

**City of Marlborough
Zoning Board of Appeals
Minutes
April 13, 2021**

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 650-45F(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

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.

Findings of fact based on submitted plans and applicant's statements:

1. The proposal is for a Raising Cane's Restaurant at 141 Boston Post Rd.
2. 141 Boston Post Rd. is owned by R.K. Associates. Raising Cane will be leasing the lot.
3. The applicant will tear down the existing building and construct a new building.
4. **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.
5. 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.
6. Applicants stated they have easement rights from the adjacent lot which is owned and occupied by McDonald's.
7. The dual drive thru lanes will accommodate queuing of 14-15 cars during peak business hours.
8. 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.
9. Onsite parking: Proposing 28 parking spaces vs. the 35-minimum required.
10. The existing lot is irregularly shaped.
11. The surrounding area is predominantly retail/hotel businesses.

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.

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 reiterated 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

Hardship as stated by the applicant and thru the applicant's narrative:

- 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
- 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.
- 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.
- 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.

Thomas Pope, Board Member, stated this will be new construction. The applicant surely should be able to comply with the parking issue.

Speaking in **favor** of the petition:

- Michael Ossing – 43 Varley Rd. Marlborough, MA – Spoke in favor of the petition.

Speaking in **opposition** – none.

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.

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.

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.**

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.

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.

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.

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.

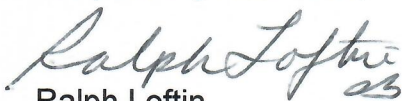
Atty. Brangwynne asked the Board for a continuation of the hearing. The attorney felt the Board did not support the parking space issue and did not want to move forward if the Board might deny the parking space portion of the petition. Adam Caracci also asked that they get a chance to re-address the seating and parking issue. Atty. Brangwynne requested a continuance in order to re-address the parking or to consider a withdrawal.

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

Robert Levine withdrew his motion in Item #17.

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.

Respectfully submitted,

A handwritten signature in cursive script that reads "Ralph Loftin" followed by a small flourish.

Ralph Loftin

Chairman – Zoning Board of Appeals