

**CITY OF WOBURN
JANUARY 3, 2023 – 7:00 P.M.
REGULAR MEETING OF THE CITY COUNCIL
COUNCIL CHAMBER, WOBURN CITY HALL**

Roll Call

Campbell	Ferullo
Demers	Gately - Absent
Dillon	Mercer-Bruen
DiMambro	Viola
Concannon	

VOTED to dispense with the reading of the previous meeting's Journal and to APPROVE, all in favor, 8-0-1 (Gately Absent).

MAYOR'S COMMUNICATIONS: None.

NEW PETITIONS: None.

PUBLIC HEARINGS:

On the petition by Liv's Juice Bar, LLC d/b/a Liv's Juice & Acai Bar, 56 Station Landing, Medford, Massachusetts 02155, for a special permit pursuant to Section 5.1(29) and Section 12 of the 1985 City of Woburn Zoning Ordinance, as amended, to allow for a fast food restaurant located within the Shopping Center at 99-103 Commerce Way, at 103 Commerce Way. PUBLIC HEARING OPENED: A communication dated December 29, 2022, was received from Tina P. Cassidy, Woburn Planning Board Director as follows:

RE: PLANNING DEPARTMENT COMMENTS ON SPECIAL PERMIT APPLICATION FOR 103 COMMERCE WAY / LIV'S JUICE & ACAI BAR

Dear Council:

The Planning Department has reviewed the above-referenced Special Permit application which requests permission to allow a fast food restaurant at the above-referenced location, in accordance with Section 5.1[29] of the Woburn Zoning Ordinance (WZO). Site Plan Review is also needed in accordance with Section 12 of the WZO. The property is zoned Business Interstate (B-I) and therefore such use is permitted by City Council Special Permit, subject to Site Plan review. No exterior construction or revisions to the current site plan are proposed in connection with this application. Instead, re-configuration/renovation of existing interior space is proposed and, presumably, new/updated signage.

Planning staff consulted with Inspectional Services Director Tom Quinn when reviewing this filing. We offer the following questions and comments for the Council's consideration:

- The Petition correctly notes that, in addition to being in a B-I zoning district, the property is also located within the Commerce Way Corridor Overlay District (CWCOD). The site is part of a shopping center that occupies several parcels of land in different ownerships¹, and the owners have not unanimously agreed to invoke the CWCOD regulations for the shopping center as specified in Section 23.2.2 of the WZO. Therefore, the zoning/permitting requirements of the B-I District will regulate this use/petition.
- The site plan must reflect information for all the parcels that comprise the shopping center. The City Council approved the installation of Tesla electric vehicle charging stations on the lot at 101 Commerce Way in 2020. While the submitted plan includes a notation referencing the existence of these charging stations, the plan itself does not accurately reflect the construction authorized by the 2020_ permit. The site plan should be revised to show existing on-the-ground conditions, including the locations of the charging stations and related equipment, signage, and the parking space reconfiguration that was implemented to accommodate the charging equipment.
- The Petitioner has not provided sufficiently detailed information to demonstrate that parking requirements of the WZO will still be met if the requested Special Permit is granted. The new fast food restaurant will be filling a space formerly occupied by a retail establishment, and the parking requirements for these two uses are different. While retail requires five (5) parking space for every 1,000 sq. ft. of net floor area on the ground floor, fast food establishments require twelve (12) parking spaces for every 1,000 sq. ft. of net floor area.

The plan should be revised to include a breakdown of the total number of parking spaces needed for each *use* on this site (retail, fast food restaurant, full-service restaurant, etc.) and the number of spaces provided for each use, to demonstrate that there is a conforming amount of parking on the property for all uses in the building. If the uses in the building on this site rely in part on parking spaces on adjacent lot(s) to satisfy the zoning requirements, then the breakdown of parking spaces required and provided must include all of the uses on adjacent lot(s) as well. The above-referenced electric vehicle charging stations should be included in the parking analysis.

- Unless authorized by a subsequent Special Permit, the hours of operation of this establishment must be between 6:00 a.m. and 11:00 p.m., in accordance with Note 16 to Section 5.1, Table of Use Regulations.
- No signage has been included as part of the Special Permit petition although it may be that the signage the Petitioner wants will be allowed by right. Approval of signage will be subject to a separate permitting process through the Inspectional Services Department.

