INC.
24 Christopher Toppi Drive
South Portland, MAINE 04106

This instrument was prepared by:
RESIDENTIAL MORTGAGE SERVICES, INC.
24 Christopher Toppi Drive
South Portland, MAINE 04106
207-775-6105

Property Address: ~~785 Massachusetts Ave~~
~~Lunenburg, MASSACHUSETTS 01462~~

[Space Above This Line For Recording Data]

VA Case Number: 73-73-6-0680756

MIN: 100316700021031192
SIS Telephone #: (888) 679-MERS

NOTICE: THIS LOAN IS NOT ASSUMABLE WITHOUT THE APPROVAL OF THE DEPARTMENT OF VETERANS AFFAIRS OR ITS AUTHORIZED AGENT.

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated April 30, 2014, together with all Riders to this document.

(B) "Borrower" is JULIA L BANKS, SINGLE WOMAN. Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security

JLB

SKM title, Pickup

Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MICHIGAN 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is RESIDENTIAL MORTGAGE SERVICES, INC., organized and existing under the laws of MAINE. Lender's address is 24 Christopher Toppi Drive, South Portland, MAINE 04106.

(D-1) "Mortgage Broker" is Not Applicable.

(D-2) "Mortgage Loan Originator" is Daniel Joseph Wozniak. Mortgage Loan Originator's post office address is 24 Christopher Toppi Drive, South Portland, MAINE 04106 and Mortgage Loan Originator's license number is 84979.

(E) "Note" means the promissory note signed by Borrower and dated April 30, 2014. The Note states that Borrower owes Lender ONE HUNDRED EIGHTY-NINE THOUSAND NINE HUNDRED NINETY-NINE AND NO/100 Dollars (U.S. \$189,999.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than May 1, 2044.

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|--|---|--|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Planned Unit Development Rider | <input checked="" type="checkbox"/> VA Rider |
| <input type="checkbox"/> 1-4 Family Rider | <input type="checkbox"/> Biweekly Payment Rider | |
| <input type="checkbox"/> Other [Specify] | | |

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

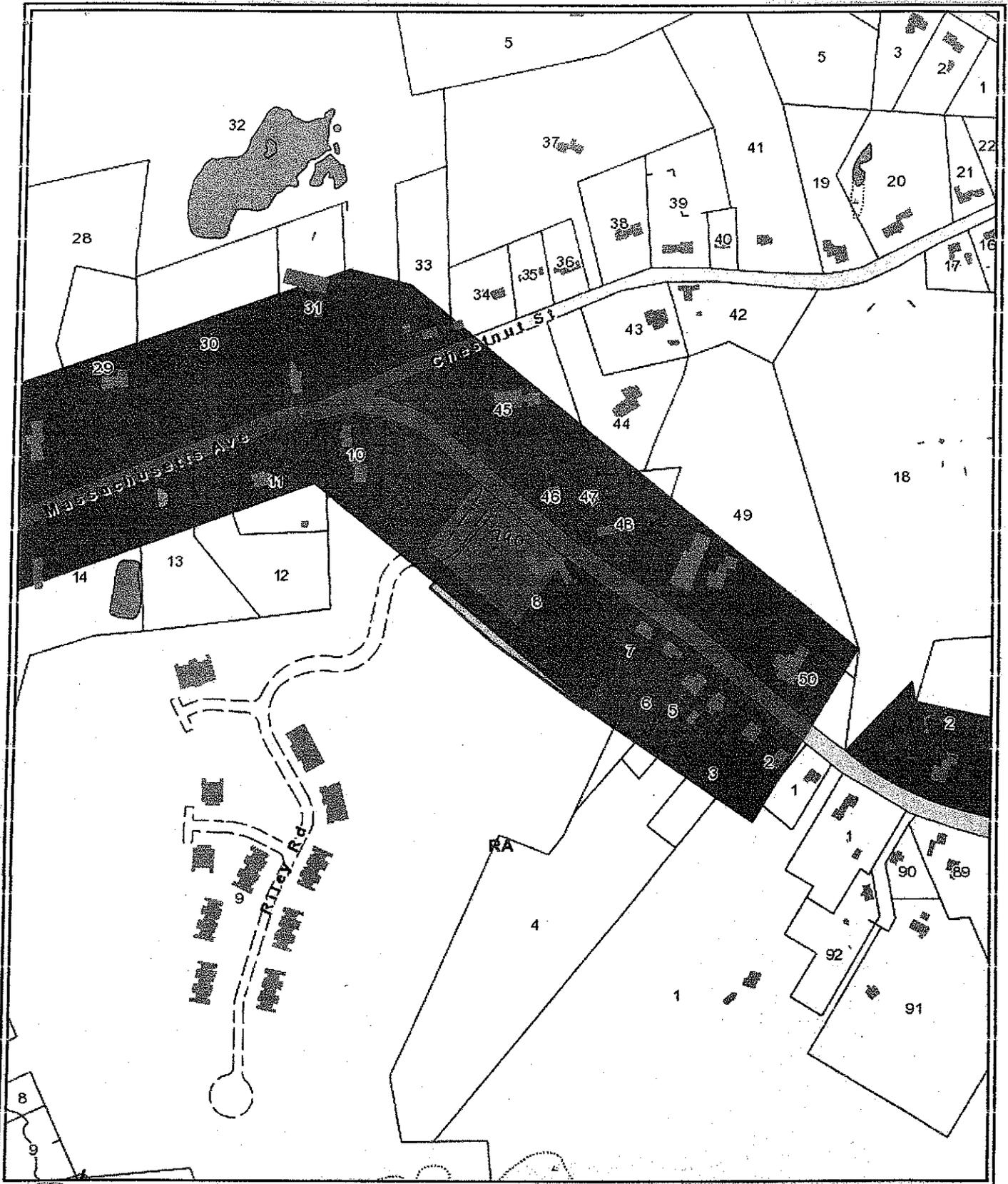
(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 *et seq.*) and its implementing regulation, Regulation X (12 C.F.R. Part 1024), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA"

Street views of Mass. Ave. from Riley Road



Views to east from west corner of 790 Mass. Ave.



