



TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS

127 Hartwell Street * West Boylston MA 01583 * zba@westboylston-ma.gov

MEETING MINUTES

October 30, 2012

Chairman: Philippe Chevalier

Members Present: Barbara Deschenes, Linda Isgro, and Charles Witkus

Others Present: Secretary Toby Goldstein

Public Hearing, Boylston Acquisition Limited, c/o S.R. Weiner Associates, 1330 Boylston Street, Chestnut Hill, MA, Petition Requesting an Amendment to Special Permit for Wal-Mart, 137 West Boylston Street:

At 7:15 p.m., Mr. Chevalier called the meeting to order, and opened the Public Hearing by reading the hearing notice that was posted. Mr. Chevalier discussed with the representatives for the applicant and the abutters that attended the fact that the board now had four members (upon the resignation of Stephen Hart), therefore four out of four members would have to vote in favor of the petition in order for it to pass. The applicant had the option of postponing the hearing until possibly the board would increase in size, but, with the 20-day appeal period in force, and the applicant seeking to open at earlier hours on November 23, the attorney representing the applicant opted to meet with the board as soon as possible.

Todd Brodeur of Fletcher Tilton PC, Attorneys at Law, representing Wal-Mart, stated that the applicant chose to continue, aware of the ZBA having a four-member board, and gave a presentation on Wal-Mart's behalf. The applicant is seeking an amendment to a Special Permit granted to them February 14, 2008, which allowed Wal-Mart to open at 5:00 a.m. on the day after Thanksgiving ("Black Friday"). Based on current retail trends, they would like to be allowed to open at 12:01 a.m. According to Mr. Brodeur, the Police Chief of West Boylston, Dennis Minnich, had no objections to it. He also stated that Wal-Mart is agreeable to the conditions listed in the 2008 special permit. Mr. Chevalier read from Mr. Minnich's letter, dated October 24, 2012, which is on file, and then asked for any questions from the board members.

Ms. Isgro discussed the fact that, at the Wal-Mart store in Millbury, there is a sign showing the New England Wal-Mart stores, and in MA, an opening time of 1:00 a.m. is listed. She questioned if West Boylston would set a precedent by a 12:01 opening. Also, currently, the West Boylston Wal-Mart store posts a sign advertising opening at 4:00 a.m. on "Black Friday", and she is concerned with issues of crowd hostility if the public in general is expecting a 4:00 opening time, but others are allowed inside hours earlier.

The current manager of this Wal-Mart branch, Michael DiFederico, explained that, in order to comply with Massachusetts Blue Laws, 12:01 a.m. would be the earliest time that the store itself could open to employees, and 1:00 a.m. would be the advertised time for customers to be able to start shopping.

Ms. Isgro then reiterated her concern for hostility issues with customers, if there is currently advertising that there will be a 4:00 opening time, yet the store actually opens at 1:00, or if this Wal-Mart does not have the same opening hours as other branches. She also opined, however, that regarding public safety, earlier opening might allow better handling of crowds.

Ms. Deschenes then asked, if the permit states an opening time of 5:00, why does the sign on the store state an opening of 4:00? Mr. DiFederico said that, when he became manager, that the information given to him stated 4:00 as the opening time and that he did not know that there was a permit that restricted the opening to 5:00. Therefore, last year the store opened at 4:00.

Mr. Chevalier then asked for any questions or comments from the abutters present. Sandy Loftus of 10 Brayton Road, who lives behind Wal-Mart, was concerned with noise issues if the store opens at 12:01. She discussed the fact that she frequently hears noise at night from the premises from such sources as a forklift, power washer and employees, and currently there is not supposed to be noise from activity between 9:00 p.m. and 6:30 a.m. according to their existing permit. Ms. Loftus said that there have been numerous complaints to the Police Department regarding this.

Ms. Isgro was also of the opinion that, if a crowd is present in the early morning, most likely machines will not be in use.

Susan Renaud of 221 Worcester Street, also an abutter, then said that she believed that it would not matter in terms of eliminating the noise from the premises, and also discussed the frequent turnover of management at Wal-Mart and possible miscommunication of operating rules at the facility. Gary Renaud, her husband, opined that there should be a yearly meeting regarding policies, as a system of checks and balances for the residents.

Mr. Chevalier then discussed that, originally, Wal-Mart requested the change in opening time, but no one came back to the board and they opened early anyway. Ms. Isgro said that she believes they are of the understanding, if the board grants this now, that they will not have to come back again. Ms. Isgro added that last year, the store opened earlier but it was advertised. She feels that they should be consistent with their advertising.

Mr. Chevalier then asked Mr. DiFederico about what kind of transition took place with the previous manager when Mr. DiFederico took over the position in August of this year. Mr. Chevalier suggested that perhaps, as a condition of issuance of the special permit, he could develop some type of transfer of information and policies for subsequent management and employees, and submit this to the ZBA. Ms. Renaud then suggested, that it would be a good idea as long as the management followed the rules, voicing concern that, if noise takes place the rest of the year, what will happen on "Black Friday"?

Mr. Chevalier continued, that there is no system for transfer of information, and suggested posting the documentation of conditions in a public place, so that management and employees would all know about it.

Ms. Deschenes suggested that the manager and abutters meet, and the abutters can give a list of grievances to the manager, who may not be aware of them. Ms. Loftus replied that he was given them already in July.

