



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

[Zoning Board of Appeals] Meeting Minutes

Date / Time / Location of Meeting

Thursday, October 19, 2023/7:00 p.m./THIS MEETING WAS HYBRID, HELD IN PERSON AND HELD REMOTELY VIA ZOOM.

Members Present

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

Members NOT Present

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

Invited Guests

Jennifer Kurzon (Attorney for Petitioner, PARTICIPATED REMOTELY), Carol McAdam (PARTICIPATED REMOTELY), William Scully (PARTICIPATED REMOTELY), Julian Votruba, and George Tignor (Building Inspector)(PARTICIPATED REMOTELY)

Welcome – Call to Order

Time: 7:15 p.m.

Approval of Previous Minutes August 17, 2023

Motion Originator: Barur Rajeshkumar

Motion Seconded: David Femia

Treasurer – Financial Report Not discussed at this meeting.

Motion to Accept N/A

Seconded N/A

Mr. Olson called the meeting
to order at 7:15 p.m.

Continued Public Hearing, to act on the petition of Carol McAdam, General Manager, CAM Hospitality, LLC, for Special Permit, 181 West Boylston Street:

(Representing were Attorney Jennifer Kurzon, via Zoom; Julian Votruba (in-person); William Scully, Carol McAdam and Steven Gallo, all via Zoom). Mr. Olson told all present that the board received further information

from the petitioner recently, and asked Ms. Kurzon to give her presentation. Ms. Kurzon thanked the board, and reiterated that she was there representing the applicant, CAM Hospitality, who filed a petition for special permit, required under bylaw Sec. 3.2F, for a drive-through. She explained that they filed the petition originally in October, 2022, and included in that information sent to the board were responses to items regarding Planning Board and the Conservation Commission. From Planning Board, dated October 13, 2023, was a response letter to their comments from December 7, 2022 (and in addition to) with respect to the site plan, and a response letter with respect to the Concomm's 11/13/2022 comments regarding whether the property was in an area subject to the Wetlands Protection Act; Ecotec responded on 11/16/22, explaining why the Wetlands Protection Act was not impacted (she added that they went through that in prior hearings). She noted that there were issues regarding the parking, mainly with respect to how many spaces were required, and whether the petitioner needed Site Plan Review. She said they met with Planning Board when they first began the process and that Planning Board reviewed Sec. 3.6B, which stated that there are five separate instances in which an applicant is requested to have Site Plan Review, and none applied except possibly the need for 15+ spaces; she noted that it was determined that they needed less than 15 spaces, and that was why the applicant needed to apply to the ZBA for special permit. Next, she explained that they subsequently had a meeting on 1/19/2023, a continued public hearing with ZBA, where they submitted a revised site plan, an updated floor plan (showing that less than 15 parking spaces were required), and the reports that she just referenced (her letter and the Ecotec report). Also submitted was the 1/18/2023 traffic study and site plan, with additional designations for the drive-through. Ms. Kurzon said that, at that meeting, it was decided that this was a dual use that they were looking for initially (with drive-through as well as restaurant) with the question of how parking should be calculated. It was decided at that time to continue the public hearing so that Ms. Kurzon could prepare a brief with the applicant's position as to how the parking should be calculated. She continued that there was another meeting on 2/16/2023, summarizing that the applicant did not believe, with respect to parking, that it was cumulative, so less than 15 spaces were not adopted by the ZBA and the applicant needed to return to Planning Board. Subsequently, the applicant went again before Planning Board and they decided not to have the restaurant but only single use (with only drive-through) with less than 15 parking spaces. At the last Planning Board meeting, it was determined that Mr. Votruba and Mr. Tignor would go through the parking and Mr. Votruba also submitted a narrative report (also submitted to ZBA, for tonight's meeting) that the parking was to be under 15 spaces; it was Ms. Kurzon's understanding that this was adopted by Mr. Tignor, and she asserted that Planning Board determined that this did not need Site Plan Review and the applicant must return to ZBA for special permit (which they are doing this evening). Ms. Kurzon also said that the traffic report was updated on 9/22/2023 and submitted, and there was no change in the management of the traffic with the single use (she explained it), and described that the drive-through will be more than 250 feet in length before reaching Route 12, and it will accommodate at least 12 vehicles, and per their traffic study (done in January, 2023, updated on 9/22/23), even in peak hours (details of this are given in the traffic report). (Ms. Kurzon then listed who was present at this evening's meeting, in-person and remotely), and asked for any questions from the board, particularly on the traffic study, to Mr. Scully and Mr. Votruba.

