



# TOWN OF RAYNHAM

## BOARD OF APPEALS

RAYNHAM, MASSACHUSETTS 02767

Tel. 508-824-2745 Fax 508-828-4290

### Planning Board Meeting

March 28, 2019

Meeting opened: 6:00 p.m. by Chairman Christopher Gallagher

Board members present: Christopher Gallagher, Burke Fountain, Daniel Andrade, Russell Driscoll  
John Teixeira,

Board members absent: (all present)

Also present: Robert Iafrate, Building Commissioner/Planning Coordinator  
Maureen McKenney, Administrative Assistant

**6:00 p.m.** – Mr. Gallagher opened the meeting and announced it was being recorded. He introduced the Board members. He explained the procedure to be followed: the articles will be read; the Board will have opportunity to ask questions; the public can then ask questions and should raise their hand to be recognized; all can speak but should not be too repetitive; the Board is aware all present have a vested interest in the matters.

Mr. Driscoll read the public hearing notice for the articles.

**Church Street/Rte. 44 rezoning:** Mr. Gallagher explained rezoning is proposed for a split property that is now zoned mostly Business with some portion Residential A. Mr. Andrade announced he is abstaining as this is his parcel; he is proposing an over-55 development on it; the by-laws allow over-55 use in Business zone so that is the reason for the rezoning.

Upon question from Mr. Fountain, Mr. Andrade noted 90% of the parcel is business now; approximately one acre is being rezoned. Mr. Iafrate explained the two parcels for rezoning are north of the purple area shown on the displayed plan; the parcel has jagged edges; and, the intent is to keep all one zoning district for the adult retirement community.

Mr. Andrade said he owns all the surrounding land, which is under agricultural restriction, so there will never be building on these parcels.

There were no questions or comments from the public. Mr. Gallagher explained the procedure of the articles going before the Selectmen, the Board voting on a recommendation, the article then going to Town Meeting with a 2/3 vote needed to pass.

Mr. Fountain moved to recommend amendment to Sec. 3.2 Zoning Map by rezoning two areas on property identified on Raynham Assessors' Map 16, Lot 55 at Rte. 44 and Church Street from Residential A District to Business District; second Mr. Teixeira. Motion passed 4-0-1 (Mr. Andrade abstained).

**Rezoning on Richard Street:** Mr. Gallagher explained the property is behind the China Garden Restaurant; the request is to rezone parcels by removing from Residential A and establishing as Business District. It is believed the rezoning is proposed for the construction of a Cumberland Farms. Mr.

March 28, 2019

Page 2

Andrade explained the Board, along with SRPEDD, has worked hard for years on zoning on Rte. 138; Mixed Use Overlay District (MUOD) article is up next; he has minutes of past meetings on the matter; it is unfortunate that this land has a sliver in the back that is residential; the MUOD does not propose to extend beyond property lines on Rte138. Mr. Gallagher noted this is not the MUOD article. Mr. Andrade noted changing this to Business will impact eight residential homes.

Mr. Gallagher asked if this article fails but the MUOD does pass, will this change the zoning for the back of the lot. Mr. Iafrate explained if the MUOD overlay passes as proposed today, this property would not be included in the overlay district. Mr. Andrade said that was his point, trying to protect residential homes off Rte. 138. Mr. Iafrate explained the two lots in the back of owner's property are not buildable and because they are in residential area, the property cannot be developed as business use over the zoning line; it makes sense to zone it all the same; a future use will come before the Board. Mr. Gallagher said he feels the opposite; the line has to be drawn somewhere.

Mr. Teixeira asked that even if Town Meeting passes this article, could a project be rejected because it is intrusive to the neighborhood. Mr. Iafrate said absolutely, if it doesn't meet requirements, buffering, dimensional, being too dense for property, the Board has right to reject it.

Discussion was opened to the public. Doug Troyer of Moriarty Troyer & Malloy, Braintree, MA, representing Cumberland Farms, addressed the Board. Mr. Gallagher stated he should step out of the meeting, citing a personal issue relating to his property in Falmouth. Mr. Troyer explained he also has issue with Mr. Andrade regarding another pending case; he believes Mr. Andrade is prohibited due to personal dispute matter that is pending and asked that Mr. Andrade recuse himself. Mr. Andrade left the meeting room. Mr. Gallagher explained he has a land dispute in Falmouth, and Moriarty represents him; he left the meeting room.