Mr. Witkus then asked the abutters if they had tried calling the police. Ms. Renaud replied, that as soon as the police leave, the store starts up their trucks again, which are not supposed to be operating between 9:00 p.m. and 6:30 a.m. She added that not only does delivery take place, but other unspecified activities, and that Wal-Mart disregards the restriction of activity that the Town ordered.

Ms. Isgro suggested that an earlier opening, which would maximize hours open, should decrease the crowd density on "Black Friday". Ms. Loftus cited 10/31/2006, when the store was to open at 5:00 a.m., that the crowd was so big that they had to open early, and she supposed that, on "Black Friday", a large crowd could form before 12:01 a.m. Ms. Renaud opined that West Boylston does not need to do this.

Ms. Deschenes then asked, how early the employees would need to be there? Mr. DiFederico said that the building would open at 12:01 (cannot open any earlier according to MA State Law), so customers would not be allowed in until between 12:30 and 1:00, and everyone must be out of the store by midnight on Wednesday, the day before Thanksgiving.

Ms. Renaud then asked, if the store opens at 12:01, how would that affect the part of the permit regarding restricted business activity outside prior to 6:30 a.m.? Mr. DiFederico answered that on the Wednesday before Thanksgiving will be the limit of stocking to be done.

Mr. Witkus then suggested to the abutters, that if they do not have help from the police, then they should approach Town Administrator Leon Gaumond, and ask him to meet with Wal-Mart.

Mr. Brodeur said that Mr. DiFederico should inform the employees of these restrictions, so that the 9-6:30 restrictions should be followed.

With no further questions from board members or audience, Mr. Chevalier then closed the public hearing, explaining that motions are in the affirmative and that the vote must be unanimous. Ms. Isgro then added that she hesitates not to allow the earlier opening. Mr. Chevalier said, if the board denies it, there is no opportunity to condition it. A major problem is, if there is a new manager, that he should know about the conditions. Ms. Isgro then added, if they allow a 12:01 opening, there will be no need for the store to return at some point to ask for an earlier opening. In return, the management must be mindful of noise in the back of the store. There should probably be an agreement that the noise in the back will not be any more detrimental due to the earlier opening. "Black Friday" is the only day that the special permit request is dealing with. But if the restrictions are violated and there are complaints, next year the permit may be challenged.

Mr. Witkus suggested that the permit be made effective for one year, to be extended permanently if the applicant follows it, but if they do not, it can be taken away in one year.

Mr. Chevalier then suggested wording it so that ZBA has the right to revoke the special permit if the conditions are not met in the first year, so that the applicant does not have to return every year, a one-year probation of sorts.

Ms. Deschenes added, to allow the applicant to open at 12:01, put the date in, then have them come back on an annual basis.

Mr. Chevalier then added, that the board should issue the special permit, but as a condition, the board has the right to revoke it, so that the applicant does not have to go through the public hearing process again. If they continue to violate the conditions, the special permit can be revoked. The issue is how to get them to comply. The board would call for a public hearing in August or September to review this.

Ms. Isgro then motioned to grant the amendment to the special permit for Boylston Acquisition Limited, c/o S.R. Weiner Associates, 1330 Boylston Street, under Section 3.25-20, for the retail store Wal-Mart, (at 137 West Boylston Street), to open for business at 12:01 a.m. instead of the

currently permitted 5:00 a.m., which was previously granted on February 14, 2008, on the Friday after Thanksgiving on an annual basis.

Mr. Chevalier added, subject to the conditions stipulated in the Special Permit granted on February 14, 2008, which will be restated in the current permit. Also, if the conditions are violated, the Zoning Board of Appeals reserves the right to revoke the special permit. This is to be revisited in September, 2013 (Mr. Brodeur suggested August 1, 2013). Ms. Deschenes seconded. Mr. Brodeur reiterated that there would be an annual review, and if the conditions have been met, the permit continues, and if not, there will be a public hearing to revoke it.

The votes were as follows: Ms. Deschenes – Yes

Mr. Chevalier – Yes

Ms. Isgro – Yes

Mr. Witkus – Yes

The motion carries. This concludes the public hearing.

Minutes of September 27 Meeting With Affordable Housing Trust:

After review of the minutes by the board members, Ms. Isgro motioned to accept the minutes as submitted. Mr. Witkus seconded. All in favor.

Minutes of September 13 Meeting:

After review of the minutes by the board, with corrections for spelling and wording (including an amendment by Mr. Chevalier, describing how, regarding the vote at that meeting to rule in favor of the petition by Meystre et al, during the roll call vote, Mr. Witkus voted “no,” and then Ms. Isgro turned to Mr. Witkus and stated, “Charlie, that’s not how you were supposed to vote. You were supposed to vote ‘yes.’” Then Mr. Witkus changed his vote to “yes.”) Ms. Deschenes motioned to accept the minutes as corrected. Mr. Witkus seconded. Three voted in favor, including Mr. Chevalier, and Ms. Isgro dissented, in disagreement with Mr. Chevalier’s amendment.

At 8:15 p.m., Ms. Deschenes motioned to adjourn the meeting. Mr. Witkus seconded. All in favor.

Respectfully submitted,

Toby S. Goldstein, Secretary

Date Accepted: _____

By: _____