



**City of Marlborough  
Zoning Board of Appeals**

140 Main Street  
Marlborough, Massachusetts 01752  
Tel. (508) 460-3768 Facsimile (508) 460-3747

**ZBA Case # 1476-2021**

**Date: April 30, 2021**

**Location: 141 Boston Post Rd. West Map 78, Parcel 15A**

**(General Laws Chapter 40A, Section 16)  
Granted one variance for landscaping  
Granted one Withdrawal Without Prejudice for parking**

**To: Raising Cane's Restaurants, LLC c/o Atty. Michael Brangwynne of Fletcher  
Tilton, P.C.**

**Address: 370 Main St. 12<sup>th</sup> Floor**

**City: Worcester, MA 01608**

affecting the rights of the owner with respect to land or buildings at:

**141 Boston Post Rd. West Map 78 Parcel 15A**

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision and of all plans referred to in the decision, have been filed with the City Clerk.

  
Ralph Loftin - Chairman

  
Susan Brown - Secretary

Submitted to the City Clerks' office on April 30, 2021.



**City of Marlborough  
Zoning Board of Appeals  
140 Main Street  
Marlborough, Massachusetts 01752  
Tel. (508) 460-3768**

**Record of Proceeding and Decision  
Held Virtually thru Microsoft Teams and was recorded**

**Location:** 141 Boston Post Rd. (Raising Cane's Restaurants, LLC)  
Map 78, Parcel 15A – Zoning District Business

**Zoning Board Case # 1476-2021**

**Applicant:** Raising Cane's Restaurants, LLC, 6800 Bishop Road, Plano, TX

**Date of Appeal:** February 16, 2021

**Meeting Date:** April 13, 2021 and a continuation date of April 28, 2021

**Zoning relief requested:** Variances request – Seeking approval of its plans for the installation of a new restaurant location with a dual lane drive thru.

- Chapter 650-44A(11): Requiring a minimum of one parking space for every three seats, plus one space for every employee, resulting in a requirement of thirty-five (35) off-street parking spaces where twenty-eight (28) off-street parking spaces are proposed.
- Chapter 50-45F(2): Requiring a minimum of five feet (5 ft.) for sideline planting area, where a zero (or minimal) sideline planting area is proposed: and
- Chapter 650-46C(5)(b)(3): Parking in side and rear yard.

**Roll call of members present in Memorial Hall:** Ralph Loftin-Chairman, Paul Giunta, Robert Levine, Thomas Pope and Thomas Golden. Also present were Susan Brown-secretary and Tin Htway, interim Building Commissioner.

**Applicant's representatives** appearing remotely were: Attorney for the applicant - Michael Brangwynne of Fletcher Tilton, P.C.; Adam Caracci - Property Development Manager for Raising Cane's Restaurants and Eric Dubrule - Project Manager, Bohler Engineering.

Notice of the hearing was given by Certified Mail to all persons to be affected, as shown on the most recent tax list and by publication in the Marlborough Enterprise Weekly, a newspaper of general circulation in Marlborough, MA,

**Documents Submitted by applicant in this Appeal:**

- Application with filing fee, narrative and plans
- Jeffrey Cooke's denial letter dated January 8, 2021

**Public hearing:**

1. The property in question is located in Zoning District Business, being Map 78, Parcel 15A of the Assessor's Map, also known as 141 Boston Post Rd.
2. Findings of fact based on submitted plans and applicant's statements:
  - a. The proposal is for a Raising Cane's Restaurant at 141 Boston Post Rd.
  - b. 141 Boston Post Rd. is owned by R.K. Associates. Raising Cane will be leasing the lot.
  - c. The applicant will tear down the existing building and construct a new building.
  - d. **Plans** were presented entitled: (1) Site Layout Plan Sheet C-301 Prepared by Bohler, (2) Preliminary Site Plan, dated 12/1/2020 Sheet SD-1 Prepared by Architects, Inc.
  - e. The submitted plans show dual drive thru lanes that will be accessed through the onsite parking area, which can be entered either from Boston Post Rd. or Northboro Rd.
  - f. Applicants stated they have easement rights from the adjacent lot which is owned and occupied by McDonald's.
  - g. The dual drive thru lanes will accommodate queuing of 14-15 cars during peak business hours.
  - h. The Sideline Planting area deviation arises from an area along the westerly property line where, due to the unusual shape of the lot and the configuration and placement of the proposed structure, there is an encroachment upon the necessary five-foot (5) side line planting area. ...this results in a short area along the property line with no sideline planting area at the narrowest point.
  - i. Onsite parking: Proposing 28 parking spaces vs. the 35-minimum required.
  - j. The existing lot is irregularly shaped.
  - k. The surrounding area is predominantly retail/hotel businesses.