Mr. Fountain took over as Chairman. It was noted a vote of three members is enough.

Also present with Mr. Troyer were Tracey Roll, V.P., Real Estate, T.M Crowley, project manager, and Phil Henry, Civil Design Group, project engineer.

Mr. Troyer explained the parcels in question are now a wooded area about 15,246 sq. ft. that is unbuildable; the Wongs owned the property since the 1950's (owner Shirley Wong present) and sold the restaurant in 2000; the restaurant was leased and ran until 2017 when a storm damaged the building so the business no longer operates; the land is being sold. The front of the parcel is business; the lots are merged due to same ownership although the parcel has two separate zoning districts. Cumberland Farms needs to "tap into" the back lot for their project; they are trying to keep the wooded area and will add "substantial" landscaping keeping residential abutters in mind.

Mr. Troyer explained that on March 19, 2019, there was a meeting held with 11 abutters to make aware of development; it was "fruitful" with discussion on noise and access concerns. The project would need Planning Board, Board of Appeals and Board of Selectmen approval; if Cumberland Farms is not granted approval, the rezoning would allow the owner to sell and develop otherwise. There are other businesses in the area; the proposal is consistent with the area; the main portion of the lot is business; Cumberland Farms seeks to develop the property correctly; they believe the Town of Raynham seeks to encourage business as it says in the MUOD proposal.

March 28, 2019

Page 3

In response to questions from Mr. Teixeira and Mr. Fountain, it was noted the parcel is undevelopable now because it is undersized and tight for parking; additional space for parking is needed to make the business work. A similar situation occurred with Cumberland Farms in Weymouth but they went forward without the rezoning; Cumberland Farms cares about towns, residents and will work with the Town; the project makes sense, it is in preliminary stages; and, if rezoned, a traffic study will be done.

Mr. Iafrate stated the Board's recommendation should be on the merits of zoning change; this plan is for another night. Mr. Fountain agreed this is not site plan review but felt people are interested.

Phil Henry, Civil Design Group, reviewed the site plan for the Board: there will be increased landscaping; 5,800 sq. ft. store proposed, half the size of the existing restaurant building; six gas pumps with underground tanks. He noted the plan was modified slightly after showing it to the neighbors; he referenced the last page of handout document given to Board members; a third curb cut was removed along Sylvain Street; two curb cuts are proposed for the front edges; 95% of the development will be Business District; extra land is needed for sight distances, aisles; a dumpster was shifted away from Sylvain Street and towards Broadway.

Mr. Fountain stated that when it was said that "we will work with" residents, it is possible Cumberland Farms could be out and new entity could be in. He asked if there were any questions.

Jeremy Disbrow, North Main Street, asked the acreage involved. It was stated it is about 1.35 acres. Upon further questions from Mr. Disbrow, it was stated that what is not zoned business now is all wooded; and, half of the current woods at Wayne Street would remain.

Caroline Karson, Chickering Road, noted there is no entrance on Broadway so all the traffic would affect the neighborhood directly. Mr. Henry explained there is no entrance on Broadway, the intent is to enter on Sylvain and Richard Streets within Business zone; it is not known yet known if it will be a 24-hour business, but that will be considered at the Planning Board stage.

James Dupont, 118 Elm Street East, stated the question is whether or not to allow the zoning change to combine the lots. He asked for explanation of the assertion that without the additional square footage, the two back pieces are unusable. Mr. Troyer explained there is 15,000 sq. ft. in the rear pieces, and 40,000 sq. ft. are needed for residential use so that lot is unusable; the front lot at over 40,000 sq. ft. is usable but it is good to have the other area. Also, the law says no business is allowed on a residential lot; the goal is to maintain as much woods as possible and add supplemental landscaping.

Derek Dagesse, 4 Richard Street and 38 Gilmore Street, asked if the two back parcels can be combined and then become buildable for a residence with a variance. Mr. Iafrate explained the common ownership automatically merges the lots as one legal lot. Mr. Dagesse noted China Garden was successful without the back land so why not another business; he questioned if Raynham needs another gas station. Mr. Fountain noted bigger lot could be better, easier for storm water needs, parking and other requirements.

