



Town of West Boylston
140 Worcester Street, West Boylston, Massachusetts 01583

[Zoning Board of Appeals] Meeting Minutes

Date / Time / Location of Meeting
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Thursday, February 16, 2023/7:00 p.m./THIS MEETING WAS HELD REMOTELY, VIA ZOOM; NO IN-PERSON PARTICIPATION WAS ALLOWED.

Members Present

Christopher Olson (Chair), Barur Rajeshkumar (Vice-Chair), David Femia (Clerk), John Benson and Secretary Toby Goldstein

Members NOT Present

Nathaniel Orciani, and Andrew Feland and Mark Wyatt (Associate Members)

Invited Guests

Welcome – Call to Order

Time: 7:06 p.m.

Approval of Previous Minutes

January 19, 2023

Motion Originator: Mr. Rajeshkumar

Motion Seconded: Mr. Benson

Treasurer – Financial Report

Not discussed at this meeting.

Motion to Accept N/A

Seconded N/A

At 7:06 p.m., Mr. Olson called the meeting to order. Mr. Olson introduced himself and the board members present.

Minutes of January 19, 2023 Meeting:

After review of the draft minutes by the board members, no changes were suggested. Mr. Rajeshkumar then made a motion to approve the minutes as written. Mr. Benson seconded. After there were no other comments made on the minutes, Mr. Olson took a voice vote:

Mr. Femia – “yes”

Mr. Rajeshkumar – “yes”

Mr. Benson – “yes”

Mr. Olson – “yes”

The vote was 4 “yes” and 0 “no”, therefore the minutes were approved as written.

Continued Public Hearing, to act on the petition of Carol McAdam, General Manager, CAM Hospitality, LLC, for Special Permit under zoning bylaws Section 3.2.F.4, to open a coffee shop restaurant with a drive-through and tables for indoor and outdoor seating at 181 West Boylston Street:

(Atty. Jennifer Kurzon, Carol McAdam and Robert Gallo represented). Mr. Olson reminded all present of what was being requested by the petitioner, and to which bylaw it was pursuant. He explained that the petitioner was going to explain any changes this evening that were made since the last meeting, the board would ask any questions and make comments, and the Building Inspector (George Tignor) was present to answer any questions or give comments.

Ms. Kurzon continued the discussion. She reminded those present at the January meeting that they were left with a question of interpretation of the zoning bylaw regarding parking spaces. She noted that this will be a multiple use restaurant, and asserted that an email dated 2/6/23 that she sent to the board supports this, along with accompanying exhibits. She discussed how the board members at the last meeting expressed the belief that this would be deemed either a 100% fast-food restaurant with a drive-in under parking regulations where they would calculate parking spaces by taking the gross square feet (minus certain areas such as utilities and stairways) divided by 40, or for multiple use, would add the gross area for both. Ms. Kurzon asserted that she could not find in the zoning bylaws or general bylaws for West Boylston a specific interpretation of how to calculate it, but did find it for other towns in Worcester County and attached this information in her brief. But she asserted that this establishment is deemed to be a restaurant, not fast-food drive-in establishment. Ms. Kurzon noted that, in a review of the Uxbridge zoning bylaws, a situation like this was deemed a restaurant rather than a fast-food drive-in establishment, as it has wait service, menus and dishes rather than single-serve utensils, and these seemed to be distinguishing factors.

Next, she researched how to calculate the parking spaces for multiple uses, but said that she could not find anything. However, she claimed that in the definition in the zoning bylaws for multiple use (exhibit D) there would be redundant language if they added the square footage for each use instead of allocating how much attributed to each use (at the beginning), according to Section 5.2.A.1 (b). She asserted that it never would be less than a single use computed separately, and that it would double the parking requirement anytime there would be a multiple use. In summary, she said that this is what her brief went through, and opined that the ZBA’s way of calculation of the parking was not correct.

Mr. Olson then asked if the board members had any questions? There were none. He also asked if anyone else present had questions? There were none. He then continued with his analysis of Ms. Kurzon’s explanation. He noted that he appreciated her brief and opined that it was helpful to understanding the petitioner’s position for calculating spaces. However, he asserted that the immediate importance was less because of it being related to whether the special permit is granted, but which board needs to review the issues such as traffic, drainage and pedestrian access under the Town’s bylaws. Mr. Olson agreed that she was correct that Section 5.2.A.1 (c), not (b), was critical because it makes it clear, for calculating parking, that the bylaw specifically contemplates multiple uses such as in this case. He said that he had no issue with characterizing the petition that is seeking to develop a restaurant with a drive-through as opposed to a drive-through restaurant that happens to have some tables. But he said that he was not sure that there was much difference and, to him, it is important that there are two uses requested, one being a change of use to a restaurant and the second is a drive-through. He added that it was also important for them not to just look at sub-subsection (c), but also (b), which covers specific uses. Mr. Olson also wanted to make it clear that in Section 5.2.B.1 is a sentence that lists areas

exempted from space assignment in terms of the square footage, which is another important fact. He summarized that there is one bylaw that specifically contemplates multiple use and they also have a bylaw that excludes certain areas not to be counted in determining ultimate area for calculating the number of parking spaces. He also noted that they agree that there is no basis in the written language of this section of the bylaw saying that they are to exclude (when they have multiple uses) for purposes of the restaurant from the calculation of the square footage that has to do with the restaurant. He said that his interpretation is that what are the two individual uses (the restaurant and drive-through) must be computed separately and must be added together. (At this point, he asked for any questions from the board and Ms. Kurzon and there were none).