3. Atty. Brangwynne, stated that the proposed design requires the least amount of relief from the city. Landscaping is improved from 71.9% to 70%, so it meets or exceeds the landscaping code.
4. Adam Caracci, Property Development Manager for Raising Cane discussed the following:
  - a. This is new construction.
  - b. Operation of the dual lane drive thru system.
  - c. A one lane drive thru may eliminate the requirement for a landscaping variance, but it will not eliminate other issues within the lot.
  - d. Employees work outside assisting the flow of cars to help prevent congestion by taking payment and delivering the food to each car. This has proved successful in other Raising Cane locations.
  - e. As a safety measure, the employees working externally are trained to direct cars thru quickly in case of an emergency on site.
  - f. With Covid 19 this past year, their dining rooms in all locations have been closed, and they have seen increased drive thru sales. He re-iterated that Raising Cane is noted for their drive thru business vs. dining in.
  - g. Access from Boston Post Rd. will be arrivals only; with both arrivals and departures from Northboro Rd.
  - h. There will be a patio which will accommodate approximately 20 people
5. Eric Dubrule, Project Manager, Bohler Engineering stated he has attended the city's informal site plan review meetings where fire safety issues were discussed. He has not heard of any outstanding issues from the city's fire department. They will have to go back to site plan review for a formal review.
6. **Hardship** as stated by the applicant and thru the applicant's narrative:
  - a. The irregular shape of the lot combined with the configuration of the proposed structure is such that the proposed drive through lanes cannot be reconfigured or relocated to be outside of the required 5 ft. sideline planting area on the west side of the property. The proposed building needs to be angled on the lot to provide for appropriate circulation of vehicles, creating a "pinch point" that causes the proposed encroachment into the side planting area
  - b. The shape of the lot and configuration of the proposed building similarly impact the availability of parking without further encroachment upon the required side planting area.

- c. Due to the shape of the lot and the configuration and placement of the proposed structure, the proposed dual lane drive through service could not be implemented without further code violations, and further reduction in parking. Drive thru service is a necessary feature for Raising Cane to succeed as a responsible member of the local business community.
7. The Board asked if anyone in the audience have any questions:
  - **Councilor Roby** – stated that the applicant will come before the city council for a special permit for the drive thru. Variances goes with the land. If Raising Cane vacate the site, any relief from the zoning codes will remain on the land for future owners/renters of this lot. This will be a new structure; the applicant should be able to conform with all the zoning codes for this site. These variances will carry thru in the future.
8. Thomas Pope, Board Member, stated this will be new construction. The applicant surely should be able to comply with the parking issue.
9. Speaking in **favor** of the petition:
  - Michael Ossing – 43 Varley Rd. Marlborough, MA – Spoke in favor of the petition.
10. Speaking in **opposition** – none.
11. Tin Htway, interim building commissioner asked the following:
  - This is a tight lot. How will food be served to the outer lane safely: Answer: there are 4 ft. walkways for the crew to safely deliver food to the cars
  - How will emergency vehicles maneuver in such a tight lot. Answer: Their crew will be trained to direct and move traffic to allow for emergency vehicles.
  - The rear of the lot includes a 17 ft. parking setback and landscape buffer line which appears to be out of conformity. Answer: Atty. Brangwynne stated he felt it was a pre-existing non-conforming condition. He will reach out to the Building Dept.
12. **There was some discussion** about easement rights, maneuverability for fire apparatuses, the number of parking spaces, pedestrians walking to the restaurant wanting to dine inside, and people driving thru and wanting to park in the lot to eat.

