

TOWN OF NEWINGTON  
ZONING BOARD OF APPEALS  
CONFERENCE ROOM L101  
NEWINGTON, CONNECTICUT 06111  
APRIL 7, 2016

I. MEMBERS PRESENT

Chairman Louis Califano

Commissioner Willard Bechter

Commissioner Nicole Pane

Commissioner John Richter

Commissioner Judith Igielski

Commissioner Timothy Hutvagner

Commissioner Audra Ekstrom excused

Commissioner Paul Plavcan Absent

Also Present:

Present: Michael D'Amato  
Zoning Enforcement Officer  
and Assistant Town Planner

Chairman Califano: Before we begin, let me explain about how the ZBA meetings are run. There are two parts to the meeting. First is the public session where the petitioner will speak, give his name, address and comments on the petition and what the hardship is. After the petitions have been heard, anyone from the public may come up and speak for or against the petition. The public part of the meeting will then be closed and we will start our work session. The public may stay for the meeting but cannot make any comments. If the petitioner cannot stay for the work session, he can call the Building Department tomorrow and he will be given the answer to the outcome of the meeting. There are four commissioners here and you will need 4 of the 6 commissioners to vote for your petition in order for it to pass. Will you please read the petition.

PETITION 00-16-05 McDonalds Real Estate Company 2355 Berlin Turnpike requests a Variance of 163ft from the required 300ft of Newington Zoning Regulations Section 3.15.4D concerning separating distances for Drive Thru intercoms from residential structures in the B-BT Zone. 2355 Berlin Turnpike is located at the intersection of East Robbins Avenue and the Berlin Turnpike, 400ft north of Brockett Street.

Attorney Daniel E. Kleinman: My name is Attorney Daniel E. Kleinman and I am a partner in the law firm of Hinkcley Allen and Snyder of 20 Church Street in Hartford, representing the applicant McDonald's, and also with me this evening is Eric Dubrule who is the engineer with Bohler Engineering and does all of McDonald's work and he will give testimony. We had posted the sign on March 17, 2016 and notices had been sent out to the abutting property owners in accordance with your regulations. This property is in a BBT zone which requires that a 300 foot distance separating the driveway intercoms from a residential structure and so we are here seeking that variance of a total of 163 feet and if I could rewind part of that to the year 2005 and as I indicated, Mr. Chairman, I believe from a careful reading of the minutes, which I do have, and the certificate of action that you sat on this matter then - and the property itself as you can see at the overhead is bounded north by East Robbins Avenue, east by the Berlin Turnpike, south by Puerto Villarta LLC which owns the restaurant there, a large commercial lot, and on the west by Jasmine Mahar and her son Demetrius who live in the house, Jasmine is the property owner and Sean Pomerow did have a personal visit to the home and spoke with them in the process and as he advised me, they had no objection to what we were doing here, but historically let me just state that in March 6, 2006, McDonald's appeared before the ZBA here and asked for 5 variances. The lot, as you can see, is a pie shaped lot and at the time they constructed, this was a 50 year old McDonald's - one of the original's and I think as I have been out to the site that the arches may be the original arches of the older building, which they retained. It is one of the oldest in the state of Connecticut, I believe, but the functionality of it, as you can guess, was not there and they made a determination and this commission took a lot of time and a lot of thought in looking at the request of McDonald's and again, there were 5 variances that were sought, one for the drive in location, second for maximum and pervious coverage and third for total sign area, fourth for sign location and then a variance for the building location, again, we were granted 134' variance at that time by this ZBA and it has functioned up to this point and over the last 10 years, as we all know from our personal experience, things change and in order to insure both the safety of motorists and to circulation and convenience of motorists and patrons the drive through configuration that was originally put forward in this particular approved site plan application, has changed nationally and now they have a different model that makes it easier for circulation, allows for the food to be cooked properly and not have stacking, etc and Eric is going to talk more about that. So effectively what we are looking for, while we are asking for 163 feet variance we are asking for an additional 29ft from what was approved by the ZBA. We contend that a literal enforcement of the zoning regulation would result in exceptional difficulty or hardship for our use of the property in a safe and efficient way for really two reasons. One, the property shape and depth are very, very unique and it was one of the factors that in the minutes of this ZBA back in 2006 recited in the granting of the 134 foot variance and at that time 134 feet and it is also very unique from other properties in the area. If you look at the Puerto Vallarta, the site is a much larger site, so when McDonald's appeared before you, it was impossible to comply at that time with a 300 foot buffer, you could not do it, you would have had to put the building out on the Berlin Turnpike, so again the property shape and depth are unique and it limited the development of the site including the drive through lanes and service menu boards and secondly, the location of the building dictates the placement of the drive through lane, so there is no other place for us to move the drive through lanes that they could comply with the courant variance of 134 feet. If we could, we would have, but we can't and so that is why we are here under section 3.15.4D and to seek relief from that so I will reserve a couple of minutes at the end to say a few words and I am going to have Eric walk through, with you, this is a little bit about the site and why we are doing what we are doing and then allow questions from the audience or from the board, if that is appropriate, Mr. Chairman.

