



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

[Zoning Board of Appeals] Meeting Minutes

Date / Time / Location of Meeting	Thursday, September 17, 2020/7:00 p.m./ <u>NOTE: THIS MEETING WAS HELD REMOTELY (ZOOM), ACCORDING TO GOV. BAKER'S INSTRUCTIONS, DUE TO THE CORONAVIRUS AS TOWN HALL HAD REMAINED CLOSED. PUBLIC ACCESS TO THE MEETING WAS ALLOWED THROUGH ZOOM INSTRUCTIONS GIVEN ON THE POSTED MEETING AGENDA.</u>
Members Present	Chris Olson (Chair), Barur Rajeshkumar (Vice-Chair), David Femia (Clerk), John Benson, Nathaniel Orciani and Secretary Toby Goldstein
Members NOT Present	Andrew Feland, Mark Wyatt and Charles Witkus (all Associate Members)
Invited Guests	N/A

Welcome – Call to Order **Time: 7:01 p.m. (by Mr. Olson)**

Approval of Previous Minutes **Minutes of August 20, 2020**

Motion Originator **Mr. Femia (approved as amended)**

Motion Seconded **Mr. Rajeshkumar**

Roll Call Vote was taken (5 “yes”, 0 “no”, 0 “abstained”)-minutes were approved as amended

Treasurer – Financial Report **N/A**

Motion to Accept **N/A**

Seconded **N/A**

At 7:01 pm, Mr. Olson called the meeting to order. (Prior to this, residents who were attending the meeting gave their names as they joined the meeting, in lieu of signing a sign-in sheet).

Minutes of August 20, 2020 Meeting:

After reviewing the draft minutes prior to the meeting, Mr. Olson suggested corrections. With no further comments, Mr. Femia made a motion to approve the minutes as amended. Mr. Rajeshkumar seconded. A roll call vote was taken:

Mr. Rajeshkumar – “yes”

Mr. Orciani – “yes”

Mr. Femia – “yes”

Mr. Benson – “yes”

Mr. Olson – “yes”

With a vote of 5 “yes”, 0 “no” and 0 “abstain”, the minutes were approved as amended.

Mr. Olson then explained to the public that was watching this Zoom meeting the meeting procedure (petitioners will make their case, the board members will ask their questions and make comments, and then the hearing will be opened to public comments and questions). Mr. Olson then read the statement on the agenda regarding remote meetings (from Governor Baker).

Continued Public Hearing, Pinecroft Development, Inc., Petition for Administrative Appeal, 241 Woodland Street:

(Atty. George Kiritsy and Joseph Evangelista represented). (Mr. Femia read aloud the continued public hearing notice; the public hearing was continued from August 20, 2020). Mr. Olson informed those present that there were comments from the public at the time of the August 20 meeting that he was going to have acknowledged in the record; he summarized them. One was from Mr. Robert Zalatan of 258 Woodland Street; he said that he had concerns regarding further development at this property, asserting that he had noticed a decrease in water pressure since the development of the four condominium units at 239 Woodland Street. He also mentioned concern about where a driveway curbcut would be located if the proposal went through, and he requested cleanup of the landscaping at the edge of the road for better sight lines. Another resident, John Sullivan (who is on the Board of Health), sent an e-mail opining that Mr. Zalatan’s concerns were valid (Mr. Sullivan replied by e-mail to Ms. Goldstein that this opinion was personal, not representing the Board of Health who stated that they had no issue with this proposed project). Mr. Femia asked, regarding Mr. Zalatan’s complaint about water pressure, if the board or the resident needed to contact the Water Dept. about this? Mr. Olson replied that, since the board is discussing the administrative appeal of the Building Inspector’s decision, and the water pressure was not an issue raised by anyone, that he was not sure if this was a zoning issue except maybe in relation to a special permit request. Also, he noted that he read these opinions into the record and the public will have the opportunity for further comments later.

Mr. Olson then asked Mr. Evangelista and Mr. Kiritsy if they had any further comments or thoughts regarding the August 20 meeting? Mr. Olson said that he would talk with the board after about the meaning of Town Counsel’s comments after he reached out to them. Mr. Kiritsy responded that, after the last meeting, the board, Town Counsel and he researched the question regarding if the lot qualifies for four units based on the lot area, or if the total area necessary for four units needs to be completely within the business district. Based on his research, Mr. Kiritsy said that he was confident that this property qualifies for the four units based on size and area. He referred back to case law from 1988, particularly the case of Tofias vs. Butler; he explained that this case had the issue of a split lot, and there was the density issue of whether or not the area needed to be within the business zone or if the entire lot can be used for density purposes. Also, there was an issue of, regarding setbacks, if they were counted from the property line or if the zoning line was to be used. Mr. Kiritsy explained that the decision for the Tofias case was that the entire area of the lot, including the area in the residential district, could be