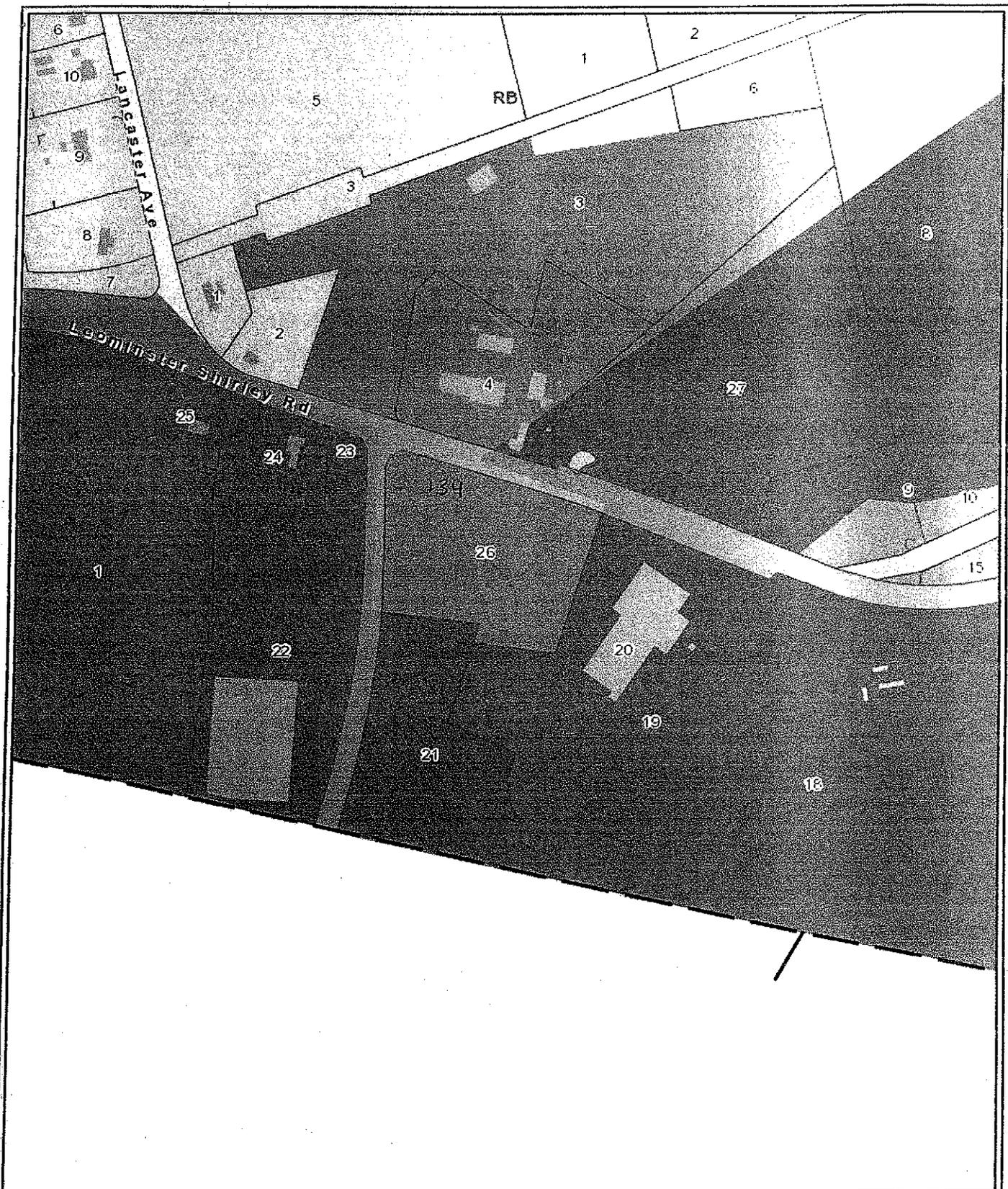


790 Commercial parcel (yellow)
 Lunenburg, MA
 1 Inch = 360 Feet
 September 24, 2014



Data shown on this map is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this map.

www.cai-tech.com
 CAI Technologies
 Creating Smarter Communities

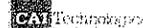


Honey Farm parcel (yellow)
 Lunenburg, MA
 1 Inch = 360 Feet
 September 24, 2014



Data shown on this map is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this map.

www.cai-tech.com



THE LAW OFFICE OF ROBERT J. CIRILLO, JR.

73 Sawyer Street, Post Office Box 842
South Lancaster, MA 01561

Phone (978) 368-8905

Fax (978) 368-3430

SENT VIA FIRST CLASS MAIL AND FACSIMILE

October 1, 2014

Attn: Lisa Normandin
Lunenburg Building Inspector's Office
Ritter Memorial Building
960 Massachusetts Avenue
Lunenburg, MA 01462

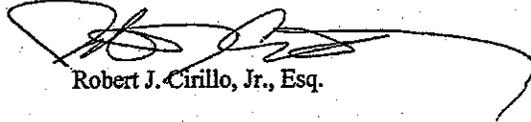
RE: 790 Massachusetts Avenue, Lunenburg MA

Dear Lisa:

As you are aware this office represents Gary Archer in the purchase of the above-referenced property.

