



ZONING BOARD of APPEALS

City Hall, Room 303
133 William Street,
New Bedford, MA 02740
(508) 979-1488
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2020 JUN -8 A 11:02

CITY CLERK

CITY OF NEW BEDFORD

JONATHAN F. MITCHELL, MAYOR

NOTICE OF DECISION

Case Number:	#4415			
Request Type:	Special Permit			
Address:	888 Ashley Boulevard			
Zoning:	Mixed Use Business (MUB)			
Recorded Owner:	Zhang Zi Q, C/O New York Buffet Inc			
Owner Address:	1015 Pecan Lake Court, Stillwater, OK 74074			
Applicant:	Yearly Grind II Realty, LLC			
Applicant Address:	3021 Acushnet Avenue, New Bedford, MA 02745			
Application Submittal Date		Public Hearing Date		Decision Date
March 11, 2020		May 28, 2020		May 28, 2020
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
127C	134	4155	343	

A Special Permit under Chapter 9 Comprehensive Zoning Sections 2200 (use regulations), 2210 (general), 2230 (table of regulations-Appendix A, commercial #23 restaurant, fast-food) and 5300-5330 & 5360-5390 (special permit); relative to property located at **888 Ashley Boulevard**, Assessors' map 127C lot 134 in a Mixed Use Business [MUB] zoned district. The petitioner proposes to construct a Dunkin Restaurant with a drive through window and the installation of an electronic message menu board per plans filed.

Action: DENIED, for the reasons set forth in the attached decision.

A copy of this Decision was filed with the City Clerk of the City of New Bedford on June 8, 2020. 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.

June 8, 2020

Date

Stephen Brown, Clerk of the Zoning Board of Appeals

APPLICATION SUMMARY

The petitioner proposes to construct a Dunkin Restaurant with a drive through window per plans filed, which requires a Special Permit under Chapter 9 Comprehensive Zoning Sections 2200 (use regulations), 2210 (general), 2230 (table of regulations-Appendix A, commercial #23 restaurant, fast-food) and 5300-5330 & 5360-5390 (special permit); relative to property located at **888 Ashley Blvd.**, Assessors' map 127C lot 134 in a Mixed Use Business [MUB] zoned district.

1.) MATERIALS REVIEWED BY THE BOARD

Plans Considered to be Part of the Application

- Plan set, drawn by Bohler, dated February 10, 2020, date stamped received by City Clerk's Office March 11, 2020 including:
 - C-101 Cover Sheet
 - C-102 General Notes Sheet
 - C-201 Demolition Plan
 - C-301 Site Layout Plan
 - C-302 Truck Turn Layout
 - C-401 Grading and Drainage Plan
 - C-501 Utility Plan
 - C-601 Erosion and sediment Control Plan
 - C-602 Erosion and sediment Control Notes and Details
 - C-701 Landscape Plan
 - C-702 Landscape Notes and Details
 - C-703 Lighting Plan
 - C-901-904 Detail Sheet
 - ALTA/NSPS Land Title Survey
- Plan set, drawn by Bohler, dated January 22, 2019, date stamped received by City Clerk's Office March 11, 2020 including:
 - Drainage Report
- Plan set, drawn by Bohler, dated April 7, 2020 date stamped received by City Clerk's Office April 27, 2020, including:
 - C-301 Site Plan Layout
 - C-901 Detail Sheet

Other Documents & Supporting Material

- Completed Petition for a Special Permit, stamped received by City Clerk's Office March 11, 2020.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated April 1, 2020.
- Staff Comments to the ZBA from the Department of City Planning, dated May 8, 2020.

2.) DISCUSSION

On the evening of the May 28, 2020 meeting, board members: Leo Schick, Stephen Brown, Allen Decker, Robert Schilling, and Celeste Paleologos were present for the public hearing. City of New Bedford staff: Danny D. Romanowicz (Commissioner of Buildings & Inspectional Services), and Angela Goncalves (Assistant Project Manager) were present during proceedings for the subject case review.

In regard to Case #4415 and Case #4417 Clerk Brown made a motion, seconded by Mr. Schilling to hold the public hearings concurrently as they both were in regard to the same project at 888 Ashley Boulevard. With all in favor, the motion carried.

