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TOWN OF DEDHAM
COMMONWEALTH OF MASSACHUSETTS

ZONING BOARD OF APPEALS

DECISION

APPLICANT: Chick-fil-A
PROJECT ADDRESS: 100-140 Providence Highway, Dedham, MA
CASE # VAR-12-15-2054
PROPERTY OWNER/ADDRESS: OSJ of Dedham, LLC, 375 Commerce Park Road, Kingston, RI 02852
MAP/LOT AND ZONING DISTRICT: 57/4A, 4B, and 4C, Highway Business
DATE OF APPLICATION: December 23, 2015
MEMBERS PRESENT AND VOTING: James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, E. Patrick Maguire, LEED AP, Jason L. Mammone, P.E., Jessica L. Porter, Jared F. Nokes, J.D.
PETITION: To be allowed such Special Permits as required for a restaurant (i.e., a use requiring a common victualler license) with 160 seats (inclusive of 24 outdoor/patio seats), an approximate gross floor area of 5,100 square feet, and a drive thru facility, such Special Permits as required for fences and/or walls approximately 9 feet in height, and such waivers from the Town of Dedham Sign Code as noted in the Town of Dedham Charter to allow up to 4 free-standing signs, a total sign area of free-standing sign of 260 square feet, and/or for the expansion of an existing nonconforming free-standing sign.
SECTION OF ZONING BYLAW: *Town of Dedham Zoning Bylaw Sections 3.0, 9.2, 9.3, and Table 1A.2. Town of Dedham Sign Code Sections 237-4, 237-9, 237-19, 237-22, 237-29, 237-30, Table 1, and Table 2*
REPRESENTATIVE:

- Peter A. Zahka II, Esq., 12 School Street, Dedham, MA

- Scott Goodson, Chick-fil-A, Development Supervisor, Chick-fil-A Cares, P.O. Box 725489 Atlanta, GA 31139-9923
- Anthony Donardo, P.E., Bohler Engineering, 352 Turnpike Road, Suite 201, Southborough, MA 01772
- Scott Thornton, Project Traffic Engineer, Vanasse & Associates, Inc., 10 New England Business Center Drive, Suite 314, Andover, MA 01810
- Bill Goebel, Bohler Engineering, 352 Turnpike Road, Suite 201, Southborough, MA 01772
- Jeremy Lindsey, Chipman Design Architects, 2700 South River Road, Suite 400 Des Plaines, IL 60018

DATE FILED WITH TOWN CLERK: February 5, 2016

The Zoning Board of Appeals ("ZBA") of the Town of Dedham, Massachusetts held public hearings on January 20, 2016, in the Town Office Building, 26 Bryant Street, Dedham, MA. Present were members of the ZBA, Chairman James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, E. Patrick Maguire, LEED AP, and Jason L. Mammone, P.E. The hearings were duly advertised for this meeting of the ZBA in accordance with the requirements of MGL Chapter 40A, Section 11.

At 7:25 p.m., the Chairman called for the hearing on the petition of Chick-fil-A, Inc. (hereinafter referred to as "Applicant") to be allowed such special permits as required for a restaurant (i.e., a use requiring a common victualler license) with 160 seats (inclusive of 24 outdoor/patio seats), an approximate gross floor area of 5,100 square feet, and a drive-thru facility, such special permits as required for fences and/or walls approximately 9 feet in height, and such waivers to the Dedham Sign Code to allow up to 4 free-standing signs, a total sign area of free-standing signs of 260 square feet, and/or for the expansion of an existing nonconforming free-standing sign. The property is located at 100-140 Providence Highway, Dedham, MA, and is in the Highway Business (HB) Zoning District. *Town of Dedham Zoning By-Law Sections 3.0, 9.2, 9.3, and Table; Town of Dedham Sign Code 237-4, 237-9, 237-22, 237-29, 237-30, Table 1, and Table 2.*

Applicant was represented by Peter A. Zahka, II, Esq., 12 School Street, Dedham, MA. Also present were Scott Goodson, Development Senior Supervisor for Chick-fil-A, Anthony Donato and Bill Goebel of Bohler Engineering (project engineers), Scott Thornton, of Vanasse & Assoc. (project traffic engineers), and Jeremy Lindsay, of Chipman Design Architects (project architect). Attorney Zahka had previously submitted plot plans (existing and proposed conditions) of the Subject Property, photographs of the existing conditions, a traffic study, and architectural renderings, floor plans, elevation drawings, and sign renderings. The minutes from the hearing are the primary source of evidence and are incorporated herein by reference. At the hearing, Applicant was afforded an opportunity to make a full presentation.

