



TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS

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

MEETING MINUTES

December 16, 2013

Chairman: John Benson

Members Present: Jon Meindersma (Vice-Chair), Francis Cahill (Clerk), Kristina Pedone and Charles Witkus

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

Members Absent: None.

The meeting was called to order at 7:18 p.m. by Mr. Benson.

Mr. Benson proceeded to read from the agenda that the first order of business at the meeting was a Continued Public Hearing, Petition for Variance, by Viewpoint Sign, petitioning Section 5.6, Zoning Bylaws, Section C,2 (signs and billboards), to place a larger sign than allowed by the bylaws on the Planet Fitness building at 184 West Boylston Street. This public hearing is continued from November 18; however, with no representative present yet, Mr. Benson proceeded with the continued public hearing for 114 Worcester Street (Cumberland Farms).

Continued Public Hearing, GC CF New England, LLC, Petition for (3) Special Permits and Sign Variance, 114 Worcester Street:

Mr. Benson read the posting of the public hearing as it was stated on the agenda. The board recognized the petitioner's request to withdraw their petition for sign variance without prejudice. He then asked John Smolak, attorney and representative for the petitioner, to speak.

Mr. Smolak said that he intends to lay out the conceptual revision of the originally discussed plan for the project. He added that he took into consideration feedback from the Zoning Board and abutters. Rather than redesign the original site plan, he opined that it would be better to lay out the conceptual plan, then take whatever steps would come next if the board is comfortable with the revisions. Mr. Benson informed Mr. Smolak that (2) different law firms

submitted materials opposing the petitions (on file), and asked him to submit documents that he has.

Mr. Smolak submitted a letter dated 12/12/13 (on file), describing major changes proposed from the original plans; attached to this is a revised site plan. There is also a memorandum from McMahon Associates (on file). First, he said, Philip Henry, project engineer, will discuss the redesign step by step.

Mr. Henry began his discussion of the conceptual plan. He said that, basically, the original proposed site would be rotated 90 degrees, with the convenience store and gas pumps facing Worcester Street (Route 140). He opined that this would open up the site. Also, the house at 118 Worcester Street would no longer be facing the rear structural wall of the Cumberland Farms. The building would also be smaller by 13% (500 square feet). Also, it will be 52 feet away from 188 Worcester Street, instead of only 20 feet as was previously planned. The applicants will also remove the outdoor seating area. They also plan to reduce the full-access curb cut on the southerly side of the property. This revised plan will retain much of the wooded area to the rear of the property. The petitioners propose the planting of 27 Arbor Vitae trees, and also propose increasing the height of the white vinyl fence to 8 feet.

Mr. Benson informed Mr. Henry that they would need a variance for the increase in fence height. He also mentioned concerns regarding the number of parking spaces and their locations. Mr. Henry responded that, originally 19 spaces were planned, now 16 are planned, 13 at the front and 3 parallel spaces on the side. This excludes spaces at the gas pumps. He added that the petitioners still will meet retail use requirements for parking. He opined that it would also be possible to provide 6 to 8 parking spaces at the rear, but this would require moving the dumpsters, removal of trees and increase of asphalt, and they feel comfortable with 16 spaces.

Mrs. Pedone asked Mr. Henry how they would handle snow storage or removal. Mr. Henry responded that they can store snow at the lower elevation of the landscaping, and are also willing to remove the snow from the site.

Mr. Witkus asked about the amount of impervious material that there would be. Mr. Henry responded that they would be reducing the amount previously proposed.

Mr. Benson asked about what green space would be at the back of the property. Mr. Henry responded that, on the southerly side, there would be 10 to 11 feet of green space, allowing planting of trees. They propose a landscape bed in the right of way and on the property. On the north side, there would be a free standing sign and low lying shrubs. To the west, 3 trees and mostly lawn would be added. They would add grass to the present driveway, and add shrubs around the transformer to make the side of the store more attractive.

Mr. Femia asked what will happen to the water line that BP uses that runs through the property. Mr. Henry responded that they may leave it alone. Originally, they were willing to relocate it, but with the revisions, no building will take place where the water line is located, so it will be more accessible.

Mr. Femia then asked about deliveries to the store. Mr. Henry replied that the receiving area would be in front of the dumpsters. Vendors can park in that area, as well as trailer trucks. Mr. Smolak added that they can also limit delivery hours. Mr. Femia then asked about a proposed parking spot in front of the dumpster, and opined that, if someone were to park there, a vendor could not gain access, and Mr. Henry replied that this is intended to be an employee parking space; there are to be (2) employee parking spaces. Mr. Femia asked, if there are then to be 14 parking spaces available for the general public, would this hamper the movement of traffic? Mr. Henry opined that, with no parking allowed in the drive isles, that the parking will be sufficient and meets the bylaw for retail use. Mr. Benson opined that, if the proposed site was only going to be a convenience store, the petitioners would be in compliance, but given the addition of gas pumps, do they feel that 16 spaces complies (Mr. Femia added the question of even at drive times), and Mr. Henry replied that it does comply.

