



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

[Zoning Board of Appeals] Meeting Minutes

**Date / Time / Location of
Meeting**

Thursday, January 19, 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, Nathaniel Orciani and Secretary Toby Goldstein

Members NOT Present

Andrew Feland and Mark Wyatt (Associate Members)

Invited Guests

Welcome – Call to Order

Time: 7:14 p.m.

Approval of Previous Minutes

December 15, 2022

Motion Originator: Mr. Rajeshkumar

Motion Seconded: Mr. Orciani

Treasurer – Financial Report

Not discussed at this meeting.

Motion to Accept N/A

Seconded N/A

At 7:14 p.m. (due to technical difficulties), Mr. Olson called the meeting to order. Mr. Olson introduced himself and the board members present, noting that a full board was present.

Minutes of December 15, 2022 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. Orciani seconded. After there were no other comments made on the minutes, Mr. Olson took a roll call vote:

Mr. Rajeshkumar – “yes”

Mr. Orciani – “yes”

Mr. Benson – “yes”

Mr. Femia – “abstain” (joined later due to technical difficulties)

Mr. Olson – “yes”

The vote was 4 “yes”, 0 “no” and 1 “abstain”, 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, Robert Gallo, Bill Scully and Steven Gallo represented). (Mr. Olson informed the board and Ms. Goldstein that they were opening the continued public hearing at 7:20, and there was no need to read the public hearing notice again as it was read aloud previously). Mr. Olson discussed the public hearing procedure for all present; the petitioner would make a presentation of what he/she is requesting and the information for the board and public, then the board would ask any questions it might have, Mr. Olson might ask the Building Inspector for input and to answer questions, and then he would open the hearing to public questions and comments. Mr. Femia (who was now online) commented that he was not sure how he could vote this evening because the board only received the traffic study results nine hours before the meeting and he thought that he might not be able to vote this evening.

Atty. Kurzon then thanked the Chair and the board and introduced herself and those representing the petitioner, Carol McAdam (who was not present yet but Ms. Kurzon thought she would be), Mr. Scully (Traffic Engineer), Mr. Steven Gallo (who worked with H, S and T in completing the site plan) and Mr. Robert Gallo (General Manager of Classic Suites). Ms. Kurzon explained that they are petitioning for special permit pursuant to Zoning Bylaws Section 3.2.F.4 (Schedule of Use Regulations for Fast-food and Drive-in Restaurants), for the building at 181 West Boylston Street, which she explained was originally the entrance for a Howard Johnson restaurant, then was built out for office use, and now the petitioner wants to use it as an upscale café` restaurant and coffee shop with a drive-through. Ms. Kurzon gave the background of the filing, noting that they filed the petition on 10/3/22, along with applicable forms including the Zoning Interpretation Form from the Building Inspector (George Tignor). She noted that they also submitted an updated site plan, dated 1/12/23, a building floor plan (dated 12/28/22) and traffic plan (dated 1/17/23); the aforementioned traffic study, which was sent to the board today, was dated 1/18/23.

Ms. Kurzon continued to give the background of the petitioner with the Town. She appeared before Planning Board for what she called an informal Site Plan Review, and Ms. Kurzon asserted that Site Plan Review was not into play because it is required for 15 parking spaces or more; however, she asserted that there will only be 14 spaces. She also asserted that Site Plan Review was not necessary for other reasons, which she discussed, and that it was decided with Planning Board at the informal Site Plan Review that actual Site Plan Review was not necessary. She said that Mr. Tignor looked at the property and informed them that they would need to apply for a special permit from the ZBA. Ms. Kurzon described the history of the filing; the applicant filed the special permit paperwork on October 3, 2022 and she said that they were ready for the November 15, 2022 ZBA meeting, but in the interim the Planning Board Chair Sarah Miles issued a comment letter on October 13, 2022, and Ms. Kurzon responded formally on December 7, 2022 to all of Planning Board’s issues that they listed. Ms. Kurzon explained that they did not receive a copy of this comment letter until 24 hours before the ZBA meeting, which was not enough time to adequately respond to it. She asserted that the ZBA should have a copy of these comments. She noted that Planning Board had issues with the July 22, 2022 site plan, so the petitioner had it revised. They also needed a traffic engineer’s review for the proposed drive-through so they retained one, and the report was

submitted to ZBA today. Ms. Kurzon noted that there were other site plan issues, and asserted that she set forth in her 12/7/22 letter 7 items that were listed on page 2 and she discussed each one on page 3.

