

**CITY OF METHUEN
COMMUNITY DEVELOPMENT BOARD**

NOTICE OF DECISION- SPECIAL PERMIT APPROVAL

Section XI-D (12) Drive-up Retail, Business or Service Establishment, Drive-up or Drive-through Restaurant,
and Stand-Alone Kiosk, Drive-through or Walk-up

436 Broadway (Route 28)

Case No. 2023-2

Date of Application: 04-04-23

Date of Hearing: 05-10-23, 06-14-23, 07-12-23

Date of Decision: 07-14-23

Petition of: Shri Swamine LLC
PO Box 2022 Danvers, MA 01923

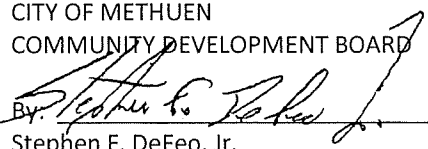
Premises Affected: 436 Broadway
Assessor's Map 610-123-47A
Business Highway (BH) Zoning District

Referring to the above petition for a Special Permit from the requirements of Section XI-D (12) of the City of Methuen Comprehensive Zoning Ordinance to allow the construction of a drive-through at the proposed 2,200± SF restaurant to be constructed in the BH (Business Highway) Zone.

At a public hearing held on July 12, 2023 the Community Development Board voted UNANIMOUSLY (6-0) to **APPROVE WITH CONDITIONS** the special permit for a drive through restaurant to be constructed at 436 Broadway. The drive through will operate between the hours of 7 AM and 10 PM.

This is to certify that the above action was taken in compliance with the statutory requirements as set forth in Chapter 40A of the General Laws, and that a copy of this decision was filed with the City Clerk on **July 14, 2023.**

CITY OF METHUEN
COMMUNITY DEVELOPMENT BOARD

By: 
Stephen F. DeFeo, Jr.
Chairman, Community Development Board

Any appeal of this decision shall be made pursuant to the requirements of Massachusetts General Laws and shall be filed within twenty (20) days after the date the notice of decision was filed with the Methuen City Clerk.

I hereby certify that no appeal has been filed in the Methuen City Clerk's Office, within the twenty (20) day appeal period.

Anne J. Drouin, Methuen City Clerk

2023 JUL 14 AM 11:11
CITY CLERK'S OFFICE
METHUEN, MA

FINDINGS OF FACT:

Shri Swamine LLC filed an application for a Special Permit on April 4, 2023. The applicant submitted a complete application, which was noticed and reviewed in accordance with Section XI Special Permits of the City of Methuen Comprehensive Zoning Ordinance and MGL Chapter 40A, Section 9.

The site is located on the west side of Route 28, approximately 1,000 feet north of Route 213, Exit 2. It is comprised of a single parcel of approximately 452,060+/- SF. The site is currently developed with a multi-tenant building of approximately 97,200 square feet with 562 parking spaces. The parcel is adjacent to various restaurants with Dunkin' Donuts to the north and Texas Roadhouse to the southeast.

The project proposes to construct a 2,200 square foot Taco John's restaurant with a drive-through. The proposed site work will produce substantially less pavement area on the overall parcel mitigating the rate of runoff and volume leaving the site. Two bioretention areas will also be introduced, providing treatment and infiltration for a portion of the runoff generated within the development. The project reduces the amount of parking on site, lessening the amount of impervious surface within the parcel area while still maintaining an adequate number of parking spaces for all uses within the plaza.

The project is shown on a plan entitled: Site Development Plans for Taco John's, 436 Broadway, Methuen, MA 01844; prepared or Shri Swamine LLC; prepared by Allen & Major Associates, Inc.; dated March 31, 2022, rev. through June 27, 2023.

The public hearing on the above referenced application was opened on May 10, 2023 and closed on June 14, 2023. The Board reviewed correspondence from the City's Engineering Department and the Board's peer review agent TEC. Upon a motion by Mr. Comei, seconded by Mr. Boes, the Board voted unanimously (6-0) to close public hearing. Upon a motion by Mr. Comei, seconded by Mr. Boes, the Board voted unanimously (6-0) to GRANT the Special Permit with Conditions.