13. **A motion** was made by Ralph Loftin to **close the public hearing**, seconded by Thomas Golden. **Vote of the Board with all yeas, 5-0 to close the public hearing.**
14. Robert Levine, Board Member, stated he was not concerned about the deviation in landscaping. The deviation is abutting another business (McDonald's) and the impact to an abutting commercial piece of property vs. a residential lot will not have an intense impact. Regarding parking, I feel this is a fast-food business and parking would not be an issue. Foot traffic from surrounding hotels and businesses may not create a seating issue.
15. Ralph Loftin, Chairman, agreed with Councilor Roby that a variance for parking will be carried with the land for future businesses that may need the parking allowed by the current code.
16. **A motion** was made by Robert Levine and seconded by Thomas Pope to grant a variance from the 5 ft. sideline planting area to a zero (or minimal) sideline planting area as proposed on their plan. **Roll call vote of the Board, Ralph Loftin, Robert Levine, Paul Giunta, Thomas Pope and Thomas Golden with all yeas. Vote 5-0 to grant the variance from the 5 ft. sideline planting area to a zero (or minimal) sideline planting area.**
17. **A motion** was made by Robert Levine to allow for the deviation of the required 35 parking spaces vs. the proposed 28 parking spaces. **Motion did not carry.**
18. Atty. Brangwynne asked the Board for a continuation of the hearing. The attorney felt the Board did not support the parking space issue and did not want to move forward if the Board might deny the parking space portion of the petition. Adam Caracci also asked that they get a chance to re-address the seating and parking issue. Atty. Brangwynne requested a continuance in order to re-address the parking or to consider a withdrawal.
19. **A motion** was made by Paul Giunta and seconded by Thomas Golden to grant a **continuance** to April 28, 2021 at 7:00 PM. **Roll call vote of the Board with all yeas, 5-0 to continue the hearing to April 28, 2021 at 7:00 PM**
20. Robert Levine withdrew his motion in Item #17.
21. **A motion** was made by Ralph Loftin, seconded by Thomas Pope to adjourn. **Roll call vote of the Board with all yeas, 5-0 to adjourn.**

**April 28, 2021 (Wednesday) – 7:00 PM – Continuation**

1. The meeting was continued from April 13, 2021 to April 28, 2021 in order for the applicant to re-address or withdraw the parking portion of the petition.
2. Meeting in the 1<sup>st</sup> floor Committee Room of city hall, roll call of members present were Ralph Loftin-Chairman, Robert Levine, Thomas Pope and Thomas Golden. Also, Susan Brown-secretary. Paul Giunta arrived at 7:03 PM
3. Atty. Brangwynne, attorney for the applicant, submitted a letter dated April 15, 2021, to the Zoning Board of Appeals, RE: Petition for Variance, Raising Cane's Restaurant, LLC, 141 Boston Post Rd. West, Marlborough, MA. Stating in part: "requests a withdrawal without prejudice of it's request for relief from the City of Marlborough Zoning Code, Section 650-48A (11) with respect to minimum parking requirement, which request was considered but continued at the Zoning Board of Appeals hearing on April 13, 2021" Note that the Applicant does not request a withdrawal of its request for relief under Section 650-47F(2) regarding minimal side planting area, which was granted on April 13, 2021." (letter was read into the file)
4. Atty Brangwynne stated that his clients will reduce the amount of outdoor seating to conform to the parking requirements. In doing this, they hope to move forward and apply to the City Council for a Special Permit.
5. A motion was made by Thomas Golden, seconded by Robert Levine to allow the applicant to Withdraw Without Prejudice it's request for relief, Section 650-48A(11) with respect to minimum parking requirement. Roll call vote of the Board with all yeas, Ralph Loftin, Robert Levine, Paul Giunta, Thomas Pope and Thomas Golden. Vote 5-0 to approve.
6. A motion was made by Paul Giunta, seconded by Thomas Golden to adjourn. A roll call vote with all yeas. Vote 5-0 to adjourn.

### **Findings**

**The Board makes the following findings concerning Chapter 650-45F(2) requiring a minimum of five feet (5 ft.) for a sideline planting area, where a zero (or minimal) sideline planting area is proposed**

1. The 5 ft. deviation in planting is within the lot itself and not visible from the roadway, but landscaping will be ample at other locations on the lot.
2. The 5 ft. sideline planting area deviation, which is minimal, will not create an impact to the adjacent commercial property (McDonald's). Currently there is essentially no landscaping between the lot in question and McDonald's.
3. Due to the shape of the lot, the applicant cannot construct a dual drive thru lane for their project. Dual lanes are a signature design for their Raising Cane's Restaurants.
4. Desirable relief may be granted without substantial detriment to the public good because there currently is no landscaping where the 5 ft. deviation in landscaping is located. The 5 ft. deviation is located at the inner portion of the lot, and away from the view of Boston Post Rd. The applicant is providing a considerable amount of landscaping at the front, side, and rear portion of the lot, which currently has a minimal amount of landscaping.