Eric Dubrule: Good evening, for the record, Eric Dubrule, with Bohler Engineering, 352 Turnpike Road, Southborough, Massachusetts and as Dan had mentioned this was constructed about 10 years ago and at that time, it was one of the very first side by side drive through that was constructed in Connecticut. Since that time they have built thousands of these side by side connectors and over the years McDonald's has optimized that design and you can go to the site rendering and essentially what we are proposing today, essentially it is a new construction site and here it would look very similar to this new drive through configuration. I won't bore you with the details of why it is better but essentially what McDonald's has found over the past 10 years in building many of these is that the distance between the order point, that first order point in the drive through window - you can fit six cars between that point and the existing site only fits three and the reason behind that is you want to make that when your order gets to the drive through window that the order is ready and you may have a situation where a customer might pull up and their order is not ready, creating some staffing issues and you may be asked to pull into a parking spot, so it is a major benefit to having this layout. The second one is the proposed drive through configuration as the second drive through entrance lane and under existing conditions you have a single lane that eventually merges into two lanes and in peak conditions you may have a situation where the que might stack out and actually not allow people coming in from East Robbins Avenue to get directly into the drive through lane and under peak conditions does not happen all the time and having two drive through lanes allows the customer going to the Berlin Turnpike to take the inside lane and the customer coming in off of East Robbins to take that outside lane which is more intuitive for the customer, more efficient and that is really the basis of this new design. As Dan mentioned, we will sit down with the staff and make some other site adjustments including a cross walk and sidewalk in the westerly parking area to the building, and the cross walk to the south does not quite show up on this rendering. We have added the large vehicle pull off area just in front of the trash area and will stripe that in white. Under existing conditions the large vehicles will pull in to the striped areas to the north and in that red area to the north and other than that there are no driveway changes, the site circulation is generally the same, no changes to the utilities or architecture and so there are very substantial additions to improve this drive through Thank you.

Attorney Kleinman: I did want to mention to you that we are making an improvement in the buffered area between the residential lot and the site, there is an older wooden stockade fence which you see there, which would get removed and a newer vinyl fence, 6 foot high fence and I don't know whether the effective height might be higher because it is on a berm, or not, but effectively it is going to be there for a long time to really improve the look of the site and we talked to the neighbor about it, having some additional plantings and they didn't want any additional plantings, they just wanted a fence and they felt very comfortable about it, and that is it. So, we think in the long run this will all be for the betterment of the property, again, it has been a ten year period and McDonald's really had a chance to take a look at the way circulation works in their newer stores throughout the country and this store can really benefit with two lanes especially with as Eric had mentioned, an inside lane and outside lane to service the Berlin Turnpike and East Robbins Avenue, so we believe that our request is in harmony with your zoning regulations and will also promote public health safety and convenience and property values are not going to be inured in any way or any detriment to the public and based on the foregoing we believe a strict application of the current zoning regulations will create exceptional difficulty and hardship and the approval will provide substantial justice while preserving public safety and welfare.