Mr. Olson said to Ms. Kurzon that he recalled, with respect to the board and request for special permit (at this time, for a drive-through), that one issue was whether Site Plan Review was required, in view of the triggers in the aforementioned bylaw section. He recalled that, at the last ZBA meeting (August 17), it was introduced to the board that the proposal changed and there would be no indoor restaurant with tables and chairs as well as outdoor tables and the principal use would be a coffee shop and drive-through. Mr. Olson added that, after the meeting in August, 2023, he understood that the Building Inspector was to determine whether the new proposal required Site Plan Review in view of the zoning bylaws; he understood that Ms. Kurzon said that Mr. Tignor had looked at it but the board had not received anything yet. Ms. Kurzon responded that she did not participate when the matter went back to Planning Board, but Mr. Gallo and Mr. Votruba did; she requested something in writing from Mr. Tignor but did not receive it and said that Mr. Votruba could address it as he met with him.

Mr. Votruba responded that he met with Mr. Tignor and asked for something in writing and Mr. Tignor said that he would forward in writing to the ZBA that the petitioner did not need Site Plan Review; Mr. Votruba said that this was the last that he heard of this, and that was a couple of weeks ago. Mr. Olson called Mr. Tignor (who was away) on his phone, and said to him that he was told that Mr. Votruba met with him and wanted him to look at their new proposal for triggers for Site Plan Review, and Mr. Olson asked Mr. Tignor if he made a determination on this? Mr. Tignor replied that he sent the new traffic study to the board (Mr. Olson acknowledged this). Mr. Tignor mentioned concern from the beginning with traffic going in and out of that area,

and thought that there would probably be more traffic. He wanted the ZBA to look at the traffic study and see if they anticipated any problems. Mr. Tignor said that he was concerned with the restaurant next door and did not think it was a good idea to use any part of the parking lot at the restaurant next door.

Mr. Olson responded that it was important to the board to know whether Site Plan Review was required. He opined that the only question that might apply to this situation was if change of use would require 15 or more parking spaces (Sec. 3.6B3). He mentioned that in Sec. 5.2B, a business such as this requires one space per 40 square feet gross floor area. Mr. Olson then mentioned that the floor plan had a total of 900 square feet, and 600 square feet would require 15 parking spaces and trigger Site Plan Review and asked Mr. Tignor if he made a determination? Mr. Tignor responded that he thought he had given his opinion already, and explained that when the petitioner sent him the gross footage, he agreed that Site Plan Review would be needed.

Mr. Votruba continued, asserting that there are actually 524 square feet that require calculations; the total would not include items such as storage and utilities, and this would require only 13 parking spaces. Mr. Tignor responded that he did not have the information with him, but asserted that the gross square footage is the total for the entire building, and did not think that those exempt areas that Mr. Votruba mentioned would come into play. Mr. Tignor said that the 524 square feet would be the net total, and he did not think that this was the intention of the bylaw. Mr. Votruba brought up the example of Gerardo's Bakery, with which he was involved 15 years ago and which he opined had the same situation and was done this way, and he asserted that certain features of the floor plan are not considered as part of the activities such as storage and utilities and are not involved in determining the parking spaces. He also claimed that they (this petitioner) discussed this with Mr. Tignor and thought that they were all on the same page. Mr. Tignor responded that he believed that, in the bylaws, a change in 15 or more parking spaces requires Site Plan Review and opined that there is no way to get away from that change in this situation. Mr. Votruba responded that they would not be changing the parking spaces because they all exist, and they would not be changing the configuration except for the drive-through driveway coming around the building and repeated that they would not be touching any of the parking. He asserted that Mr. Tignor's biggest concern was the removal of the overhead section over the walkway. Mr. Tignor responded that his concern was that the lane of travel around the building would affect the parking in the front of the building (he explained why he thought so). (Mr. Votruba then showed the board a full-sized plan and pointed out the flow of traffic and opined that the drive-through lane would not affect the parking in the front).

Mr. Scully continued that the front has parking spaces already, a 24-foot driving aisle which is currently a two-way aisle which anyone from the restaurant or motel can utilize and he said that they will not be touching the parking spaces. They will be modifying the two lanes into one lane to go into the drive-through area. They are not modifying the width (which he opined is very wide), to accommodate the drive-through and any cars going around. The plan developed earlier in the year accounted for markings in the drive-through, arrows on the ground and some signage for moving vehicles around it. He asserted that they tested all the movements through the drive-through and determined that it is more than adequate to accommodate them. They made changes coming out of the drive-through to make sure it will be a safe exit, and in relation to any motel traffic (which he asserted is very light) that would be entering or exiting. Mr. Tignor asked if they will allow a right turn only out of the lot? Mr. Scully responded that a left turn is allowed now and they did not propose restricting it, and suggested that someone can use the signal there if they want to do so. He said that they talked about that and noted that the owner has control over the area. He said that he did not suggest restricting it because right now it is not, and he opined that vehicles can go in and out with no real problem. He acknowledged that the signal there does create some gaps, but if someone wants to make a left turn at the signal he/she can do so. Ms. Kurzon suggested that, if the Town wants, they can put the condition of right-turn only in the special permit. But she noted that there is not a restriction now and she also mentioned the signal there. She agreed with Mr. Scully and opined that there is a natural flow now since it is one-way. She added that, regarding the square-footage, in Mr. Votruba's narrative of July 18, 2023, according to bylaw Sec. 5.2B(1), there were areas (utility corridors, stairways, rest rooms and building maintenance areas) not counted toward the parking calculations. Mr. Tignor responded that if the ZBA feels it is accurate and they are comfortable with it, he will feel comfortable with it. He reiterated that his concern was coming out of that area into that congested area, and opined that a left turn would not be a good idea.