Linda LaMarca, 81 Carver Street, asked if the zoning is changed, is it a "done deal" with Cumberland Farms; Cumberland Farms did a great job on Rte. 104, Bridgewater, site but what is being done on Rte. 138 should be discussed; Rte. 138 is now a "disaster," i.e., the Center Street intersection. It was noted Wal Mart now pays for police officer for traffic at Center Street. Ms. LaMarca feels the road cannot sustain two more egresses; questioned if the purchase is contingent upon fixing Rte. 138. Mr. Fountain noted the Cumberland Farms deal could fall apart and someone else could come in, but any business

March 28, 2019

Page 4

wanting to build has to come before the Planning Board for site plan review; Cumberland Farms is not absolutely guaranteed. Mr. Fountain noted the site is now wide open, which would not happen today because it would require a more defined entrance/exit; and, this is a State road so they have input. Ms. LaMarca asked if fixing the road is being discussed. Mr. Iafrate said the State will resurface the road in 2021. Mr. Teixeira noted SRPEDD says the improvements are at 25% planning stage.

Mr. Iafrate said it is premature to be talking about Cumberland Farms; the question is does the rezoning make sense; anything can happen. Ms. LaMarca asked if there are plans to widen Rte. 138. Mr. Iafrate noted improvements are at the 25% planning stage; he believes there will be sidewalks, bike paths and resurfacing. Mr. Teixeira noted the project was moved up to 2021 because the improvements now just go up to Rte. 495 at cost of \$11 million.

Ms. LaMarca stated if Cumberland Farms buys this land, they will need a light, which should be part of the plan; the business should be able to pay for traffic control. Mr. Fountain noted it's a State road, and there are a lot of traffic lights close by. Mr. Henry noted the State is resurfacing the road and realigning slightly to the west and installing sidewalks. Cumberland Farms is being transparent in showing the project; they will make up for the back woods with landscaping in the front; it is reasonable to assume the parcel will be redeveloped; they came forward to show responsible development.

Jeremy Disbrow, 970 North Main Street, asked if the Town can force a light. He was told no.

Bill Chappell, 441 Broadway, asked why the parcel did not go from Business to Residential. Mr. Iafrate noted one residential house can be done on the property now. Mr. Fountain agreed, noting the property is not worth as much if residential.

Maria Petti, 2 Wayne Street, noted the neighborhood house lots are smaller than lots allowed now and asked if a house with a business is allowed. She was told no. She noted the plan shows the woods as being denser than they are and one can "semi" see through them; she has owned her house for 25 years; the plan is intrusion, not convenience; the back lots serve as a buffer; the new plan to add landscaping in the front wouldn't replace buffering and won't "hold a candle" to what is there now. The property is run down and anything would be an improvement but if the lot is rezoned, anyone can go in and pave straight through. Mr. Fountain stated that isn't true because a buffer would be needed, something more than arborvitae. Ms. Petty said that what is there now serves well. She has a petition opposed to this rezoning; she is here not to support the rezoning and asks the Board not to recommend the rezoning request.

Jeremy Disbrow stated anyone can buy the property and build; the Town has not yet voted on the MUOD and, there is assumption that most want it, but they don't; if the back lot is used for storm water, it will be breeding ground for mosquitos; there could be spills on the site; there is nothing wrong with leaving the woods as buffer; is there need for another gas station; and, he prefers to frequent small, family businesses.

Phil Henry stated the existing tree line is an image and not doctored; the revised plan has 10 ft. to 15 ft. encroachment by the building so most of the use on back land would be for storm water.

Mr. Teixeira showed photos on his phone of the existing woods.

Chris Petti, 2 Wayne Street resident for 25 years: knows he can't complain about what was there when he bought his property; he did research and found the two lots were there as a residential buffer; this change would cause high percentage drop in resale value; three real estate agents told him to move now, not to

wait; this project will affect his value and life; there are 20 Cumberland Farms in surrounding area and 75% of them would fit on the lot so why need the extra pieces; and, he bought when business was there but is against the encroaching.

Mr. Fountain stated, again, there could be any business if Cumberland Farms is not granted. Mr. Petti stated he is against any business encroaching but Cumberland Farms is presenting tonight; there are six gas stations within a mile.

Ann Franzosa, 46 Sylvain Street: she purchased her home knowing of the restaurant; she is okay with a business; the site is now a mess and should be addressed; the rezoning is not needed for a successful business; the neighborhood is quiet even though a mile to Rt. 495; not much passes through the neighborhood; it is hard for two cars to pass on the neighborhood roads; the neighborhood is primarily owner-occupied; there are children; dogs and no sidewalks; the project will impact home values even though they were told by Cumberland Farms that they don't track value change; they were told there is no offering of compensation if value is an issue; the area streets are hard for trucks and emergency vehicles have problems; Cumberland Farms will bring more traffic than the restaurant; there would be drainage runoff problems; there is concern for resident using a wheelchair; fumes and exhausts are health issue; there are environmental concerns; any business using the back space will lead to pollution, noise, light; the neighborhood now is quiet and dark; and, she asks the Board to not recommend.