In regards to Case #4415 Clerk Brown made a motion, seconded by Mrs. Paleologos to receive and place on file the communications from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated April 1, 2020; staff comments from the Department of City Planning, dated May 8, 2020; the appeal packet as submitted; 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.

Chairperson Schick then declared the hearing open.

The petitioner: Brian Grossman, Attorney, Bowditch & Dewey (200 Crossing Boulevard, Suite 300, Framingham, MA) and James Bernardino, Project Manager for Bohler Engineering, (352 Turnpike Road, Southborough, MA), co-presented the case at the hearing representing the applicant, Yearly Grind II Realty, LLC. Attorney Grossman began the presentation by stating the applicant is seeking two separate reliefs; one for a Special Permit and one for an Administrative Appeal.

Under the zoning ordinance a commercial restaurant, fast food use requires a Special Permit from the Zoning Board of Appeals in a Mixed Use Business zoned district.

The proposal also requires an Administrative Appeal for the proposed electronic message menu board (Case #4417).

The petitioners are proposing to construct a Dunkin' Restaurant with a drive thru-window and the installation of an electronic message menu board per plans submitted.

Mr. Grossman briefly describes the locus of the subject property located at 888 Ashley Boulevard in a Mixed Use Business (MUB) zoned district. Mr. Grossman states the subject site previously hosted New York China Buffet; the business is no longer operational, and the site is currently vacant. Mr. Grossman explained the proposal is to raze and rebuild to allow for the proposed development.

The project would include the removal of the existing building and the construction of the new 2,002 SF building, drive thru, parking lot, landscaping, installation/improvement of associated utilities,

installation of a new stormwater management system and the installation of an electronic menu board.

Mr. Grossman proceeded to clarify the applicant is Yearly Grind II Realty, LLC and has a purchase and sales agreement in place with the current owner Zhang ZI Q .

The subject proposal requires Site Plan Review from the Planning Board. **The Planning Board hearing is scheduled for June 10th via Zoom.**

Mr. Grossman continued his presentation by clarifying the boundary of the existing rear property lot line of the site. Mr. Grossman stated the proposed ownership of the site would not include the abutting residential boundary line. Mr. Grossman noted the proposed footprint would be smaller than the existing building. Nonetheless the use would be similar as a proposed as a Fast Food, Restaurant use. Mr. Grossman mentions the proposed development would be harmonious with the structure of the commercial neighborhood along Ashley Boulevard.

Mr. Grossman notes the configuration of the site, curb cuts, traffic and deliveries. The site as proposed would have two driveways; one full access (entrance & exit) while the other would be an exit only. Vehicles will therefore access the site via the main entrance (southwest) on Ashley Boulevard and exit the site via the same or an “exit only” drive (northwest) to Ashley Boulevard. **No curb cuts or traffic is proposed to be routed onto Maryland or Jarry Streets.**

The drive-thru will have one lane along the south side of the building, wrapping around the building counterclockwise to the drive-thru window on the east side of the building.

The applicant proposes to provide twenty-eight (28) off street parking spaces, with (25) being required. The proposed business is expected to have 20 employees, with 6 employees working per shift. The proposed hours of operation are from 4am-9pm, seven days a week. Deliveries are anticipated between 9am-5pm, with daily deliveries via a “small truck” and two other deliveries weekly. The business anticipates serving 500 customers per day.

Mr. Grossman concluded his presentation by briefly explaining the required criteria to allow for the granting of the special permit; mentioning neighborhood characteristic, traffic flow, and servicing the social, economic and community needs.

Mr. Bernardino proceeded with the presentation to explain in more detail the proposed development. Mr. Bernardino briefly described the subject property, screening options, site access and configuration; eliminating two of the existing curb cuts to reduce traffic congestion to abutting residential neighbors located on Maryland & Jarry Street. Mr. Bernardino reemphasized parking, deliveries and the rear lot line previously mentioned by Mr. Grossman.

