



TOWN OF FALMOUTH
ZONING BOARD OF APPEALS
DECISION

SPECIAL PERMIT NO: #030-19

OWNER: RHC Associates (c/o McDonald's Restaurant) Massachusetts

50 Oliver Street STE W1B, N. Easton, MA

APPLICANT: McDonald's Corporation (c/o Bohler Engineering), 110 N. Carpenter Street, Chicago, IL

SUBJECT PROPERTY: 263 Teaticket Highway, Teaticket, Massachusetts

Assessor's Map: Map 39 Section 14 Parcel 030 Lot 003

DEED/CERTIFICATE: Book 1500 Page 1072

SUMMARY: Special Permit issued, with conditions

PROCEDURAL HISTORY

1. On May 10, 2019, an application was filed with the Zoning Board of Appeals for a Special Permit, pursuant to Section(s) 240-107 A. and 240-3 C., to provide a second drive through lane, at 263 Teaticket Highway, Teaticket, Massachusetts (the "Premises").
2. Notice was given, as required by M.G.L. Chapter 40 A, Section 9, including notices mailed to all persons deemed to be affected thereby, as they appear on the tax list.
3. The advertised public hearing was opened on July 11, 2019, at which hearing, relevant testimony was heard. Board members present included Terrence J. Hurrie, Kenneth H. Foreman, Robert B. Dugan, Edward Van Keuren, and Gerald Potamis.
5. Brandon Barry, of Bohler Engineering, 352 Turnpike Road, Southborough, MA appeared before the Board, representing McDonald's Corporation (c/o Bohler Engineering), 110 N. Carpenter Street,

Chicago, IL (the "Applicant"), as to the Premises, and discussed the request for a Special Permit with the Board.

6. The public hearing was closed on July 11, 2019. Minutes of the hearing(s) are on file in the Board of Appeals.

7. The following documents and information are on file in the office of the Zoning Board of Appeals at Town Hall, as set forth below:

Letters/E-mails from Abutters/Interested Parties None

Letters/E-mails/Information from Applicant/Representative(s)

- Letter dated May 6, 2019, from Eric G. Dubrulle and John A. Kucich of Bohler Engineering, 352 Turnpike Road, Southborough, MA

Letters/Referrals/E-mails from Town Departments

Note: ZBA sent Referral requests to: Assessors, Building Department, Conservation Commission, Engineering Department, Board of Health, Fire Department, Planning Department, Board of Selectmen and Water Department

- Engineering comments, dated 5/10/19 (regarding parking, and turning radii)
- Conservation Commission, no comments, dated 5/30/19
- Board of Health, comments, dated 5-15-19 (property on sewer)
- Assessor, no comments, dated 5/14/19
- Water, no comments, dated 5/13/19
- Fire Department, no comments, dated 5/24/19
- Planning, Site Plan Review issued June 12, 2019; referral dated 5/10/19 regarding site plan review

Plans submitted by Applicant/Applicant's Representative

- "McDonald's Site Development Plans for Existing McDonald's with Drive-thru", including sheets Cover C-1; General Notes Sheet, C-2; Demolition, Soil Erosion & Sediment Control Plan, C-3; Site Plan, C-4; Grading Plan, C-5; Detail Sheet, C-6; and Detail Sheet, C-7; all prepared by Bohler Engineering, 352 Turnpike Road, Southborough, MA, and dated 3/25/19, as revised on 5/29/19

Hearing:

July 11, 2019

The Notice of Public hearing was read into the record, as well as the list of Town referrals received. The Planning Board issued Site Plan Approval on 6/4/19, and the Board of Health has reported that the Premises is on Town sewer. Engineering provided a memorandum with comments.

Brandon Barry, of Bohler Engineering, appeared before the Board, representing McDonald's Corporation, 110 N. Carpenter Street, Chicago, IL (the "Applicant"). Mr. Barry reported that the subject site 263 Teaticket Highway, Teaticket, Massachusetts (the "Premises") is currently improved by a McDonald's restaurant; however they are looking to expand the existing single drive through lane to a side-by-side drive through with 2 separate lanes, at the southeast (rear) of the restaurant. Due to this drive through expansion, there will be a decrease in parking, from 58 to 47 spaces. Mr. Barry reported that Planning Board reviewed the proposal, and they approved the 10 space parking reduction.

The Board inquired as to whether cars would merge into a single lane for pick up. Mr. Barry replied affirmatively, explaining that there would be a six-foot striped lane where the lanes merge, and that there won't be two cars merging at the same time. Mr. Barry also confirmed that there would be 47 parking spaces, but that 44 spaces would be allowed, as-of-right.

There were no public comments. Mr. Dugan made a motion to close the hearing, which was seconded by Mr. Potamis. The Board voted unanimously to close the hearing, and proceeded to deliberate.

Findings:

The subject site, 263 Teaticket Highway, Teaticket, Massachusetts, (the "Premises") is sited in the Business 2 zoning district, and comprises 75,515 square feet of area. The Premises is improved by a single-story fast food restaurant, with a drive through lane.