She continued that the Chair of the Conservation Commission sent an email to Mr. Olson on November 13, 2022 regarding conservation issues, and these were addressed in a November 16, 2022 email from Scott Morrison of EcoTec. Ms. Kurzon noted that she heard nothing back from either board regarding their addressing of comments. Finally, she described how the site plan was changed; these changes involved interior seating (40 seats to 32, 20 exterior and 12 interior), and she stated that the building size is 900 square feet and the patio 308 square feet. She asserted that the proposed seating of 32 requires 14 parking spaces, and there will be 8 in front and 6 in back (in the motel parking lot). There will be a single handicapped space (noting that one space is required for 25 parking spaces according to ADA regulations), with five feet on the side for wheelchair access in and out.

Next, she discussed the traffic report that addressed traffic issues that were mentioned. She discussed who the engineer was that took care of this (Bill Scully). In summary, she explained that they conducted a traffic circulation review and went through existing conditions, reviewed the proposed site plan layout, the original and amended with the traffic engineer (she gave the dates), looked at the current site plan revision (1/12/23), estimated site trip activity, then concluded. She wanted to have Mr. Scully give an overview of the traffic study, but Mr. Olson asked for questions.

Mr. Femia continued, referring to the comment letter from the Conservation Commission that was mentioned before. He asserted that, after reading it, he had questions, and opined that the November 16 letter from EcoTec did not address all the issues that Mr. Chase of the Concomm listed in his letter of 11/13/22. Ms. Kurzon responded, asserting that, in the last paragraph of the EcoTec letter, Mr. Morrison mentioned that he went to the site to assess the wetland resource area and determine if Concomm application was required. He determined that the proposed project was greater than 200 feet from the buffer zone or a resource area, so it is not regulated by the Wetlands Protection Act and no Concomm review is needed. Mr. Morrison opined that Chairperson Chase's comments were all related to issues not under regulation by the Wetlands Protection Act. Regarding Mr. Chase's last question as to whether a contiguous entrance/exit would be allowed by MA DOT, Mr. Morrison asserted that this is not related to the Wetlands Protection Act either. Ms. Kurzon said that Steven Gallo spoke to the MA DOT head for Worcester County, who said that it will not be public highway so it will not be affecting ingress or egress and will not affect permitting by MA DOT Highway Division.

Mr. Femia responded, asserting that the Concomm letter specifically asked for more information on the parking area materials, drainage and sheet water going on the State highway and wanted the hydrology in more detail, and Mr. Femia opined that he did not see those things addressed or where all the water would be going. Ms. Kurzon responded, first asserting that the EcoTec letter stated that the building will be renovated with no proposed expansion, but existing access and pavement used if possible and additional pavement proposed would be all asphalt (1,200 square feet extra) on the site plan at the back of the coffee shop. She added that 324+/- square feet is proposed for a concrete sidewalk. Mr. Femia reiterated that the Conservation Commission needed to know the hydrology of the project, and explained that the ZBA is required to send a new petition to other Town boards. He wanted to verify that MA DOT would allowing the proposal? Ms. Kurzon reiterated that the head of MA DOT Highway Division confirmed that this area was not State highway so there were no ingress or egress issues for them. She asserted that, with respect to hydrology, the Conservation Commission's main purpose was for situations where the Wetlands Protection Act is in effect, and opined that hydrology would relate to that, so they concluded that this had been addressed. Robert Gallo continued that they spoke to MA DOT and Mr. Scully and they are not doing work on the entrance and there is no new hydrology to be considered. He asserted that everything on the plan except the crossover lateral connecting the two lots is existing. He claimed that, if they are not within 40 feet of the center line and since they are not doing anything except painting, no permit from MA DOT is needed (he claimed that Mr. Scully would back up what he said). He reiterated that they are not affected

by the Conservation Commission because their work will not be within 200 feet of the wetlands and they are not changing hydrology, and the parking already exists (he described the size of the parking area); they are only changing one lateral.