- The issue of trash storage and its regular pickup seems particularly important given that food waste will compose a portion of the business's trash. The application does not indicate if there is an exterior Dumpster that will be used by the restaurant to safely store the refuse and prevent health issues. The site plan should identify the location of the Dumpster and recycling totes (if any) that will be used by this business.
- The Petition includes memoranda from VHB dated November 23, 2022 on the subjects of traffic, stormwater management and utilities. The Planning Department defers review of and comment on those documents to the City's Engineering Department.

If members of the Council have any questions or concerns regarding the foregoing, please feel free to contact me.

Respectfully, Tina P. Cassidy, Planning Director

Attachment

¹ See attached legal opinion dated June 17, 2020 from City Solicitor Ellen Callahan Doucette to the City Council.

Further, a communication dated January 3, 2023, was received from John E. Corey, Jr., PE, City Engineer, as follows:

Dear City Council Members,

We have reviewed the traffic memo generated for the above reference special permit and I agree that the traffic impacts associated with this project are negligible.

We have no further comments on the matter.

Jay

Motion made and 2nd that all communications be received and made part of the permanent records, all in favor, 8-0-1 (Gately Absent). Appearing for the petitioner, Attorney Joseph R. Tarby, III, Rubin and Rudman LLP, 500 Unicorn Park Drive, Suite 502, Woburn, Massachusetts 01801, stated he would like to submit three documents: 1. PowerPoint presentation; 2. Proposed Menu; and 3. Proposed Conditions. Motion made and 2nd that the documents be received and made part of the permanent records, all in favor, 8-0-1 (Gately Absent). Attorney Tarby stated the special permit request is for Section 5.1(29) and Section 12 of the Woburn Zoning Ordinances to allow for a fast food restaurant at 103 Commerce Way at the shopping center at 99, 101, and 103 Commerce Way. Attorney Tarby stated from the aerial view you see the Petco out front, and Liv's Juice Bar is next to it. Attorney Tarby stated the building is located in the B-I Zoning District, which requires a special permit for fast food uses. Attorney Tarby stated in November 1997, the prior special permit and variances were issued for the City Council and Board of Appeals for the Target Shopping

Plaza and the two pad sites in front. Attorney Tarby stated the City Council allowed a special permit that to meet the parking requirements a lot could be 500 feet away, and the City Council allowed the petitioner to use all three lots to meet the parking requirements. Attorney Tarby stated there is a recorded easement that shows the responsibilities of all the parties. Attorney Tarby stated in October 2022, the City Council issued to Tesla and Target for the 12 charging stations. Attorney Tarby stated that the plans provide for a 1, 594 sq. ft. of vacant space at 103 Commerce Way. Attorney Tarby stated the concept is for a fast casual restaurant serving acai bowls, gourmet toasts, and juices. Attorney Tarby stated some food is prepared onsite such as energy balls, but the majority of the business is takeout or delivery by Grub hub and Uber Eats. Attorney Tarby stated in February 2020, the petitioner opened a location in Medford, Massachusetts at Station Landing, which is opened seven days a week and has about five to eight employees. Attorney Tarby stated the building is approximately 25, 987 sq. ft. and will have eight seats in front of the house and remainder of counterspace will be for preparation. Attorney Tarby stated that the co-owners, Neil Paris, and Chris Butts, are present. Attorney Tarby stated he was going to address the Planning Department comments as follows: Regarding Comment No. 1, Attorney Tarby stated the petitioner was in agreement; Regarding Comment No. 2, Attorney Tarby stated the actual site plan shows the 12 Tesla spaces, the four EV spaces, and the access aisle, which they have complied with from the beginning; Regarding Comment No. 3, Attorney Tarby stated the overall use is a shopping use, which is considered an “other” use and meets the parking requirements for other uses. Attorney Tarby stated a parking survey was done, and the City Council was not concerned when Firehouse Subs, Starbucks, or the Urgent Care went in. Attorney Tarby stated this petitioner is a small user; Regarding Comment No. 4, Attorney Tarby stated they have no issue with the hours of operation; Regarding Comment No. 5, Attorney Tarby stated they have no issues with following signage requirements; Regarding Comment No. 6, Attorney Tarby stated the dumpster is shown on the site plan as enclosure but does not say “trash”. Attorney Tarby stated that the connection road is right there where the dumpster is at the end; and Regarding Comment No. 7, Attorney Tarby stated the City Engineer stated that the traffic impact was negligible. Upon inquiry from Councilor Mercer-Bruen, the petitioner, Neil Paris, confirmed that the juice bar is around the other side of the Petco building. Mr. Paris stated there also used to be a Firehouse Subs and GameStop around the front of the building. Mr. Paris stated he believed the vitamin shop was still there. Mr. Paris stated that there is not too much on that side. Vinod Kalikiri, VHB Transportation Engineering, that the Traffic Analysis dated November 23, 2022 has all the details of the traffic counts and parking analysis. Mr. Kalikiri stated the Vitamin Shop is on the north part of the building, and there is access to the cite from Commerce Way at the signalized driveway, which have had upgrades over the years. Mr. Kalikiri stated they were able to obtain real time traffic count data to use, and that the numbers showed the estimated traffic, as well as numbers used from the Medford location that has a lot more seats and proposed vehicle trips. Mr. Kalikiri stated there was a de minimis change. Mr. Kalikiri stated the City Engineer has agreed with this finding. Mr. Kalikiri stated the rest of the parking is on the portion along the west side of the building and there is some on the south side as well. Mr. Kalikiri stated there are 143 parking spots, 63 on the west and north side of the lots, and 80 on the south side of the building. Mr. Kalikiri stated they observed in April of 2022 there was a total of 13 vehicles parked in the 143 parking spaces. Mr. Kalikiri stated this number of spots is in excess of the industry standard of 40 cars. Mr. Kalikiri stated when applying industry standards weekday there were 110

