



ZONING BOARD OF APPEALS

CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

SUBMIT TO:
Planning Department
133 William Street
Room 303
New Bedford, MA 0274

Appeal Nr. 4206A

Petition for a VARIANCE

Date: _____

The undersigned petitions the Board of Appeals to grant a Variance in the manner and for the reasons hereinafter set forth under the provisions of the Zoning Ordinance to the following described premises:

1. Application Information

Street Address: 1080 Kings Highway

Assessor's Map(s): 125 Lot(s) 29

Registry of Deeds Book: 8820 Page: 194

Zoning District: Planned Business

Applicant's Name (printed): McDonald's USA, LLC c/o Bohler Engineering (Eric Dubrule)

Mailing Address: 352 Turnpike Rd Southborough MA 01772
(Street) (City) (State) (Zip)

Contact Information: 508 480 9900 edubrule@bohlereng.com
Telephone Number Email Address

Applicant's Relationship to Property: Owner Contract Vendee Other Lessee

List all submitted materials (include document titles & volume numbers where applicable) below:

Site Plan Set by Bohler Engineering Dated 8/12/15
Elevations & Floor Plan dated 10/2014
Deed
McDonald's Authorization Letter
Abutters List
Departmental Sign-off Sheet
Electronic Submission

2015 AUG 17 A 11: 29
 CITY CLERK
 CITY OF NEW BEDFORD, MA

By signing below, I/we acknowledge that all information presented herein is true to the best of my/our knowledge. I/we further understand that any false information intentionally provided or omitted is grounds for the revocation of the approval(s). I/we also give Planning Division staff and Zoning Board Members the right to access the premises (both interior and exterior) at reasonable times and upon reasonable notice for the purpose of taking photographs and conducting other visual inspections.

8-27-15
Date

Jon Dubrule
Signature of Applicant

2. Dimensions of Lot(s) 653-ft ± 665-ft ± Area 303,630
 Frontage Depth Sq. Ft.

3. Number of buildings on lot Existing McDonald's (to be rebuilt) & existing strip mall

4. Size of existing buildings ±5,145 SF

5. Size of proposed buildings ±4,500 SF

6. Present use of premises Restaurant with Drive-thru

7. Proposed use of Premises Restaurant with Drive-thru

8. Extent of proposed alterations Raze & rebuild entire site.

9. Existing number of dwelling units & bedrooms 0 Proposed 0

10. For commercial uses, please complete the following:

	Existing	Proposed
a) Number of customers per day:	<u>1,100</u>	<u>1,100</u>
b) Number of employees:	<u>35</u>	<u>40</u>
c) Hours of operation:	<u>24</u>	<u>24</u>
d) Days of operation:	<u>7 days</u>	<u>7 days</u>
e) Hours of deliveries:	<u>7a-6p</u>	<u>7a-6p</u>
f) Frequency of deliveries:	<input type="checkbox"/> Daily <input type="checkbox"/> Weekly <input type="checkbox"/> Monthly <input checked="" type="checkbox"/> Other: <u>3 times per week</u>	

11. Planning Board Site Plan Review and Special Permits:
X The applicant is also requesting Site Plan Review and Special Permit(s) from the Planning Board. If so, specify below:
Planning Board Site Plan Review
Planning Board Special Permit for Reduction in Parking

12. Have plans been submitted to the Department of Inspectional Services? Yes

13. Has the Department of Inspectional Services refused to issue a permit? Yes

14. Explain what modifications are proposed that would require the requested Variance:
A Variance is requested for an encroachment of a 6-ft high vinyl trash enclosure fence within a rear & side yard setback (Section 2720 Appendix B of the Zoning Bylaws). The side yard requires a 25-ft setback, where 18.5-ft is provided and the rear yard requires a 25-ft setback where 15-ft is provided. Both abutting properties are commercial uses, one being train tracks and the other a vacant retail building with the rear of the building facing the enclosure fence.

15. State your hardship in accordance with Mass General Laws Chapter 40A Section 10. (Reference the attached "Required Findings For Granting a Variance").

1. The SE portion of the site is constrained with a wetland buffer, so the ideal location for the enclosure is to the north of the site. The north side of the site has limited area to house the 6-ft fence enclosure and as such relief is requested.

2. Moving the enclosure out of the setback would result in a further reduction to the limited amount of proposed parking.

3. Granting relief for the fence will not nullify or derogate from the intent of the Zoning Ordinance as the structure is merely a 6-ft fence enclosure within a shopping plaza.

4. Relief may be granted without substantial detriment to the public good as the structure is merely a 6-ft fence enclosure meant to provide additional screening. The adjacent property Use is a train track and the rear of a commercial building.