Mr. Olson continued that he wanted to discuss procedure. With respect to procedure, he opined that it was appropriate to request a special permit for the drive-through. With respect to Site Plan Review with Planning Board, he agreed that there are certain triggers identified in the zoning bylaws for Site Plan Review. Mr. Olson asserted that one trigger seemed most relevant, that being change of use involving 15 or more parking spaces. He opined that, under the zoning bylaws, it seemed like a change of use of the building. He referred to Section 5.2B (parking requirements for drive-throughs and restaurants), and he opined that two sub-subsections, (h) (for the restaurant) and (i) (for the drive-through), seem to apply in the context of calculating the number of parking spaces involved. He noted that Mr. Gallo mentioned needing a space for every four seats (sub-subsection h), and sub-subsection (i), one parking space per 40 square feet of gross floor area, and Ms. Kurzon had mentioned an interior footage of 900 square feet. But Mr. Olson continued, according to Sec. 5.2.B.1(i), 15 spaces are required for 600 square feet of gross floor area, which this building exceeds. Therefore, because of Sec. 5.2.B.1(i), greater than 15 spaces are involved, so to obtain zoning relief, not only is a special permit from ZBA for drive-through relief but also Site Plan Review will be needed. Ms. Kurzon responded that she recalled a gross floor area of 634 square feet, not 900. Robert Gallo claimed that he had built a lot of restaurants and all parking was generated by the seating area, not square footage, and that gross area has nothing to do with seating for most designs. He asserted that they use parking to correspond to tables and seating areas and that was what they did in this case. He claimed that gross area is another interpretation but has no relation to seating or parking spaces, and said that they would have to define gross area because if it was only the seating area of the restaurant it wouldn't even be 300 square feet. Mr. Olson responded that he is looking at the bylaw and they need to go by that. Mr. Gallo claimed that they had done this before and they did not use gross area to determine parking but always looked at table area and seating. He asked how to define it? Mr. Olson responded that, in his opinion, gross floor area includes interior space and the patio area according to the bylaw, and added that they could remove the square footage for the restroom, utility room, energy, corridor, stairway and maintenance areas but the rest of the space is counted, and he did not see how they could get below the 600 square feet threshold for Site Plan Review.

Mr. Gallo opined that, regarding the patio, the outside is not part of the gross area of the restaurant itself, and thought that the area was probably close to, or even less than, 600 square feet. He explained that if they remove the bathroom and storage, the size would be 14' x 28' maximum, which is less than 400 square feet of actual usable area in the interior. He added that they went through the seating again, which is what they use mostly, and the building itself is only 28' x 28'. Showing all present the building plan, noting that the calculations are in the upper right of the plan, Mr. Olson explained that the top left showed 900 square feet of total interior space and 1,208 square feet with the patio, and stated that 600 square feet is required for 15 parking spaces and the petitioner would have to remove half of what was described here, and he did not think that they could remove half of the gross area to get below the threshold. Mr. Olson added, that in other similar projects in Town (such as Cumberland Farms and Clinton Savings Bank), they were required to obtain special permits and Site Plan Reviews.

Mr. Femia noted that he saw that the attorney sent a letter to Planning Board and ZBA on December 7, 2022, asserting that no Site Plan Review was required, and he asked if Planning Board agreed with this? He noted that he did not see anything from Planning Board about this letter from Ms. Kurzon. Mr. Olson replied that, under the zoning bylaws, it is not Planning Board's discretion to require Site Plan Review, but the bylaw controls it and he's trying to apply the bylaw to this case; he sees a greater than 600 square foot gross floor area on the plan and that's why he's coming to this conclusion. Mr. Gallo claimed that they were blindsided by that figure and said that they will reconfigure the square footage they will do that; he reiterated that they are only working with a 14' x 28' seating area, which would be less than 400 square feet, and claimed that the 28' x 28' building will be mainly storage with 14' x 28' used for seating. He also did not think that the patio is included in that. Mr. Olson