vehicles, and 120 vehicles on Saturday. Mr. Kalikiri stated he submitted this analysis to the City Engineer, and he responded the impacts were minimal. Councilor Mercer-Bruen thanked Mr. Kalikiri. Councilor Mercer-Bruen stated she agreed with the City Engineer that this was minimal, but she was concerned with things change over on that site. Councilor Mercer-Bruen stated a lot is now empty and when other business will come in and thrive, they can use the other lots too. Councilor Mercer-Bruen stated she believes those buying these healthy drink will not mind walking 20 yards. Councilor Mercer-Bruen stated that drivers come around awfully fast on the bend before the left turn. Councilor Mercer-Bruen stated because of this she is concerned with getting back and forth from the site and additional parking for pedestrians. Mr. Kalikiri stated there is a crosswalk around the entry and to the surface parking lot, and it is well designed to access the store and frontage without walking in the path of vehicles. Councilor Mercer-Bruen stated she sees the crosswalks on the plan, but does not recall seeing them there, and that she wants to make sure they are painted and reflective. Mr. Kalikiri stated they will do that and make sure the crosswalks meet the standards. Attorney Tarby stated that if the crosswalk needs to be repainted, they can agree to that condition. Councilor Mercer-Bruen stated she wants it maintained as well. Upon inquiry from Councilor DiMambro, Attorney Tarby stated the trash is behind the building. Mr. Kalikiri stated the trash has an enclosure and will be outside. Upon inquiry from Councilor DiMambro, Mr. Paris stated that the door is located on the Petco side and there is going to be an access door not for pedestrians, that leads into a shared hallway with easy access to their refrigeration units. Mr. Paris stated he did not recall if the door was a double door or one. Mr. Paris stated the shared access is with Petco. Mr. Paris stated that most of the deliveries are in the morning and in Medford the bread is delivered between 3:00 a.m. and 4:00 a.m. Councilor Dillon stated he has observed such businesses in Wells and Ogunquit, Maine and observed that 70-80% are grab and go customers and take out. Mr. Paris stated yes, that was correct. Mr. Paris stated in Medford they have seating for 25 and they learned their lesson. Mr. Paris stated they are going to have seven to eight stools in the Woburn location. Mr. Paris stated they have mobile app orders ahead of time and the customers state their names and they are out in 1.5 minutes. Upon inquiry from Councilor Dillon, Mr. Paris stated yes, they can accommodate special orders. Upon inquiry from Councilor Voila, Attorney Tarby stated the hours of operation are from 6:00 a.m. to 8:00 p.m. seven days a week. Attorney Tarby stated there is no signage on the plan indicating no double parking but can put that on the plan and could reserve a couple spots for the third party delivery services. Councilor Mercer-Bruen stated she is concerned to take a couple spots for food delivery as she never sees anyone in those spots. Attorney Tarby stated that the delivery services must be parked in a parking spot. Councilor Mercer-Bruen stated nine to ten months ago maybe these would be needed, but now not as much in demand. Councilor Viola stated that he was out at Five Guys in Burlington and saw four cars queued up out-front even though there were plenty of open spaces. Councilor Mercer-Bruen stated she would hate to give up just one. Councilor Campbell stated she was okay with the two spaces, as she does not think it is going to make much of a difference. Councilor Campbell stated she was okay with the condition, as it is going to be popular. Upon inquiry from Councilor Viola, Attorney Tarby stated that he was not sure how many handicap spaces there are, but it will comply, and the petitioner would not take away a handicapped accessible spot. Councilor Demers stated that the council is kind of making a mountain out of a mole hill, as he was concerned with mandating this designated spots when the delivery companies are violating