I have drafted a proposed decision for consideration by the Zoning Board of Appeals in regard to the above referenced Application for Special Permit. I am enclosing a copy herein. If you wish to have an additional copy emailed for editing, please do not hesitate to contact me. \

Very truly yours,



Robert J. Cirillo, Jr., Esq.

RJC/skp
Enclosure

PROPOSED FINDING AND RULINGS OF THE LUNENBURG ZONING

BOARD OF APPEALS

FINDING AND DECISION

RE: Application of Gary Archer for a Special Permit for a gas station, car wash, drive through and signage at 790 Mass. Ave, dated August 7, 2014.

PROCEDURAL HISTORY

1. Application for a Special Permit to construct a gas station/convenience store with sandwich shop, and a drive through pursuant to Zoning By-Law 4.6.3.1 (d) [gasoline service station], 4.5.3.1 (a) [drive thru window], 6.5.1.4 (a) [signage] was made by the Owners and proposed purchaser of 790 Mass. Ave and filed with the ZBA on August 7, 2014.
2. A public hearing was held on September 10, 2014 and continued to October 8, 2014.
3. This Special Permit application is accompanied by and augmented by a Preliminary Site Plan.
4. The Plans and other submission material were reviewed by the Zoning Board of Appeals, along with analysis of the zoning map and by-laws by the applicant's counsel, and the comments of the general public, all as made at the public hearing.

FINDINGS

A. General

1. The subject property is located at 790 Mass. Ave, Lunenburg, MA "Property hereafter". The Property consists of 3.396 acres. The Property has uplands and has some wetlands areas. The site sits on Route 2A and abuts Riley Road, a private road to Stone Farm Condominium Complex to the north and a private residence to the south. To the west and rear of the site is a large wetlands area.

2. The Applicant proposes to build a gasoline service station/convenience store, with a sandwich shop, and drive-through window.
3. The site will have access to and from Route 2A only. Said access/driveways will be constructed in accordance with the applicant's plan and traffic study recommendations so as to be acceptable to the Zoning Board.

B. SPECIAL PERMIT CRITERIA

1. The Zoning By-Laws states that in granting a Special Permit the Zoning Board of Appeals shall review:
 - a. Whether the use will be injurious or dangerous to the public health or unduly hazardous because of traffic congestion;
 - b. Whether the use will have a material adverse effect on the value of land and buildings in the neighborhood or on the amenities of the neighborhood.
 - c. Will the site be operated with reasonable regard for order and sight lines?
 - d. Will the site produce excessive noise, vibration, smoke, dust or odors?

C. SPECIFIC FINDINGS

1. The Property is located in a Commercial Zoning District.
2. The Lunenburg Zoning By-Law states, pursuant to paragraph 4.6.1.1 "The Purpose of the Commercial District is to provide areas for transient services, automobile oriented sales and services and commercial uses requiring large land areas."
3. Section 4.6.3.1 (d) allows the Zoning Board of Appeals to authorize gasoline stations.
4. Section 4.5.3.1 allows the Zoning Board of Appeals to authorize a drive-through window.
5. Section 6.5.1.4 (a) allows the Zoning Board to grant additional signage.
6. The site was the previous location of the Stone Farm Package store.

7. The Proposed Use of the site as a gas station is consistent with uses allowed by the Lunenburg ZBA in a Commercial District.
8. The proposed site has been taxed by the Town of Lunenburg at the Commercial Rate.
9. The proposed structures on the Property will conform to zoning by-laws regarding height, impervious surfaces, and all other building code regulations and will not require any variances.
10. The Applicant has submitted a traffic study with his application that displays compliance with all DPW and town regulations, as well as complies with Massachusetts Department of Transportation (MassDOT) and current engineering standards. Based on the traffic study submitted, there will not be a danger to the public health, or unduly hazardous traffic congestion. The proposed use of the site is expected to increase traffic, on average, by approximately one additional vehicle trip every one to two minutes during peak traffic hours.
11. The Applicant has submitted a plan that does not anticipate waiver of any Conservation Commission Regulation.
12. The Applicant' design proposal will minimize the impact of light on abutters.
13. The use of the Property as a gasoline station and convenience store is significantly similar to other uses allowed in the Commercial Zone without Special Permit. Such uses include hotels, office buildings, restaurants (which may include fast food restaurants), convenience stores, liquor stores and other retail industries. Therefore, the impact to the neighborhood by the grant of a Special Permit for the use of the Property as a gasoline station v. any other permitted use will not impact the area substantially greater than uses allowed without a Special Permit.
14. The use of the Property as a gasoline station and convenience store is significantly similar to the prior use of the Property as a liquor store. Therefore, the impact to the neighborhood by the grant of a Special Permit for the use of the Property as a gasoline station v. a liquor store will not have a substantially greater impact on the district/neighborhood.
15. After considering the impact of permitted uses at the location, such as convenience stores, restaurants, professional offices, parking garages, retail stores and other automotive garages/repair facilities, the Zoning Board of Appeals finds the impact of the proposed use will be similar if not equal to the impact of the uses allowed without

a special permit, such as a fast food restaurant or liquor store. The Board finds the proposed use will not have an adverse effect on the district/neighborhood in light of the comparison with the uses permitted in the district.