Mr. Benson asked about parking at the pumps, and Mr. Henry replied that there will be 8 additional parking spaces at the pumps.

Mr. Femia then asked about parking at the back of the building; Mr. Henry did not believe that it would be a good idea, but Mr. Smolak opined that it would be feasible. Mr. Henry then explained the layout of the gas pumps, and Mr. Smolak pointed out the canopy setup at the pumps and opined that they would provide positive rain barriers.

Mr. Femia asked, if cars are stopped at the pumps, would other vehicles be able to exit if a truck were parked there, and Mr. Henry replied that vehicles will not be able to exit the property where the trucks will park.

Mr. Benson then asked how the size of the proposed building compares with the size of the Honey Farms building, and Mr. Smolak said that they could get that information.

Mr. Benson next asked if there is space for waiting area for the gas pumps. Mr. Henry replied that the drive aisle width will be 32 feet from the edge of the pump to the front of the curb facing Worcester Street. The width to the sides will range from 25 to 30 feet.

Next, Mr. Benson asked about traffic flow when customers enter the pumps. Maureen Chlebeck, Traffic Engineer, replied that the pumps would be perpendicular to the roadway, and opined that there would be advantages to this location. Mr. Benson then asked that, if 2

people are fueling, that someone can drive between, and Ms. Chlebeck replied that this would be possible.

Mr. Witkus asked if a fire truck would be able to drive around the building, and Mr. Henry replied that there is no access to the rear side of the building. He proposed that a fire truck could pull off onto the shoulder on Route 12 and not impede traffic. Ms. Pedone asked, with the vegetation present, if it could do that currently, and Mr. Henry replied that it could not do that. Mr. Femia proposed that they speak with the Chief of the Fire Department regarding a fire lane in the back of the building for fire trucks and other emergency vehicles; Mr. Smolak thought that was a good idea and said that they would talk to him.

Ms. Chlebeck next spoke to address comments regarding number of parking spaces discussed in a traffic study by MDM Transportation Consultants (on file). She first opined that the location in New Jersey that was discussed was not good to use for a comparison to this proposed site; the New Jersey site is a lunch destination, with a full deli. The proposed building for West Boylston is smaller, therefore less parking is required. Also, the consultants looked at a Cumberland Farms in Framingham, MA. It is a very busy location on a very busy road, where the proposed traffic to the West Boylston location would perhaps be 35% of that amount; therefore, she opined that the Framingham location was not a good comparison. Mr. Smolak reiterated this opinion, as he permitted the store in Framingham and is familiar with the location. Next, Mr. Smolak and Ms. Chlebeck discussed pump amounts and traffic comparisons between other locations and the West Boylston store.

Mr. Benson then asked about what types of food would be offered. Mr. Smolak replied that it would be prepackaged food, which can be heated at the site. It is not to be a “fast food” establishment, and Mr. Smolak said that he discussed its use with Mark Brodeur, Building Inspector. Mr. Smolak explained that the main reason that they were proposing a larger building than was customary was that it was the intention for this building to be more “user friendly”, more open, with more space.

Mr. Benson asked Mr. Smolak if he received any correspondence from the Building Inspector, and he replied only the original letter that is part of the petition package, but suggested that he could ask for an additional letter from him regarding parking.

Ms. Chlebeck mentioned that they need a Mass DOT access permit for their planned multiple full access driveways, where presently there is only one driveway. When asked by Mr. Benson what would happen if Mass DOT refused the permit, Ms. Chlebeck suggested that they could eliminate one; Mr. Smolak said that he would contact Mass DOT.

Ms. Chlebeck next discussed that, in the revised site plan, there will be no parking spaces at the entrance. Next she said that adequate maneuvering area for a tanker and emergency vehicles will be addressed.

Ken McIntyre of Cumberland Farms stated that there would be (3) vendors, making one delivery per week only, and groceries would be delivered twice per week. Also, trash would be removed once per week.

Ms. Chlebeck added that they will submit a revised traffic study.