The following Board members participated in the hearing and voted on the decision: Stephen DeFeo, Michael Comei, Neal Hunter, Brian Boes, Shadi Kasis, and Heather Plunkett.

This approval is granted subject to the accuracy of the information, reports and data presented. In the instance where the Board is of the belief that this material was inaccurate as presented or has subsequently become unreliable the Board may conduct a determination hearing to consider requiring further review or mandating current and reliable data and information for subsequent approval.

As required by the City of Methuen Comprehensive Zoning Ordinance Effective July 28, 2008 **Section XI-B(2)**, based upon the applicant's testimony, plans submitted and information provided, the Community Development Board makes the following findings:

- A. The proposal serves social, economic and community needs. The proposed restaurant drive-through will provide another dining option for residents of the City, will provide employment opportunities, and will provide another taxable use on an a previously developed parcel.
- B. The proposed use will result in no impact on traffic flow. The proposed restaurant with drive-through will be accessed from the internal shopping center roads. The shopping center is accessed by a signalized intersection on Broadway. There is adequate parking on the site.
- C. The proposed use will utilize no public services.
- D. The neighborhood character and social structure will not be impacted by the proposal. The proposed restaurant and drive-through are located within an existing shopping center and are consistent with adjacent uses.
- E. The proposed use has no impact on the natural environment. The site currently consists of a paved parking lot. There will be no additional impacts on the environment.
- F. The proposed use will have no impact on City services.
- G. The proposal is consistent with the most recent City of Methuen Master Plan

In accordance with **Section XI-D (12)(d)**, based upon the applicant's testimony, plans submitted, and information provided, the Community Development Board makes the following findings:

- i. The drive-up retail, business or service establishment shall not constitute a nuisance of any type.
- ii. Access to such drive-up service shall conform to Section VI-B-5 Yard Requirements, for all Districts.
- iii. The drive-up retail, business or service establishment shall not operate after Midnight without an additional special permit from the Community Development Board. The drive through will be open from 7AM to 10PM.
- iv. The drive-up retail, business or service establishment complies with the Methuen Municipal Code Article VI Section 9-61. Regulation of Loudspeakers, Amplifiers, and Paging Systems.

SPECIAL CONDITIONS:

The Community Development Board finds that this project generally complies with the City of Methuen Zoning Ordinance requirements as listed in Section XI-D (12) but requires conditions to be fully in compliance. The Community Development Board hereby grants an approval to the applicant provided the following conditions are met:

1) Prior to the endorsement of the plans by the Community Development Board, the Project Owner must comply with the following:

- a) The final plans must be reviewed and approved for accuracy and conformance with the terms of this Approval by the City's Engineering Department, the City's Peer Review consultant (as may be required by the Board), and the Community Development Department. The final plans must be revised in accordance with comments received by the City of Methuen staff members and peer review agents as follows:
 - i) The proposed exterior grease trap has a specified capacity of 1,000 gallons, DEP Wastewater Regulations require a minimum grease trap capacity of 1,500 gallons and must be revised accordingly.
 - ii) Sanitary sewer manholes must be specified with internal ladder steps.
 - iii) All precast concrete sewer components must be specified with a double exterior coating of asphalt waterproofing.
 - iv) The water component must have a minimum depth of cover of five (5) feet.
 - v) Existing DMH, east of DMH-1, conflicts with a proposed wheelchair ramp and detectable warning panel.
 - vi) An existing steel guard rail appears to run along the northern side of the proposed development. Applicant should show the existing guard rail within the Site Plans.
 - vii) Utility connections to the existing utility pole are outside the limit of work. Applicant should revise their limit of work and provide the limit of work on the Utilities Plan.
 - viii) The slope for the proposed drainage pipe from EX. CB-3 to DMH-1 is 0.1%. Applicant should revise the slope of the drainage pipe to have a slope greater than or equal to 0.5%.
 - ix) The Bioretention System Detail states a minimum of 1 foot from the seasonal high-water table. The Massachusetts Stormwater Handbook states that bioretention areas should have a vertical separation of at least 2 feet from the seasonal high-water groundwater table (SHGWT) to the bottom of the bioretention area. Applicant should revise bioretention detail.
 - x) The "edge of pavement" elevation for the Rain Guardian-1 (Turret) is higher than the proposed 138' contour within the pavement area. Applicant should confirm that the elevation for the Rain Guardian is correct.