16. Presently, the building/structure is a pre-existing "vacant" storefront and attached house. It is in a state of disrepair and has not been occupied in several years. It has been listed for sale for approximately 2 years. The grant of the Special Permit allows the Property to generate income, revenue and be used for purposes consistent with its zoning status. The Board makes a finding that allowing the applicant to contribute significant funding and create an income generating property is an improvement over the existing conditions of the Property.
17. The Zoning Board of Appeals has previously authorized gasoline stations in its Commercial Zone. The Board finds that under *M.G.L.c. 40A, sec. 4* as well as the precedent setting case-law on the issue, *SCIT, Inc. v. Planning Board of Braintree*, 19 Mass. App. Court 101 (1984), we must adhere to the concept of "uniformity." "All land in similar circumstances should be treated alike, so that 'if anyone can go ahead with a certain development in a district then so can everyone else.'" *Id. at 107*.
18. The Applicant will be required to operate his business on The Property with reasonable regard to cleanliness.
19. We find that the applicant's use of The Property will not produce excessive noise, vibration, smoke dust, or odor or light that will be clearly detrimental to the normal use of adjacent properties. The applicant will be required to minimize lighting impact.

DECISION

For the above reasons, which reasons this Board finds are supported by the Applicant's Proposed Site Plan, Traffic Study, analysis and application to the Board, and in considering the present condition of the site, the allowable uses in a Commercial District, the value of the proposed improvements, the impact on the abutters, and the prior allowed use of the site as a liquor store, the Zoning Board of Appeals votes to GRANT the Special permit for the following:

1. Use of the Property as a gasoline station;
2. Allow the use of a drive through window at the Property;
3. Allow the applicant to build and erect signage as proposed, such signage being standard in the industry for gasoline stations.

The Guaranty Building

370 Main Street, 12th Floor
Worcester, MA 01608-1779
TEL 508.459.8000
FAX 508.459.8300

October 2, 2014

VIA FIRST CLASS MAIL

The Meadows

161 Worcester Road, Suite 501
Framingham, MA 01701-5315
TEL 508.532.3500
FAX 508.532.3100

Donald F. Bowen, Chairman
Lunenburg Zoning Board of Appeals
Ritter Memorial Building
960 Massachusetts Avenue
Lunenburg, MA 01462

Cape Cod

171 Main Street
Hyannis, MA 02601
TEL 508.815.2500
FAX 508.459.8300

RE: Proposed Retail and Fueling Station
798 Massachusetts Avenue
Lunenburg, Massachusetts

FletcherTilton.com

Dear Mr. Bowen and Members of the Board:

As the Board is aware, this office represents Stone Farm, LLC and Stone Farm Condo Estates Trust in the matter pertaining to the application of G.W. Archer, Inc. (the "Applicant") for a special permit pursuant to Section 4.5.3.1 and Section 4.6.3.1 of the Protective Bylaw of the Town of Lunenburg. We are aware that the Applicant has submitted to your Board a Traffic and Impact Access Study dated September, 2014 prepared by Greenman-Pedersen, Inc. The traffic study reflects a significant and material increase in the traffic along Massachusetts Avenue and a material and significant increase in the trip generation created by the proposed development.

The traffic study attempts to assert that the impacts should be diluted due to both the impact of a multi-use development addressing internal trips and due to a number of the trips being generated being pass by trips. While such assumptions may be appropriate in the theoretical abstract, in our opinion taking a significant reduction in the trip generation for both of these factors creates the impression that there is significantly less traffic expected from the proposed development than will actually occur. This misrepresentation is exacerbated by the credit applied by the study for existing traffic generated by the existing retail center which greatly exceeds reality.

As the Board heard during the course of the first public hearing, traffic generation and the adverse impacts of such traffic generation are significant portions of the concern of the parties in interest including without limitation our clients. It would therefore be appropriate and on behalf of our clients we hereby request, that the Board cause the Traffic Impact and Access Study prepared by Greenman-Pedersen, Inc. dated September, 2014 to be reviewed by an independent

Donald F. Bowen, Chairman
Lunenburg Zoning Board of Appeals
October 2, 2014
Page 2

consultant retained by the Town of Lunenburg and paid for by the Applicant. Until such review is complete and the information has been submitted to the Board in a presentation made available to the public, it would be inappropriate and unwise for the Board to close the public hearing.

We look forward to the opportunity to discuss this matter in more detail at the continuation of the public hearing currently scheduled for October 8, 2014.

Very truly yours,



Amanda E. Risch

AER/mmp

Direct Line: (508) 459-8209

Direct Fax: (508) 459-8409

E-Mail: arisch@fletchertilton.com

Please direct all correspondence to our Worcester office.

Oct. 4, 2014

RECEIVED
OCT - 6 2014

Town of Lunenburg Zoning Board of Appeals

BY: _____

Re: Continuation of hearing for Special Permit at 790 Mass Avenue for the construction and use of the site for a gasoline station and convenience store with a drive thru window and larger sign (also car wash).

I would again like to express my opposition for the above request for a Special Permit. The amount of traffic that this use would generate poses a risk to the existing curb cuts on the North and South sides of Mass Avenue. I believe the applicant's traffic engineer stated that the proposed curb cuts meet the minimum site line distances for the site. I think existing curb cuts on Mass Avenue deserve more than minimum site line distance protection on a difficult stretch of roadway. Some of the existing curb cuts are a 55+ community, Day Care Center, Funeral Home and Church.

The site will have five pumps and a large lit canopy and a large illuminated sign. This will visually impact the abutters surrounding the site. The applicant will ask to have operating hours of twenty-four hours a day, seven days a week. This will cause a noise nuisance. The size and scope of the project does not fit into the area of a residential look. I believe that there are other areas in Town where this operation would be better suited.

I would urge the Zoning Board to carefully consider these issues and **NOT** grant this request for this project.

Thank you for your careful consideration.