In order to provide for a second drive through lane, the existing parking spaces will be reduced from 58 to 47 spaces. The total number of seats within the restaurant will remain at 58. Parking is required for 58 spaces, but can be reduced by 25% by right, to no less than 44 spaces. The provided parking will exceed the minimum allowance with a by-right reduction, and represents a modest reduction. The addition of the second drive through lane will increase efficiency, and reduce queuing. The Planning Board issued Site Plan Approval.

The Premises is nonconforming, with 164.5 feet of street frontage, where the district minimum is 200 feet. The lot coverage by structures is 4.8%, and total lot coverage is 49.4%. Approximately 120 square feet of additional pervious coverage will be created, which will provide a reduction in stormwater runoff. The Premises is on the Town's Little Pond Sewer Service Area.

In addition to the above findings, the Board finds that the proposed dwelling will be in harmony with the general purpose and intent of the By-Law, and does include consideration, as set forth in Section 240-216 of the Code of Falmouth, as follows:

- A. The site is adequate, in terms of size, for the proposed use, comprising 75,515 square feet of area. The Premises has been utilized as a fast food restaurant, and will continue to do so.
- B. The site is suitable for the continued use, as the property is zoned Business 2. There was no opposition expressed relating to the proposal.
- C. There will be no impact on traffic flow and safety; the Premises is currently accessed by one entrance, and one exit. Some parking stalls are being relocated against the building, to eliminate pedestrian crossing of drive through aisles. The second drive through will improve circulation within the Premises, by increasing efficiency and decreasing drive through stacking.

- D. There will not be any impact on the visual character of the neighborhood, or view or vista from the roadway or abutting properties, given that there will be no change to the existing building.
- E. There will be no impact on sewage disposal, source of water; impervious area is being decreased slightly, and stormwater is collected in catch basins. Applicant has been requested to provide an As-built sewer connection to the Wastewater Superintendent.
- F. The existing restaurant is currently serviced by utilities. The water department will coordinate in upgrading the water service line, within the context of replacing the water main in Teaticket Highway in 2020.
- G. The construction discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.
- H. The Planning Board issued Site Plan Approval, with waivers for parking area design and location for the 25-foot drive through radius.
- I. The application is in compliance with all applicable sections of the Zoning By-Laws as represented, except for the nonconformities stated herein.
- J. The approval of this special permit does not include any affordable housing.

The Zoning Board of Appeals weighed the effects of the proposed second drive through lane at the Premises, as discussed herein, and found that the beneficial effects of granting this special permit outweigh any negative effects there may be. The Board further found that the granting of this special permit will be in harmony with the purpose and intent of the Zoning By-Law, and that the change, extension or alteration shall not be substantially more detrimental to the neighborhood.

NOW THEREFORE, BE IT RESOLVED, that the Zoning Board of Appeals, being of the opinion aforesaid, and acting under Section(s) 240-107 A., and 240-3 C. of the Code of Falmouth, following a motion duly made by Mr. Dugan, and seconded by Mr. Potamis, voted 5 to 0 to grant a special permit, to allow second separate drive through lane, at the southeast (rear) of the restaurant, at 263 Teaticket Highway, Teaticket, Massachusetts (the "Premises"). This special permit shall be subject to the following conditions:

1. The construction shall be as represented to the Board, and substantially as shown on plans submitted and reviewed by the Board, entitled as follows:
 - "McDonald's Site Development Plans for Existing McDonald's with Drive-thru", including sheets Cover C-1; General Notes Sheet, C-2; Demolition, Soil Erosion & Sediment Control Plan, C-3; Site Plan, C-4; Grading Plan, C-5; Detail Sheet, C-6; and Detail Sheet, C-7; all prepared by Bohler Engineering, 352 Turnpike Road, Southborough, MA, and dated 3/25/19, as revised on 5/29/19
2. A final As-Built plan shall be provided to the ZBA. The Applicant is required to identify if there were any changes made to the approved plan, and seek proper approval, or to certify that there were no changes.
3. Any deviation, no matter how minor, from plans submitted and approved by this Board, shall be submitted to the Board for approval, prior to implementation of said change. The Zoning Administrator may make a determination as to whether the changes are minor in nature, and

can be approved administratively, or whether they will require a hearing for an amendment. Changes made prior to an approval may be subject to a full hearing, and are at risk that the ZBA may deny the request, subjecting any unapproved construction be ordered undone.

4. This permit shall not take effect until a copy of the decision bearing the certification of the Town Clerk that 20 days has elapsed after the decision had been filed in the office of the Town Clerk with no appeal being filed, or an appeal has been filed within such time, is recorded in Barnstable Registry of Deeds. (Any person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.)
5. This special permit shall lapse three (3) years from the date on which this decision is filed in the Town Clerk's office.
6. The Zoning Board of Appeals reserves the right to recall the Applicant, with such notice as the Board deems proper, to discuss unresolved matters of concern.

Action: The Board of Appeals, by the signature below, certifies the vote of the Board, as follows, for the above referenced hearing:

Vote: 5 to 0 to grant the Special Permit, as represented to the Board, based on the Findings stated herein, and with the above stated Conditions.



Robert B. Dugan, Zoning Board of Appeals

RECEIVED
JUL 31, 2019 PM 3:45

TOWN CLERK

Date Filed With Town Clerk