used towards density. He then cited several cases which also found this to be true. He said that he had not seen any case in MA to the contrary. Mr. Olson asked Mr. Kiritsy if any of these cases finds a town prohibited from writing a bylaw that limits the dimensional area to a particular zone in a split zone situation? Mr. Kiritsy replied that he had not seen that; he mentioned that there was a case where it was asserted that one cannot use land from an abutting town for dimensional purposes, but the court decided that, even if the land straddles towns, counties or another state, that the entire parcel can be used.. Mr. Olson responded, citing the Brookline case mentioned at the previous ZBA meeting, where there was no zoning bylaw for split lots, and the Tofias case, where there was a bylaw, and the court decided that they could use the entire lot for dimensional purposes. He explained that his issue was if it is possible that the courts would allow either interpretation so it would be unlikely that either one would be overturned if appealed? Mr. Olson explained that the towns have the authority to write their own zoning bylaws, and that the towns have broad discretion and questioned if the West Boylston bylaw reads fairly and what interpretation of Sec. 2.4 fits better? Mr. Kiritsy responded, asserting that if the West Boylston bylaw expressly stated that the dimensional requirements had to be fulfilled in a certain district, then they could argue if it was unreasonable or constitutional and that had been done in other towns and other cases, but in the Tofias case, he asserted that the bylaw was almost identical, and they said that they could not take it to constitute an exclusive rule so they are limited to more general considerations and case law. He continued that he looked at whole case law that allowed land owners to enjoy the entire lot rather than single units, otherwise the lot would not qualify in either district and one could not build on it. Mr. Olson continued, asserting that one difference in the Woodland St. case is that both sections of the lot would allow a single residence on it, and maybe other uses where both are allowed but it is not as if no uses are allowed and they can use the total lot size. Mr. Kiritsy responded that he did not think that changes are what the court said (he read aloud the pertinent bylaw), and asserted that the court does not stop counting area and this was never overturned since 1988.

Mr. Femia asked Mr. Kiritsy if he was asserting that the court said four units can be built and the entire acre of land used? Mr. Kiritsy replied that the lot as a whole can be used for density, and added that this lot has greater than the required frontage. Mr. Femia asked him, supposing that one acre is in the business district, can it be in two different zones? Mr. Kiritsy replied that courts distinguish between abstract and active use, and one cannot build in the residential district, but he asserted that the entire lot can be used to calculate density requirements under the bylaws.

Mr. Evangelista then explained, that before George Tignor was Building Inspector, the other Building Inspector told him (Mr. Evangelista) what he had to do to proceed with his project. Mr. Evangelista said that the ZBA granted him a special permit to decrease frontage at that time. However, he explained that now there is a different Building Inspector, and Mr. Evangelista said that he had understood that he could use the entire lot for density and build in the business district, but commented that he now cannot obtain a building permit. In response to Mr. Femia, Mr. Evangelista asserted that the Building Inspector denied the building permit because of the area within the 30 feet of the residential district. Mr. Tignor continued, that he was more concerned with active use; he explained (noting that he did not have any paperwork with him at this time) that there is about 300 square feet which includes decks, foundation and building which to him constitutes active use that would be in the single residence, and he interpreted it to mean that the 30 foot buffer was not to be used actively. He explained to Mr. Femia that incidental use would be for such things as a back yard or garden, with no structures there.

Mr. Olson then referred to Town Counsel's advice, which he noted was shared with the board but not shared widely due to attorney/client privilege, but that he would share some of it with those present this evening. He noted that the Tofias case was mentioned by Town Counsel. Referring to the zoning bylaws Section 2.4, in Town Counsel's opinion the maximum portion used to calculate the number of units to be built would be 30 feet from the zoning boundary line of the business district, providing that the frontage is within the zoning district, and noted that this interpretation was not inconsistent with the Goldlust v. Board of Appeals of Andover interpretation from 1989, which was a year after Tofias. Mr. Olson said that Town Counsel opined that the 30-foot buffer could

only be used in dimensional requirement calculations. He noted that the board had to be sure that the question was not asked of Town Counsel in a leading manner, and that this was the feedback that was received.

Mr. Femia then asked Mr. Olson, if Town Counsel opined that it would be allowable to go into the 30-foot buffer? Mr. Olson replied that the applicant could build in the 30 feet, but not greater than 30 feet. Mr. Femia noted that the minimum lot size for building in the bylaws was one acre in the building district but most of the lot is in the residential district, and asked if this meant that the applicant could do what he proposed? Mr. Olson responded, that Town Counsel stated that one could build a multi-family structure in the building district and the 30-foot buffer, but regarding density and how many units can be built, Section 2.4 only allows area in the business zone and 30-foot buffer toward density but not the entire lot; so, four units requires 40,000 square feet of area within the building district and the 30-foot strip. Mr. Femia noted that the entire lot is 46,000 square feet with most of it in the single residence district. Mr. Kiritsy responded, citing the Goldlust case, which dealt with language in their town's bylaw that required a 100-foot setback (with 50 feet being green) from the boundary line, and he noted that this type of restriction is not in the West Boylston bylaws. He asserted that the Tofias case was on point, with unique, specific requirements. Mr. Kiritsy also mentioned that Uxbridge's Town Counsel in 2018 agreed to count the entire area towards the dimensional requirements, and Mr. Kiritsy reiterated that he disagreed with West Boylston's Town Counsel.

Mr. Olson continued, that he struggled because Mr. Kiritsy cited cases to his favor but Mr. Olson did not know if their bylaws were similar or different, but on the other hand considering Town Counsel's opinion, asked if it was reasonable to assume that the bylaws are a matter of interpretation, and could they be read more than one way and be defensible?

The board members then discussed whether or not sewer was connected to that property, and Mr. Femia opined that Lot 6 was connected and if the lot in question is approved for development, it will be hooked into that; Mr. Kiritsy agreed. Mr. Kiritsy read the aforementioned bylaw again and reiterated his opinion that nothing is like that in the West Boylston bylaws. He reiterated that the Tofias case bylaw was identical to West Boylston's, and said that the entire lot could be used for dimensional purposes. Mr. Evangelista suggested that the board agree with Mr. Kiritsy, stating that, as a resident of the Town, he did not want to spend Town money on Town Counsel.

Mr. Femia opined that Sec. 2.4 did not seem to make sense, and suggested that it would have been helpful for the board to see the language of the bylaws and cases that Mr. Kiritsy cited; but, Mr. Femia opined that West Boylston is unique, regardless of what another town's bylaws say. Mr. Evangelista opined that the residents should amend the bylaw in West Boylston to change the language, but Mr. Olson responded that the board has the duty to read Sec. 2.4 and apply it in this situation.