16. Complete for ALL the portions for which you are requesting a Variance:

	<u>Existing</u>	<u>Allowed/Required</u>	<u>Proposed</u>
Lot Area (sq ft)	303,630 SF	0	no change
Lot Width (ft)	±665-ft	n/a	no change
Number of Dwelling Units	0	0	0
Total Gross Floor Area (sq ft)	±5,145 SF	n/a	±4,500 SF
Residential Gross Floor Area (sq ft)	n/a	n/a	n/a
Non-Residential Gross Floor Area (sq ft)	±5,145 SF	n/a	±4,500 SF
Building Height (ft)	±16-ft	100-ft	20'-3"
Front Setback (ft)	±206-ft	25-ft	±174.6-ft
Side Setback (ft)	± 375-ft	25-ft	±410-ft
Side Setback (ft)	±148-ft	25-ft	±127.2-ft
Rear Setback (ft)	±50.5-ft	25-ft	±68.7-ft
Lot Coverage by Buildings (% of Lot Area)	11.4%*	50%	10.7%*
Permeable Open Space (% of Lot Area)	15.0%	20%	22.3%
Green Space (% of Lot Area)	15.0%	20%	22.3%
Off-Street Parking Spaces	50	56	41
Loading Bays	1	1	1
Number of Ground Signs	1 existing to remain	1	existing to remain
Height of Ground Sign	unknown	***	existing to remain
Proximity of Ground Sign to Property Line	existing to remain	min. 6-ft	existing to remain
Area of Wall Sign (sq ft)	±84 SF	***	110 SF
Number of Wall Signs	2	***	5

*** Signage Reviewed during Planning Board Site Plan Review.

17. Verification of Ownership. By signing this application the petitioner is stating that they have read and understand this application and the accompanying instructions and information. If petition is granted, the approvals are specific to the plans submitted, unless the Board states otherwise. Also, if granted, that the Variance must be recorded and acted upon within one year.

This section is to be completed & signed by the property owner(s):

I hereby authorize the following Applicant: McDonald's USA, LLC c/o Buhler Engine
at the following address: 352 Turnpike Rd, Southboro, MA 01712
to apply for: ZBA - Variance (setback encroachment)
on premises located at: 1080 Kings Highway, New Bedford, MA
in current ownership since: October 5, 2007
whose address is: 44 South Bayles Avenue, Fort Washington NY
for which the record title stands in the name of: Cedar-Kings, LLC
whose address is: 44 South Bayles Avenue, Fort Washington NY 11050
by a deed duly recorded in the:
Registry of Deeds of County: Bristol Book: 8820 Page: 194
OR Registry District of the Land Court, Certificate No.: _____ Book: _____ Page: _____

I/we acknowledge that all information presented herein is true to the best of my/our knowledge. I/we further understand that any false information intentionally provided or omitted is grounds for the revocation of the approval(s). I/we also give Planning Division staff and Zoning Board Members the right to access the premises (both interior and exterior) at reasonable times and upon reasonable notice for the purpose of taking photographs and conducting other visual inspections.

8-20-15 Charles Burkut, VP Development & Construction
Date Signature of Land Owner (If authorized Trustee, Officer or Agent, so identify)



BOHLERTM

ENGINEERING

352 Turnpike Road
Southborough, MA 01772
PHONE 508.480.9900
FAX 508.480.9080

August 26, 2015

City of New Bedford
Planning Department
Attn: Jennifer Gonet
133 William St. Rm 303
New Bedford, MA 02740

Re: McDonald's
1080 King's Highway
New Bedford, MA
ZBA - Special Permit & Variance Applications

Dear Ms. Gonet:

On behalf of McDonald's USA, LLC (c/o Bohler Engineering) please find the enclosed Applications for a Special Permit for Fast food Use and a Variance Application for a trash enclosure fence within a side and rear yard setback. In support of these applications please find the following enclosures;

- Twelve (12) Special Permit Applications;
- Twelve (12) Variance Applications;
- Twelve (12) Building Permit Rejection Packets;
- Twelve (12) Certified Abutter lists;
- Twelve (12) property deeds;
- Twelve (12) Site Development Plan set prepared by Bohler Engineering, dated August 12, 2015;
- Twelve (12) Architectural plans;
- McDonald's USA, LLC applicant authorization letter;
- Landlord Authorization Letter;
- \$750 Check for Special Permit & Site Plan Review Application Fees;

The proposed project involves the demolition of the existing $\pm 5,145$ square foot McDonald's and construction of $4,450\pm$ square foot McDonald's with 40 parking spaces. Traffic circulation proximate to the McDonald's is being improved with the addition of curbing and designated entrance & exit driveways. Additional improvements include side-by-side drive-thru ordering stations, increased landscaping, decreased impervious area ($\pm 4,625$ SF reduction), new utilities, and a drainage system which includes the addition of water quality treatment where none exists currently.

