



### ZONING BOARD OF APPEALS

City Hall, Room 303  
133 William Street,  
New Bedford, MA 02740  
(508)979-1488  
www.newbedford-ma.gov

Registry of Deeds Use Only:

CITY OF NEW BEDFORD  
JONATHAN F. MITCHELL, MAYOR

### NOTICE OF DECISION

Case Number:	#4206 A			
Request Type:	Variance			
Address:	1080 King's Highway			
Zoning:	Planned Business Zoned District			
Recorded Owner:	Cedar-Kings, LLC			
Owner Address:	44 Bayles Avenue, Suite 304 Port Washington, NY 11050			
Applicant:	McDonald's USA, LLC c/o Bohler Engineering; and Cedar Kings, LLC			
Applicant Address:	352 Turnpike Road Southborough, Ma 01772			
Application Submittal Date	Public Hearing Date	Decision Date		
August 27 <sup>th</sup> , 2015	October 22 <sup>nd</sup> , 2015	October 22 <sup>nd</sup> , 2015		
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
125	29	8820	194	

CITY CLERK'S OFFICE  
NEW BEDFORD, MA  
2015 NOV -4 A 0:41  
CITY CLERK

Variance under provisions of Chapter 9, comprehensive zoning section 2700 (Dimensional Regulations), 2710 (General), and 2720 (Table of Dimensional Requirements, Appendix-B-Side Yard Setback); relative to property located at 1080 King's Highway, assessor's map 125 lot 29 in a Planned Business zoned district. To allow the petitioner to demolish the existing 5,145 square foot McDonald's and construct a 4,450 square foot McDonald's with 40 parking spaces as plans filed.

**Action: GRANTED, WITH CONDITIONS, for the reasons set forth in the attached decision with the conditions as described in the attached decision. (See Attachment)**

A copy of this Decision was filed with the City Clerk of the City of New Bedford on November 4<sup>th</sup>, 2015. Any person aggrieved by this decision has twenty (20) days to appeal the decision in accordance with the procedures set forth in Section 17 of Chapter 40A of the General Laws of Massachusetts.

Nov. 4, 2015  
Date

Allen Decker  
Clerk, Zoning Board of Appeals

### **1.) APPLICATION SUMMARY**

The petitioner is proposing to demolish the existing 5,145 square foot McDonald's and construct a 4,450 square foot McDonald's with 40 parking spaces as plans filed, which will require a Variance under provisions of chapter 9, comprehensive zoning section 2700 (Dimensional Regulations), 2710 (General), and 2720 (Table of Dimensional Requirements, Appendix-B-Side Yard Setback). The petition is relative to property located at 1080 King's Highway, assessor's map 125 lot 29 in a Planned Business zoned district.

### **2.) MATERIALS REVIEWED BY THE BOARD**

#### **Plans Considered to be Part of the Application**

- Site Development Plan Set, submitted by Bohler Engineering, date stamped received by City Clerk's Office August 27<sup>th</sup>, 2015, including:
  - Sheets C-1 through C-15, drawn by Bohler Engineering,
  - ALTA/ACSM Land Title Survey (2 sheets) drawn by Control Point Associates, INC.
  - Building Elevations, drawn by unknown
  - Building Floor Plan, drawn by unknown

#### **Other Documents & Supporting Material**

- Completed Petition for a Variance Form, stamped received by City Clerk's Office August 27<sup>th</sup>, 2015.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated September 28<sup>th</sup>, 2015.
- Staff Comments to ZBA from the Office of Planning, Housing and Community Development, dated October 9<sup>th</sup>, 2015.
- Letter to ZBA from the Conservation Agent, dated October 13<sup>th</sup>, 2015.

### **3.) DISCUSSION**

On the evening of the October 22<sup>nd</sup>, 2015 meeting, board members: James Mathes, John Walsh, Allen Decker, Sherry McTigue, and Robert Schilling were present for the public hearing. City of New Bedford staff: Danny D. Romanowicz (Commissioner of Buildings & Inspectional Services) and Jennifer Gonet (Assistant Project Manager, Planning Division) were present during proceedings for the subject case review.

Case numbers 4206A and 4206B<sup>1</sup> were heard concurrently, as both were for the same project.

For Case number 4206A Mr. Decker made a motion, seconded by Mr. Walsh, to receive and place on file the communications from Commissioner and Inspector of Buildings, Danny D. Romanowicz, dated September 28<sup>th</sup>, 2015; the Communication from the Office of Planning, Housing and Community Development, dated October 9<sup>th</sup>, 2015; the Communication from the Conservation Agent dated October 13<sup>th</sup>, 2015; the appeal packet; the plan as submitted; and, that the owners of the lots as

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<sup>1</sup> A separate notice of decision for Case #4206B was filed concurrently with this notice of decision.

indicated are the ones deemed by the Board to be affected; and that the action of the Clerk in giving notice of the hearing as stated be and is hereby ratified. With all in favor, the motion carried.