Mr. Kiritsy then referred to one other line in the Goldlust case, that mentioned the North Andover bylaw that says that the boundary line is the line that governs and determines setbacks, and he opined that this meant that they were dealing with a unique provision under that bylaw, and that overturned the Tofias decision, which said that, with a split lot like West Boylston's bylaw, the entire lot counts; he reiterated his opinion that this is not the case in this situation (Woodland St.).

Mr. Olson responded that he would prefer to look closer at Tofias and the other cases mentioned, and suggested that they could consider continuing the public hearing again and perhaps Mr. Kiritsy could prepare a brief. Mr. Olson said that he did not feel comfortable voting this evening against the advice of Town Counsel. Mr. Femia continued, that he did not see the case Mr. Kiritsy was referring to in the paperwork given to the board, and suggested to Mr. Kiritsy that if he is to cite a case that he send it to the board to review, and discussed the procedure involved in changing a bylaw. He agreed with Mr. Olson about continuing the public hearing until the board receives and reviews the aforementioned cases. Mr. Rajeshkumar agreed that the board should follow Town Counsel's advice, but he would wait to make a decision in order to review the cases if the board decides to do that. Mr. Femia suggested that, if they continue, they could consult with Town Counsel again and obtain their opinion on the latest information, and he said that he was not comfortable voting now.

Mr. Kiritsy then asked if the board could share Town Counsel's correspondence? He commented that he had not read any case that says what Town Counsel opined, and he could not believe that they opined that the bylaw Section 2.4 prohibits that use or that they cannot count the area. He noted that the Tofias case was in the original paperwork given to the board. Mr. Evangelista opined that the denial by the Building Inspector was based on the 30-foot extension, but that Mr. Tignor agreed with them on density; he wanted the board to vote this evening and then he would take his next step if need be.

Mr. Olson responded, that if the board is not allowed the opportunity to understand the situation better, then they are not in a position to vote against Town Counsel's recommendations. Mr. Evangelista responded that he was confident that they will succeed, reiterating that Mr. Tignor agreed on density and the 30-foot zone was the only problem. Mr. Benson said that, if the board members are uncomfortable with the information then he supported continuing the hearing. Mr. Rajeshkumar reiterated that he thought the board should agree with Town Counsel's opinion.

(With no further questions or comments by the board, Mr. Olson opened up the hearing to public comment; he instructed those present to state their names and addresses for the record). First to speak was Madeline Stamas of 243 Woodland Street. Ms. Stamas commented that she wanted to remind Mr. Evangelista and Mr. Kiritsy that "this Town did not belong to them", and wanted the board to give her as much time as she needed to speak. She opined that the Building Inspector denied the building permit because of active use in the 30-foot zone, but mentioned the medical building at 242 Woodland Street (discussed at the August 20 meeting) which was given a building permit and she opined that active use was not an issue then, and believed that this situation did not apply here (with 241 Woodland St.). She opined that, if the Building Inspector's expertise is valued, the board should have denied the applicant's request last month. She then asked about the rules of the meeting and the scope involved. Ms. Stamas then asked if there were rules regulating Mr. Evangelista texting residents to meet with him over their concerns and she asked if that was appropriate (as it apparently happened to them recently)? She then showed those present a picture that Mr. Evangelista drew for her husband before they purchased their property; she asserted that Mr. Evangelista assured her husband that this development would not be built in a certain place because it would not fit there. Mrs. Stamas then discussed 2018, when Mr. Evangelista visited them regarding a water problem on their deck. She asserted that the residents were never told about a variance request. She said that, when the building permit was denied, that she trusted the Building Inspector's integrity and that it was denied for a reason, and opined that the Brookline situation does not apply here and Mr. Kiritsy's arguments did not support their appeal. Mrs. Stamas discussed privacy issues that she had regarding this project especially due to her health problems and asked who monitors active use?

Mr. Rajeshkumar responded that there is a procedure and the applicant has a right to appeal, and the board has a right and responsibility to listen to all arguments. Mrs. Stamas responded that she had rights, too, and explained that they bought their property for a particular reason but opined that Mr. Evangelista was trying to make his development fit, right in front of her. Mr. Olson expressed understanding of her feelings. She continued that they spent a lot of money to purchase this property; Mr. Olson then asked her to please mute her microphone so the hearing could proceed, and Mrs. Stamas replied that her husband had comments and she wanted her questions answered.

Mr. Olson continued, that there was the potential to continue the public hearing one more time; it was his understanding that the timeline for administrative appeals was similar to that of a special permits, and as the public hearing was opened in a timely fashion, it can be continued a second time. As Mr. Olson said that there was still a possibility that someone's mind on the board could be changed in the future, Mr. Kiritsy and Mr. Evangelista agreed to continue the public hearing.

Mr. Kiritsy stated that Section 15 of the bylaws states that a decision must be made within 100 days of filing of an appeal, and he expressed frustration, claiming that most of the arguments in this situation are personal. He said that he would prepare a brief as was discussed earlier for the board, but reiterated that there will be a

100-day deadline (he mentioned that there could be a difference due to COVID-19). Mr. Olson responded that the filing was stamped June 15, and asserted that the 100-day clock was not an issue if the petitioner agrees to continue. Mr. Kiritsy responded that he will send the board a written confirmation of that.

In summary, Mr. Olson stated that he was not prepared this evening to go against Town Counsel's recommendations, and was willing to look at the brief, summarize arguments and perhaps have Town Counsel look at that information, keeping in mind funding required for Town Counsel. He added that a continuance was not a guarantee that the board would vote in the applicant's favor. Mr. Evangelista replied that he would agree to continue, and Mr. Kiritsy said that he will prepare a brief for the board of the cases he discussed.