Louise Boyle

29 Riley Road

Lunenburg, MA 01462

44 Riley Rd.
Lunenburg, MA 01462

September 29, 2014

Town of Lunenburg
Zoning Board of Appeals
Lunenburg, MA

RECEIVED
OCT - 6 2014

Subject: 790-792 Massachusetts Avenue

Dear Board:

I respectfully request that you read this letter into the public record.

As a follow-up to the first meeting for the subject property, I wanted to provide you with some traffic information that I have collected since that meeting. When I heard the applicant's expert state that the expected increase in traffic was $\frac{1}{2}$ car per minute, I did a double-take at how low and non-impactful that sounded and I decided to study the local traffic conditions myself (with the help of a couple of neighbors).

As I thought about it I realized that, although the overall increase in *through* traffic is a concern, a more pressing concern is the amount of traffic entering and exiting the station. This is where the noise and traffic congestion issues surface. With the proximity of Riley Road entrance so close to the station driveway, the ability to safely enter and exit Riley Road and the gas station itself is at risk. The issue of ambiguous blinkers is also a big risk. It will not be clear to Riley Road vehicles or to gas station vehicles where the Mass Ave vehicle with the blinker is turning. This effect is true eastbound and westbound.

So, I decided to monitor traffic at nearby gas stations and Mass Ave in general. I realize that my observations are just that and not an official "traffic study" and used no fancy simulation or analysis tools. We just used our eyes, a watch and a pencil -- very low tech, but the numbers are the numbers.

The expert's averages are likely low probably due to averaging over a 24-hour period. I did not use "industry averages". We think they do because we never saw traffic counter lines in the road. Our studies use typical times of day and actual observations. I feel our numbers are meaningful to establish the actual impact throughout the day with real usage. I did not include commuter times or sleeping times to avoid spikes.

Conclusion:

While we have no way to ascertain brand new traffic to the area, we think it is clear that an average of at least 3 cars per minute would be exiting and entering a new gas station complex much of the time. We think this is too great a number for the proximity to residents, pedestrians and vehicular traffic.

I have attached the data for your perusal and I hope you come to the same conclusions.

Respectfully,

Wendy Blatt
Wendy Blatt
44 Riley Rd.

(Still no relation!)

Encl: Site comparison study, Mass Ave and L-S Rd study, Gas Station Volume Study, worksheets

Site Comparison Traffic Study

DATE	START TIME	MASS AVE AT RILEY RD - VOLUME			LEOMINSTER-SHIRLEY RD AT MOBIL - VOLUME			MOBIL STATION Entering and Exiting			% OF L-S STATION CARS TO ROAD
		MINUTES	CARS	CARS PER MIN	MINUTES	CARS	CARS PER MIN	MINUTES	CARS	CARS PER MINUTE	
9/18/2014	6:35PM	10	96	9.6	10	79	7.9	10	30	3.0	38%
9/19/2014	9:28 AM	10	98	9.8	10	99	9.9	10	33	3.3	33%
9/19/2014	5:41 PM	9	129	14.3	9	110	12.2	9	30	3.3	27%
9/20/2014	8:37 AM	10	82	8.2	10	50	5.0	10	34	3.4	68%
9/23/2014	2:53 PM	5	90	18.0	10	97	9.7	10	38	3.8	39%
TOTALS/AVERAGES:		44	495	11.3	49	435	8.9	49	165	3.4	38%

Notes:

- (1) The 165 vehicles entering the gas station enter from L-S Road as well as Pioneer Park Dr. However, the total 435 vehicles are only those vehicles that travel L-S Road.
- (2) This shows that Mass Ave is a busier road than Leominster-Shirley location by 21% so it is reasonable to conclude that a Mass Ave station would yield at least a similar amount of gas station traffic.
- (3) The effect of the nearby shopping district at Pioneer Park did not make for a higher overall volume than Mass Ave.
- (4) These 5 sets of data are a subset of all the data where these two spots were tracked nearly simultaneously these 5 times. In other words, one site was tallied before immediately driving to the next site.
- (5) no peak commuter times are included to normalize the data.
- (6) no special events or obstructions existed in any of the studies

LOCATION (circle one) 25KingWilliam, Archer-Ave., Mobil-Lunenburg (L.S. Road), 2A@Riley Rd., Other: L-S Road/Beards

Date	Time Start	Time End	Minutes	Vehicles Entering (ticks)	Total Entering	Vehicles Exiting (ticks)	Total Exiting	Total Vehicles	Avg Vehicles /Minute	Video Y/N?
9/18	7:00	7:10	10		30		49	79	7.9	
9/19	9:50	10:05	10		43		56	99	9.9	
9/19	5:40	5:50	9		32		78	110	12.2	
9/20	8:37	8:47						50		
9/23	8:53	9:09						97		

INSTRUCTIONS: Pick one or two locations of your choosing. One sheet per location. Park in the station with good visibility of all entrances. Count vehicles entering and exiting for at least 10 minutes. Different times of day or night, if possible, different weekdays or weekends. Commuter times and non-commuter times. 4-5 samplings per person should be enough to provide a sufficient quantity of data when combined, which I will do when all the data has been collected. Please return to Wendy Blatt #44 by 9/27. If you can video your sampling, that would help credibility. But my camera did not have a setting to show the date on the recording, so I don't think it will help. Questions to wendyblatt@gmail.com, 978-877-0650

NOTE: For 2A@Riley Road monitoring, change ENTERING, EXITING to EASTBOUND, WESTBOUND

SUBMITTED BY: Wendy Blatt DATE: 9/23/14

LOCATION (circle one) 25KingWilliam, Archer-Ave., Mobil-Lunenburg (L.S. Road), 2A@Riley Rd.

