



# TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS

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## MEETING MINUTES

July 22, 2013

Chairman: John Benson

Members Present: Francis Cahill (Clerk), Kristina Pedone, and Charles Witkus

Others Present: David Femia (Associate Member), Aaron Goodale III (Associate Member) and Secretary Toby Goldstein

Members Absent: Jon Meindersma (Vice-Chair) and Paul Hennessey (Associate Member).

The meeting was called to order at 7:03 p.m. by Mr. Benson.

Mr. Benson proceeded to read to the Board members the names of those members present and those absent. Referring to Section 6.2A of the Town's Zoning Bylaws, Mr. Benson designated Mr. Femia to replace Mr. Meindersma on the board. Therefore, there was a quorum present to conduct a meeting. Mr. Benson then proceeded to announce the (2) scheduled Public Hearings, for Sunshine Sign Company's Request for Variance (continued from May 28) and Mohamed Eldardir, Request for Special Permit, 231 West Boylston Street.

### **Continued Public Hearing, Sunshine Sign Company, Request for Variance, 306 West Boylston Street:**

(Ellen McGovern of Clinton Savings Bank and Gary Cunningham from Sunshine Sign represented). Mr. Benson informed those present that he e-mailed Mr. Cunningham, letting him know that, on July 1, he showed a proposed sign change to Mark Brodeur, Building Inspector. (The original sign proposed by the applicants for Clinton Savings Bank was not acceptable to the Town, so after the ZBA May 28 meeting, the applicants proposed a sign of a different size). First of all, the Building Inspector stated that roof signs are not permissible, according to the Town zoning bylaws. Second, there is a question of the previous roof sign on the building (when it was Friendly's) being grandfathered in as a previous, non-conforming sign, which might allow this new roof sign on the bank to be permissible. Mr. Cunningham said that he left copies of the revised sign with the Planning Board, who will meet on July 10. They did not give any opinion to ZBA on this revised sign.

Mr. Cunningham continued that, at the original public hearing meeting on May 28, the proposed sign was 40 sq. feet, too large under zoning bylaws. After meeting with the Planning Board and ZBA, the applicants agreed to reduce the size to 24 sq. feet. Mr. Cunningham said that he had thought that the size change was all that he needed to do; the roof issue did not come into question yet, and it is not known if the roof sign on Friendly's was legal or not.

Mr. Benson replied that, according to the Zoning Bylaw 1.4A, provided that previous non-conforming use of the Friendly's sign was not discontinued for greater than one year after it was taken down, the new roof sign for the bank would be allowed. Ms. McGovern opined that the Friendly's sign was removed at approximately the end of February, 2013, during renovation of the building, which is within the last 12 months.

Mr. Cunningham asked if the board was able to act upon the duration question tonight. Mr. Benson replied, that it is evident that the Friendly's sign came down within a year, so the sign complies with the statement made before about there being less than one year discontinuation of the previous non-conforming use, but the Building Inspector says that it complies with the regulations for a projecting sign, but that it is non-conforming because it is on the roof. Mr. Benson feels that the questions are, is it a roof sign, and is it non-conforming use that is continued?

Mr. Cunningham replied that the proposed sign is a roof sign, and when it is in place, the non-conforming use carries over to the subsequent tenant (Friendly's) if within one year of removal of the previous sign. Mr. Benson asked if the use is, in fact, continued, since this will be a new sign. Mr. Cahill asked Ms. McGovern if they duplicated Friendly's sign cabinet, to which she replied that the Friendly's sign was bigger. Mr. Benson then asked her if she views it as a different use, thus not being covered, and she replied that the sign is in the same placement as before, and added that they feel the location of the sign would be good for better visibility and better lighting for the night depository at the bank. Mr. Benson then said, according to the discussion at the May meeting, that the sign cabinet would not change from the previous sign. Mr. Cunningham replied that the construction of the cabinet would be similar to the original. Mr. Benson thought that the Friendly's sign was not illuminated, but Mr. Cunningham thought that it was.

Mr. Benson then opened the meeting to questions from the board. Mr. Cahill asked, if the cabinet is the same, then how would the sign be made smaller; Mr. Cunningham and Ms. McGovern replied that it is not the same cabinet, but of the same material. Mr. Benson said that Kieran Stone, who represented Sunshine Sign at the May meeting, said that the brackets were the same, but removed for repairs, and that the sign could fit in the same spot. Mr. Cunningham said that, with the sign being of a reduced size, the placement brackets may differ.