The Subject Property is located at 100-140 Providence Highway, and is shown on Dedham Assessors Map 57, Lots 4A, 4B, and 4C. It contains approximately 227,541 square feet of land and has approximately 814 feet of frontage on Providence Highway. The Subject Property is located in the Highway Business (HB) Zoning District.

The Subject Property actually consists of three (3) separate lots shown on various plans recorded or filed with the Norfolk Registry of Deeds and/or the Land Registration Office for Norfolk County. The Subject Property is currently occupied by an approximately 37,000 square foot commercial building utilized for an Ocean State Job Lot (hereinafter referred to as "OSJL"). The remainder of the Subject Property is an asphalt/paved parking lot with little landscaping. OSJL has an existing free-standing sign on the Subject Property with a sign area of approximately 125 square feet. The Subject Property is in a heavily developed commercial area with the Dedham Mall to the south and a self-storage facility and a car wash to the north. Access to the Subject Property is via curb cuts off of the "service road" on Providence Highway. Access is also via an access easement which runs parallel to Providence Highway from the Dedham Mall to the Boston line.

Applicant proposes to construct an approximate 5,100 square foot Chick-fil-A restaurant on the southern portion of the parking lot. The proposed restaurant will have seating for 160 patrons inclusive of 24 outdoor/patio seats. The restaurant will also have a drive-through

facility. The maximum height of the proposed building is between 24 feet and 25 feet. Applicant also proposes to enclose the dumpster area with fences and/or walls with a height of 9 feet.

The restaurant will have shared parking with the Ocean State Job Lot ("OSJL"). The current parking lot is underutilized. A study undertaken by Applicant indicates that the maximum use of the parking lot by OSJL is 75 vehicles or 28% of the available on-site parking. Applicant's project will also result in a major increase in the on-site landscaping. Applicant indicates that currently the interior landscaping is about 9% (with much being grass). Applicant intends to increase the interior landscaping to over 15%. In addition, there will be significant upgrades and improvements to the frontage landscaping along Providence Highway.

Applicant proposes two (2) so-called menu boards for the drive through facility. In addition, Applicant originally proposed to erect its own free-standing sign. (As discussed further below) based upon meeting with the Design Review Advisory Board, however, Applicant is now proposing a shared/combined free-standing sign with OSJL.

The Project requires Site Plan Approval by the Dedham Planning Board and a Stormwater Management Permit by the Dedham Conservation Commission. Applicant has already appeared before the Dedham Planning Board for a "scoping session" and reports that the Project was well received. Applicant has also appeared before the Design Review Advisory Board for a review of the proposed architecture of the building, landscaping, and the proposed signs, and received approval of the project.

Inasmuch as Applicant will have facilities for on-premises consumption of food and beverage (i.e., tables and chairs), a common victualler license will be required. In Dedham, the Board of Selectmen is the licensing board for the issuance of common victualler licenses. Use Category E.8. of Table 1 of the Dedham Zoning By-Law ("Use Regulation Table") provides that a "use requiring a common victualler license" is allowed in the HB Zoning District upon issuance of a special permit by the ZBA. In addition, Use Category E.14 of said Table 1 provides that "drive-through facilities" are permitted in the HB Zoning District upon issuance of a special permit by the ZBA. Furthermore, the definition of "fence" set forth in Section 10 of the

Dedham Zoning By-Law provides that a fence "in excess of six (6) feet six (6) inches in height shall require a special permit from the Zoning Board of Appeals."