responded that nothing in the bylaws allows removal of square footage for the kitchen; they are allowed to use the stairs and restroom, but cannot reconfigure the building to reach less than 600 square feet, so he did not see the outcome being changed and the building is the size that it is and it also has a drive-through. Mr. Gallo responded that they looked at the seating, and asserted that they have plenty of parking and will not be adding pavement, but if the board wants to use the bylaw for square footage, they will do that. Mr. Olson responded that, under the bylaws, if they request a drive-through and restaurant, they need to add both together to find the total number of parking spaces involved. He said that he was willing to allow them to go back, and propose a possible change, but said that he did not know how this will change things given the uses being requested. Mr. Gallo responded, that if they are using the most stringent criteria (square footage), he claimed that they were not aware of that, and said that they can look at that to get an actual count to see if Site Plan Review is required. He reiterated that they are not adding anything other than lines in the parking area, and no pavement is being added except for a crossover. He noted that they can even add spaces by changing the size of the spaces. Mr. Olson responded that the board wants to get this right, and one requirement that the board has for granting the special permit is whether the proposal meets all the requirements of the bylaws.

Ms. Kurzon and Mr. Gallo agreed that they would continue the public hearing and look at the more stringent standards for square footage. Mr. Olson continued that all the same issues are looked at, whether or not Site Plan Review is required, and it is less about who reviews it than making sure it is reviewed correctly and in accordance with the bylaws. He added that, when the board sees these types of petitions, they are usually the types that require special permits and Site Plan Review. They also handle drainage issues and require engineers, and Planning Board is more familiar with these kinds of issues. He added that all of these issues will be looked at by someone before ZBA can give the zoning relief they are seeking. In response to Ms. Kurzon, Mr. Olson replied that there is nothing in the bylaws requiring one board to look at the request before the other board, if greater than one type of relief is required. He said, if Planning Board needs Site Plan Review, the ZBA can either continue the public hearing for a month or two, or the applicant can withdraw the petition and refile in the future but he did not recommend that. Mr. Olson said that he had no problem continuing to get the process going and that would make the ZBA's process easier. Mr. Gallo responded that he thought they should continue the public hearing, and look at the square footage, what's included, what the bylaw requires and what they need. He reiterated that they are not changing anything regarding hydrology and noted that the parking lot has been there 30 years and opined that the Conservation Commission is not involved with this.

Mr. Olson continued, regarding Site Plan Review, the bylaw is not triggered by new parking spaces, but triggers pertaining to change of use. He agreed regarding parking and hydrology, but opined that if Site Plan Review is needed, the process will be that much smoother. Mr. Gallo responded, opining that they are also following the bylaws, adding that, to the best of their knowledge, the parking is being properly done, but they want to continue and see the alternatives that they have to conform to for the more stringent requirements.

Mr. Olson thanked Mr. Gallo for his comments. He then explained that according to Section 5.2.B.1, multiple uses require space calculations for each use. In this case, regarding the coffee shop, whether there are 15 or more spaces, the calculation equals the sum of the number of spaces with one space for every 40 square feet of gross floor area (sub-subsection i) plus one space/four seats in the dining area (sub -subsection h). Also, he explained that one space/two seats is required where meals are not served or for self-service. He told Mr. Gallo that he would be glad to continue the public hearing, but reminded Mr. Gallo to be sure to look at (h) and (i), and if there are 15 or more spaces, Site Plan Review is required. In response to Mr. Gallo, Mr. Olson explained that the two separate uses are the seating in the restaurant and the drive-through, and pointed out a statement under Sec. 5.2.B.1 that multiple use requires space calculations for each applicable use. Mr. Gallo responded that he did not see two uses. Mr. Olson responded that this is the same standard held for other businesses in the past.

Mr. Rajeshkumar agreed with Mr. Olson that the public hearing should be continued and all involved should take their time in figuring out the process. Mr. Gallo reiterated that he disagreed with the idea of multiple

uses. Mr. Rajeshkumar replied that they will discuss this with the attorney. Mr. Gallo replied that they will continue for 30 days.