Mr. Femia then asked what was the purpose of the sign? He opined that the front lawn sign of the bank can be seen in either direction, but the roof sign can only be seen from one direction. Ms. McGovern replied that it would enhance the visibility of the bank and add security with the extra lighting. Mr. Femia suggested that they could simply install a light, and opined that there are no other banks in the area with a similar sign. Mr. Benson then said that a roof sign is non-conforming use, and the question is if it is grandfathered in as continued use of a non-conforming structure.

Reading from the zoning bylaws, Mr. Femia read, if a sign is non-conforming, the board can decide to grant the permit or not (according to 1.4B). Mr. Benson continued, that the Planning Board can give an opinion, but the ZBA makes the final decision. According to the bylaws, the previous use was non-conforming. The Building Inspector decided that it was an issue for the Planning Board to decide if it was grandfathered in or not. Mr. Witkus asked if the Planning Board had no opinion, and Mr. Femia replied that the Planning Board and Building Inspector said that the sign was smaller than before, but non-conforming, but they did not know if it was grandfathered in or not.

Mr. Goodale discussed that Friendly's was at that location since the 1950's, and at that time, the meaning of conforming and non-conforming may have differed in the zoning bylaws, but the bylaws have changed since then and the meaning of non-conforming may be different. Mr. Femia then reiterated that, basically, the sign would be grandfathered in. Ms. Pedone restated that the sign would be grandfathered in if the use of the former sign was not discontinued after one year, and she said that the sign is being made smaller to conform with bylaw regulations.

Mr. Benson said that it is within the ZBA's discretion to make a decision one way or another; the bylaws do not appear to state that they are required to do anything in particular. He asked Ms. McGovern if she had anything else to add, and she replied that, based upon the last meeting, she felt confident that the sign would conform when the size was reduced. Mr. Benson asked about the brightness of the sign, and she replied that the Friendly's sign was not spot-lit.

Mr. Benson then asked for a motion to close the public comment part of the hearing if there were no further questions from the public (there were none). Mr. Cahill made the motion, and Ms. Pedone seconded. All in favor.

Next, the board deliberated. Mr. Benson reasoned that the sign in question does not meet with the requirements of the current bylaws, so it is non-conforming, by being a roof sign. The question is if it will be a continuation of the previous non-conforming use. It will meet size requirements of the bylaws for a projecting sign. Friendly's had a non-conforming sign, and

Clinton Savings Bank wants to continue the previous non-conforming use. Mr. Femia felt that he did not see the need for this particular sign, but according to the bylaws, requirements change. Mr. Benson replied that the previous sign became non-conforming. He continued, reading from the bylaws, that “any lawful building on the premises that is adopted, may be continued.” He interpreted this to say, that if there was a sign on the building, it can continue even though the bylaws change. Or, it may be allowed, subject to the request for a permit. The Building Inspector did not address the question of prior non-conforming use. The question is if the sign placement should be allowed to continue.

Mr. Witkus moved to vote. Ms. Pedone seconded. All in favor. Mr. Benson moved to grant Clinton Savings Bank the variance. There were (4) “yes” votes to allow the sign (Ms. Pedone, Mr. Cahill, Mr. Benson, and Mr. Witkus), and (1) “no” vote to not allow the sign (Mr. Femia). It was a 4:1 decision, therefore Clinton Savings Bank will be granted a variance to install their sign.

**Public Hearing, Mohamed Eldardir, Petition for Special Permit, 231 West Boylston Street:**

(Mohamed Eldardir, Petitioner, and Jonathan Flick, Attorney for Gourmet Donuts, represented). The applicant provided drawings and photos of the present site and proposed work (all on file). The applicant would like to construct a coffee shop (Gourmet Donuts) with a drive-through window. The notice from the Building Inspector (on file) to the property owner, Karla Meola, stated that the proposed work was not in compliance with section 3.2 of the zoning bylaws, regarding schedule of use regulations, in that the drive-through window would require a special permit. The building to be renovated for that purpose is the former Clinton Savings Bank. Mr. Flick discussed the drawings and photos with the board and public present. He demonstrated that the property shows (2) drive-through areas, one on the left and one on the right, but only one will be used, on the right. There will be 12 parking spaces. Customers will drive through from West Boylston Street, and exit around the back of the building to West Boylston Street. All orders will be taken and filled at one drive-through window. The queue can accommodate up to 7 vehicles. There is prior existing use (when the Clinton Savings Bank was there). They will renovate the building, and open up the inside for more space. It will be primarily a take-out business, with the average time being 2 minutes/customer. They will primarily serve coffee, donuts, and breakfast sandwiches.