the law. Councilor Demers stated there should be signage and be able to be towed or given a warning. Councilor Demers stated there will be additional businesses that will need spots. Councilor Demers stated this was not required for other petitioners that have come before the council like the charcuterie business in which that plaza is even tighter. Councilor Demers stated that the delivery companies should be instructed not to double park. Upon inquiry from Councilor Dillon, Mr. Paris stated currently at their Medford location nine out of 10 are actual customers and not delivery services. Mr. Paris stated that Uber Eats and Grubhub are a small percentage and there is less parking at that location. Mr. Paris stated he is unsure if the landlord will agree to allow signage on the lots but is happy to put the signage inside the restaurant. Councilor Mercer-Bruen stated we should not punish those people that go out and get drinks for themselves. Councilor Mercer-Bruen is against the restrictions. Councilor Campbell stated thank you for explaining, and that if the amount of delivery is that small it does not make sense. Councilor Viola stated after hearing the information of it being that small, he agrees the signage is not needed. Upon inquiry from Councilor DiMambro, Mr. Paris stated he did not believe there were back up generators and that they do have multiple refrigerators. Mr. Paris stated they have delivery setup seven days a week, so they store very little onsite. Mr. Paris after two and half years they have it down to a science. Motion made and 2nd that the public hearing be opened for public comments, all in favor, 8-0-1 (Gately Absent). PUBLIC COMMENTS: None. Motion made and 2nd that the PUBLIC HEARING BE CLOSED, all in favor, 8-0-1 (Gately Absent). Motion made and 2nd that the SPECIAL PERMIT BE GRANTED with the following conditions: 1. The site plan of record shall be the plan entitled “Liv’s Juice & Acai Bar, 103 Commerce Way, Woburn, Massachusetts” dated November 23, 2022 prepared by VHB, 101 Walnut Street, P.O. Box 9151, Watertown, MA 02471; 2. All dumpsters shall be enclosed, by means of a fence, wall, or landscaping in compliance with the Woburn Zoning Ordinances. In addition, rodent control measures in connection with any dumpsters shall be in place and maintained; 3. All signage shall comply with Section 13 of the Zoning Ordinance; 4. The crosswalks in the vicinity of 103 Commerce Way shall be repainted and maintained; and 5. The hours of operation shall be seven days a week from 6:00 a.m. to 8:00 p.m., all in favor, 8-0-1 (Gately Absent).