### **Decision**

**Granting a variance from the 5 ft. sideline planting area where a zero (or minimal) sideline planting area is proposed.**

#### **Conditions:**

1. **Plans** were presented entitled: (1) Site Layout Plan Sheet C-301 Prepared by Bohler, (2) Preliminary Site Plan, dated 12/1/2020 Sheet SD-1 Prepared by Architects, Inc.
2. In accordance to the plans listed in Condition #1, a variance is only granted from the 5 ft. sideline planting area were a zero (or minimal) sideline planting area is proposed.
3. Regarding the 17 ft. parking and landscape buffer at the rear of the lot. The applicant stated they are in contact with the Building Dept and have discussed the issue to have it adjusted to conform. The applicant should have the revised



plans when they go before the Site Plan Review Committee for their formal review. A copy of the approved site plans should be submitted to the Zoning Board of Appeals for their file.

4. Prior to the issuance of a Building Permit, the applicant at their expense shall record this zoning relief (variance) in the Middlesex South District Registry of Deeds after the City Clerk has certified that the 20-day appeal period has elapsed with no appeal having been filed and before the applicant shall apply to the Building Dept. for a building permit.

#### **Decision**

**To Withdraw Without Prejudice, it's request for relief from the City of Marlborough Zoning Code, Section 650-48A(11) with respect to minimum parking requirements.**

1. A motion was made Thomas Golden, seconded by Robert Levine to allow the applicant to Withdraw Without Prejudice it's request for relief, Section 650-48A(11) with respect to minimum parking requirement. Roll call vote of the Board with all yeas, Ralph Loftin, Robert Levine, Paul Giunta, Thomas Pope and Thomas Golden. Vote 5-0 to approve.

End


The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section II (last paragraph) provides that no variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the city clerk that twenty days (20) have elapsed after the decision has been filed in the office of the city clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the Registry of Deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for such recording or registering shall be paid by the owner or applicant.

If the rights authorized by a variance are not exercised within one (1) year of the date of grant of such variance, such rights shall lapse; provided however, that the permit granting authority in its discretion and upon written application by the

grantee of such rights may extend the time for exercise of such rights for a period not to exceed six (6) months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period.

No Special Permit, or any extension, modification, or renewal thereof, can take effect until a copy of the decision, bearing the certification of the city clerk is recorded in the registry of deeds. The fee for recording or registering shall be paid by the owner or applicant. Special Permit will lapse within two years of grant of such Special Permit.

Respectfully submitted,

  
Ralph Loftin – Chairman  
Zoning Board of Appeals

Submitted to City Clerk's office on April 30, 2021.



**City of Marlborough  
Zoning Board of Appeals**

140 Main Street  
Marlborough, Massachusetts 01752  
Tel. (508) 460-3768

**ZBA Case # 1476-2021**

**Applicant: Raising Cane's Restaurants, LLC**

**Location: 141 Boston Post Rd. West**

**VOTE OF THE BOARD**

**Signature Sheet**

**Chapter 50-45F(2) - Requiring a minimum of five feet (5 ft.) for sideline planting area, where a zero (or minimal) sideline planting area is proposed.**

**IN FAVOR**

Paul Giunta

Ralph Loftin

Thomas Golden

Thomas Pope

Robert Levine

**IN OPPOSITION**

Paul Giunta

---

Ralph Loftin

---

Thomas Golden

---

Thomas Pope

---

Robert Levine

---



**City of Marlborough  
Zoning Board of Appeals**

140 Main Street  
Marlborough, Massachusetts 01752  
Tel. (508) 460-3768

**ZBA Case # 1476-2021**

**Applicant: Raising Cane's Restaurants, LLC**

**Location: 141 Boston Post Rd. West**

**VOTE OF THE BOARD**

**Signature Sheet**

**To Withdraw Without Prejudice**

**Chapter 650-44A(11) – Requiring a minimum of one parking space for every three seats, plus one space for every employee, resulting in a requirement of thirty-five (35) off-street parking spaces where twenty-eight (28) off-street parking spaces are proposed.**

**IN FAVOR**

Paul Giunta

Ralph Loftin

Thomas Golden

Thomas Pope

Robert Levine

**IN OPPOSITION**

Paul Giunta

---

Ralph Loftin

---

Thomas Golden

---

Thomas Pope

---

Robert Levine

---