

2018 DEC 21 A 9:44

**BOARD OF APPEALS CASE NO. 18-27**

**PETITION OF RICHARD ARONOVITZ**

**DATE OF DECISION: DECEMBER 11, 2018**

**1. Application**

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of RICHARD ARONOVITZ (hereinafter the Applicant), for property located at 1 NICHOLAS RD. This Decision is in response to a Petition for a Variance for multiple buildings on one lot as required by the Zoning By-Law (hereinafter the Application).

**2. Property Owner and Applicant**

Richard Aronovitz  
60 Aaron Way  
Carlisle, MA 01741

**3. Location**

Property is located at 1 NICHOLAS RD and identified by Assessors' Parcel ID 040-24-5216-000 (hereinafter the Site).

**4. Board Action**

After due consideration of the Application, the record of proceedings, and based upon the findings set forth below, on December 11, 2018 the Board voted to GRANT the requested VARIANCE by a unanimous vote in favor of the petition of three (3) members sitting on the Application. The record of the vote is stated as follows:

PHILIP R. OTTAVIANI, JR.	YES
SUSAN S. CRAIGHEAD	YES
STEPHEN MELTZER	YES

**5. Proceedings**

The Application was received by the Board on September 10, 2018 pursuant to MGL, Ch. 40A, §10, and the Framingham Zoning By-Law. The Application was considered by the Board at a duly noticed public hearing of the Board on October 9, 2018 at 7:30 P.M. in the Ablondi Room of the Memorial Building. The case was subsequently continued to November 13<sup>th</sup> and December 11<sup>th</sup>, at which point a decision was made. Board Members Philip R. Ottaviani, Jr., Susan S. Craighead, Stephen Meltzer, and Alternates Rick McKenna, Edward "Ted" Cosgrove, and Joseph Norton were present throughout the proceedings. The minutes of the public hearing and submissions on which this Decision is based, which together with this Decision constitute the record of the proceedings, may be referred to in the Office of the Zoning Board of Appeals at the Memorial Building.

At the October 9 hearing, Mr. Ottaviani explained that the case would be heard simultaneously with a sign petition for the same project, with case no. S18-06. He read the hearing notice for the zoning case and allowed Mr. Cosgrove to chair the sign case. Mr. John Kucich of Bohler Engineering was present on behalf of the Applicant, joined by the operators of the proposed Dunkin' Donuts, Steve and Gene Sardenia. Mr. Kucich explained the Variance request before the ZBA for multiple buildings on a lot, and explained the status of other permitting for the project.

Mr. Ottaviani read comments submitted by the Conservation Commission and a letter of opposition.

Mr. Steven Weisman (3 Stearns Street), an unidentified abutter, Mr. John Stasik (15 Chouteau Avenue), Mr. Herbert Everett (2 Stones Court), Ms. Marorra Gabel (77 Nicholas Road), Ms. Kathleen McCarthy (25 Westgate Road), Ms. Lynne Damianos (24 Meadow Street), and Ms. Victoria Felson (1811 Windsor Drive) voiced concern regarding disrupted traffic flow, safety, neighborhood character, noise, handicap accessibility, hours of operation, the property owners lack of attendance, proposed site plan circulation, subdivision, and Variance criteria. Ms. Susan Santone (73 Nicholas Road) spoke in favor but voiced concern regarding parking lot conditions and safety. Mr. Herb Everett presented an opposition petition on behalf of Saxonville Mills Café and its patrons, with approximately 297 signatures.

Board members questioned the design and the nature of the request, wondering why the owner could not subdivide the lot to be compliant, noting that the Variance criteria had not been met. They voted to continue the hearing to the November 13 meeting.

The Applicant subsequently requested that the Application be continued to the December 11 meeting, to allow more time to address concerns and prepare changes to the plans. At the November 13 meeting, there was no discussion and the Board voted to grant the request for continuance.

At the December 11 meeting, Mr. Kucich was present with Mr. Aronovitz, the property owner, and presented a revised site plan and architectural plans, as well as an explanation for why it was preferable to not create a separate parcel.

Ms. Susan Bernstein (8 Merriam Road) and Mr. Steven Weisman (3 Stearns St.) expressed concern about the Variance request and whether the criteria were met for approval. Board members voiced no concerns and moved to approve as presented, pending final changes as directed by the Planning Board.

## **6. Exhibits**

Submitted for the Board's deliberation were the following exhibits:

- 6.1. Application filed with the Building Official for a permit to construct a second building on a lot, dated August 22, 2018.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the City Clerk on September 14, 2018.