Mr. Bernardino proceeded with the presentation describing the proposed electronic message menu board. Mr. Bernardino stated the menu board would be located in the rear of the building easterly. The visual electronic components would not be directed towards the street right of way and would be

screened from abutting properties. Mr. Bernardino explained the optimal positioning of the electronic message menu board/speaker in the rear of the building is to maximize customer efficiency and minimize traffic congestion. Mr. Bernardino notes the electronic message menu board is not intended or proposed to having moving, flashing or continuously changing light intensities that would attract the attention of person outdoors. Mr. Bernardino briefly mentions the decibel level of the speaker; noting it would have little to no impact to the surrounding neighborhood.

The overall area of the proposed menu board is 22.92 SF, with an overall height of 6'-10", width of 5'-0", and 2'-0" depth. The digital menu board as proposed includes two side by side internally illuminated cabinets. Each cabinet is 11.46 SF, totaling 22.92 SF. The base height of the sign will be 2'-0". The internally illuminated sign face as proposed would be in a variety of colors depicting the drink and food items offered at Dunkin establishment.

Mr. Bernardino concluded his presentation by stating a comprehensive site plan package has been submitted for the proposal; including lighting, landscaping, drainage and an erosion plan for the proposed development. Before the discussion was turned over to the Board for comments/questions, Mr. Grossman reiterated that the noise data shows no impact to the surrounding neighborhood.

Chairperson Schick inquired regarding hours of operation, Mr. Grossman stated 5am-9pm, Mr. Bernardino clarified the hours of operation are 4am-9pm.

In response to an inquiry from board member Paleologos relative to parking and seating capacity, Mr. Grossman and Mr. Bernardino replied (28) parking spaces are proposed, only (25) spaces are required. There are (14) seats associated with the dining area.

Board member Decker inquired regarding Planning Board Site Plan Review and time limitations of the menu board speaker; Mr. Grossman replied Site Plan Review is scheduled for June 10, 2020. Mr. Grossman and Mr. Bernardino refer to Mr. Daly to answer the limiting of the speaker. Mr. Daly replied within reason they would consider limited speaker hours of operation. Nonetheless, Mr. Daly noted drive-thru businesses have been a crucial and sometimes only means of operation for fast food, restaurant businesses during the Covid-19 Pandemic.

Following the petitioner's testimony, Chairperson Schick invited to the podium anyone wishing to speak in favor or be recorded in favor of the petition of the application. There was no response to Chair Schick's invitation to speak or be recorded in favor.

Chairperson Schick invited to the podium anyone wishing to speak or be recorded in opposition of the petition. Several people responded to speak in opposition of the proposal. Attorney, Nicholas Gomes (252 Maitland Street), Laurie Sousa (260 Jarry Street), Anne Trembley (247 Ohio Street), Dolores Couto (261 Maryland Street), Jonathan St Clair (200 Maryland Street), Peter Gomes (254 Maryland Street), Constance Preston (250 & 260 Jarry Street) and Ward 1 Councilor Brad Markey spoke in opposition of the proposal.

The mutual principal concerns with the proposal were relative to lighting, noise, traffic congestion, proper screening (fencing), and services not needed in the surrounding neighborhood.

Chairperson Schick invited to the podium anyone else wishing to speak or be recorded in opposition of the petition. There was no response to Chair Schick's invitation to speak or be recorded in opposition.

Mr. Grossman gave a brief rebuttal to the opposition stating the proposed Dunkin restaurant is owned by a franchisee not a faceless corporation. Mr. Grossman also rebutted in regard to screening, signage, traffic and lastly that the site would be replacing an existing location in close proximity to the proposed site.

Mr. Bernardino gave a brief rebuttal in regard to buffers, including fencing and evergreen screening.

Attorney Gomes gave a brief rebuttal, addressing an extension of the decision based on a petition signed by residents that was not submitted in time.

With no further discussion, Chairperson Schick closed the hearing.

The board had a brief discussion.

Clerk Brown stated many of the concerns are in the purview of the Planning Board, and should be addressed at the Planning Board Meeting, scheduled for June 10, 2020.

Board member Schilling suggested a possible extension of the vote, due to an unseen signed petition. Mr. Schilling implies that he would be interested in seeing the document of the "46" signatures in opposition to the proposal.

There was brief discussion among to make a motion to accept the petitions and submit them to the Planning Board to address future concerns.

Board Member Decker begins to make a motion to receive and place the signed petition, Clerk Brown dismisses the motion due to the fact that the actual petition has not yet been submitted.