Mr. Olson then entertained a motion to continue the public hearing to October 15, 2020, at 7:05 pm, with a quick discussion and vote. Mr. Femia made the motion; Mr. Rajeshkumar seconded. A roll call vote was taken:

Mr. Orciani – "yes"

Mr. Femia – "yes"

Mr. Benson – "yes"

Mr. Rajeshkumar – "yes"

Mr. Olson – "yes"

The vote was 5 "yes, 0 "no" and 0 "abstain"; the continued public hearing will be continued again to October 15, 2020 at 7:05 p.m. (The board members then briefly discussed what Mr. Kiritsy needed to include in his brief. Chris Stamas, also of 243 Woodland Street, then made some comments about dimensional aspects of the lot, including width and frontage. Mr. Kiritsy responded that the applicant has a special permit. Mr. Olson added that the board heard the comment, noting that the width in the front of the property was not necessarily the same going back in the lot).

(At 8:37 p.m., prior to the start of the next public hearing, the board took a brief recess until 8:40 p.m.).

Public Hearing, Branded Realty Group II, LLC, for Special Permit under Section 3.2.F.4 for the construction of a new 2,400 square-foot food service building with drive-through window at 262-264 West Boylston St.

Public Hearing, Branded Realty Group II, LLC, for Variance under Section 5.6.C.2 for the construction of a second free-standing sign for Dunkin' at 262 West Boylston St.

(Patrick Healy, Matthew Doyle, Rob Branca, Corinne Tobias and Brad Wyatt, a family member of the family trust owning the property, represented). (Mr. Rajeshkumar read aloud the public hearing notice for the special permit, and Mr. Femia read aloud the notice for the variance). Mr. Femia noted that there was a written opinion from Vincent Vignaly, a Planning Board member, but not from the Planning Board itself. Mr. Olson responded that, since the boards were notified 35 days in advance of the hearing, the Planning Board itself had time to comment. Mr. Branca informed the board that he had no objection to Vincent Vignaly's report being read into the record as a resident. After discussion between Mr. Olson and Mr. Branca, they decided to begin the special permit hearing first and then, at some point, the sign variance petition can be discussed. Mr. Branca began by explaining that the board is empowered to grant a special permit, where the conditions and safeguards required by the bylaw have been made after determining that it will not be detrimental to the public. Mr. Branca believed that the evidence and testimony will show that the standards were met for the special permit and that the board should grant it, especially as it is feet away from where they are located. He believed that they have designed it such that it would be beneficial for the public's health, safety and welfare; he asserted that it would be of benefit to the community as a seven-figure investment. Mr. Branca explained that they will redo the present situation such that comments (for example, from Planning Board and the Police Dept.) will be addressed regarding turning left in a variety of places as is the case now, with several curb cuts and entrances; he asserted that what

they propose will be a safer situation, with controlled traffic flow. He noted that there had been no accidents at their drive-through entrance from 2015-2019, which he said was stated in their Traffic Study that was supposedly submitted. Mr. Branca mentioned that there are concerns with the Dairy Queen's traffic situation, but noted that Dunkin's proposal will be of a different design and they will be combined with the CVS parking lot so there will be a much larger space, more parking and travel lanes and a designated way to go in and out; they opined that a left turn in will be virtually impossible there and added that they will provide a signalized intersection there to make a left turn into the site.

In response to Mr. Rajeshkumar, Mr. Branca specified the planned traffic directions; he noted that the signalized intersection entrance in will be off of Woodland Street, they obtained use of an easement from CVS in a letter, and in an agreement with CVS agreed that it will be a unified, modern more attractive development than having an empty lot between them right now, and he reiterated that he thought it would be beneficial to the community and that the design will not be the same as that of Dairy Queen as Dairy Queen has entrances from both directions and traffic at mostly all hours of the day.

Mr. Branca continued, that most of Dunkin's business is from 6 to 10 a.m., with mostly right turns in and out. He noted that this is their business model, and they have 90 units such as this throughout the country, which are right turn in and out. He noted that they purchased the existing site; they did not build it or design it. They did design the proposed store, and he asserted that there will be more efficient drive-through operations, with low to no touch, and extended their digital app so that there can be no physical contact, therefore promoting health and safety of the community; but he explained that they cannot have as much of that with the present site as he opined that it is now antiquated, and they will provide the more current Dunkin' image and the more modern technology will allow them to provide measures that will be more convenient, safe and for the comfort of the public. Mr. Branca continued, regarding traffic concerns, asserting that there would be no additional traffic as there would be mainly existing customers coming to be better served and there will be additional parking because of the CVS lot. He believed that there will be a better configuration, whereas Dairy Queen has customers from both sides and other areas coming in, and he asserted that Dunkin is not a destination location but for convenience as there are others not too far away. Mr. Branca also said that they have attempted to solve the problems with the current site and traffic issues, and stated that they have CVS' support (in the record).

Mr. Rajeshkumar asked Mr. Branca to explain how cars will enter and to show the board the flow of traffic? Mr. Branca explained that the majority of cars will enter by taking a the right from Route 12 (he showed the board the plan and pointed out how traffic will move) and either exit onto Route 12 (right turn), or if they want to go left they would cross the CVS parking lot and exit onto Woodland St., or use the signalized intersection to take a left onto Route 12. In response to Mr. Rajeshkumar, Mr. Branca replied that cars can only enter from the right; they would have to have a signal to come in from the left. He explained that a curb cut would make it difficult to take a left, and added that there are also signs prohibiting that. He asserted that their proposal will result in a safer, more efficient traffic pattern. Mr. Branca pointed out that a customer can park at CVS also or go through the drive-through queue, and asserted that it will be designed for vehicles to go in one direction. He mentioned that there are other locations with similar designs that work, given one example of a Walgreen's in Ohio; he asserted that this design benefits both the business and the community with one-stop shopping. (The board then asked Mr. Branca to read aloud the aforementioned letter from CVS, which was received after the start of the meeting, into the record, and to send the board a copy).