So, Mr. Olson continued that it was his understanding that, for the total number of parking spaces, and they are trying to see if 15 or more are needed for Site Plan Review, for restaurant use, that has nothing to do with square footage, only the number of seats. He said that the drive-through side requires 40 square feet/space. He noted again in the bylaw the exclusion of certain areas from square foot calculation. He did not see anything to exclude restaurant use, where they share the building. Giving Cumberland Farms as an example, where there is a store but also gas pumps. Mr. Olson asserted that, in his experience, this zoning bylaw's interpretation requires taking the two calculations and adding them; so here, for the restaurant use, they are asking for 28 seats, some inside (1 space for 4 seats) and some outside (and one parking space is required per two seats) and, for the drive-through, they acknowledge that the total square footage of the building on the site is greater than 600 square feet, which is the threshold for 15 parking spaces and Site Plan Review. Mr. Olson asserted that historically this bylaw has not been interpreted the way that Ms. Kurzon was suggesting (separating the area of the two uses), but has been calculated in the past by taking the total for each use and adding them. He reiterated that the issue was not to allow or deny the special permit, only determination of who will decide this, and he reiterated that, historically, the way that the Town interprets that section of the bylaw when dealing with two different multiple uses is contrary to how the petitioner interprets it.

Ms. Kurzon responded that they have different interpretations, and that if the Town has historically done it differently, it may not be correctly and they disagree with the interpretation. She explained that, otherwise, what she reads is that a multiple use cannot be less than that for a single use. She added that there are also calculations with respect to exemptions that do not apply in multiple uses that she thinks is incorrect. Ms. Kurzon opined that, if Site Plan Review is necessary, it would be most efficient for that to be done before the special permit.

Mr. Olson agreed with this last step. He said that he was willing to continue the public hearing to March or April, so that the petitioner could interact with Planning Board and then come back before the ZBA; he opined that this would streamline the special permit process and would be the next best move.

Mr. Robert Gallo spoke next. Referring to Cumberland Farms, he noted that it was new construction so it was understandable that Site Plan Review was required. He wanted to note that his petitioner's property has 75 parking spaces existing on the site, and asserted that they will not be involved with any drainage issues; he added that they have been there since 1965, and basically they will only need to draw lines for changes in parking spaces. He opined that the interpretation of the bylaw seems to be ambiguous and that all aspects have been covered. He opined that it was odd to require more spaces for the drive-through than the restaurant. He asserted that the traffic report substantiates the ability to withstand the traffic, and noted that their traffic lane will support 20 cars and will have a side lane also, so parking will not be an issue. Mr. Gallo did not see the necessity for Site Plan Review. As to spaces, Mr. Olson did not disagree, but noted that the board's function is to apply the bylaws fairly and the same way for each applicant. He added that the board wants to be sure that they can make progress, and suggested that once the petitioner goes through Site Plan Review, they can come back before the board and move quickly with the special permit process; he thought that, given all the material that they have already provided to the ZBA, the board will have everything on their end to decide on the special permit once Planning Board gives its approval.

Ms. Kurzon responded that they could meet with Planning Board until April so they would have to continue with ZBA to April; Mr. Olson responded that he would be open to giving them more time if necessary. With no comments by the board or anyone present, Mr. Olson asked for a motion to continue the public hearing to Thursday, April 20, 2023, at 7:05 p.m. Mr. Rajeshkumar made the motion. Mr. Benson seconded. Mr. Olson took a voice vote:

Mr. Benson – “yes”

Mr. Femia – “yes”

Mr. Rajeshkumar – “yes”

Mr. Olson – “yes”

The vote was 4 “yes” to 0 “no”, therefore the public hearing was continued to April 20, 2023, at 7:05 p.m. Mr. Olson noted that Planning Board will hold their public hearing before that and decide on how to proceed.

Other Business:

ZBA Treasurer’s Report – Mr. Olson had seen it prior to the meeting; it was not discussed this evening.

Miscellaneous Mail and Paperwork Needing Signatures/Future Agenda Items/ZBA Report – Mr. Olson and Ms. Goldstein informed the board that there was nothing that needed to be discussed at the meeting. Mr. Rajeshkumar congratulated Ms. Goldstein on receiving the 2022 Town Administrator’s Commitment to Excellence Award.

Next Scheduled ZBA Meeting – Thursday, March 16, 2023: Mr. Olson noted that there are no outstanding petitions at this time so there may not need to be a March meeting.

With no further business to discuss, Mr. Rajeshkumar made a motion to adjourn the meeting at 7:41 p.m. Mr. Benson seconded. A voice vote was taken by Mr. Olson:

Mr. Femia – “yes”

Mr. Benson – “yes”

Mr. Rajeshkumar – “yes”

Mr. Olson – “yes”

The vote was 4 “yes”, 0 “no”, and the board adjourned at 7:41 p.m.

Submitted by: _____

Date: _____

Reviewed by: _____