On the petition by Sanctuary Medicinals, 130 Commerce Way, Woburn, Massachusetts 01801, for special permit pursuant to Section 32.3 of the 1985 City of Woburn Zoning Ordinance, as amended, to amend the current special permit to allow for adult use marijuana, at 130 Commerce Way. PUBLIC HEARING OPENED: A communication dated December 29, 2022, was received from Attorney Mark J. Salvati, Attorney At Law, 10 Cedar Street Suite 26, Woburn, Massachusetts 01801 regarding “130 Commerce Way – Request to Modify Special Permit”. Motion made and 2nd that all communications be received and made part of the permanent records, all in favor, 8-0-1 (Gately Absent). Appearing for the petitioner, Attorney Mark J. Salvati, Attorney At Law, 57 Arlington Road, Woburn, Massachusetts 01801, stated the petitioner is located diagonally across from Liv’s Juice Bar. Attorney Salvati stated the petitioner is asking to sell adult use marijuana, as Sanctuary has been selling medicinal marijuana for three years. Attorney Salvati stated that Nick Satmary, from Sanctuary, is here for questions, but that this will probably go to committee. Attorney Salvati stated the host agreement has been signed and filed with the Cannabis Control

Commission. Attorney Salvati stated said the acceptance of the filing, is indication to approve once they come out and inspect. Attorney Salvati stated Sanctuary has already gone through this before for the medicinal. Attorney Salvati stated being there three years there has been zero issues. Attorney Salvati stated they filed the operation and logistics plan. Attorney Salvati stated the Building Commissioner expressed that he wants it to be clearer this is for adult use. Attorney Salvati stated that perhaps we should refer to the state definition to be clearer. Attorney Salvati stated that he submitted changed of hours as proposed conditions, as they are reworking the prior use, and the asking for the increase in hours based on popularity and that of what the state allows for liquor stores to stay open until 11:00 p.m. Councilor Mercer-Bruen stated she suggests there be at least one committee meeting on this. Attorney Salvati stated that this public hearing should probably be continued to the February meeting, due to the code change needing to be completed. Upon inquiry from Councilor Campbell, Attorney Salvati stated yes, this was for the municipal code. Motion made and 2nd that the public hearing be opened for public comments, all in favor, 8-0-1 (Gately Absent). PUBLIC COMMENTS: None. Motion made and 2nd that the PUBLIC HEARING BE CONTINUED TO THE REGULAR MEETING OF THE CITY COUNCIL ON February 7, 2022 AND THAT THE MATTER BE REFERRED TO THE COMMITTEE ON SPECIAL PERMITS, all in favor, 8-0-1 (Gately Absent).

Motion made and 2nd to take the next matter from the table, all in favor, 8-0-1 (Gately Absent).

UNFINISHED BUSINESS FROM PREVIOUS MEETINGS:

On the petition for renewal of First Class Motor Vehicles Sales License by Lawless Inc., 196 Lexington Street. Councilor Viola stated he met with President Concannon, Attorney Tarby, and the petitioner and came up with an agreeable plan. Councilor Viola stated that if the construction is to change, the petitioner will reconfigure it to make it safer to the public. Upon inquiry from Councilor Mercer-Bruen, Councilor Viola stated that the petitioner set down an aerial view and marked out the changes. Councilor Viola stated they took out the small island of cobblestone and paved and coned it off. Councilor Viola stated the cones will be moved out of the way when the delivery truck comes. Councilor Viola stated it is a lot safer now. Councilor Viola stated the petitioner spoke with the headquarters in Detroit, Michigan to try to notify the tractor trailer companies in advance. Councilor Mercer-Bruen stated nicely done. Motion made and 2nd that the license be GRANTED, all in favor, 8-0-1 (Gately Absent).

Presented to the Mayor: January 5, 2023

s/Scott D. Galvin January 5, 2023

Motion made and 2nd to take the next matter from the table, all in favor, 8-0-1 (Gately Absent).

On the petition for renewal of Second Class Motor Vehicles Sales License by Lawless Inc., 196 Lexington Street. Motion made and 2nd that the license be GRANTED, all in favor, 8-0-1 (Gately Absent).

Presented to the Mayor: January 5, 2023 **s/Scott D. Galvin January 5, 2023**

COMMITTEE REPORTS: None.

CITIZEN'S PARTICIPATION: None.

COMMUNICATIONS AND REPORTS: None.

APPOINTMENTS AND ELECTIONS: None.

MOTIONS, ORDERS AND RESOLUTIONS: None.

Motion made and 2nd to ADJOURN, all in favor, 8-0-1 (Gately Absent). Meeting adjourned at 7:51 p.m.

A TRUE RECORD ATTEST:

Lindsay E. Higgins
City Clerk and Clerk of the City Council