



TOWN OF TEWKSBURY ZONING BOARD OF APPEALS

1099 Main Street
Tewksbury, MA 01876

Nancy Rego, Chair
Rob Dugan, Vice-Chair
Daniel Teixeira, Clerk
Associate Members:
Michael Farnum
Joseph Cary

DEPARTMENT OF COMMUNITY DEVELOPMENT

MEETING MINUTES

May 26, 2022

The meeting was called to order by Nancy Rego, Chair, at 6:30 p.m. at the Tewksbury Town Hall. In attendance were Rob Dugan, Vice-Chairman, Daniel Teixeira, Michael Farnum and Joseph Cary.

Approval of Meeting Minutes

There were no meeting minutes presented for approval.

NEW HEARINGS

The Lowell Five Cent Savings Bank under MA General Laws, Chapter 40A, Section 8, as a party aggrieved by a decision made by the Building Inspector in a letter dated March 7, 2022 to construct a remote teller kiosk. Said property is located at **30 International Place**, Assessors Map 53, Lot 1, zoned Office/Research.

Present was Attorney Douglas Hausler, of Hausler & Lambert, Chelmsford, Massachusetts on behalf of The Lowell Five Cent Savings Bank, and Alison Kalman of The Lowell Five Cent Savings Bank.

Attorney Hausler noted that he submitted a letter to the Board outlining the project and explained that this is not a “hostile” situation with the Building Inspector and is more a matter of procedure to get before the Board. Attorney Hausler explained that there is a bit of a conflict between the definitions within the towns Zoning Bylaws between an “accessory use” and “accessory structure”, which is what is taking place in this application. Attorney Hausler noted that he believes the Building Commissioner would agree that focus is not so much on the “accessory use”, but more the “accessory structure”, which is a remote teller kiosk.

Attorney Hausler explained that having lived through COVID for the last two and a half years, most would agree that it is important to have the ability to do remote teller banking for health reasons. Attorney Hausler noted that this is something that is incredibly important to the bank and its’ account holders and explained that the only place this can be done is where they have

shown on the plan provided to the Board. Attorney Hausler noted that it is at one location and is one structure.

Attorney Hausler explained that it is their position that the accessory use is consistent with the prior special permit that was granted to the bank to allow for retail banking at this site and noted that they are not changing the use and have always been allowed to do retail use by a permit. Attorney Hausler explained that the Building Commissioner has applied Section 6300, and its various subparts, and they feel the appropriate section for the structure would be Section 3500. Attorney Hausler quoted Section 3500; “an accessory structure is defined as a building or structure subordinate to a principal building or structure” and explained that this is exactly the situation here where there is the main office/headquarters of the bank with retail, and they are proposing an accessory structure right outside its doors. The structure is customarily used to serve the purposes of the principal building and the uses are the same. Attorney Hausler explained that one of the issues is when the bylaw and criteria for Section 6300 was being considered, a remote teller was not anticipated. Attorney Hausler noted that it appears from the criteria in Section 6300 that it was designed to prevent such things as a Dunkin Donuts or McDonalds drive thru.

Mr. Dugan asked if customers would drive up in their vehicles and Attorney Hausler confirmed this and noted this is currently done for the existing structure. Mr. Dugan asked if customers are remaining in their vehicles or if they are exiting their vehicles and Attorney Hausler explained that it is intended for vehicles, but one could get out if they chose to.

Ms. Rego noted that it is essentially an ATM machine and asked if there would be a physical person there. Ms. Kalman noted that there would not be person and explained that it is a tube to send things back and forth to customers. Attorney Hausler noted that it is not habitable.

Mr. Farnum asked if there is accessibility to an ATM machine at the bank and Ms. Kalman noted that the ATM machines are located closer to the Andover Streetside and that there is not an ATM, or any other terminal, located at 30 International Place. Attorney Hausler noted that it is just a lobby.

Attorney Hausler noted this will not affect any abutters and explained that they are requesting permission as a matter of right to construct the remote teller structure. Attorney Hausler noted that they have submitted the details on the structure and architectural plans to the Planning Board and Town Departments for comments and have received minor comments back. Attorney Hausler explained that the only remaining issue is which section of the bylaw is applicable in this instance.

