

**ZONING BOARD OF APPEALS**

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482-5992

RICHARD L. SEEGEL, CHAIRMAN
CYNTHIA S. HIBBARD
DAVID G. SHEFFIELDLENORE R. MAHONEY
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TELEPHONE
(781) 431-1019 EXT. 2208J. RANDOLPH BECKER, VICE CHAIRMAN
ROBERT W. LEVY
DAVID L. GRISSINO

ZBA 2009-59
Petition of Dunkin Donuts
951 Worcester Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, September 10, 2009 at 7:30 p.m. at the Town Hall, 525 Washington Street, Wellesley, on the petition of DUNKIN DONUTS requesting renewal of a Special Permit pursuant to the provisions of Section XI, Section XIVE and Section XXV of the Zoning Bylaw to continue to allow its premises at 951 WORCESTER STREET, in a Business District and a Water Supply Protection District, to be used for a drive-through window where business is transacted from the vehicles of customers or patrons, which is a use not allowed by right in a Business District.

On August 25, 2009, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was Bill Donovan, who said that he was the owner of the Dunkin Donuts (the "Petitioner") and Bike Realty, LLC.

The Board said that the Planning Board objected to granting the petition.

The Board asked if anything has been done with respect to the suggested expansion onto the Cochituate Aqueduct land. Mr. Donovan said that the Town and Mr. Larsen met with the Massachusetts Water Resources Authority (MWRA), who declared the land to be surplus. He said that he believes that a price has been set on the land. He said that there are a few obstacles remaining but things are moving forward. He said that he has every intention of purchasing the land.

The Board asked about the timeline for acquiring the aqueduct land. Mr. Donovan said that it is their intention to purchase the property and deed the property to the Town of Wellesley. He said that the land is approximately 5 acres. He said that Dunkin Donuts needs 10,000 square feet to expand the drive through in the parking lot. He said that it has not been worked out whether that 10,000 square feet will be leased or deeded back. He said that the intent is to gift the 5 acres to the Town, except for 10,000 square feet.

The Board asked if there is a Site Plan that includes the 10,000 square feet of additional land. Mr. Donovan said that they hired a consultant, Vanesse & Associates, last year. He displayed Alternate 2 Plan that was prepared by Vanesse & Associates.

Mr. Donovan said that they did make approximately \$10,000 worth of changes at Dunkin Donuts last year.

The Board asked about delivery times. Mr. Donovan said that, since last year, they had the distribution company change the delivery time to afternoons. He said that the traffic situation is not as bad in the afternoon.

Mr. Donovan said that the situation with traffic on the street in the morning is now nonexistent. He said that he took exception to the Planning Board's comment on this. He said that the Planning Board has objected to his petition over the past 16 years.

Mr. Donovan said that, in the past three or four years, at the request of the Zoning Board of Appeals (ZBA) for the safety of the people of Wellesley, he has spent a lot of money on high speed equipment, personnel and site changes. He said that the issue of cars in the street was formerly an issue but is no longer an issue. The Board asked if it is no longer an issue because the economy is down or due to the changes that were made and the limited menu. Mr. Donovan said that all of the factors contributed to getting the cars off of the street.

The Board said that last year when Mr Dirk was at the Public Hearing, he brought statistics of queue length at different times of the day. The Board said that it was hoping to see more of that with this petition to verify what Mr. Donovan has asserted about getting the cars off of the street.

Mr. Donovan said that they have diligently pursued moving the line of cars to where they are not on the street. He said that the customer and vehicle count is down but the speed of service is up. He said that there is the limited menu. He said that the changes made since last year have eliminated the problem.

Mr. Donovan said that he believes that Mr. Larsen and the Town and the MWRA are looking to move forward with the plans to purchase the land. He said that there is still an issue with the Commonwealth of Massachusetts that has to be resolved.

The Board said that it could renew the Special Permit for one year. The Board said that if Mr. Donovan has not been able to purchase the property in nine months, he should engage Vanesse & Associates to do a follow up, so that when he comes back for a renewal, the Board will have a report to look at.

Mr. Donovan said that he did try to purchase the land last year but it was not timely on the part of Wellesley. He said that he was prepared to move forward at the time. The Board said that the State does not move quickly when disposing of property.

Mr. Donovan said that it was mentioned last year that he might get a two-year renewal of the Special Permit. He said that would help him because the State does move so slowly.

The Board said that it was concerned that it did not have any information before it to confirm that the traffic issue had been resolved. The Board said that if it receives Vanesse & Associates' favorable report at the the time of the next renewal, the Board could renew the Special Permit for two years.

Mr. Donovan asked if, when and if he has been able to purchase the property, the issue of the limited menu would go away. The Board said that it would if there is sufficient space for a queue line. Mr. Donovan said that would justify the expenditure for the purchase of the land.

There was no present at the Public Hearing who wished to speak to the petition.

Statement of Facts

The subject property is located at 951 Worcester Street, in a Business District, on a 12, 255 square foot lot and is owned by Bike Realty LLC.

The Petitioner is requesting renewal of a Special Permit to continue the use of the drive-through window at the rear of the premises, which is a use not allowed by right in a Business District.

The width of the drive-through lane is 10 feet, and 8 vehicle queuing spaces, varying in length from 10 feet to 10 feet 4 inches, have been provided.

On August 31, 2009, the Planning Board reviewed the petition and objected to granting the request.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. The use of a drive-through window in a Business District requires a Special Permit, as it is a use not allowed by right in a Business District.

It is the opinion of this Authority that the Petitioner has complied with all of the Special Permit Use Standards enumerated in Section XXV of the Zoning Bylaw. Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing, subject to the following conditions:

1. Between the hours of 6 am and 10 am, only a limited menu shall be available to drive-through window customers. A notice of this limited menu and the aforesaid hours shall be posted on signs that are visible to customers before the customer reaches the drive-through window.
2. The Petitioner shall continue to pursue acquisition of the Aqueduct land shown on Conceptual Parking and Access Improvement Plan, Alternative 2.
3. Traffic data shall be submitted with the application for subsequent renewal of this Special Permit.
4. This Special Permit shall expire one year from the date time stamped on this decision.

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APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.

Richard L. Seegel, Chairman

J. Randolph Becker

David G. Sheffield

cc: Planning Board
Inspector of Buildings
lrm