In response to Mr. Femia, Mr. Branca replied that there will be 12 parking spaces in the Dunkin lot; he explained that employees usually would park in the CVS lot, but that lot will also provide parking for customers. Mr. Femia asked how the size will compare to the new Dunkin locations in Sterling and Boylston? Mr. Branca replied that the drive-through in Boylston is probably most similar, as it wraps around the building, but that the size of the one in Sterling is probably about the same. Mr. Femia commented that the one in Sterling cannot seat 24, so the one the applicants' plan is bigger. Mr. Branca added that this will be a typical size store that is not in a

gas station. Mr. Branca continued to explain, in response to Mr. Femia's questions, that they plan to use beer taps as are used in the Sterling location, and will have more variety in beverages, and in response to Mr. Femia explained that they will have their own maintenance company to take care of trash and snow removal; he explained that they have loaders to remove the snow, and usually plow along with removing the snow. He added that these things will usually be done before the AM rush hour.

Next, Mr. Femia addressed the concern that, even though the traffic situation is not supposed to be the same as at Dairy Queen, there will still be vehicles extending out of the driveway into the street as there is at Dairy Queen when it's busy. Mr. Branca asserted that they are designing the area so that does not happen, and this is one reason why they will wrap the drive-through line around the back of the building. He explained that there will be room in the parking lot to park which will provide more capacity for vehicles, more room for the drive-through line, and also customers coming in will do other errands at the same time.

In response to another question from Mr. Femia, Mr. Branca replied that the hours of operation are 5:00 a.m. to 7:00 p.m. now, but they will figure out what hours they will need to be open. He reiterated that the speed of service will be better due to the better design and technology, and therefore traffic won't back up.

Next, in response to Mr. Femia, Mr. Branca responded that they want a second sign to enhance safety, so that people not familiar with the area will see the sign in advance to plan their entry into the lot. Mr. Doyle added that they use a wrap-type of drive-through rather than a horseshoe as it will work well at the site. In response to a question from Mr. Orciani, he responded that 12 vehicles will be able to fit in the drive-through line, 15 if they are backed up or speeding through. Mr. Branca said that, when it is busy, they have put cars there to see how they move through, and they observed that there was plenty of room, with a lot of width. He added that the lot is large and the owners intended there to be further development, and asserted that it is designed to accommodate cross traffic.

In response to Mr. Femia, Mr. Branca replied that they covered a variety of days and times to observe traffic; they provided data on the number of customers and at what times they went there, shown as an exhibit in the traffic study, and noted that most traffic was in the morning on weekdays. Mr. Femia, Mr. Olson and Ms. Goldstein then determined that the board did not receive a copy of the traffic study, so Mr. Femia asked Mr. Branca to make sure that the board receives at least one copy. Mr. Branca opined that they gave the board a hard copy. Corinne Tobias, Traffic Consultant, added that they also responded to comments from Wayne Amico of VHB from Planning Board regarding traffic, and she noted that there has been a level of Town review in this process. Mr. Olson commented that this is generally part of Site Plan Review. Before Ms. Tobias was to make her presentation, Mr. Olson asked Mr. Branca about the 6 to 10 a.m. time period, where it seemed as though most entered the site by taking a right turn south on route 12 into the Dunkin lot. Mr. Branca responded that, during rush periods, more people take right turns there. Mr. Olson asked if the proposed plan allows a left turn from Route 12 into the current CVS entrance? Mr. Branca responded that it does not, as there are signs and will be more signs, and asserted that the traffic study shows that most customers go into Woodland Street first if taking a left. Mr. Olson responded that he was concerned that people not from the area, going north on Route 12, would try to make a left turn there, not knowing that they must go onto Woodland St. first, and thought that the Traffic Consultant could address some of these things. Mr. Branca responded that there are people that do that now, and he was not sure it would be possible to change the curb cut there to stop that. Mr. Olson also had concerns that, if cars took a left into the present CVS entrance, this is closer to the intersection and there might not be enough room for cars that queue. Mr. Healy continued, that prior to filing Planning Board asked them to look at several improvements to stop left turns into the existing CVS driveway, such as rising the height of the curbing on the separating island in the driveway, which would make a left turn difficult; also, he said that their new entrance would be angled away, making a left turn difficult. In response to Mr. Olson, Mr. Healy replied that there are signs against the left turn in both directions on Route 12, and there will be a left-turn signal, but they will repeat the signs. Ms. Tobias added that there is a large striped gore area also which she opined would discourage left turns.

At Mr. Rajeshkumar's request, Mr. Healy traced the route through from Woodland St., to CVS, to Dunkin, and then to the exit. Mr. Healy asserted that one would follow the same traffic pattern as through CVS basically; one could go through the drive-through lane, then can turn right onto Route 12, or turn left and go through the CVS lot and onto Woodland Street. He responded to Mr. Rajeshkumar that the back of CVS will be one-way. Mr. Healy then showed Mr. Rajeshkumar how to get in then out, through Woodland Street.

