

**City of Marlborough
Zoning Board of Appeals
Minutes
April 28, 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.

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. The public hearing was closed on April 13, 2021.

Meeting in the 1st 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

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)

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.

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.

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

Decision was submitted to City Clerk's office on April 30, 2021.