The Board had a brief discussion contemplating on whether to table the decision to a later date in order to view the petition. After further discussion, the Board finally agreed to vote on the petition at tonight's meeting.

With no further discussion, the board indicated their readiness to vote.

3.) FINDINGS

The Board found that due to significant abutter concerns voiced at the hearing, and in accordance with City of New Bedford Code of Ordinances Chapter 9 Section 5320, the benefit to the City and the neighborhood does not outweigh the adverse effects of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site including consideration of the

following: social, economic, or community needs which are served by the proposal; traffic flow and safety, including parking and loading; adequacy of utilities and other public services; neighborhood character and social structures; and impacts on the natural environment.

4.) 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 in Section 6.

The Board **DENIED** the applicant's request for relief from Chapter 9 Comprehensive Zoning Sections 2200 (use regulations), 2210 (general), 2230 (table of use regulations-Appendix A, commercial #23 restaurant, fast-food) and 5300-5330 & 5360-5390 (special permit); relative to property located at **888 Ashley Boulevard**, Assessors' map 127C lot 134 in a Mixed Use Business [MUB] zoned district. The petitioners are proposing to construct a Dunkin Restaurant with a drive through window per plans filed.

5.) 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 **DENIED** the requested special permit.

A motion to approve was made by Clerk Brown and seconded by Celeste Paleologos as follows:

In regard to Case #4415 for: **Zhang Zi Q, C/O New York Buffet Inc**, (1015 Pecan Lake Court, Stillwater, OK 74074), **Yearly Grind II Realty, LLC** (3021 Acushnet Avenue, New Bedford, MA 02745) and **Bowditch & Dewey, LLP, C/O Brian S. Grossman** (200 Crossing Blvd., Suite 300, Framingham, MA 01702) relative to property located at **888 Ashley Blvd.**, Assessors' map 127C lot 134 in a Mixed Use Business [MUB] zoned district. The petitioner proposes to construct a Dunkin Restaurant with a drive through window per plans filed, which requires a **Special Permit** under Chapter 9 Comprehensive Zoning Sections 2200 (use regulations), 2210 (general), 2230 (table of use regulations-Appendix A commercial #23 restaurant, fast-food) and 5300-5330 & 5360-5390 (special permit). Having reviewed this petition in light of the City of New Bedford Code of Ordinances Chapter 9 Comprehensive Zoning Sections as cited; the board finds that in respect to these sections the board finds in regard to the criteria as follows:

The board finds that in respect to these sections 5300-5330 and 5360-5390 relative to the granting of Special Permits, that the benefit to the city and the neighborhood outweighs the adverse effects of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site.

This determination included consideration of each of the following:

- *Social, economic, or community needs which are served by the proposal;*
- *Traffic flow and safety, including parking and loading;*
- *Adequacy of utilities and other public services;*

- *Neighborhood character and social structures;*
- *Impacts on the natural environment;*
- *Potential fiscal impact, including impact on City services, tax base, and employment*

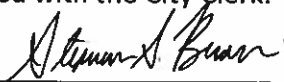
In light of its review of the specifics of this case, the applicable sections of the city's zoning ordinance, the findings subsequently made based on these items along with all properly submitted materials and testimony made, and the board's careful consideration of the petitioner's request, the Zoning Board of Appeals finds that the petition satisfactorily meets the basis of the requested relief.

General Conditions on this decision shall include:

- That the project be set forth according to the plans submitted with the application.
- That the applicant shall ensure a copy of the Notice of Decision bearing the certification of the city of New Bedford City Clerk's Office be recorded at the Registry of Deeds.
- The rights authorized by the granted special permit must be exercised by issuance of a Building Permit by the Department of Inspectional Services and acted upon within one year from the date the decision was granted, or the approval will lapse.

On a motion by S. Brown seconded by C. Paleologos to grant the requested Special Permit, the vote **failed** 2-3-0 with members C. Paleologos and S. Brown voting in the affirmative; members R. Schilling, A. Decker and L. Schick voting in the negative, and no members abstaining. (Tally 2-3-0).

Filed with the City Clerk:



Stephen Brown
Clerk of the Zoning Board of Appeals

June 8, 2020

Date