The placement of the 6-ft high white vinyl trash enclosure fence within a required 25-ft side & rear yard setback requires relief by way of a Variance from the Zoning Board of Appeals (ZBA). From an operations standpoint, McDonald's would prefer to locate their enclosure to the southeast side of the site. However, the site is constrained with wetlands to the southeast and as such, to respect the wetland resource area, the trash enclosure is proposed to the northeast side of the property. Upon review of the surrounding area, it is apparent the proposed location is actually the most ideal on the property as it is located to the rear of the abutting commercial building, along a railroad track to the east and to the rear of the McDonald's property. It's notable that moving the enclosure outside of the required setbacks would result in a reduction in parking and a less superior site layout with regards to on-site traffic circulation. For these reasons, we respectfully request relief for the 6-ft vinyl fence encroachment on the side & rear yard setback. Additional information is listed within the Application for reference.



BOHLER
ENGINEERING

The applicant respectfully requests that the application package be reviewed upon receipt and if deemed complete, placed on the ZBA's September 17, 2015 meeting agenda for review. Should you have any questions or need additional information, please do not hesitate to contact me at 508-480-9900.

Sincerely,

BOHLER ENGINEERING

Eric G. Dubrule

John A. Kucich, P.E.

W142005
Letter ZBA 08-26-15.docx



McDonald's USA, LLC
690 Canton Street
Suite 310
Westwood, MA 02090
(781) 329-1450

May 22, 2007

Bohler Engineering, P.C.
352 Turnpike Road
Southborough, MA 01756

To Whom It May Concern:

McDonald's USA, LLC with a usual place of business in Westwood, Massachusetts, does hereby authorize the employees of Bohler Engineering, P.C. to apply for and represent McDonald's USA, LLC in filing of any applications for required permits and/or approvals for the construction, operation and maintenance of McDonald's USA, LLC restaurants including, but not limited to, appearing before any governmental agency at general meetings or public hearing addressing such construction/improvement of McDonald's USA, LLC.

McDonald's USA, LLC


Nancy Dittmeier



August 25, 2015

McDonald's Corporation
One McDonald's Plaza
Oak Brook, IL 60523

Re: Authorization to Submit Petition for Special Permit, Kings Plaza Shopping Center,
1080 Kings Highway, New Bedford, MA 02745

Dear Tenant:

This is to confirm your authorization to submit a petition for a special permit to the Zoning Board of Appeals in connection with the proposed demolition of your existing fast-food restaurant to construct a new fast-food restaurant building.

Very truly yours,

A handwritten signature in cursive script, reading 'Adina G. Storch'.

Adina G. Storch, Esq.
Secretary, Cedar-Kings, LLC

Deed

King's Plaza Associates Limited Partnership
of c/o WP Realty, Inc., 940 Haverford Road, Bryn Mawr, PA 19010 ("Grantor")

For consideration paid and in full consideration of Twelve Million and 00/100 Dollars
(\$12,000,000.00)

Grants to Cedar-Kings, LLC of 44 South Bayles Avenue, Port Washington, NY 11050
("Grantee")
With Quitclaim Covenants

Certain parcels of unregistered land situated in the City of New Bedford, County of
Bristol and Commonwealth of Massachusetts, described on Exhibit "A" attached hereto
and made a part hereof.

Together with all the buildings and other improvements thereon and all tenements, rights,
easements, hereditaments, rights of way, privileges, liberties, appendages and
appurtenances now or hereafter belong or in any way appertaining to such land.

Being the same premises conveyed to the Grantor by deed recorded with Bristol Co. S.D. in
Book 3214, Page 337.

Executed as a sealed instrument this 5 day of October, 2007.