Date	Time Start	Time End	Minutes	Vehicles Entering (ticks)	Total Entering	Vehicles Exiting (ticks)	Total Exiting	Total Vehicles	Avg Vehicles /Minute	Video Y/N?
9/18	6:30	6:40	10		20		10	41	2.7	
9/18	5:40	5:57	10		3		6	14	1.4	
9/19	7:00	7:10	10		16		14	30	3	
9/19	9:50	10:04	10		21		12	33	3.3	
9/19	5:40	5:50	9		21		10	30	3.3	
9/20	8:50	8:57			15		19	34		
9/23	2:30	3:05	10		14		24	38		

INSTRUCTIONS: Pick one or two locations of your choosing (Use separate sheet for each location. See other side). Park in station with good visibility of all entrances. Count vehicles entering and exiting for at least 10 minutes. Different times of day or night, if possible, different weekdays or weekends. Commuter times and non-commuter times. 4-5 samplings per person should be enough to provide a good quantity of data when combined, which I will do when all the data has been collected. Please return to Wendy Blatt #44 by 9/27. If you can video your sampling, that will help credibility. I will come up with a place to upload them on the web, or you can just use YouTube and provide me the link. Questions to wendyblatt@gmail.com

NOTE: For 2A@Riley Road monitoring, change ENTERING, EXITING to EASTBOUND, WESTBOUND

SUBMITTED BY: Wendy Blatt DATE: 9/23/14

2 samples to concurrent L-S Road #15

LOCATION (circle one) 25KingWilliam, Archer-Ave., Mobil-Lunenburg (L.S. Road), 2A@Riley Rd., Other:

Date	Time Start	Time End	Minutes	Vehicles Entering (ticks)	Total Entering	Vehicles Exiting (ticks)	Total Exiting	Total Vehicles	Avg Vehicles /Minute	Video Y/N?
9/18/14	7:15	7:45	30		33		33	33		N
9/23/14	2:35	2:50	15		23		23	23		N
9/24/14	1:15	1:25	10		16		16	16		
					58					

INSTRUCTIONS: Pick one or two locations of your choosing. One sheet per location. Park in the station with good visibility of all entrances. Count vehicles entering and exiting for at least 10 minutes. Different times of day or night, if possible, different weekdays or weekends. Commuter times and non-commuter times. 4-5 samplings per person should be enough to provide a sufficient quantity of data when combined, which I will do when all the data has been collected. Please return to Wendy Blatt #44 by 9/27. If you can video your sampling, that would help credibility. But my camera did not have a setting to show the date on the recording, so I don't think it will help. Questions to wendyblatt@gmail.com, 978-877-0650

NOTE: For 2A@Riley Road monitoring, change ENTERING, EXITING to EASTBOUND, WESTBOUND

SUBMITTED BY: Wendy Blatt DATE: 9/24/14

LOCATION (circle one) 25KingWilliam, Archer-Ave., Mobil-Lunenburg (L.S. Road), 2A@Riley Rd., Other: Conrad

Date	Time Start	Time End	Minutes	Vehicles Entering (ticks)	Total Entering	Vehicles Exiting (ticks)	Total Exiting	Total Vehicles	Avg Vehicles /Minute	Video Y/N?
9/18	6:30	6:40	10		50		40	90	9.0	
9/19	9:25	9:38	10		50		48	98	9.8	
9/19	8:50	9:00	5		27		34	61	12.2	
9/19	5:58	6:07	9		24		55	129	14.3	
9/20	8:50	9:00	10		47		55	82	8.2	
9/23	2:35	2:50	15		23		23	90	18	
9/23	5:14	5:17	3		7		7	77	19.3	

INSTRUCTIONS: Pick one or two locations of your choosing. One sheet per location. Park in the station with good visibility of all entrances. Count vehicles entering and exiting for at least 10 minutes. Different times of day or night, if possible, different weekdays or weekends. Commuter times and non-commuter times. 4-5 samplings per person should be enough to provide a sufficient quantity of data when combined, which I will do when all the data has been collected. Please return to Wendy Blatt #44 by 9/27. If you can video your sampling, that would help credibility. But my camera did not have a setting to show the date on the recording, so I don't think it will help. Questions to wendyblatt@gmail.com, 978-877-0650

NOTE: For 2A@Riley Road monitoring, change ENTERING, EXITING to EASTBOUND, WESTBOUND

SUBMITTED BY: Wendy Blatt DATE: 9/23/14

Fletcher Tilton^{PC}
Attorneys at law

RECEIVED
OCT - 8 2014

The Guaranty Building
370 Main Street, 12th Floor
Worcester, MA 01608-1779
TEL 508.459.8000
FAX 508.459.8300

BY:.....

October 7, 2014

The Meadows
161 Worcester Road, Suite 501
Framingham, MA 01701-5315
TEL 508.532.3500
FAX 508.532.3100

VIA EMAIL AND FED EX

Donald F. Bowen, Chairman
Lunenburg Zoning Board of Appeals
Ritter Memorial Building
960 Massachusetts Avenue
Lunenburg, MA 01462

Cape Cod
171 Main Street
Hyannis, MA 02601
TEL 508.815.2500
FAX 508.459.8300

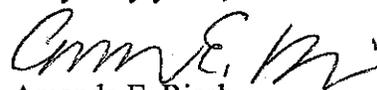
RE: G.W. Archer, Inc.
Application for a Special Permit Application for Proposed
Retail Fuel Facility
790 Massachusetts Avenue
Lunenburg, MA 01462

FletcherTilton.com

Dear Mr. Bowen and Members of the Board:

I would like to submit for the record for the above-captioned matter a Memorandum to Zoning Board of Appeals in Opposition of Application for a Special Permit for the construction of a gasoline service station, convenience store, and drive-through window. Please make this Opposition part of the record for this application and file.