In acting upon requests for special permits, the ZBA is guided by Section 9.3. of the Dedham Zoning By-Law which provides that:

Special permits shall be granted . . . only upon [the] written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this By-Law, the determination should include consideration of each of the following:

1. Social, economic, or community needs which are served by the proposal;
2. Traffic flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood characteristics and social structure;
5. Impacts on the natural environment; and
6. Potential fiscal impact, including impact on town services, tax base, and employment.

Applicant submits that it satisfies the above stated requirements and criteria for the issuance of the requested special permit. Applicant avers that the adverse effects of the proposed use will not outweigh its beneficial impacts to the Town or neighborhood considering the above requirements and criteria. The Project is consistent with neighborhood characteristics since the Subject Property is located in a heavily developed commercial area on Providence Highway in the HB Zoning District. The Project will allow a development on an underutilized paved parking lot. As part of the Project, Applicant will be introducing new and improved landscaping and parking layout. Furthermore, the Project will require Site Plan Approval from the Dedham Planning Board and a Stormwater Management Permit from the Dedham Conservation Commission. Therefore, Applicant submits that the Project has little or no impact on the natural environment and there are adequate provisions for utilities and public services (or the same will be addressed through the Site Plan and/or Stormwater Management Permit process).

Applicant also claims that the Project will serve social, economic, and community needs. The Project is a great opportunity to improve the Subject Property, will allow the development of an underutilized paved parking lot, and will bring a good business to the Dedham area. Inasmuch as the Project is commercial in nature, the same should have a positive fiscal impact upon the Town. Applicant indicates that traffic flow within the site and the proposed parking will adequately serve the Project. The drive-through facility has been designed to allow adequate room for the stacking/queuing of vehicles. The parking/site plan will undergo review and peer review as part of the Planning Board Site Plan Approval process. In addition, Applicant has commissioned a full traffic report for the Project. The traffic report concludes that there will be no significant change in the level of service between the No-Build and Build Conditions, and that the Project will satisfy safety standards. This traffic report will also undergo review and peer review as part of the Site Plan Review Process.

The dumpster area is proposed to be enclosed with 9 foot fences/walls. The architecture of these fences/walls is in keeping with the architecture of the proposed building. As indicated above, the architecture (including the proposed 9 foot fences/walls) has been submitted to DRAB for review and has received its recommendations.

Table 2 of the Dedham Sign Code provides that lots in the HB Zoning District are allowed one (1) free-standing sign with a maximum sign area of 100 square feet. As noted above, Applicant proposes two (2) so-called menu boards serving the drive-through and a shared/combined free-standing sign with OSJL. Assuming the menu boards are considered free-standing signs, this will result in three (3) free-standing signs on Subject Property. In addition, the total sign area of these three (3) free-standing signs will be approximately 260 square feet. Sections 237-29 and 237-30 of the Dedham Sign Code authorize and empower the ZBA to grant waivers to the provisions of the Dedham Sign Code.

Relative to the relief requested from the provisions of the Dedham Sign Code, Applicant submits that it has satisfies the procedural and substantive criteria and requirements of said Sections 237-29 and 237-30 of the Dedham Sign Code. With respect to the procedural requirements, Applicant submitted appropriate documentation to the Design Review Advisory Board (DRAB). Prior to appearing before the ZBA, Applicant appeared before DRAB to discuss the requested waivers or relief. At that time, the documentation submitted to DRAB

indicated a request for four (4) free-standing signs which included two (2) so-called menu boards, the existing OSJL pylon sign, and an additional free-standing sign for the Applicant. In total, the sign area for these free-standing signs was approximately 260 square feet. In terms of the menu boards there is some question as to whether the same are considered signs. However, since the same may be visible from the public way, Applicant has included the same in its requested relief. At this meeting, DRAB voted to recommend Applicant's request for the relief or waivers for the total sign area of free-standing signs of 260 square feet. DRAB further voted that it preferred that Applicant work with OSJL to have a single combined free-standing sign (and not a separate free-standing for Applicant). Based upon DRAB's recommendation, Applicant is now before the ZBA requesting waivers or relief from the Dedham Sign Code for three (3) free-standing signs with a total area of 260 square feet. Said signs would consist of the two (2) menu boards and one (1) free-standing sign (a combined sign with Applicant and OSJL) with a sign area of approximately 200 square feet.