Steven Gallo continued, asserting that according to the email from Ms. Kurzon, Mr. Tignor had said that seating should be used to calculate number of parking spaces. He also said that that he had not seen the method previously mentioned by Mr. Olson used to calculate spaces. He said that, in his experience, he never used more than one bylaw to calculate seating for one space. Ms. Kurzon said that she went to the Building Inspector to clarify how to calculate the spaces. She believed that the interior was to be used to calculate spaces for a restaurant as defined in the bylaw. She agreed that they should continue for 30 days, and mentioned looking for case law applying to these issues. She claimed that they never had to add both together and utilize both for the same space, but would take one of two and apply it. She claimed that Mr. Tignor did clarify this.

Mr. Olson opined that if they go to case law, in the past it often was not exactly on-point with the Town's bylaws, and reiterated that Section 5.2.B.1 states that multiple uses require space calculation for each applicable use, and adding them together to get the total number of spaces, either for purposes of construction or for triggering Site Plan Review. He asserted that, in the Town's bylaw, the restaurant use and drive-through use are two different uses, and one requires a special permit but one does not, but if the case law is on-point, he will be glad to read it. He was in favor of continuing the public hearing for at least 30 days, but first asked for any comments from Mr. Tignor. Mr. Tignor responded that he agreed on the calculation given by Mr. Olson, and regarding what he told Ms. Kurzon, he said that he needed to go through his notes as he did not remember exactly what the question was or what he said and he would not comment on that right now as it was not in front of him.

Mr. Robert Gallo responded, asking how they divide the building and determine the areas of what would be the takeout and what would be the restaurant? He reiterated that he thought that there would be just one use, and that one bylaw would apply and not two. He asked the board to tell them how to figure what goes with the takeout and what goes with the restaurant? He opined that it is still the same area, with the same cooks and the same kitchen. Mr. Olson responded, asserting that however this calculation ultimately comes out will have no impact on the review outcome, just who will be doing the review; it will not determine if they obtain relief, only who would be the proper board to hear the issues.

Mr. Olson then asked any member of the public who was present to give his/her name, address, and question or comment? There was no response. He then asked the board if they had any more comments? Mr. Femia replied that he agreed with Mr. Olson that there are two uses involved, but he was not in favor of continuing the public hearing. The reason was that if case law was found, Mr. Femia did not want the information the same day as the meeting as was the case with the Traffic Study that was received today by the board. Mr. Olson asked Ms. Kurzon if they continue for 30 days, can everything be done 10 or more days before the next meeting? Ms. Kurzon apologized for the late submission of the Traffic Study and replied that they will have their information 10 days before the meeting (Mr. Olson noted that it would need to be to the board by Monday, February 6, and she agreed that they can do that). Mr. Olson then asked for a motion to continue the Public Hearing to February 16, 2023, at 7:05 p.m., and it would be a remote meeting again. Mr. Benson made the motion. Mr. Orciani seconded. Mr. Olson then took a voice vote:

Mr. Rajeshkumar – “yes”

Me. Orciani – “yes”

Mr. Benson – “yes”

Mr. Femia – “no”

Mr. Olson – “yes”

The vote was 4 “yes” to 1 “no”, the motion carried, therefore the public hearing was continued to February 16, 2023, at 7:05 p.m., via Zoom. Mr. Olson thanked everyone, and reminded the representatives for the petitioner to get any information to the board by February 6.

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, February 16, 2023

With no further business to discuss, Mr. Femia made a motion to adjourn the meeting at 8:35 p.m. Mr. Orciani seconded. A roll call vote was taken by Mr. Olson:

Mr. Rajeshkumar – “yes”

Mr. Orciani – “yes”

Mr. Benson – “yes”

Mr. Femia – “left”

Mr. Olson – “yes”

The vote was 4 “yes”, 0 “no”, and the board adjourned at 8:35 p.m.

Submitted by: _____

Date: _____

Reviewed by: _____