Next, Ms. Tobias gave a brief powerpoint presentation of the highlights of the traffic study. She pointed out first an overview of the study area, existing and proposed, including the intersection and turns in and out. She discussed traffic data collection, with counts affected by COVID-19 restrictions, and how they obtained their data, using historical counts for the intersection and historical growth rates from MA DOT to capture real peak periods, not reduced as they are now; speed data on Woodland and West Boylston Streets; site driveways and how they obtained their data; crash history, obtained from MA DOT, which showed all locations to be below average in accidents; trip generation data, which showed they mainly redistributed trips, not adding additional trips; traffic data distribution; and operations analysis. She said that MA DOT reviewed the findings, and she asserted that they were comfortable with signal timing and changes agreed with the relocation. She mentioned that Planning Board did not overall disagree with their approach to the study. She said that there was some effect on sight distance at the intersection due to existing vegetation and landscaping, which she said will be removed, and they do not anticipate issues once the design is in place. In conclusion, Ms. Tobias asserted that there were minor impacts of the intersection of Woodland and West Boylston Streets, and asserted that signal re-timing within existing parameters of the signal could minimize impact on the AM and PM traffic. With the low crash rates, she said that no real safety issues were found, and reiterated that vegetation will be cleared. Regarding comments concerning traffic through CVS (those present looked at the site plan), they want to provide wayfinding signage, enhanced signage such as additional stop signs at all approaches, they will use striping to make the lanes feel narrower and let people know there is through traffic there, and they want to extend the drive-through to allow additional space for overflow of vehicles. She noted that they feel that it will be an improvement over existing conditions, and, regarding left turns (she brought up the view of the street), there should be in addition to the existing barriers here and there they plan additional signage and a yellow-striped gore area.

In response to Mr. Femia, Ms. Tobias replied that Wayne Amico of VHB gave them a letter and she asserted that they prepared and submitted responses to those comments. Mr. Femia asked, if someone comes down Woodland St. to the traffic light, will there be a sign at the CVS entrance indicating where to turn to Dunkin? Mr. Branca replied that they can request that from CVS, but cannot guarantee that CVS will do that. In response to a question from Mr. Femia, Ms. Tobias replied that they had not heard back from VHB as to whether the issues were resolved, but she said that mostly there were not issues with their methods; there were questions about the new site driveway, coordination with MA DOT, and request for traffic calming measures. Mr. Branca continued, that Mr. Amico told them to assume that more traffic will be coming, but Mr. Branca asserted that they know the sales and believed that there is not anything that would cause more people to come there.

Mr. Femia asked Ms. Tobias if they collect data from the weekends at all? Ms. Tobias replied that they find Thursdays and Fridays to be the busiest, and as they were limited to available days they used historical counts of customers, with Thursdays and Fridays being the busiest. Mr. Branca added, that the regular people usually do not work on the weekends and they usually have the more junior people, asserting that it is difficult to attract labor. And he asserted that this is another reason for a new store with a new service model. In response to a question from Mr. Femia, Mr. Branca replied that the free-standing sign will comply with the bylaws, and they want a second sign since it will be a unified development in a single lot, it will be a new style Dunkin, and for sight from distance purposes. In response to Mr. Femia, Mr. Branca, referring to the site plan, replied that the sign would be to the left of their entrance. Ms. Tobias continued, that they applied a generic background growth rate to all the trips. Mr. Branca said that there is an assumed growth rate of 2 percent; Ms. Tobias said a 1.5 percent growth rate per year. Mr. Rajeshkumar mentioned that a marijuana dispensary will be opening soon and opined

that it will increase West Boylston St. traffic; Ms. Tobias responded that this was not figured into the data. Mr. Branca added that it will be near the Post Office, and opined that customers will go there, leave, and not necessarily go to their Dunkin' site; he added that now many marijuana sites are by appointment only, noted that towns can limit the number of customers, and that they are not always open. Mr. Rajeshkumar responded, opining that, from Franklin Street and Route 12, there is always a lot of traffic, due to locations such as Walmart, the Wachusett Plaza, and the current Dunkin'. He asked, if the queue goes through CVS to the signal, how many vehicles would be there before the light? He commented that, currently, at least 4 to 5 are in the queue, but if they go to the signal, opined that there will be no room. Mr. Branca responded that the timing of lights would account for this, and explained that the service analysis said that it should improve the traffic situation; he also opined that Dunkin' is a known entity, with known amounts of customers. Mr. Rajeshkumar was concerned that, with the current Dunkin', if cars take a right at least five cars can queue, and if they leave CVS, there may be a lot of cars waiting to go south on West Boylston Street. Mr. Branca responded that the proposed design will have two lots. Mr. Rajeshkumar opined that people will want to get out, not wait around. Mr. Branca asserted that there will be the same volume of cars and it will be closer to the signal. He explained that the main concern is cars queued up on the street, but asserted they will be queued at Dunkin' or CVS, which will be Dunkin's problem, and that there will be other ways for people to travel; they do not have to get coffee. He continued that there will be a choice with this design, whereas currently one can only leave Dunkin' onto Route 12. Regarding Saturdays, he said that people are out and about, and he acknowledged having difficulties with queueing of cars, but this would be a problem for his business to solve, and it will be safer and customers will not have to face people going left. He asserted that the new design will make vehicles behave more appropriately. Mr. Femia commented to Mr. Olson that he believed that the proposal would be a lot safer than the present situation. Mr. Olson continued that he had two questions; one question was regarding the drive-through, where the existing condition is that vehicles come from both directions on Route 12 to turn in to Dunkin', so queueing comes from cars or trucks, and there hadn't been many accidents so far, but the petitioner is proposing to shift traffic off of Route 12 and through the parking lot through CVS, and he asked if that would be a danger to pedestrian safety (CVS customers)? Referring to the plan which showed the CVS area, Ms. Tobias asserted that most pedestrians to CVS will not go through the drive-through; she explained that the outside lane will be wide open with good sight distance and that traffic will move slower than on Route 12; she asserted that most traffic will slow down to get to CVS and won't interact with foot traffic to Dunkin', and reiterated that visibility will be good. Mr. Branca continued, describing where most CVS customers and employees of CVS and Dunkin' would park. He thought danger will be minimized. Ms. Tobias added, regarding the queueing issue, that southbound one lane of traffic will become three lanes, with gaps to allow people to come out even if traffic is backed up.