Mr. Votruba then responded to Mr. Femia, showing him where the queue of cars would go past the drive-through window. Mr. Votruba showed Mr. Femia two legal-sized lanes and opined that there would be no obstruction to other vehicles. Mr. Femia responded to Mr. Votruba, asserting that people do not slow down when they come out and there is a hill there, and he was concerned with the left turn coming out of the lot. Mr. Votruba

responded that Mr. Scully is a traffic expert and he would let him address this. Mr. Tignor continued, asserting that there will be changes affecting the plaza across the street from the location which will increase traffic even more in that area, and he reiterated that he did not think that allowing of a left turn would be a good idea.

Mr. Scully responded that he did not professionally think it would be a problem, but had no problem with the board wanting to make no left turn a condition of the special permit. With regards to the activity in the plaza across the street from the proposed drive-through, Mr. Scully asserted that drivers use the signal mostly for going in and out of the plaza. He did not see a major issue there. He did not recommend restricting it. Mr. Scully asserted that things were done on-site to address this concern, and asserted that they are making an effort to be sure it's adequate. He also opined that it is a small site with much less traffic than the plaza across the street (he described the measures taken for caution and good visibility). Mr. Tignor responded that he has traveled that area quite a bit and disagreed with allowing the left turn and commented that he will not go left out of that lot. Mr. Scully responded that he tends to let the motorist make the decision and use the signal if he/she feels uncomfortable, but it is up to the board if they want to make no left turn a condition of the special permit. Mr. Tignor responded that if the board agrees on the calculation of the parking spaces, he will agree, but (for the record) he will not agree to allowing the left turn.

Mr. Olson continued. His first point was that it would be premature to discuss traffic issues now, as they still had not decided which is the proper board in this instance to decide these issues, and he sees that as the threshold issue. He said that, in order to grant a special permit, one of the requirements for this board is it must certify that the project will be in compliance with all of the Town's bylaws. One issue that must be resolved is whether the petitioner must pursue Site Plan Review through Planning Board. Mr. Olson said that he heard from the engineer that 900 square feet would be the total area of the building, and that, based on a certain section of the bylaws, there are certain areas that can be subtracted from that which would get the petitioner down to less than the 600 square-foot threshold, which would not require Site Plan Review. He said for the ZBA to agree with that, information must be submitted in writing to the board with a detailed breakdown of the 900 square feet and come to a clear calculation of whether there are 600 square feet of countable, non-exempt area in the building. (Mr. Tignor's signal was then lost and he could not continue his conversation). Mr. Olson added that Mr. Tignor alluded to the possibility of more than one floor in the building. Mr. Olson stated that he had never seen the building himself, but wants to see the breakdown of the building area by area to see if there is greater than the 600 square-foot threshold required for Site Plan Review.

Referring to the floor plan, Mr. Votruba responded that the only part of the building used for the drive-through is the entrance, coffee counters, refrigerator, oven, counter and clean-up station, and he opined that, with the exempt areas removed, it will be less than 524 square feet in area. In response to a question from Mr. Olson, Mr. Votruba explained the parts of the business that would be exempt. He said that the second floor is not to be used for the coffee shop, and neither would the cellar. Mr. Votruba opined that the bylaw states that the area is only for the part of the building that the change of use is for, but Mr. Olson disagreed and responded that the bylaw goes by gross area, meaning the full building is counted and not just the part that is used (they read aloud this section of the bylaws). He continued that parking for the drive-through would be calculated as one space per 40 square feet of gross floor area, but if exemptions are allowed for certain things and they can be justified, it could be less than 600 square feet; if not, that is a different scenario where the Planning Board will be involved. Mr. Olson also wanted certainty as to the number of floors in the building. Mr. Votruba opined that this was a whole new conversation with Mr. Tignor, that it did not come up either of the times they spoke with him and they thought that they were all set at this point and that he agreed with them. He stated that downstairs is a cellar, which may be also be used for maintenance but not as part of the coffee shop. Mr. Votruba disagreed with "dissecting" the building to determine what each room is going to be used for, and he commented that he was surprised by Mr. Tignor not agreeing with the proposals that he supposedly agreed with.