Very truly yours,


Amanda E. Risch

Enclosure

Direct Telephone: (508) 459-8209
Direct Facsimile: (508) 459-8409
Email: arisch@fletchertilton.com

{Client Files/38216/0001/01581656.DOCX }

Please direct all correspondence to our Worcester office.

TOWN OF LUNENBURG
ZONING BOARD OF APPEALS

RE: G.W. Archer, Inc.)
790 Massachusetts Ave.)
Lunenburg, Massachusetts)
)
Application for Special Permit under)
Section 4.5.3.1 and Section 4.6.3.1)
of the Protective Bylaw of Lunenburg)

MEMORANDUM TO ZONING BOARD OF APPEALS IN OPPOSITION
TO APPLICATION FOR SPECIAL PERMIT

I. INTRODUCTION

On September 10, 2014, the Zoning Board of Appeals (the "Board") opened a Public Hearing with regard to the proposal of G.W. Archer, Inc. and Gary Archer (collectively, the "Applicant") for the construction of a gasoline service station, convenience store, and drive-through on land located at 790 Massachusetts Avenue, Lunenburg, Massachusetts (the "Site"). At the end of the hearing the matter was continued, with the consent of the Applicant, for a further scheduled public hearing of the Board to be held on October 8, 2014.

II. DESCRIPTION OF THE SITE

The land in question is currently owned by the Estate of Edward H. Riley and was previously utilized as a package/convenience store for many years. The Site consists of approximately 3.4 acres and is surrounded by wetlands, rendering a portion of the Site unusable. The Site abuts, among others, the Stone Farm Estates, an established residential development with approximately one hundred (100) residents, St. Boniface Parish, Sawyer-Miller-Masciarelli Funeral Home, and the Bonjour School.

III. PROPOSED DEVELOPMENT

The Applicant seeks to raze the existing buildings at the Site to construct a +4,100 square foot convenience store with a drive-through window and deli, and a gasoline service station with eight (8) fueling stations. There will be two access/egress driveways on Massachusetts Avenue and another access/egress driveway for an area defined as "Future Development" on the Applicant's site plan, attached hereto as Exhibit A.

The Site is located in a split zoning district with a portion located in the Commercial District and the vast bulk of the Site located in the Limited Business/Residential District as

established in the Protective Bylaw of the Town of Lunenburg (the "Bylaw"). Under the Bylaw, in the Commercial District a convenience store is a permitted use, while a gasoline service station and a drive-through require a special permit. In the Limited Business/Residential District, a gasoline service station and a drive-through are prohibited uses, hence the proposed development being crammed into a small portion of the entire Site.

IV. NO RIGHT TO A SPECIAL PERMIT

In making a special permit decision, the granting authority is not compelled to grant the special permit. M.G.L. c. 40A (the "Zoning Enabling Act"), authorizes cities and towns to regulate the use of land through the issuance of a special permit and gives the granting authority a full range of discretion in shaping its decision. *See Sedell v. Zoning Board of Appeals of Carver*, 74 Mass. App. Ct. 450 (2009). "Neither the Zoning Enabling Act nor the town zoning by-law gives . . . an absolute right to the special permit . . . The board is not compelled to grant the permit. It has the discretionary power in acting thereon. The board must act fairly and reasonably on the evidence presented to it, keeping in mind the objects and purposes of the enabling act and the by-law." *See MacGibbon v. Board of Appeals of Duxbury*, 356 Mass. 635, 638-639 (1970). While the decisions regarding special permit applications are not subject to the untrammelled discretion or unbridled fiat of the board, the refusal to grant a special permit does not require detailed findings. *See id.* at 637-638.

V. SPECIAL PERMIT CRITERIA

Section 8.3.2.1(b)(4)(a) of the Bylaw sets forth specific criteria that the Applicant must satisfy in order for the Town to grant a special permit. Section 8.3.2.1(b)(4)(a) of the Bylaw provides the following:

"In granting the special permit, the Board shall find that the special permit may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of this Bylaw (see Sections 4.2.2., 4.5.3., 4.6.3., and 8.3.2.1.), and shall find that:

- (i) the specific site is an appropriate location for such building or alteration;
- (ii) the proposed building or alteration is compatible with the existing neighborhood with regard to size, location and architecture;
- (iii) the granting of the special permit will not adversely affect the neighborhood;
- (iv) the granting of the special permit will not unreasonably diminish the available light, air, sunlight, and other amenities; and
- (v) there will be no nuisance or serious hazard to vehicles or pedestrians.

VI. ARGUMENT

The Applicant fails to meet the specific criteria required for a special permit for the following reasons:

(A) THE PROPOSAL IS NOT AN APPROPRIATE LOCATION FOR SUCH BUILDING OR ALTERATION.

The Applicant bears the burden of establishing that the proposed development meets the criteria required for a special permit, including, but not limited to, establishing that the Site is an appropriate location. The Applicant has not met that burden. The proposed development vastly expands beyond recognition the limited commercial use of the Site. As the Traffic and Impact Access Study dated September, 2014 prepared by Greenman-Pedersen, Inc. (the "Traffic Study") points out, the proposed development will generate a significant and material increase in the traffic along Massachusetts Avenue and a material and significant increase in the trip generation created by the proposed development. Further, the addition of artificial lighting, compiled with the extensive hours of proposed use will create a burden and nuisance to the immediate neighborhood. The abutting residential neighborhood was developed in expectation of a use on the Site similar to the small and innocuous past use. The proposed development vastly deviates from such use.