Mr. Benson continued, opining that it is a terrible turn going north on Route 12 and taking a left onto Woodland St., with not much room in the left lane, with an acute angle then a sharp turn into CVS. He thought that left lane use is not very practical and that most people will take a left into Dunkin', spin around and then take a right-hand turn. He also asked what will happen when the existing Dunkin' becomes a new food restaurant, which will add another restaurant to a small footprint? He also asked what will be done about the utility pole there where there appears that there will be a curb cut? (He pointed out the area that he was talking about). Mr. Branca replied that they will have to relocate it behind the sidewalk, approximately six feet. Mr. Healy verified this using plan C4 (utility plan). Mr. Benson opined that the proposal would not be especially practical, due to the proximity to the intersection and with the sharp angle, there cannot be many cars in the queue. Mr. Branca responded, asserting that most of the business goes south on Route 12, and reiterated that they will not attract more people. Mr. Benson responded, that there may not be an increase in customers, but at this time they can make a left turn; he added that weekends are bad also, and there tends to be backup, but he noted that there are few accidents there. He was also concerned about the density of drive-through establishments. Mr. Branca opined that, regarding the left turn issue, that cars will have to go through the lot slowly rather than racing to take a left turn,

so it should be safer. Ms. Tobias agreed that there will be more left turns at the signal, but without incident, which will be better than the present situation of uncontrolled left turns. Mr. Benson responded that somehow people have done it without accidents, but Ms. Tobias opined that it is stressful to navigate now. Mr. Benson commented again on the sharpness of the angle when taking a left at Woodland St. into CVS and opined that it is not intended for an increased traffic flow and will tie up Route 12 more. Ms. Tobias opined that they are proposing timing adjustments to allow the shift in traffic to be accommodated; Mr. Benson opined that, on the weekends especially, that could hold up Route 12 more, but Ms. Tobias asserted that this would not happen. Mr. Rajeshkumar then expanded on Mr. Benson's comment, opining that currently people go through Woodland Street to avoid taking a left onto Route 12 from Shrine Ave., because there is a signal, but if this traffic is added on to that, at least now they can go through Dunkin' to get out to Route 12. Mr. Femia then opined that it is just as difficult to make a left turn from the north. Mr. Femia asked Mr. Branca if they could talk to MA DOT regarding a left-turn signal? Mr. Branca replied, that in his experience, that requires a certain volume of traffic, and asserted that if the traffic does get that troublesome, then signalized lights could be added, but he had no problem talking with them about it. Mr. Femia opined that there will be an increase in traffic, and suggested again that they have a conversation with MA DOT. Ms. Tobias responded that they had been in touch with MA DOT, and that MA DOT reviewed the traffic study and generally agreed with what they said but would raise the signal issue. Mr. Femia, discussing the example of a crosswalk at Cumberland Farms, opined that it would be beneficial for the applicants to look into a signal. Mr. Branca replied that they will make the request, but also asked the board to do so.

Mr. Branca then addressed Mr. Benson's comment about the proliferation of drive-throughs in the area; he explained that, if one day they leave the existing site, someone else will have to go back to the Town to get permission to do it, and if it's a high-frequency business then he opined that this is where the concern should be directed, not if it's a low-frequency business, such as a bank. As an example, he discussed Gourmet Donuts and their drive-through, noting that it is a lower-frequency business than theirs; he also opined that it was unlikely that another restaurant will come to West Boylston anytime soon due to the COVID situation. Mr. Branca also asserted that, as a sub-tenant they cannot get the property owner to fix the property so they are looking to move; with a hill, he opined that probably no one would want to climb it; he asserted that building there would be a challenge; he asserted that the Town has the ability to control high-frequency tenants and place conditions on them; and he opined that they (Dunkin') have been good neighbors and made the best of their situation. Mr. Branca thanked their customers and reiterated that they believe the proposal will serve the customers better, slow traffic down and make it safer. He noted that the number one problem that they have been asked to address was the left turn, and said that he would like to push for a left-hand turn signal, and noted that Walmart asked for the traffic signal going into their plaza.

In response to Mr. Femia, Mr. Olson replied that he was not sure how the Town would go about requesting of a signal from MA DOT, but thought at the least Planning Board or another board should make a formal request. Some suggestions were DPW or the Police Chief; Mr. Branca suggested Congressman O'Day, or the Lieutenant Governor, and said that he would be involved. Mr. Femia suggested that Ms. Tobias talk to MA DOT and go back to Planning Board and discuss it, and perhaps MA DOT will agree if they see what the situation is.

The board then discussed whether or not they should continue the public hearing. They agreed that they were open to continuing, for example so that they could read the traffic report. The board members discussed the fact that they would have liked to read the report. Mr. Branca claimed that the Town had the report, and that they are not hiding anything. Mr. Branca agreed that there was no need to rush, noting that the board identified the important questions. He reiterated several things that he opined previously, such as that this will be a safer design, and noted that, in the Midwest, the plazas are built like this, larger, modern plazas that bring vehicles into the plaza and they circulate around with controlled access points. He added that the Town can control the process, and opined that most of their customers are right-turn in and right-turn out. Mr. Femia disagreed, opining that more people make a left than what the applicants think. Mr. Branca agreed that this is their main

problem, and reiterated that vehicles won't be able to make a left turn with the new design. Ms. Tobias asserted that they made traffic assumptions based on existing customer data, and found that the driveway traffic was proportional to what was on the roadway, they assumed a heavy left turn in their data, and opined that their plan will be better in that respect also. Mr. Branca asserted that Gourmet Donuts captured the customers in the other direction, and that later in the day there is heavier traffic in that direction. Ms. Tobias asserted that, with the existing site, the associated plaza would be full with retail, and if another business comes along, there would be issues with the existing site that would have to be dealt with.