I would be happy to answer questions from the board and certainly respond to any questions or concerns or comments from the public.

Chairman Califano: Any questions from the commissioners?

Comm. Bechter: Just a curiosity question, you say you are going to be replacing the fence, is that one of the first things you are going to do? Replace that fence?

Eric Dubrule: We can do.

Attorney Kleinman: We can do it any time,; we are going to stage the work but we could do it immediately, it does not make a difference, but if the commissioners would like us to do that in that order, we certainly could do it. It might be of benefit to the neighbor, while the construction is going on.

Comm. Bechter: I was thinking that the fence is broken in a couple of places.

Michael D'Amato: The only thing I would like to add is, just so that you are all aware, this is Step I in their process. If they are approved tonight, they will then go on to TPZ. They will need to receive the approval from them for site plan modification, so the issue here of the intercoms and those locations that we are looking at tonight and I know it can get confusing when we are talking about site plans and everything that is going on, but, they will have to go there and they will have to deal with all of those issues in front of TPZ for a formal modification. I just want to make sure that everybody understood.

Attorney Kleinman: Thank you, but we are prepared to honor your request and advise the TPZ that we had this discussion at the ZBA and we are more than happy to do that, so I want the record to indicate that we will when we appear before the Planning and Zoning, to get the site plan modified, we will indicate that is one of the requests that came out.

Chairman Califano: And the parking that you are going to have, that is going to back up the speakers from where they are right now.

Eric Dubrule: Yeah, the speakers are being moved.

Chairman Califano: They are going to be moved back. Is it their parking that abuts the McDonald's itself? You are going to do away with those?

Eric Dubrule: Yes, we are going to end up losing a few parking stalls when those speakers are shifted back roughly 100 feet.

Chairman Califano: You don't think that is going to back up traffic or congest things?

Eric Dubrule: No, we did an analysis to show that we did not back up the cars to that crosswalk so that it did not block any vehicles and then we showed 14 cars under existing conditions and the 14 cars under existing conditions actually showed an improvement.

Chairman Califano: Those are handicapped spots, aren't they?

Eric Dubrule: Under existing conditions?

Chairman Califano: Yeah.

Eric Debrule: Yeah, under existing conditions I think there are 3 of the 4 cars blocked on the 14 cars stacked.

Chairman Califano: So you are going to cut down on the handicapped?

Eric Debrule: We are reducing the stalls to three, I believe.

Attorney Kleinman: One of the handicapped will be missing, but we will be in compliance with the regulations requirement.

Chairman Califano: Any other questions from the commissioners?

Commissioner Igielski: Do you know what the regulations are for handicapped parking, like how many spaces for the area?

Eric Debrule: Since we only have 42 stalls, we only are required to have two spaces.

Attorney Kleinman: That is an excellent question and I believe that we go to the TP&Z for the site plan modification, it will be discussed there. They are going to want to make sure that we comply with the regulations.

Commissioner Igielski: It probably has no bearing on this, but where you order you food and someone inside speaks back to you, is there a sound decibel of the speaker?

Eric Debrule: Yes, I do not know what the exact decibel is, but the new speaker systems self adjust ambient noise so if it is in the daytime, it is louder and will adjust and at nighttime it is quieter they will lower it, and they also have manual controls if there is ever an issue.

Commissioner Igielski: I was thinking about Friday and Saturday nights, years ago were very busy.

Attorney Kleinman: That is an excellent question and is one I had asked early on in the discussion and the technology now is so advanced in terms of the microphones and speakers that they adapt and they adjust and whatever and so during the daytime it might be a little bit louder but at night time when there is no background noise, it is softer and you can manually increase the volume as well, so again we will be monitoring it and looking at it, but all of this is going to be a significant improvement.

Commissioner Igielski: On the map it says that the white spaces down to the lower left, that is for the tractor trailers, and that is on the south side. That is not the north.