Mr. Benson asked Mr. Flick what the distance would be from the street, and could there be a backup of traffic? Mr. Flick replied that vehicles would enter from the south end and drive around to the north end. Seven cars could fit in the queue, or 10 cars from the window to the street. He thought the distance from the street would be about 175 feet. Showing the board an aerial photo of the Dunkin Donuts on West Boylston Street, he pointed out that there is only enough space for 2 vehicles in the queue.

Mr. Benson then asked why having one window, where both the ordering and filling of the order, would be less likely to create backup – Dunkin Donuts has (2) separate windows. Mr. Eldardir replied that he felt it to be more personal. The customer will place the order with the server. Another person will charge the customer and take the money. Two people will be waiting on the customer instead of only one. For large orders, such as of 5+ sandwiches, the customer will be asked to pull forward to wait. Mr. Eldardir mentioned that he owns other locations also, so that he has experiences with these arrangements. He also mentioned that Clinton Savings Bank had an issue with vehicle backup because of the ATM being located in the drive-through area. There was not enough space and cars backed up.

Mr. Benson asked the representatives if they had anything further to present, and they did not, so Mr. Benson then opened the hearing to questions from the board. Mr. Witkus asked the applicant if he met with the Planning Board, and Mr. Eldardir responded that the Building Inspector told him that no site plan review was needed from the Planning Board; since there was only change of use involved, he only needed to appear before the ZBA. Mr. Benson added that it is customary for the Planning Board to give an opinion, but they did not; the Police Department could have issues with traffic; however, these are not binding.

Ms. Pedone asked about photos of parking of the neighboring property. Mr. Eldardir replied that their neighbor offered to let them use her parking. He added that his staff of (3) employees is less than what the bank had, and they also used the neighbor's parking.

Mr. Benson asked if one person could man the counter? Mr. Eldardir explained, that he will add a person if he needs to, and use the neighbor's parking if he needs to, but 60 to 75 % of his business is drive-through.

Mr. Benson then asked, referring to the area to the right of the drive-through lane, if there is a 10<sup>th</sup> car in the queue, will another car be able to get by? Ms. Pedone said, when the bank was there, that there was room for a car to go around.

Ms. Pedone then asked if anything is going to be done to the outer building? Mr. Eldardir replied that they will be changing the siding, but nothing structural will be done. She asked about any signage and Mr. Eldardir said that they would just replace the Clinton Savings Bank sign with their own.

Mr. Femia then referred to the drive-through side, on the right of the building, and where cars would drive around the building, and asked if people would be able to back out of certain of the parking spaces and go past the other vehicles and exit? Mr. Eldardir explained that the angles of the parking are such as to allow easier backing out of the vehicles to go around the other cars. Mr. Femia then asked if cars were allowed to park on the side of the drive-through window, and Mr. Eldardir answered that 2 cars could park there.

Mr. Benson then asked, could a vehicle come in to the right of the drive-through, go around the back of the building, and exit with no interference, and Mr. Eldardir replied yes, and that he reduced the number of parking spaces to 12 so that could be done

Ms. Pedone asked what would be done about snow, and Julie Meola, property owner of the Gourmet Donuts property, responded that they use snow removal.

Mr. Femia asked about the proposed hours of operation, and Mr. Eldardir responded that the business would open every day at 5:00 a.m., close on weekends at 7:00 p.m., and weekdays at 8:00 p.m. He added that all cooking and baking would be done in Fitchburg, and the truck will drop off fresh food every morning; the food would be reheated here. Mr. Femia also asked about seating capacity inside, and Mr. Eldardir responded that there would be two tables and three barstools. He referred to what the Building Inspector said regarding seating and parking according to code, that there would need to be one parking space for 4 seats, and, with the number of seats planned, Mr. Eldardir opined that he would be providing more than what code requires; also, he added, the coffee shop will not really be a dining place. Mr. Eldardir added that the Building Inspector approved the layout; his concern was the permit for the drive-through.

