

**CITY OF METHUEN  
COMMUNITY DEVELOPMENT BOARD**

**NOTICE OF DECISION- SPECIAL PERMIT APPROVAL**

Section XI-D (12) Drive-up Retail, Business or Service Establishment, Drive-up or Drive-through Restaurant, and Stand-Alone Kiosk, Drive-through or Walk-up

Case No. 2023-1

Date of Application: 01-06-23

Date of Hearing: 02-08-23

Date of Decision: 02-09-23

2023 FEB -9 PM 12:15

**Petition of:** Route 28 Development, LLC  
c/o The Wilder Companies, Ltd.  
800 Boylston Street, Suite 1300  
Boston, MA 02199

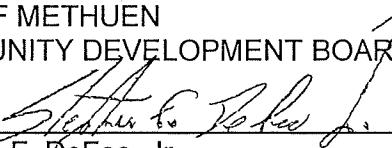
**Premises Affected:** 4 Broadway  
Parcel ID: 716-111-1  
Business Highway (BH) Zoning District

Referring to the above petition for a Special Permit from the requirements of Section XI-D (12) of the City of Methuen Comprehensive Zoning Ordinance so as to allow the construction of a drive-up window at the proposed 2,265± SF restaurant footprint to be constructed in the BH (Business Highway) Zone.

At a public hearing held on February 8, 2023 the Community Development Board voted UNANIMOUSLY 6-0 to **APPROVE WITH CONDITIONS** the special permit for the drive-up window for the Restaurant to be located in the shopping plaza at 4 Broadway.

This is to certify that the above action was taken in compliance with the statutory requirements as set forth in Chapter 40A of the General Laws, and that a copy of this decision was filed with the City Clerk on **February 9, 2023**.

CITY OF METHUEN  
COMMUNITY DEVELOPMENT BOARD

By:   
Stephen F. DeFeo, Jr.  
Chairman, Community Development Board

**Any appeal of this decision shall be made pursuant to the requirements of Massachusetts General Laws and shall be filed within twenty (20) days after the date the notice of decision was filed with the Methuen City Clerk.**

**I hereby certify that no appeal has been filed in the Methuen City Clerk's Office, within the twenty (20) day appeal period.**

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Ann Drouin, Methuen City Clerk

## **FINDINGS OF FACT:**

Route 28 Development submitted an application on January 6, 2023. The applicant submitted a complete application, which was noticed and reviewed in accordance with Section XI Special Permits of the City of Methuen Comprehensive Zoning Ordinance and MGL Chapter 40A, Section 9.

Broadway Crossing is an existing mixed use retail plaza constructed in 2015. The plaza was originally approved with three buildings, a bank with a drive-thru, a restaurant with a drive-thru, and a main retail building with multiple tenants. To date the main retail building and bank building have been constructed with the restaurant pad site remaining vacant.

The current application before the Board seeks to reduce the originally proposed restaurant footprint from 3,200 sf to 2,265 sf. The proposed drive-thru isle has been modified to allow for additional drive-thru queue space increasing the total vehicle queue from 14 to 17 vehicles. The reconfigured drive-thru isle also contains a full width by-pass lane allowing for cars within the queue to drive around the waiting vehicles to the drive-thru exit.

The project is shown on a plan entitled: Proposed Starbucks at Broadway Crossing (Formerly Malden Mills Retail Plaza), 4 Broadway, Methuen, Massachusetts; prepared by Level Design Group; Property Owner: Route 28 Development LLC; Applicant: 28 Development, LLC; containing 7 sheets; dated 11/15/2022, rev. 12/16/2022

The public hearing on the above referenced application was opened on February 8, 2023. At the hearing Atty. Arthur Broadhurst and Nick Facendola, Level Design Group appeared on behalf of the applicant. The Board received written testimony from Laurie Joslin, President, Methuen Arlington Neighborhood (M.A.N. Inc.) requesting that the drive thru hours be limited to between 5 AM and 10 PM. M.A.N. Inc. also requested that during construction the slope at the entrance from Broadway into the shopping center be adjusted to allow small cars to enter without scraping the bottom of the car.