Mr. Teixeira is concerned with setting precedent; has concern with the MUOD going into residential areas; he is worried this is happening here and setting precedent; questions how to stop future taking of back lots for businesses; this could be a legal issue.

Mr. Driscoll asked if this is now one property, asked about buffers, and asked about setbacks and buffers if the zoning is changed. Mr. Iafrate said it is one property, a 50 ft. buffer from residence would be needed and building setbacks are 20 ft., 20 ft. and 45 ft.; it is not known if this plan has those.

No further discussion. Mr. Fountain moved to not recommend amending of Sec. 3.2 zoning map by removing Residential A and establishing as Business District the property at 0 Richard Street, Raynham; second Mr. Teixeira. Vote was two in favor (Mr. Fountain, Mr. Teixeira); one opposed (Mr. Driscoll).

Mr. Fountain announced he has collection of Town annual reports if anyone wants to have them.

**7:22 p.m. – Mixed Use Overlay District amendment:** (Mr. Gallagher returned to the meeting; Mr. Andrade did not return for the meeting.) Mr. Gallagher explained the procedure to be followed asking that comments be brief and not repetitive; this is just a forum for recommendation to Town Meeting where a 2/3 vote is needed to pass; this matter has been before the Board several times.

Mr. Teixeira stated that regarding the gentleman who said the Town hasn't spoken on the MUOD, he himself has voted no on this on a number of occasions; he is not in favor but Rte. 138 needs cleaning up; this won't clean up issues; if this should pass, residential neighborhoods will be destroyed; those remaining will see significant reduction in value, as stated in the previous discussion; the taxes do not cover the costs of services; the only benefit is to developers pushing this.

Mr. Iafrate spoke of changes made from one year ago: the MUOD is a proven planning tool; there will be new growth to a "challenged" Rte. 138 area; mixed uses could be close or in the same building; there will

be Planning Board design standards; it will be positive impact with quality tenants and financial success; the goal has been to revitalize the area; new buildings are encouraged to blend in with surroundings; at no future point can parcels be added to MUOD unless at Town Meeting; no access to development sites through any residential lots outside the MUOD; the apartment inventory will be limited to Residential B density; this will be economic development tool; Rte. 138 identified as "special needs" area; there were successful open forums to discuss; the committee of 10 members revisited previous language; Sec. 20.8 was changed; Sec. 20.7 was rearranged; in Residential D, the prohibited uses were the main focus (he read the list of prohibited uses aloud); language of the design standards was changed; he was given this task when he took over the planner duties; he was personally involved in similar matter in Bridgewater so he sees it works; people must be comfortable with it.

Public comments - Karen Duarte, Britton Circle for 27 years: asked why the Board and Town keep pursuing this after several times. Mr. Gallagher stated this was Citizen's Petition. Mr. Iafrate stated the Selectmen endorsed it this time not Citizen's Petition. Ms. Duarte asked the reason it is being pursued. Mr. Iafrate stated as a planning tool, for economic boost and to spur positive development on the road. Mr. Gallagher stated some want it, some don't. Ms. Duarte, as a taxpayer, questions why the Town is continuing when it was voted down several times. Mr. Gallagher said because they can; he understands what she is saying. Mr. Fountain noted some rezoning changes were favorably voted - the Residential D District, the Wal Mart area.

Ms. Duarte stated it is disheartening to fight this over and over; she would hope the Selectmen would represent better; questioned the positive impact, noting she abuts Rte. 138 and does not want business in her back yard; she disagrees it is positive; why not do this in other residential areas, i.e., Rt. 104; she doesn't want it; stop "picking on" Rt. 138.

Mr. Teixeira noted if this is voted down at Town Meeting, it cannot be done again for two years. Mr. Gallagher said he understands this may be better to some or detrimental to some. Mr. Fountain asked if Britton Circle is affected. Mr. Iafrate said it is not in the overlay but does abut it.