Mr. Femia next referenced a letter from New England Environmental, dated August 2, 2023. He noted that it stated that the drive-through coffee shop had an area of 425 square feet of area, according to Section 5.2B(1), excluding areas such as utilities, corridors, stairway, rest room and building maintenance areas; it gave 11 parking spaces as the requirement, and there are 58 spaces required including for the motel, with 66 spaces available all together. Ms. Kurzon asked Mr. Olson if he wants this in writing verified by Mr. Tignor? Mr. Olson replied that he does, from an enforcement perspective, as it can be alleged that the use is one thing but it ends up being something else, and the actual calculations would go a long way in this process.

Mr. Rajeshkumar opined that this should have come from the Building Inspector and the petitioner should have asked for it, and commented that he agreed with Mr. Olson that they should get something from Mr. Tignor. He opined that the question was if Site Plan Review is or is not needed, and that this question has gone back and forth too many times without a clear answer. Mr. Femia then read aloud from a letter from Ms. Kurzon, dated August 2, 2023, requesting preliminary Site Plan Review from Planning Board on August 9, 2023; Mr. Femia thought that this never happened. Mr. Votruba tried to explain this. Mr. Femia continued that the letter was written before they came to the ZBA on the third Thursday in August, and there was no mention of going to Planning Board and ZBA gave the petitioner a two-month extension. Mr. Rajeshkumar commented that, at the last Planning Board meeting, he asked Mr. Tignor if Site Plan Review was needed or not? He said that Mr. Tignor has not answered that up to now. Mr. Rajeshkumar and Mr. Olson agreed that it was up to the Building Inspector to say if Site Plan Review is necessary. In response to Mr. Olson, Mr. Votruba asserted that the petitioner got together all the information that Mr. Tignor needed and wanted from them and claimed that, in their last conversation, Mr. Tignor was fine with the petitioner going back to ZBA. Mr. Rajeshkumar suggested, since Mr. Tignor had technical difficulties this evening, they should ask for what they need from Mr. Tignor and come back to the next meeting and see if they need Site Plan Review or not.

Ms. Kurzon responded that she will follow up with Mr. Tignor to obtain something in writing also as to whether he agrees on the calculations done by the applicant. She added that, after her aforementioned 8/20/23 letter, the applicant decided to have the one-use project, and that the applicant and Mr. Votruba did go to Planning Board at their next meeting for preliminary Site Plan Review. Mr. Olson responded that he will reach out to Mr. Tignor to have him make a determination, then they will all come back before the ZBA on November 16, 2023 and will hopefully the next steps will be clearer.

The petitioner and the board agreed to continue the continued public hearing and hopefully have the answer that they need from Mr. Tignor by then. Mr. Rajeshkumar made a motion to continue the continued public hearing to November 16, 2023. Mr. Femia seconded. Mr. Olson took a voice vote:

Mr. Benson – “yes”

Mr. Rajeshkumar – “yes”

Mr. Femia – “yes”

Mr. Olson – “yes”

The vote was 4 “yes”, 0 “no”, therefore the continued public hearing was continued to November 16, 2023 at 7:05 p.m. (Mr. Rajeshkumar added that he was not comfortable voting on the special permit this evening anyway as a full board was not present).

Other Business:

Minutes of August 17, 2023 Meeting: After review of the draft minutes by the board members, Mr. Rajeshkumar made a motion to approve the minutes as written. Mr. Femia seconded. Mr. Olson took a voice vote:

Mr. Benson – “yes”

Mr. Rajeshkumar – “yes”

Mr. Femia – “yes”

Mr. Olson – “yes”

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

ZBA Treasurer’s Report – This was not discussed this evening.

Miscellaneous Mail and Paperwork Needing Signatures/Future Agenda Items/ZBA Reports: None were discussed this evening.

Next Scheduled ZBA Meeting – Thursday, November 16, 2023. (Mr. Olson noted that it is likely to be a hybrid meeting).

With no further business to discuss, Mr. Rajeshkumar made a motion to adjourn the meeting at 8:11 p.m. Mr. Femia seconded. A voice vote was taken by Mr. Olson:

Mr. Benson – “yes”
Mr. Rajeshkumar – “yes”
Mr. Femia – “yes”
Mr. Olson – “yes”

The vote was 4 “yes”, 0 “no”, and the board adjourned at 8:11 p.m.

Submitted by: _____

Date: _____

Reviewed by: _____