The board then discussed with the applicants continuing the public hearing to the November 17 meeting, as there is a full schedule planned for the October 15 meeting. Mr. Branca added that, meanwhile, he would contact MA DOT regarding the signal and get a copy of the traffic study to the board to review. Mr. Branca suggested that a joint request letter would be better, and he would ask CVS; also he said that they would waive the need to have the hearing within the required 60 days. In response to Mr. Femia, Mr. Olson replied that he was hesitant to have the board write a letter of support, as there is a current matter before the board and he did not want it to appear as if the board is advocating a particular position while trying to make a decision. It was suggested that the Town Administrator and Board of Selectmen discuss it. Mr. Olson told Mr. Branca that he was more comfortable having them contact the Town Administrator.

Mr. Olson then asked Mr. Branca if they believed that their situation met any of the criteria for a variance to be granted for the second sign? Mr. Branca asserted that there was a unique character of the land, for example regarding sight lines, traffic, and navigation. Mr. Olson verified that the sign would not be for advertising but for instruction. Mr. Branca continued, that the variance was necessary because CVS has a sign already, and opined that therefore the Dunkin establishment, with its unique ownership, needs a separate sign. In response to Mr. Rajeshkumar, Mr. Branca replied that the sign would be on the building and reiterated that it would be for commuters rather than regular customers and would be for safety purposes. (The board members then briefly discussed whether to continue both public hearings, or only the variance/special permit). (They then opened the hearing to public comment, with Mr. Olson instructing the public to give their names and addresses when speaking).

First to speak was Mary Noyes of 36 Woodland Street. She informed the board that she was a direct abutter to the CVS plaza. She mentioned concern with traffic, and noise from dumpsters emptying and delivery trucks, as well as blocking of the area. She said that she could write a letter to the board with additional concerns. Ms. Noyes asserted that none of her neighbors were contacted about the public hearings (Mr. Branca asserted that they were contacted). She mentioned Dairy Queen and its traffic being right down the road, and asked the board to consider everything. (After some questioning by the board, Ms. Noyes admitted that the neighborhood was notified about this, but the residents were surprised about the proposed project until they received the notices).

Next to speak was Brad Wyatt, whose mother is Barbara Wyatt, trustee of the trust that owns the property, and he said that he grew up at 262 and 264 West Boylston Street. He opined that it will be a better solution and will alleviate a lot of traffic concerns, and will help and not hurt. Barbara Wyatt explained that the Town requested that they put the two lots together, although she would have rather kept them separate; she thought that the project will be an improvement, and that she sees growth and moving forward. She mentioned that Ms. Noyes has a business on her property and opined that CVS has been good to her. Ms. Noyes agreed that CVS has been good to her, but mentioned annoyances such as their opening at 8 a.m. and dumpsters being emptied.

Jeff Harris of 40 Woodland Street spoke next. He agreed with Ms. Noyes, mentioning the delivery and trash issues. But he opined that there could be improvements in traffic flow.

Selectman Chris Rucho of Colonial Drive spoke next. He acknowledged that businesses should be helped, but (showing a photo to those present) he asked everyone how it would look there when cars are backed up? He also opined that it wouldn't be easy to solve the left turn problem with a signal.

With no further public comments, Mr. Femia then made a motion to continue the public hearings to November 19, 2020, at 7:05 p.m. Mr. Benson seconded. In response to Mr. Olson, all board members said that they can be present at that meeting at that time. After some discussion with Mr. Branca, Mr. Femia made a motion for the board to vote on the variance this evening. Mr. Rajeshkumar seconded. All in favor. Mr. Femia then made a motion to withdraw the first motion regarding continuance of both hearings. Mr. Rajeshkumar seconded. The roll call vote was as follows:

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

The vote was five “yes”, 0 “no” and 0 “abstain”; the motion passed.

Mr. Femia then made a motion to continued the public hearing for the special permit until November 19, 2020, at 7:05 p.m. Mr. Rajeshkumar seconded. The roll call vote was as follows:

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

The vote was 5 “yes”, 0 “no” and 0 “abstain”; the motion passed.

The board then discussed whether or not they thought that a free-standing sign at Dunkin was necessary or met the criteria of a variance. Mr. Femia made a motion to approve the variance for construction of a free-standing sign at Dunkin. Mr. Rajeshkumar seconded. The roll call vote was as follows:

Mr. Orciani – “no”
Mr. Benson – “no”
Mr. Femia – “yes”
Mr. Rajeshkumar – “no”
Mr. Olson – “no”

The vote was 1 “yes”, 4 “no” and 0 “abstain”, therefore the variance was denied.

Mr. Olson reiterated that the special permit will be continued to November 19 at 7:05 p.m.

Other Business:

Treasurer's/Financial Report:

This was not discussed this evening.

Next Scheduled ZBA Meeting – THURSDAY, OCTOBER 15, 2020

Miscellaneous Mail and Paperwork Needing Signatures/Future Agenda Items/ZBA Reports:

This was not discussed this evening.

With no further comments by anyone, Mr. Rajeshkumar made a motion to adjourn at 11:26 p.m. Mr. Femia seconded. The roll call vote was as follows:

Mr. Orciani – “yes”

Mr. Benson – “yes”

Mr. Femia – “yes”

Mr. Rajeshkumar – “yes”

Mr. Olson – “yes”

With a vote of 5 “yes”, 0 “no” and 0 “abstain”, the meeting was adjourned at 11:26 p.m.

Submitted by: _____

Date submitted: _____

Approved by: _____