GRANTOR:
KING'S PLAZA ASSOCIATES LIMITED
PARTNERSHIP

By: **King's Plaza Developers Limited**
Partnership, its General Partner

By: **New King's Plaza, Inc.,**
Its General Partner

By: _____
Bryan S. Weingarten
President

REG OF DEEDS
REG #07
BRISTOL S

10/11/07 1:35PM 01
000000 #1737

FEE \$54720.00

CASH \$54720.00

1024+1080 King's Plaza, New Bedford, MA

EXHIBIT "A"

That certain tract or parcel of land with all buildings and improvements shown as Lot B on a plan dated November 22, 1971, recorded with said Deeds, Plan Book 86, Plan No. 69, thereon situated on the easterly side of King's Highway (State Route 140) in the City of New Bedford, Bristol County, Massachusetts, is herein bounded and described:

Beginning at the most northwesterly corner of the herein described parcel said corner being located S 32 08' 24" W two hundred thirty four and 00/100 (234.00') from the intersection of the easterly highway line of King's Highway with the westerly line of land now or formerly of the Penn Central Railroad;

Thence proceeding S 58 04' 05" E a distance of one hundred twenty five and 00/100 (125.00) feet to a point;

Thence proceeding N 80 52' 14" E a distance of fifty-eight and 00/100 (58.00') feet to a point;

Thence proceeding along the chord of an arc N 08 18' 57" W a distance of one hundred nineteen and 98/100 (119.98') feet to a point, said arc having a radius eleven thousand, three hundred sixty and 19/100 (11,360.19') feet and an arc length of one hundred nineteen and 98/100 (119.98'), the last three courses bounded northerly, and westerly by land now or formerly of the Shell Oil Company;

Thence proceeding N 81 22' 53" E a distance of sixty-six and 00/100 (66.00') feet to a point;

Thence proceeding along the chord of an arc S 08 18' 46" E a distance of one hundred twenty two and 82/100 (122.82') feet to a point, said arc having a radius of eleven thousand four hundred twenty six and 19/100 (11,426.19') feet and an arch length of one hundred twenty two and 82/100 (122.82');

Thence proceeding S 08 00' 10" E a distance of one thousand four hundred twenty and 00/100 (1,420.00') feet to a point, the last three courses bounded northerly and easterly by land now or formerly of the Penn Central Railroad;

Thence proceeding S 81 59' 50" W a distance of four hundred twelve and 00/100 (412.00') feet to a point;

Thence proceeding N 08 00' 10" W a distance of four hundred eleven and 29/100 (411.29') feet to a point;

Thence proceeding N 58 32' 07" W a distance of thirty seven and 59/100 (37.59') feet to a point;

Thence proceeding N 10 08' 29" W a distance of three hundred sixty and 00/100 (360.00') feet to a point;

Thence proceeding N 57 56' 23" W a distance of two hundred seventy-six and 00/100 (276.00') to a point on the easterly side of King's Highway so called, the last five courses bounded southerly, westerly, southerly, westerly and southerly by land now or formerly of First Bristol Corporation, Trustee of Fieldstone Realty Trust;

Thence proceeding N 32 08' 24" E along the easterly highway line of king's highway so-called a distance of thirty seven and 72/100 (37.72') feet to a Massachusetts Highway bound found;

Thence continuing N 32 08' 24" E along the said highway line a distance of five hundred seventy six and 18/100 (576.18') feet to a Massachusetts Highway bound found, thirty three and 00/100 (33.00') feet right of station +75.009;

Thence continuing N 32 08' 24" E along said highway line a distance of seventy seven and 66/100 (77.66') feet to the point and place of beginning;

Said parcel contains 15.348 acres more or less.

Together with and the benefit of Grant of Driveway and Access Easement and of Restriction between Shell Oil Company and King's Plaza Associates Limited Partnership dated June 6, 1995 and recorded in Book 3486, Page 228.

REQUEST FOR CERTIFIED LIST OF ABUTTERS

Attach the Certified List of Abutters to this Certification Letter and Submit all.

The applicant shall complete the request form below, and submit to Planning Department, City Hall, 133 William Street, Room 303, so that a list may be created for use by the applicant.

I, Carlo Aguedo, Administrative Assistant to the Board of Assessors of the City of New Bedford, do hereby certify that the names and addresses as identified on the attached "abutters list" are duly recorded and appear on the most recent tax.

Date: 7/1/2015

SUBJECT PROPERTY:

MAP 125 LOT 29

LOCATION 1080 Kings Highway

OWNER'S NAME Cedar-Kings, LLC c/o Cedar Realty Trust Inc.

MAILING ADDRESS 44 South Bayles Ave STE 304, Port Washington NY 11050

CONTACT PERSON Eric Dubrule (Bohler Engineering - 352 Turnpike Rd, Southboro MA 01772)

TELEPHONE NUMBER 508 480-9900

EMAIL ADDRESS edubrule@bohlereng.com

REASON FOR REQUEST: ZBA - Special Permit for Drive-thru Use,
ZBA - Variance for trash structure in a building setback,

CITY CLERK'S OFFICE
NEW BEDFORD, MA
2015 AUG 27 A 11:29
CITY CLERK

June 29, 2015
Dear Applicant,

Please find below the List of Abutters within 300 feet of the property known as 1080 Kings highway (125-29). The current ownership listed herein must be checked and verified by the City of New Bedford Assessor's Office. Following said verification, the list shall be considered a Certified List of Abutters.