(B) THE PROPOSED BUILDING OR ALTERATION IS NOT COMPATIBLE WITH THE EXISTING NEIGHBORHOOD WITH REGARD TO SIZE, LOCATION AND ARCHITECTURE.

This Board should deny the Applicant's request for a special permit because the proposed development is not compatible with the existing neighborhood with regard to its size and location. As it stands, only a small portion of the Site is located in a Commercial District under the Bylaw. The Site is replete with development constraints with wetland buffers located throughout. Because of these development constraints, the Applicant attempts to jam its proposed development into an area that is not large enough for the proposed use. The Applicant's site plan demonstrates that the Applicant must use every inch of available space on the Site in order to fit its proposed development. The Site for the proposed development simply cannot accommodate the proposed use without significant impact to the natural resources surrounding the Site or to the neighborhood.

In addition to being an inappropriate location, the proposed development is not compatible with the character of the existing neighborhood. The neighborhood consists of residential homes, a church, a funeral home and a day care. While the existing commercial businesses in the neighborhood are not a hindrance to the community, a 24-hour gas station, with its artificial lighting and continuous traffic, accompanied by an active drive-through and food service, would be aesthetically detrimental to the existing neighborhood.

(C) THE GRANTING OF THE SPECIAL PERMIT WILL ADVERSELY AFFECT THE NEIGHBORHOOD.

The proposed development will have a negative impact on the abutters' property values because it will substantially change the character of the surrounding neighborhood. Currently

the neighborhood is described as primarily residential with limited commercial establishments. The proposed development will vastly transform the neighborhood's character by materially increasing the amount of traffic, creating artificial lighting, and increasing the volume of sound. A gas station and a convenience store, by their very nature, have vehicles coming in and out of the Site throughout the day and evening, including the middle of the night. This includes customers stopping for gas or other items, gas deliveries, food/product deliveries, and trash/recycling pick up. These activities come with a slew of negative consequences, including, but not limited to, odors from the gasoline and trash, noise at all times of the day and evening, and light spill into the surrounding neighborhood. What was once thought of as a peaceful neighborhood, will now be characterized by loud noise and continuous traffic of this multi-faceted commercial venture. The proposed development will, without a doubt, detrimentally impact the neighborhood and will detract potential buyers from purchasing homes in and around the area. Potential buyers will be dissuaded by the increase of noise and traffic in the area, which will consequently reduce the property values in the neighborhood.

(D) THE GRANTING OF THE SPECIAL PERMIT WILL UNREASONABLY DIMINISH THE AVAILABLE LIGHT, AIR, SUNLIGHT AND OTHER AMENITIES.

The proposed development will negatively impact the surrounding residential development with respect to noise, sound, and air. The Applicant suggests that the surrounding wetlands will prevent inappropriate light spill from the development. While the wetlands may provide a small barrier between the development and the neighborhood, the Applicant has not established that lighting will not spill beyond the property lines of the development. The site plan submitted by the Applicant includes an obtrusive pylon freestanding sign that will impact the line of sight for those exiting Riley Road. The placement of this sign on the Site raises safety concerns for area residents. The proposed development will also negatively impact the surrounding neighborhood with respect to sound. The Applicant thus far has failed to provide a detailed analysis, such as a sound study, relative to the volume of sound to be generated from the Site and the comparable impacts upon the neighborhood. Potential sound impacts include deliveries, trash/recycling pickup and move-in/move-out activities. Finally, the Applicant is proposing a twenty four (24) hour gasoline station and has failed to address how it will avoid negative light and sound affects during the evening hours of operation.

(E) THERE WILL BE NUISANCE AND SERIOUS HAZARD TO VEHICLES OR PEDESTRIANS.

The Traffic Study submitted by the Applicant establishes that the proposed development will significantly affect the amount of traffic in the area. Traffic generation and the adverse impacts of such traffic generation are important areas of concern to certain members the community. The increase in activity in an area that town residents already characterize as a busy neighborhood will create serious and significant safety concerns for area residents. While the Traffic Study attempts to minimize these impacts due to both the impact of a multi-use development addressing internal trips and due to a number of the trips being generated being pass by trips, nevertheless, the Traffic Study has identified a material impact on traffic by the

proposed development. The Applicant has failed to demonstrate that the proposed development will not create a nuisance or serious hazard to vehicles or pedestrians in the neighborhood.

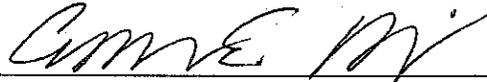
VII. CONCLUSION

The proposed development will severely affect the surrounding area by negatively impacting property values, increasing traffic, increasing sound and light in the area, and negatively impacting the character of the neighborhood. Thus far, the Applicant has submitted incomplete information with respect to its proposed development. The Applicant hasn't submitted full site plans including drainage and photometrics, or a sound study. The Board should address these issues prior to their decision. The proposed development does not represent a proper reuse of the Site and creates more negative impacts on abutters than other possible uses that could be permitted by this Board. There are adequate facts presented to enable the Zoning Board to deny the requested special permit application.

Respectfully submitted,

STONE FARM, LLC and
STONE FARM ESTATES CONDOMINIUM
TRUST

By their attorneys,



Mark L. Donahue, Esq., BBO No. 128930

Amanda E. Risch, Esq., BBO No. 684719

Fletcher Tilton, P.C.

370 Main Street

Worcester, MA 01608

Exhibit A
Preliminary Site Plan