On February 8, 2023 upon a motion by Mr. Comei and seconded by Mr. Hunter, the Board voted to close public hearing. Upon a motion by Mr. Comei, seconded by Ms. Plunkett, the Board voted to GRANT the Special Permit with Conditions. The Community Development Board voted on the motion by a vote of 6-0.

The following Board members were present and voting: Stephen DeFeo, Chair, Michael Comei, Vice Chair, Neal Hunter, Secretary, Brian Boes, Shadi Kasis, and Heather Plunkett.

This approval is granted subject to the accuracy of the information, reports and data presented. In the instance where the Board is of the belief that this material was inaccurate as presented or has subsequently become unreliable the Board

may conduct a determination hearing to consider requiring further review or mandating current and reliable data and information for subsequent approval.

As required by the City of Methuen Comprehensive Zoning Ordinance Effective July 28, 2008 **Section XI-B**, based upon the applicant's testimony, plans submitted and information provided, the Community Development Board makes the following findings:

- A. The proposal serves social, economic and community needs.
- B. The proposed use will result in no impact on traffic flow.
- C. The proposed use will utilize no public services.
- D. The neighborhood character and social structure will not be impacted by the proposal.
- E. The proposed use has no impact on the natural environment.
- F. The proposed use will have no impact on City services.
- G. The proposal is consistent with the most recent City of Methuen Master Plan

In accordance with **Section XI-D (12)**, based upon the applicant's testimony, plans submitted, and information provided, the Community Development Board makes the following findings:

- 1) The drive-up retail, business or service establishment shall not constitute a nuisance of any type.
- 2) Access to such drive-up service shall conform to Section VI-B-5 Yard Requirements, for all Districts.
- 3) The drive-up retail, business or service establishment **shall not operate after Midnight** without an additional special permit from the Community Development Board.
- 4) The drive-up retail, business or service establishment complies with the Methuen Municipal Code Article VI Section 9-61. Regulation of Loudspeakers, Amplifiers, and Paging Systems. The Project will use a speaker system that incorporates automatic volume control that adjusts the outbound volume based on the outdoor ambient noise level.

#### **SPECIAL CONDITIONS:**

The Community Development Board finds that this project generally complies with the City of Methuen Zoning Ordinance requirements as listed in Section XI-D (12) but requires conditions in order to be fully in compliance. The Community Development Board hereby grants an approval to the applicant provided the following conditions are met:

- 1) **The drive thru hours be limited to between 5 AM and 10 PM.**
- 2) **Prior to the endorsement of the plans** by the Community Development Board, the Project Owner must comply with the following:

- a) The final plans must be reviewed and approved for accuracy and conformance with the terms of this Approval by the City's Engineering Department, the City's Peer Review consultant (as may be required by the Board), and the Community Development Department. The final plans must be revised in accordance with comments received by the City of Methuen staff members and peer review agents.
  - i) The entrance to the retail plaza from Broadway must be adjusted as needed to allow cars to safely enter without scraping the bottom of the car.
  - ii) A detail for the dumpster enclosure must be provided on the plan. The enclosure must not be chain ink.

**3) Prior to the start of any site work:**

- a) The Community Development Board must endorse the final site plan mylars and three (3) copies of the signed, recorded plans must be delivered to the Community Development Office.
- b) One certified copy of the recorded decision must be submitted to the Community Development Office.
- c) A bond in the amount of **five thousand (\$5,000) dollars** shall be posted for the purpose of insuring that the site is constructed in accordance with the approved plan and that a final as-built plan is provided showing the location of all on-site structures.
- d) Prior to any construction activity of any kind associated with the project, the Project Owner shall submit to the Community Development Department a proposed phased construction sequence schedule (timetable/bar chart), said schedule to be used as a guide to activities within the development including construction of roadways, utilities, drainage system, stabilization, earth removal and stockpiling. This schedule once established shall not be deviated from and may only be modified by agreement between the Project Owner and the Community Development Department.
- e) A pre-construction meeting must be held with the developer, their construction employees, Community Development Department, and other applicable departments to discuss scheduling of inspections to be conducted on the project and the construction schedule.
- f) The Project Owner will provide supervisory contact personnel along with emergency telephone numbers that are answered on a 24-hour basis (answering machines or voice mail are not acceptable).