Mr. Benson reiterated that usually the Planning Board makes a comment for the ZBA, but did not this time, and questioned whether or not the board should continue the public hearing to see if there would be any input from Planning Board? Ms. Pedone asked the applicant when he was hoping to open, and Mr. Eldardir responded that he would want to start construction before the cold weather, so he would like this resolved as soon as possible. Mr. Witkus mentioned the history of the present Dairy Queen restaurant on West Boylston Street, and the fact that it was approved as a Honey Dew Donut, but then changed later to the Dairy Queen, with a large amount of traffic, making the point that they could approve this now, but have no idea of what might be there later.

Mr. Femia then stated his concern, not of the drive-through window, but backup of cars on to Route 12. Mr. Eldardir replied that 10 cars would be the most in queue, with 2 minutes per customer, so there would not be backup. Ellen McGovern added that Clinton Savings Bank moved because of backup of vehicles due to turnaround time. Mr. Goodale replied that there are 10 more spaces in the parking lot, with room for the cars to move all the way around the building. Mr. Femia reiterated his concerns about room for vehicles to back out and go around the other cars and out of the lot. Mr. Goodale responded, that, based on the bylaws, the applicant only needs 3-4 parking spaces, so if room is an issue, they can reduce the parking spaces. Mr. Eldardir added that he and his partner brought a truck over to the site and tested out backing up out of the spaces.

Mr. Benson referred back to the petition itself, and said that, if the board approves, the drive-through would be on the north side of the building at the position of the previous drive-through. Mr. Goodale said that the only issue is the drive-through and that needs the special permit.

With no more questions from the board, Mr. Benson opened the hearing to public comment. Julie Meola, the owner of the property, spoke. She opined that, with Clinton Savings Bank, the drive-through was never an issue. It was there for 12 years, and she never had a problem; parking was adequate. Also, she opined that, if there is backup at the Gourmet Donuts, customers will go to Dunkin Donuts. In contrast to Dairy Queen, which Mr. Witkus had mentioned earlier, she stated that they do not have a competitor. Therefore, when they are backed up, the customers remain, causing a backup of traffic. She opined that, because Gourmet Donuts will have a competitor, it probably won't happen in this circumstance. Also, she stated that she had said to Mr. Eldardir that, if necessary, his employees can park at 271 West Boylston Street.

Mr. Witkus asked one further question from the board, just being sure that the building was remaining the same, and Mr. Eldardir answered that there would be no tearing down or construction, and the drive-through is even existing. Mr. Goodale added that the coffee shop is just a matter of right; the applicant will be operating the drive-through window in conjunction with the coffee shop.

Ms. Pedone then moved to close the hearing to public comment. Mr. Cahill seconded. All in favor. Mr. Femia then moved to vote on the petition. Ms. Pedone seconded. All in favor. Mr. Benson then read what the board would be voting on. Five voted in favor of the petition, none were opposed. The petition shall be granted.

#### **OTHER BUSINESS:**

##### **Minutes of June 17 Meeting:**

After review of the draft minutes by the board, Ms. Pedone moved to accept the minutes as submitted. Mr. Femia seconded. All in favor.

##### **Signatures for Accounting Department:**

Whichever member(s) were not present at the June 17 meeting to provide signatures needed by the Accounting Department signed the form tonight; the Clerk will give it to the Accounting Department.

##### **Update on 7/10/13 Affordable Housing Meeting:**

Mr. Femia attended the meeting. Vincent Vignaly developed the Land Area Minimum proposal, and it was voted upon to bring before the Planning Board and the Selectmen and then would be sent to the DHCD. The Selectmen approved it, with changes (it is finalized and on the Town website). The Planning Board approved it also. This proposal would give ZBA a safe harbor of one year from denial of 40 B projects because of the Town meeting the Land Area Minimum required for 40B's.

**Update on Land Area Minimum Meeting:**

Mr. Femia also attended, and the discussion was the same as the above for the Affordable Housing Meeting.

**114 Worcester Street (Proposed Cumberland Farms):**

Those involved in the above project need a special permit for fuel, and to be open all night; they will file with the ZBA in the near future.

**Next ZBA Meeting:**

The board agreed upon the next scheduled meeting of August 19-there were no issues for anyone.

At 8:40 p.m., Ms. Pedone moved to adjourn the meeting. Mr. Femia seconded. All in favor.

Respectfully submitted,

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Toby S. Goldstein, Secretary

Date Accepted: \_\_\_\_\_ By: \_\_\_\_\_