Mr. Femia next asked about what hours are considered hours of peak traffic. Ms. Chlebeck replied, on a typical day, 7-9 am and 4-6 pm, and that seasonal adjustments were made for July. Mr. Femia also asked if the peak hour study takes into account the fact that most traffic exits on Worcester Street, and she replied that it accounts for existing traffic patterns. Ms. Pedone asked if the updated study will look at weekend traffic, and Ms. Chlebeck replied that they typically look at weekdays. Ms. Chlebeck opined that, according to analyses of traffic patterns in the area, that there is fairly even traffic exiting onto Worcester Street and Route 12. Mr. Benson, however, opined that traffic is more inclined to exit onto Worcester Street due to layout rather than origin and destination. Ms. Chlebeck opined that, even if most of the traffic uses the Route 140 driveway, there will still be good service at all driveways.

Mr. Henry added that, if vehicles are parked at the gas islands, there will still be sufficient driveway access around the pumps for 2-way travel; regardless of which pump(s) is/are used, access is possible in any direction, and Ms. Chlebeck added that there is sufficient visibility also, regardless of which direction exit is used.

After Mr. Benson asked for any further comments from the board, there were none, so comment was opened to the audience. First to speak was Attorney William Ritter, representing George Tavlas of Honey Farms. Mr. Ritter discussed that many people were concerned with the prior traffic analysis done by the petitioners; they did not agree with the traffic figures, they were concerned with the number of parking spaces planned, and the amount of proposed curb cuts for a site of this size. So, Mr. Tavlas wanted his own traffic analysis, and Bob Michaud of MDM Traffic Consultants, who prepared this analysis, would give a presentation explaining this.

Mr. Michaud discussed that there are concerns about how the plan for Cumberland Farms relates to the industry standard for convenience stores with gas pumps. He opined that Cumberland Farms offers items that traditional convenience stores do not, such as inexpensive coffee, Friday promotions, and hot sandwiches, and these unique features create questions as to whether or not the usual trip generation and parking standards really apply to this situation.

Mr. Michaud opined that the array of food items to be offered by Cumberland Farms is similar to Dunkin Donuts or other fast food places, according to parameters of a “new store model”. He opined that the applicants provide appropriate supporting information, and that findings are not based upon land use codes that are outdated and do not apply. He continued that they are able to select the closest land use code, and it is up to the engineer’s judgment to interpret whether or not data is needed in addition. He explained how the applicants’ study differed. First of all, he said that they used IT-generated rates for convenience stores, not appropriate because they will sell gas also. And, on the prior plans and the present ones, he opined that the number of customers parking on the site other than for gas was understated. He also questions whether or not the types of vehicles and activities would fit in the space of the location. Some examples he gave were of deliveries by box trucks, tankers, visits by other commercial vehicles such as utility trucks or vehicles with trailers, and the fact that not all customers have compact cars; all of these possibilities raise concerns regarding the number of parking spaces. He opined that these concerns are supported by observations of the Framingham location, and advised the board to obtain more information. Mr. Michaud suggested that (2) time periods in particular be surveyed, 7-9 am, especially on Fridays when free coffee is served, and lunch time due to the sale of food items; he opined that noontime should be a peak period of activity.

Mr. Benson asked Mr. Michaud if the proposed Cumberland Farms falls into the industrial standard for convenience stores with gasoline, and Mr. Michaud opined that it does not cleanly fit, due to their data not reflecting the full range of uses at the location. He felt that, according to industrial standard, the West Boylston location should have 38 parking spaces, and insufficient parking on site could cause substantial issues. Mr. Benson asked if there were only 3 pumps, would that reduced the peak parking demand, and Mr. Michaud replied that it would. For example, if one vehicle is waiting to exit, if someone is fueling, the other person will have difficulty exiting. He opined that it is difficult to circulate on these types of sites, that it is very tight. Mr. Benson asked if there would be a real impact of deliveries that take place perhaps a couple of times per week. Mr. Michaud replied that, if this location has the demand of Framingham, there could be greater than 20 vehicles at peak hours, and he opined that there would be no room for deliveries without blocking the aisle, and deliveries would block access to the site also. He also said that the corner of the driveway will be tight according to DOT standards, and on a state highway, the curb cuts must be separated by greater than 75 feet. Another question that he proposed was if there would be enough employee parking spaces, and where the 2 employee spaces are now proposed, the employees would have to move their vehicles to load and unload deliveries and leave the store unattended. Other concerns are ability to leave the site being encumbered at the traffic signals and effects on adjacent property.

Mrs. Pedone asked Mr. Michaud if he did not think that the 36 foot distance from the pump to the trees is enough of a distance? Mr. Michaud replied that the issue is not the distance, but if a vehicle enters for gas and a fuel tanker arrives, it cannot pass between a parked car and one at the pump.

Mr. Femia asked how the Framingham location compares to the West Boylston location landwise. Mr. Michaud replied that it is smaller than Framingham. Mr. Smolak interjected that he would welcome Peer Review for traffic analysis. He opined that he never saw 38 parking spaces for a convenience store, and the Framingham situation cannot be compared to West Boylston. Framingham, according to Mr. Smolak, sells 3 to 4 times the amount of gas sold here, and the traffic is 65% higher, so he opined that it is not a valid comparison. He said that they will consult with Mass DOT.