With respect to the substantive requirements, said Section 237-30 provides that the ZBA may grant relief or waivers if the same "are warranted owing to any circumstances including (a) that literal compliance... is not practical or is unfeasible, or (b) that such relief or waivers are recommended by the Design Review Advisory Board." As indicated above, DRAB is recommending such relief or waiver. In addition, the ZBA may find that there are other "circumstances" warranting the requested relief or waivers including:

1. The Subject actually consists of three (3) recordable lots. Accordingly, Applicant could arguably have its own free-standing sign.
2. Two (2) of the proposed signs are actually so-called menu boards.

No one appeared in opposition to the requested special permits or waivers and/or relief from the Dedham Sign Code.

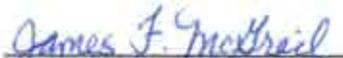
Upon motion being duly made by Scott M. Steeves and seconded by E. Patrick Maguire, LEED AP, the ZBA voted unanimously (5-0) to grant and approve such special permits as required for a restaurant (i.e., a use requiring a common victualler license) with 160 seats (inclusive of 24 outdoor/patio seats) and an approximate gross floor area of 5,100 square feet, for a drive-thru facility, and for fences and/or walls approximately 9 feet in height at 100-140 Providence Highway. In granting said special permit, the ZBA finds that, after consideration

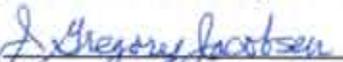
of the criteria in Section 9.3.2 of the Dedham Zoning By-Law, the adverse effects of Applicant's proposal will not outweigh its beneficial impacts on the Town and neighborhood.

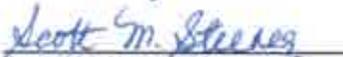
Upon motion duly made by Scott M. Steeves and seconded by E. Patrick Maguire, LEED AP, the ZBA voted unanimously (5-0) to grant such relief or waivers from the provisions of the Dedham Sign Code as necessary or required to allow (a) three (3) free-standing signs of which two (2) shall be so-called menu boards and the third shall be an approximate 200 square foot combined/shared sign with Applicant and OSJL, and (b) a total sign area for free-standing signs of 260 square feet at 100-140 Providence Highway. In granting this relief, the ZBA finds (1) that Applicant has satisfied the procedural requirements set forth in the Dedham Sign Code, (2) that the relief is recommended by DRAB, (3) that the relief is warranted due other "circumstances" (as described above), and (4) that the same may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Sign Code.

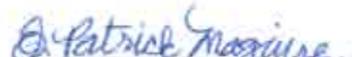
Applicant is advised that, in accordance with MGL Chapter 40A, Section 11, no special permit shall take effect until a copy of this decision bearing the certification of the Dedham Town Clerk that twenty days have elapsed after the decision has been filed with the Dedham Town Clerk and no appeal has been filed or that an appeal has been filed within such time shall be recorded in the Norfolk County Registry of Deeds or the Land Registration Office of Norfolk County.

Dated: January 14, 2016


James F. McGrall, Esq.


J. Gregory Jacobsen


Scott M. Steeves


E. Patrick Maguire, LEED AP


Jason L. Mammone, P.E.

Attest, by the Administrative Assistant:


Susan N. Webster

Copies of this decision are filed in the Dedham Town Clerk's office. Copies of all plans referred to in this decision and a detailed record of the Zoning Board of Appeals proceedings are filed in the Dedham Planning/Zoning Department.

Materials Submitted:

- ZBA application
- Addendum to Application for Hearing prepared by Peter A. Zahka II, Esq.
- Letter of consent from John D. Conforti, Manager, OSJ of Dedham, LLC
- Proposed building elevations including exterior finishes, floor plan, signage key plan, front (west) elevation, left elevation (north), rear elevation (east), right elevation (south), sign layout detail, pylon sign elevations, clearance bar detail with side view detail, outer lane island, side view detail, drive thru canopy detail, flag pole, door vinyl elevation detail (double door and single door), and window dining hours
- Photographs of existing conditions
- Overall site plan prepared by Bohler Engineering
- ALTA/ACSM Land Title Survey