Eric Debrule: Did I say north?

Commissioner Igielski: Yes, okay, so it is the south side. Another thing coming in from E. Robbins you technically only have one entrance, even though people do turn left on E. Robbins frequently, there is a sign on a pole, No left hand turn, it doesn't say it but it shows the arrow with a sign through it, so there is really one entrance from E. Robbins.

Attorney Kleinman: That is correct and again, we are going to be looking at the signage in general.

Comm. Igielski: I do not know where you can put the sign.

Attorney Kleinman: We will make sure that the signage is clear to the driving public and we will again be looking at that and I am sure it will be discussed at Planning and Zoning.

Chairman Califano: That is a state highway ordinance and another thing is to make it more difficult to take a left hand turn because then you may cause an accident. I noticed that myself when coming down E. Robbins and somebody wants to take a left in there and there is a line of traffic which has nothing to do with McDonald's, that is a state problem.

Attorney Kleinman: Again, we are going to take a fresh look, and we will look at it again as we file the site plan application and we are retaining staff as well to make sure we are using the site in the optimum way due to the site restraints, so public safety obviously is the most important thing for us and circulation is extremely important and why we are here and why the stacking is important to be able to stack more vehicles than they give you right now.

Commissioner Pane: The way it is going to be stacked, is it going to be, it mostly has a lot to do with the employees taking the orders, so if the lines do come far back as they do now, the way the employees are taking the orders is how fast the line is going to go so so how do we guarantee that we are not going to get the lines further back and blocking the handicapped and two or three slots that are left in the front for the people and for the people that are walking into McDonald's from that area of parking.

Eric Dubrule: So that is a great question and there is no guarantee that it won't happen but in the existing conditions it is going to be much more worse under the existing conditions if there are 14 cars stacked there, you won't be blocking any of those spaces and under existing conditions you block six stalls and three handicapped stalls and what we are doing is to improve the drive through efficiency in order taking, we are actually going to have a que zone, so I will not say it could not happen, it could, but it is going to be less probable.

Attorney Kleinman: I think the way the system is supposed to work is speculation, but the way the system is supposed to work and does work is that if you order your food earlier in terms of the place you have, then by the time you get around, is ready and cars keep moving so that what you have is a more orderly progression of cars moving through the line which then won't block the spaces so this is their prototype, they figured this out and have used it in other stores and communities and this is what they do well.

Commissioner Pane: They have used it in others? Not in Connecticut? There is no one that has done this yet?

Eric Dubrule: There are many thousands of McDonald's.

Commissioner Pane: That have changed it? Made it the two lane already and working?

Attorney Kleinman: Absolutely, this is not an experimental thing they are doing here, this is something they have done all over the country and they are upgrading every store that they can, assuming the site allows it to be able to do it because they know it works and that is the reason they are doing it here and so the end result is going to be more efficiency, and they believe it will

be more efficient because it has worked elsewhere.

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Chairman Califano: I think some of the problem might be if they start eating the sandwich before they pull out and get out of the way, you know, unfortunately you cannot control that with that sign, I know that has happened, I have been in line and not too many times, but people start, I do not know what they are doing, but they sit there in the car, which obviously no one can control, really.

Attorney Kleinman, As you know it is a unique site, it is the topography of the site dictated where the building could be built and dictates where the drive through can be and the hardship is really you're caught with the site the way it is and the building the way it is, and so in terms of distance required, it is just impossible - and we believe the extra 29 feet is justified because of not only the hardship but also the end result will be a better functioning restaurant for the public than what it is now.

Commissioner Richter: I have one question. Is it an on site that they are receiving that somebody is there that is accepting the menus, or the stuff for the menu because I have seen on T.V. where McDonald's had off site people taken...

Attorney Kleinman:...no, they are on site, I am smiling because you know we out source jobs all over the world and when you said someone is in, not even Chicago, but maybe overseas somewhere, saying may I take your order, no, they have people on site.