With no further comments from the applicant, Mr. Benson asked for any comments from the audience. First to speak was Allan Lipkin, representing the Vautours and owners of the BP station. He said, regarding the conceptual plan, no elevations were given; regarding the BP water line mentioned earlier, he cannot see it on the plans. He opined that the plan by the applicants goes against West Boylston's Master Plan. He opined that the abutters should see it. Mr. Lipkin suggested that the applicants withdraw their petitions and start again. He discussed the impact that the project could have on the Vautours. He opined that it could affect the property value, and that there would be impact on them by the lighting, the noise, and the TV screens at the pumps, and he saw nothing in the revised plan addressing these issues.

Mr. Benson addressed Mr. Lipkin, reminding him that he submitted one case, but asking him if he is of the opinion that the ZBA cannot grant relief. Mr. Lipkin replied that there are two provisions in the bylaw that must be proven, that this is a nonconforming lot, and that the applicant can alter and expand the structure if not to the detriment of the neighbors. He suggested that the applicants build a new structure on a vacant undersized lot. (Ms. Pedone opined that the bylaw stated that the existing structure cannot be expanded or altered). Mr. Smolak replied that he would not request withdrawal except possibly for sign variance.

Mr. Benson asked Mr. Lipkin what he thinks that the board's obligations are regarding the issue of nonconformance. Mr. Lipkin replied that he felt the applicant should either withdraw or the board should vote on the previously submitted plans; he opined that it was not fair for the applicant to file information at the last minute. Ms. Pedone added that the applicant is not seeking relief for land structure. Mr. Benson continued that the issue of nonconformance has been addressed. He posed the question of whether or not the board should vote on this new plan, not what was originally filed. Mr. Lipkin said that there is a lot of information that has not been seen before, such as the site landscape plan CFG 8.0. Mr. Smolak responded that the applicants prepared the conceptual plan to determine if the board was comfortable with it. Mr.

Benson replied that there are concerns that these materials did just come in to the board, and the public had no chance to review it; he opined that it was not appropriate to vote tonight. Mr. Smolak responded that he did not expect a vote tonight. Mr. Benson continued that, he opined that the board was in an odd position to give preliminary approval of sorts, which he is not comfortable with. He opined that it would not be fair to do so, when they may return at a later time and not approve. Also, he opined that the traffic study is concerning, and also is the issue of the number of gas pump islands and how they may affect access. Mr. Smolak then said that he requests a continuance to update the traffic analysis, lighting, and layout, so that he can make a complete response at the next meeting. Mr. Benson replied that he is inclined to vote in favor of the request for continuance, but instructed Mr. Smolak to submit his materials in advance of the next meeting, and copy them to Mr. Ritter and Mr. Lipkin.

Mr. Smolak requested to come to the February meeting, in order to have time for the traffic analysis. Mr. Benson replied that the continuance will be scheduled for February 24 at 7:15 pm, to give the public the maximum amount of time to review. He instructed that there would be no action taken now and no further comment will take place. He would also like to review all information two weeks prior to the February 24 meeting. Ms. Pedone moved to continue until 2/24 at 7:15 pm. Mr. Femia seconded. All in favor. (There were 4 voting members-Mr. Benson, Ms. Pedone, Mr. Witkus, and Mr. Femia).

Continued Public Hearing, Viewpoint Sign, Petition for Sign Variance, 184 West Boylston Street (Planet Fitness):

Mr. Benson opened the public hearing. Still no representatives were present. He asked for any public comment, and there was none.

Ms. Pedone moved to close the hearing to public comment. Mr. Femia seconded. All in favor.

Mr. Benson opined that there was no demonstration of hardship to justify the sign variance. Therefore, Mr. Femia moved for a vote on the applicant's petition for sign variance. Ms. Pedone seconded. The votes were as follows:

Mr. Benson: Nay

Mr. Cahill: Nay

Ms. Pedone: Nay

Mr. Femia: Nay

Minutes of November 18, 2013 Meeting:

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

Minutes of September 16, 2013 Meeting:

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

Tentative 2014 ZBA Meeting Schedule:

After review by the board of the tentative schedule prepared by the Secretary, the dates were finalized for the upcoming meetings; the schedule is available upon request, and will be posted on the Town website.

At 10:04 p.m., Ms. Pedone moved to adjourn the meeting. Mr. Meindersma seconded. All in favor.

Respectfully submitted,

Toby S. Goldstein, Secretary

Date Accepted: _____ By: _____