Caroline Karson, 126 Chickering Road: supports business but can't stand behind this; showed photos of the old Brothers Pizza site, not being used; Central Oil site, environmental issues, not used; business sites in Taunton with vacant apartments; Rt. 138 area cannot be safely walked as similar areas in Easton; she sees food establishments, traffic and families with children in apartments; not opposed to zoning but is opposed to what is presented; property values will go down; people are upset and not in favor; values will diminish and affect lifestyle; traffic is always a concern; something needs to be done but what is proposed is not good solution; there is no fire station in North Raynham; this will drain on police, fire and roads; and, there are problems with school buses, miracle no one is hurt.

Mr. Gallagher noted it is a tough spot, a lot will benefit, a lot won't; he does not think it's good; if it harms lifestyles, he cannot be for it; voices are heard at Town Meeting.

Mr. Iafrate stated regarding Brothers Pizza site, it would be offered an opportunity to redevelop while now it is pre-existing, non-conforming; the nearby plaza has issues with access to second floor otherwise could convert space to apartments.

Randy Karson, 126 Chickering Road: impressed with process of local government; doing a good job; many broken promises in the past so take with a grain of salt regarding promises; China Garden nearby residents earlier expressed opposition and he supports them 100%; that situation is "totally relevant" to

March 28, 2019

Page 7

this; there is finite customer base and money; people must be really smart when doing changes; he feels bad for changes made such as removing buffers.

Drew Knappik, Church Street: sees as intrusion; cited the Rte. 44 zoning as changes; doesn't want this; how much taxes and development are enough; must be voted at Town Meeting; this is a State road but Raynham can't make worse; it is Town's responsibility to worry about those here and paying taxes, not future.

Laraine Nickerson, First Street: disappointed that the Rte. 138 Committee was invited but only two are here and one left; a survey from Selectmen Pat Riley listed number one concern as sense of community; traffic also a concern; 100 building permits issued this year and 18 last year; past discussions of North School committee were of putting two units in the school but believed that would be a "wash" with revenue; the Board recommendation is important at Town Meeting; people are being asked to approve blindly the number of apartments possible with children/students; busing is an issue in the 2019 school budget; people have never given the "green light" to approve unknown apartment buildings; business is not coming to Rte. 138 now.

Jeremy Disbrow: asked if there is different time frame for this coming back other than the two years if the Planning Board opposes it. He was told no. Mr. Gallagher noted it all comes down to a 2/3 vote at Town Meeting, that is the real forum; this cannot come back before that unless "drastically changed." Mr. Disbrow asked question about sewerage on Rt. 138. Mr. Gallagher explained there would be sewer possible.

Caroline Karson asked if this cannot be brought up again. It was stated no, it's the law.

Mr. Gallagher noted all have rights whether they disagree or not.

Bill Chappell, 67 years Broadway resident: there is always traffic on the road; back yards are a sanctuary; houses on Broadway sell; Rte. 138 was designed from Fall River to Boston; cars passing now go home, they don't stop; unless there is a niche, they will go by; Boards can change and changes can get approved; he has gone through this for 17 years; family has been in his house since 1939.

Mr. Teixeira thanked all present for coming; participation is needed at Town Meeting; it is no good to oppose this unless you go to Town Meeting; he personally appreciates the participation. Mr. Gallagher agreed the participation is good but to be heard, people must vote at Town Meeting. Mr. Gallagher said he will entertain a motion.

Mr. Fountain said he was speaking in favor of this; has been on the Board 25 years; in comparison to Rte. 44, Broadway is "dilapidated"; buildings on Rte. 44 are being redone in first class; Broadway is going downhill, being abandoned, underutilized, and going in the wrong direction; it needs to be straightened out and should be with business; residents will eventually sell; spaces could be offices.

Mr. Fountain moved to recommend amending Town of Raynham Zoning By-laws by adding Article 20, MUOD; second Mr. Driscoll. Mr. Teixeira voted no; Mr. Driscoll voted yes; Mr. Fountain voted yes; Mr. Gallagher voted no (2-2-0). Tie vote, motion did not pass. Board makes no recommendation.

March 28, 2019

Page 8

John Donahue announced pre-Town Meeting is May 14<sup>th</sup> here at Town Hall. The Town Meeting is May 20<sup>th</sup> at 7 p.m. at Raynham Middle School; this article will not be heard before 7 p.m. There may be a special meeting beforehand but not yet determined.

**8:12 p.m.** There was no further business. The meeting adjourned.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'R. Driscoll', written over the typed name.

Russell Driscoll, Clerk