**4) During Construction:**

- a)** Construction activities on the site shall conform to the City of Methuen's Ordinances relating to such work.
- b)** Construction activities shall be conducted in a workmanlike manner at all times. Blowing dust or debris shall be controlled by the Applicant through stabilization, wetting down, or other proper storage and disposal methods.
- c)** It shall be the responsibility of the Applicant to assure that no erosion from the construction site shall occur which will cause deposition of soil or sediment upon adjacent properties or public ways, except as normally ancillary to off-site construction. Off-site erosion will be a basis for the Community Development Board making a finding that the project is not in compliance with the plan; provided however, that the Community Development Board shall give the Applicant written notice of any such finding and ten days to cure said condition.

**5) Prior to the Issuance of the Certificate of Occupancy:**

- a)** The Project Owner must submit a letter from the engineer of record stating that the building, landscaping, lighting, and site layout substantially comply with the plans referenced in this decision as endorsed by the Community Development Board. The engineer of record shall outline in detail any deviations from the approved plan.
- b)** A final as-built plan showing final topography, the location of all on-site utilities, structures, curb cuts, parking spaces and drainage facilities, including invert elevation of all storm water structures shall be submitted to the Community Development Department and the Engineering Department for review and approval.
- c)** If minor site related issues such as final landscaping, have not been completed at the time the building itself is ready for occupancy, the Community Development Board may authorize the Project Owner to post a security sufficient in the opinion of the Community Development Board, to cover the cost of the City of completing the remaining site items.

**6) Prior to the final release of all funds:** The Community Development Board must, by majority vote, make finding that the site is in conformance with the approved plan and decision based upon the submission of an as-built plan.

**7) Other Conditions:**

- a)** The Applicant must comply with the Methuen Municipal Code Article VI Section 9-61. Regulation of Loudspeakers, Amplifiers, and Paging Systems.

- b) To reduce noise levels the Project Owner shall keep in optimum working order, through regular maintenance, any and all equipment that shall emanate sounds from the structures or site.
- c) Any plants, trees, or shrubs that have been incorporated into the Landscaping Plan approved in this decision that die within two years from the date of planting shall be replaced by the owner. All plantings and screening depicted on the approved plans shall remain in perpetuity over the life of the project.
- d) Within five (5) days of the transfer of ownership of this site in whole or in part, the Project Owner shall notify the Community Development Department of the name and address of the new owner(s). The Project Owner shall provide the new owner(s) with a copy of these conditions.

8) The Community Development Board hereby reserves the right to serve notice on applicant of a cease and desist work order should a violation of the endorsement, the approval, the conditions or the restrictions be found to exist. Such cease and desist work order, when served in writing, directing itself to the violation occurring, shall act to prohibit any and all work on the areas as mentioned in such order.

9) This Special Permit shall be deemed to have lapsed two years after the date of the grant of this approval if a substantial use thereof has not sooner commenced, except for good cause. Such approval may, for good cause, be extended in writing by the Community Development Board upon the written request of the applicant.

10) The following documents and plans shall be deemed part of the decision:

- a) Proposed Starbucks at Broadway Crossing (Formerly Malden Mills Retail Plaza), 4 Broadway, Methuen, Massachusetts; prepared by Level Design Group; Property Owner: Route 28 Development LLC; Applicant: 28 Development, LLC; containing 7 sheets; dated 11/15/2022, rev. 12/16/2022
- b) Starbuck's, Broadway Crossing, Methuen, MA, 01844; prepared by Scott Griffin Architects; containing Sheets, A3, A4, A001, A101, A104, A105, and A106; dated 12/07/2022