Please note that multiple listed properties with identical owner name and mailing address shall be considered duplicates, and shall require only 1 mailing. Additionally, City of New Bedford-Owned properties shall not require mailed notice.

Parcel	Location	Owner and Mailing Address
125-29	1080 KINGS HWY	CEDAR-KINGS LLC, C/O CEDAR REALTY TRUST INC 44 SOUTH BAYLES AVE STE 304 PORT WASHINGTON, NY 11050-3765
126-222	606 TARKILN HILL RD	FALCON KARYN "TRUSTEE", C/O MICHAEL PANAGAKOS 133 FAUNCE CORNER ROAD DARTMOUTH, MA 02747-1213
123-43	950 KINGS HWY	CEDAR-FIELDSTONE, LLC, C/O CEDAR REALTY TRUST INC 44 SOUTH BAYLES AVE STE 304 PORT WASHINGTON, NY 11050 -3765
123-109	1024 KINGS HWY	CEDAR-KINGS LLC, C/O CEDAR REALTY TRUST INC 44 SOUTH BAYLES AVE STE 304 PORT WASHINGTON, NY 11050 -3745
114-3	429 CHURCH ST	JONES J THOMAS "TRUSTEE", JONES KEVIN J "TRUSTEE" P O BOX 51687 NEW BEDFORD, MA 02745 - 0048
114-325	475 CHURCH ST	475 CHURCH STREET LLC, 268 DEXTER ROAD ST ALBANS, ME 04971 -7113
114-341	W CHURCH ST	SURPRENANT CHARLES E, 268 DEXTER ROAD ST ALBANS, ME 04971 -7113
114-1	RIGHT OF WAY	PENN CENTRAL CO, CONSOLIDATED RAIL CORP P O BOX 8097 8499 PHILADELPHIA, PA 19101 -8499
126-68	RIGHT OF WAY	PENN CENTRAL CO, CONSOLIDATED RAIL CORP P O BOX 8097 8499 PHILADELPHIA, PA 19101 -8499
126-67	SS TARKILN HILL RD	PENN CENTRAL CO, C/O CSX TRANSPORTATION (J910) 500 WATER STREET JACKSONVILLE, FL 32202 -4423
126-227	507-CHURCH ST 513	BRODEUR FAMILY LIMITED PARTNERSHIP (THE), 513 CHURCH STREET NEW BEDFORD, MA 02745 -5106
125-113	1090 KINGS HWY	PANAGAKOS MICHAEL, 133 FAUNCE CORNER ROAD DARTMOUTH, MA 02747 -1213
125-106	SS TARKILN HILL RD	HUBBER JOHN W - TRUSTEE HERITAGE REALTY TRUST, C/O CROSSPOINT ASSOCIATES INC 300 THIRD AVENUE SUITE 2 WALTHAM, MA 02451 City of New Bedford Airport Commission 133 William St. New Bedford, MA 02740

McDonalds

DEPARTMENT SIGN-OFF SHEET

**ZONING BOARD OF APPEALS SPECIAL PERMIT REVIEW
& Variance**

<u>DEPARTMENT</u>	<u>COPIES</u>	<u>SIGNATURE</u>	<u>DATE</u>
BOARD MEMBERS CITY HALL, ROOM 303	5	<u>Conni Franken</u>	<u>8/27/15</u>
CITY PLANNING CITY HALL, ROOM 303	1	<u>Conni Franken</u>	<u>8/27/15</u>
CITY CLERK (Original) CITY HALL, ROOM 118	1	<u>Paola Santos</u>	<u>8-27-15</u>
CITY SOLICITOR CITY HALL, ROOM 203	1	<u>Brad A. Peterson</u>	<u>8/27/15</u>
INSPECTIONAL SERVICES CITY HALL, ROOM 308	1	<u>Pat Lanzoni</u>	<u>8-27-15</u>
PUBLIC INFRASTRUCTURE 1105 SHAWMUT AVENUE	1	<u>Eric Rencato</u>	<u>8/27/15</u>
CONSERVATION COMMISSION CITY HALL, ROOM 304	1	<u>Strongus</u>	<u>8/27/15</u>
FIRE DEPARTMENT 1204 PURCHASE STREET	1	<u>Carayn Pedro</u>	<u>8/27/15</u>