Mr. Dugan referenced the denial letter and noted that the letter states this is more of a drive thru facility, which is not allowed in office research. Attorney Hausler confirmed this and explained that they feel the intent of Section 6300 is not applicable as it is an expansion of a current use. Mr. Dugan inquired about the current special permit and Attorney Hausler explained that there were a number of permits and variances given to allow for the re-construction of this building including for the use of retail banking, otherwise they would not have been located at this location. Attorney Hausler noted that they received five Special Permits from 2004 - 2016, most are regarding signs, as well as the Site Plan Special Permit and Use Special Permit dated July 19,

2011 and recorded at Book 25179 Page 195. Mr. Dugan asked what the use was, and Attorney Hausler noted retail banking.

Mr. Teixeira asked if the parking spaces are being realigned to accommodate this and Attorney Hausler noted that there is an existing island where this would be located so there would not much re-lining involved.

Attorney Hausler explained that Section 6300 addresses use and Section 3500 addresses structure and noted that already have the use so the structure should be the focus. Ms. Kalman explained that they were approved for underground tubing when the building was re-constructed, and they did not end up completing the project as they did not feel there was a need at that time. However, this has since changed with COVID. Attorney Hausler explained that the customers safety and health is what is important, and this would allow them to do their banking without having to enter the building.

Mr. Teixeira asked how this was handled over the last two years and Ms. Kalman explained that the lobby at this location was closed and customers were redirected to their other Tewksbury location. Mr. Teixeira asked the dimensions of the kiosk and Attorney Hausler noted 8 x 11.

Ms. Rego noted that there is currently a coffee shop in front of where this kiosk would be that has a drive thru. Ms. Kalman confirmed this and noted that there is also a Wendy's with a drive-thru off Andover Street, but they are located in the Village Overlay District.

Ms. Rego opened the hearing to the public and no one came forward to comment.

MOTION: Mr. Teixeira made the motion to close both parts of the hearing; seconded by Mr. Farnum and the motion unanimously carried 3-0.

Ms. Rego noted that she does not really see this as an issue as there are currently other drive-thrus in this area and the tubing is already in place.

Mr. Teixeira noted that he does not feel the Board would be setting precedence as a McDonalds or Dunkin Donuts would have to go into another district.

Mr. Dugan noted that they are already on a site that they are not allowed to be, and it does not allow for a drive-thru and explained that the Board would be saying the kiosk is allowed by right under the original special permit. Mr. Dugan noted that he feels this should require another special permit.

It was noted that the voting members are Mr. Dugan, Mr. Farnum and Mr. Cary.

Attorney Hausler asked if a unanimous vote of the Board is required, and Ms. Rego confirmed this.

Ms. Rego explained that a "nay" vote would allow the applicant to move forward and a "yes" vote would uphold the Building Commissioner's decision.

MOTION: Mr. Farnum made the motion to approve The Lowell Five Cent Savings Bank under MA General Laws, Chapter 40A, Section 8, as a party aggrieved by a decision made by the Building Inspector in a letter dated March 7, 2022 to construct a remote teller kiosk. Said property is located at 30 International Place, Assessors Map 53, Lot 1, zoned Office/Research; seconded Mr. Dugan and the motion failed to carry 0-3.
DUGAN, FARNUM, CARY

New Business

Ms. Rego noted that the next meeting will be held on June 30, 2022.

Old Business

There was no old business discussed.

Adjourn.

MOTION: Mr. Dugan made the motion to adjourn; seconded by Mr. Farnum and the motion unanimously carried 5-0.

Approved: June 30, 2022

List of documents for the 05.26.2022 meeting

Documents can be found in the Community Development Office

6:30 P.M. Call meeting to order

6:30 P.M. Approval of Minutes: None

NEW HEARINGS

6:30 **The Lowell Five Cent Savings Bank** under MA General Laws, Chapter 40A, Section 8 as a party aggrieved by a decision made by the Building Inspector in a letter dated March 7, 2022, to construct a remote teller kiosk. Said property is located at **30 International Place**, Assessor's Map 53, Lot 1, zoned Office/ Research.

- **Application Package dated 4/26/2022**

Old Business

New Business

Correspondence

Adjournment