For Case number 4206B Mr. Decker made a motion, seconded by Mr. Walsh, to receive and place on file the communications from Commissioner and Inspector of Buildings, Danny D. Romanowicz, dated September 28<sup>th</sup>, 2015; the Communication from the Office of Planning, Housing and Community Development, dated October 9<sup>th</sup>, 2015; the Communication from the Conservation Agent dated October 13<sup>th</sup>, 2015; the appeal packet; the plan as submitted; and, that the owners of the lots as indicated are the ones deemed by the Board to be affected; and that the action of the Clerk in giving notice of the hearing as stated be and is hereby ratified. With all in favor, the motion carried.

Acting Chairperson Mathes then declared the hearings open for case number 4206A and 4206B.

Representative of the Petitioner: Mr. John Kucich (352 Turnpike Road South Hampton, MA), of Bohler Engineering presented the project and requests to the board. Mr Kucich presented that the existing structure was forty-two years old. The proposal is to take down and build a new McDonalds. The requested special permit is for the use as a fast-food drive-thru restaurant. The requested variance is for the location of the trash enclosure. Mr. Kucich stated the proposal improves the site. He explained the current site design is outdated including the parking and drive-thru. The site has limited green space, drainage, and no storm water management. The proposal will eliminate traffic conflicts that currently happen, there will longer be parking in front of the building, a double lane cue was added to keep cars from stacking in roadway of the plaza, and storm water treatment will be added to the site.

Mr. Kucich explained the variance is required as the dumpster location usually would be behind the building, however due to the wetlands buffer on the site it cannot be placed there. The trash enclosure will be six (6) feet trex fencing, located behind another building in the plaza and near the railroad tracks. A green strip is provided in the area near the dumpster separating the site from the other building site.

Ms. McTigue asked about the current parking and the reason for the reduction of parking spaces. Mr. Kucich explained there is no need for fifty spaces for a modern fast-food restaurant, and it would be better for the neighborhood to reduce the parking. He further explained the project had been granted a Special Permit for a reduction in parking requirements from the Planning Board. Also, the project received approval from the Conservation Commission for the storm water management plan. Ms. McTigue stated green space is a welcome addition in the plaza.

Following the petitioner's testimony, Acting Chairperson Mathes invited to the podium anyone wishing to speak in favor of the application. No one in attendance spoke in support of the petition or wished to be recorded in favor of the petition.

Acting Chairperson Mathes invited to the podium anyone wishing to speak in opposition of the petition. No one in attendance spoke in opposition of the petition or wished to be recorded in opposition of the petition.

The Board explained there would be two separate votes on the two cases. Mr. Decker confirmed with Mr. Kucich that the approvals will incorporate the other required approvals of the City as a condition of approval. Mr. Kucich indicated agreement with this condition.

With no further stated questions or concerns, Acting Chairperson Mathes declared the hearings closed.

#### **4.) FINDINGS**

##### **Criteria for Approval of Dimensional Variation (Ch. 9, Sect. 2730)**

The Board of Appeals may vary otherwise applicable dimensional requirements pertaining to frontage, lot area, building height and sidelines upon finding the following:

- a.) *That owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant;*

The board found that property's wetlands and wetlands setback constrain placement of necessary sanitation facilities. The board found the hardship is the placement of necessary sanitation facilities requires a setback variance.

- b.) *That desirable relief may be granted without substantial detriment to the public good;*

The Board found that sufficient information and testimony had been given to determine that granting the required relief would not result in substantial negative impact to the public good.

- c.) *And, that desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.*

The Board found that the impact of the dimensional relief would be minimal, and would not substantially derogate from the intent of the zoning ordinance.

#### **5.) RELIEF**

With respect to the relief requested by the Applicant, the Board has been presented with sufficient information at the hearing to justify the relief described below, subject to the conditions set forth below in Section 6.

The Board grants the Applicant's request for relief from Chapter 9, comprehensive zoning section 2700 (Dimensional Regulations), 2710 (General), and 2720 (Table of Dimensional Requirements, Appendix-B-Side Yard Setback); relative to property located at 1080 King's Highway, assessor's map 125 lot 29 in a Planned Business zoned district. The allow the petitioner to demolish the existing 5,145 square foot McDonald's and construct a 4,450 square foot McDonald's with 40 parking spaces as plans filed.

**6.) THE FOLLOWING CONDITIONS AND RESTRICTIONS SHALL APPLY**

- a. Approval from all City Departments involved in the project;
- b. The project shall be set forth according to plans submitted with the application;
- c. That the applicant shall ensure that a copy of this decision, bearing the certification of the City of New Bedford Clerk's Office, is recorded in the Registry of Deeds;
- d. And that the rights authorized by the granted Variances must be exercised, by issuance of a Building Permit by the Department of Inspectional Services and acted upon within one year from the date they were granted or they will lapse.

**7.) DECISION**

Based on a review of the application documents, testimony given at the public hearing and the findings described above, the Zoning Board of Appeals hereby **GRANTS, WITH CONDITIONS**, the requested Variance.

On a motion by A. Decker, seconded by J. Walsh to grant the requested Variance, the vote carried 5-0 with members R. Schilling, S. McTigue, A. Decker, J. Mathes, and J. Walsh. voting in the affirmative, no member voting in the negative. (Tally 5-0)

Filed with the City Clerk on:

Nov. 4, 2015

Date

Allen Decker

Allen Decker, Clerk of the Zoning Board of Appeals