Commissioner Richter: Okay, they have advertised it that they are doing it off site to make it more efficient.

Attorney Kleinman: I am unaware of that place for this particular restaurant.

Chairman Califano: Very good. Any other questions? Is there anyone wanting to speak in behalf or against the petition?

Francisco Montaro: I live across from there at 288 E. Robbins Avenue for 10 years and Mr. Montaro spoke to the accidents that occur at that intersection

Chairman Califano: Thank you.

Attorney Kleinman: I can respond if it is appropriate and obviously I am unaware of any accident record on the site, certainly McDonald's wants to make sure that the site is safe for its circulation and also pedestrians and it sounds like it is an enforcement issue that comes up on every zoning matter that I get involved with and that is how do the police enforce the regulations, is the signage appropriate and all of that are reasonable questions to take a look at. We are concerned about the circulation of the site and again, we are not going to add anymore traffic that is there now, we are trying to take the traffic that is there and make it safer in the way that it circulates around the site, so I know exactly where Mr. Montero lives and I see on the map here and we certainly know how not to minimize what his concerns are and we certainly can work with planning and staff to take a look at it but in terms of this particular application, which is one for the variance, I think his concerns are maybe things that we can talk to him separately and by meeting with him to get a better articulation with him to us about what his concerns are so we will be able to understand that.

Chairman Califano: I am sure it will come up with TPZ. Our concern here is the variance.  
Attorney Kleinman: I am glad Mr. Montarro came tonight and we know what his concerns are and this will give us an opportunity to be as responsive as we can be within the parameters of the site and if it is an enforcement issue it is the town of Newington's Police Dept. that has to be involved.

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Commissioner Richter Just for the record, 54 years ago I had an accident right where he was talking about.

Chairman Califano: That was a long time ago, the horse and buggy days!  
Any other questions for the commissioners?

Michael D'Amato: I guess I can follow up on some of the stuff that he talked about - the plan that they have before you that he talked about, we did sit down and the things that we asked them to adjust they added the parking cross walk for us, they added a large vehicle, the hash lines that you see going at the bottom because as you all know vehicles parked right here in this lot use the curbing is now being removed so we wanted a place where larger vehicles could be and that is what you are seeing here. He is correct in that they were 10 spaces over what they needed so the reduction that you are seeing here does not make them nonconforming. The parking spaces that they will need, they will still have. They did upgrade the fencing at our request because aesthetically it does look better and it will last longer and he mentioned the order of the intercoms adjusting so that because this is a 24 hour operation, at 2:00 AM if somebody is coming in and ordering through the drive through will not be impacted, so I think those concerns we had to that neighboring residential properties were addressed and will be further addressed when it goes to TPZ, but they are going to look at the whole site and they are going to take the concerns that we all have and they have as well.

Chairman Califano: Motion to close the public hearing.

Comm. Richter: So moved.

Comm. Pane: Second.

Chairman Califano: All in favor: Aye unanimously.

### III. WORK SESSION

Chairman Califano: Comments from the commissioners? First of all let me go over what the McDonald's real estate company is looking for on the Berlin Turnpike. They are looking for a 29' variance to relocate their speaker system to alleviate some of the back up that is occurring on their drive through windows. We did hear from one of the neighbors that lives on E. Robbins Avenue and he is concerned more with the traffic pulling in and pulling out onto E. Robbins Avenue which has to do with the town or the state. We have to decide if they could have the variance for their speakers and what the neighbor does not like is nothing that we can actually have any particular voice in it, so that would be up to the town and TPZ and highway department and to alleviate the problems that occur there. Comments from the commissioners.

Comm. Bechter: The plan looks like an improvement.

Comm. Igielski: I wish there had not been any accidents and I do not think it is in our purview where you have an exit and incoming, if you could make the exit, only and only one entrance into McDonald's from the Turnpike.

Comm. Richter: That would not help because they have a problem on Main St going into Starbuck's, the sign says no left turn and they take a left turn. Robbins & E. Robbins they are going to do the same thing.