- 6.3. Filing fee in the amount of \$500.00.
- 6.4. Comment letters submitted from the following: Steven Weisman (10/9/18) and Aurora Coaricona (10/6/18).
- 6.5. Petition against Dunkin Donuts in Pinefield Plaza signed by 297 opponents and including comments from an online article, stamped "Received" by the ZBA office on 10/09/18.
- 6.6. Conservation Commission comments dated September 17, 2018.
- 6.7. Site plan entitled "Boundary and Topographic Survey", prepared by Bohler Engineering, 352 Turnpike Rd, Southborough, MA 01772, dated June 29, 2015.
- 6.8. Architectural renderings prepared by Aharonian & Associates, Inc. Architects dated June 8, 2018, updated December 11, 2018.
- 6.9. Plan set entitled "Site Development Plans for Proposed Dunkin Donuts" containing Cover Sheet, General Notes Sheet, Demolition Plan, Overall Site Plan, Site Plan, Grading & Drainage Plan, Utility Plan, Soil Erosion & Sediment Control Plan, Soil Erosion Control Notes & Details Sheet, Landscape Plan, Landscape Notes & Details Sheet, Lighting Plan, Construction Detail Sheets, prepared by Bohler Engineering, 352 Turnpike Rd, Southborough, MA 01772, dated 8/17/2018.
- 6.10. Supplemental plan set submitted 12/11/18, containing the aforementioned plan set (6.9) in addition to a color version of the Landscape Plan, revised 10/4/18, and a Schematic Master Plan for the entire site dated 12/29/18.

Exhibits 6.8, 6.9, and 6.10 shall be hereinafter referred to as the "Plans."

## **7. Findings and Conclusions**

Based upon its review of the Application, exhibits, and the public hearing thereon, the Board makes the following findings and conclusions:

- 7.1. The property is located within the Community Business (B-2) zoning district.
- 7.2. On August 22, 2018, the Building Official denied the Application for the construction of a second building on a lot, pursuant to Section IV.E.2 of the Zoning By-Law.
- 7.3. On September 14, 2018, the Applicant filed with the City Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining a Variance from the Zoning By-Law.
- 7.4. Notice of the public hearing was duly published in "THE METROWEST DAILY NEWS" on September 24 and October 1, 2018 and mailed to all parties-in-interest, as defined by G.L. c. 40A, §11.
- 7.5. The Board finds that it would be preferable in terms of future development of the Pinefield Plaza if the proposed building were on the same lot as the existing strip mall. With separate lots, a separate access would need to be provided, resulting in more curb cuts.
- 7.6. The Variance standard established by the G.L. c. 40A §10 and the Framingham Zoning By-Law is a demanding criterion. The Board must find that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures, which especially affect

such land or structures but do not affect generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. Also, the circumstances under which a Variance may be granted are not unlimited.

- 7.7. There are circumstances relating to the soil conditions, shape, or topography of the land or structures for which the Variance is being sought. *The subject parcel features an existing multi-use commercial building with associated utilities, parking areas, and driveways. The orientation of the lot and the location of the existing buildings and driveways on both Water Street and Nicholas Road, make it impracticable to subdivide the lot into separate parcels without having a significant impact on the existing operation of the site and require significant additional permitting and easements. Creating separate lots would also require an additional driveway be provided for the proposed Dunkin Donuts, which would be difficult to locate given the proximity to the intersections of the two roads.*
- 7.8. Such circumstances especially affect such land or structures but do not affect generally the zoning district in which the land or structures are located. *The subject parcel is unique in that it has both an existing, operating use and also ample space that is currently underutilized.*
- 7.9. Owing to such circumstances, a literal enforcement of the provisions of this By-law would involve substantial hardship, financial or otherwise, to the petitioner. *Applying for relief from the requested sections of the By-Law will be both less of a financial and time commitment to the applicant. Additionally, lots with multiple uses are not a unique circumstance in the City; this is an appropriate alternative to the lengthier and costlier options for redeveloping this area.*
- 7.10. The desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the By-Law or from the intent of the district in which the Variance is being sought. *The subject parcel is surrounded by mostly commercial uses; as such the proposed use will be well-suited for the area and will not have any impacts on the surrounding neighborhood. The project will enhance pedestrian connectivity to the stores in the plaza.*
- 7.11. The Board grants this Variance with the following condition:
  - 7.11.1. The proposed project shall be located as shown on the revised Plans. The final design may incorporate changes as approved by the Planning Board.
- 7.12. This Decision applies only to the requested Variance. Other approvals or permits required by the By-Law, other governmental boards, agencies or bodies having jurisdiction, shall not be assumed or implied by this Decision.
- 7.13. If the rights authorized by this Variance are not exercised within one year of the date of grant of such Variance, such rights shall lapse. The Applicant may request an extension to the one-year period by submitting a written Application for extension prior to expiration of

the one year period. However, it is solely within the discretion of the Board to grant such an extension. An extension shall be for a period not to exceed six (6) months. If the Board fails to act on the request for extension within thirty days of the date of the requested extension, all rights authorized by this Variance shall lapse at the expiration of the one-year period. If the Variance lapses, such rights pertaining to the Variance may only be reestablished after notice and a new hearing pursuant to G.L. c. 40A, §10.

7.14. This Decision shall be recorded at (as appropriate) the Middlesex South District Registry of Deeds or District of the Land Court prior to the issuance of a Building Permit. A copy of the recorded or filed Decision certified by the Registry, and notification by the owner of the recording, including recording information, shall be furnished to the Board and the Building Official

7.15. The terms, conditions and provisions of this Decision shall run with the land and shall be binding upon the Applicant, its successors in interest and assigns, and shall be enforceable by the City of Framingham.

**8. Appeals**

Appeals, if any, shall be made pursuant to MGL, Ch. 40A, §17 and shall be filed within twenty (20) days after the date of filing this Decision with the City Clerk.

ZONING BOARD OF APPEALS

By: 

Philip R. Ottaviani, Jr., Chairman