Chairman Califano: That is not our problem.

Comm. Igielski: I do like what was told about the sound decibels and how it will adjust to background noise and the fence is a good idea and parking for trucks and wasn't this the first McDonald?

Chairman Califano: Can we have a motion to accept or decline the petition.

Comm. Bechter: I make a motion we approve the petition.

Comm. Richter: I second it.

Chairman Califano: All in favor. Aye unanimously. The petition passed unanimously.

#### V. MINUTES PREVIOUS MEETING MARCH 3, 2016

Comm. Igielski: I move to accept the minutes as written.

Comm. Richter: I second the motion.

Chairman Califano: All in favor. Aye unanimously.

#### VI. COMMUNICATIONS AND REPORTS

Michael D'Amato: What I have is a memo about the application fees which an average one costs \$350.00 and we only charge \$75.00 for an application so the town of Newington is subsidizing \$250.00 per application. It costs around 100 bucks every time we put it in the paper and we have to do it 3 times per application and we do not have to continue a meeting or move a meeting so we need to get the application fees to the point where number one, people take variances seriously and number two, we are not subsidizing their applications so I will be doing that on behalf of the ZBA. My recommendation is \$250.00 and that is the only way to cover our costs.

Comm. Hutvagner: What are other towns charging?

Michael D'Amato: Other towns go from \$75 to \$800 and some towns actually factor the amount of time it takes to review by staff. This is just our break even. So we just went through the budget process and some accounts are getting less money than we got last year, but if we have more applications than we did the previous year, the amount of money we were given in the budget does not cover what we need, for real. So we are at a point now where depending on what applications we get from now and July, we may go under, so we cannot have the ZBA pay for our own variances so I am going to put that to the Council and have them consider them bringing these up so that the applicant is footing the bill and not the town. Adrienne is the staff person and she has been here since 1999 and things have not changed, so at least 17 years it has been \$75.00 so we need to adjust that because it needs to reflect the cost. We are drafting a memo to put to the Council and we also have to send \$60 to the state for every application received, so we have \$100 per application for publishing and \$60 to the State for application processing and it gets \$60 for every land use application from wetlands, TPZ, Conservation, and ZBA. They take \$60 and give us \$2 back because we have to do the forms, so they take \$58 for every application.

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So when you take in what we count for legal notices then they take \$60, then we are losing money, hand over fist and if we do not have a quorum or if we have to continue a meeting or something along those lines,

Comm. Richter: ...I think if you do that you are going to stop a lot of these people coming in for a variance and some of the variances are stupid.

Michael D'Amato: We are not going to be as high as Conservation because they have a much more complicated formula, we are going to be higher than TPZ by site and modifications they are going to go to TPZ and pay \$150 or \$175 so yes, we need to have a fee that forces them to consider alternatives. Fees are based on the cost of the job. So a \$4,000 job is going to cost you \$50.

Comm. Richter: If a home owner is going to do their own roof and they are giving the cost of materials, do you do it on a sliding scale?

Michael D'Amato: They present the cost of the job to us, and we determine the value of the permit from there, so if they are not paying a contractor and their costs are less, their permits are less. The minimum in Building is \$50. Zero to \$4,000.00 is \$50 and then it goes up \$11 per thousand.

Comm. Richter: Some other panels have a book and if you are changing your roofs it is \$3,000.00.

Michael D'Amato: Newington has a minimum fee that they apply for single houses, you have a minimum dollar value per square foot the Building Dept. applies, but we do 2500 permits a year and we have a different scale for all of these different things, so other than that - no other communications or reports and I will keep you posted as far as what the Council proposes to do.

VII. NEW BUSINESS - None.

VIII. OLD BUSINESS - None.

IX. MOTION TO ADJOURN: Comm. Richter made a motion to adjourn the meeting and Comm. Brechter seconded the motion. The motion passed unanimously. The meeting adjourned at 8PM.

Respectfully submitted,

  
Sophie Glenn  
Recording Secretary