2) Prior to the start of any site work and building permit issuance:

- a) Prior to the issuance of a building permit, the Applicant shall submit a traffic impact and access study for the plaza expansion prepared by a Professional Engineer. The Applicant shall submit the traffic study to the Community Development Department along with a copy of MassDOT's updated Permit to Access State Highway or correspondence from MassDOT acknowledging their

interim approval to allow construction activities while their reviews are conducted, and potential off-site mitigation is determined.

- b) The Community Development Board must endorse the final site plan mylars and three (3) copies of the signed, recorded plans must be delivered to the Community Development Office.
- c) One certified copy of the recorded decision must be submitted to the Community Development Office.
- d) A bond in the amount of **five thousand (\$5,000) dollars** shall be posted for the purpose of insuring that the site is constructed in accordance with the approved plan and that a final as-built plan is provided showing the location of all on-site structures.
- e) Prior to any construction activity of any kind associated with the project, the Project Owner shall submit to the Community Development Department a proposed phased construction sequence schedule (timetable/bar chart), said schedule to be used as a guide to activities within the development including construction of roadways, utilities, drainage system, stabilization, earth removal and stockpiling. This schedule once established shall not be deviated from and may only be modified by agreement between the Project Owner and the Community Development Department.
- f) A pre-construction meeting must be held with the developer, their construction employees, Community Development Department, and other applicable departments to discuss scheduling of inspections to be conducted on the project and the construction schedule.
- g) The Project Owner will provide supervisory contact personnel along with emergency telephone numbers that are answered on a 24-hour basis (answering machines or voice mail are not acceptable).

3) During Construction:

- a) Construction activities on the site shall conform to the City of Methuen's Ordinances relating to such work.
- b) Construction activities shall be conducted in a workmanlike manner at all times. Blowing dust or debris shall be controlled by the Applicant through stabilization, wetting down, or other proper storage and disposal methods.
- c) It shall be the responsibility of the Applicant to assure that no erosion from the construction site shall occur which will cause deposition of soil or sediment upon

adjacent properties or public ways, except as normally ancillary to off-site construction. Off-site erosion will be a basis for the Community Development Board making a finding that the project is not in compliance with the plan; provided however, that the Community Development Board shall give the Applicant written notice of any such finding and ten days to cure said condition.

4) Prior to the Issuance of the Certificate of Occupancy:

- a) The Project Owner must submit a letter from the engineer of the project stating that the building, landscaping, lighting, and site layout substantially comply with the plans referenced in this decision as endorsed by the Community Development Board.
- b) A final as-built plan showing final topography, the location of all on-site utilities, structures, curb cuts, parking spaces and drainage facilities, including invert elevation of all storm water structures shall be submitted to the Community Development Department and the Engineering Department for review and approval.
- c) If all site related issues, including landscaping, have not been completed at the time the building itself is ready for occupancy, the Community Development Board may authorize the Project Owner to post a security sufficient in the opinion of the Community Development Board, to cover the cost of the City of completing the remaining site items.

5) Prior to the final release of all funds: The Community Development Board must, by majority vote, make finding that the site is in conformance with the approved plan and decision.

6) Other Conditions:

- a) The dumpster must be emptied at non-peak hours to avoid conflicts with cars that may be parked in the nearby parking spaces.
- b) The Applicant shall make every effort to maintain queueing vehicles in the site, within the parking area, rather than allowing vehicles to queue on the primary circulation aisles of the shopping center.
- c) The Applicant must comply with the Methuen Municipal Code Article VI Section 9-61. Regulation of Loudspeakers, Amplifiers, and Paging Systems.
- d) To reduce noise levels the Project Owner shall keep in optimum working order, through regular maintenance, any and all equipment that shall emanate sounds from the structures or site.

- e) Any plants, trees, or shrubs that have been incorporated into the Landscaping Plan approved in this decision that die within two years from the date of planting shall be replaced by the owner. All plantings and screening depicted on the approved plans shall remain in perpetuity over the life of the project.
 - f) Within five (5) days of the transfer of ownership of this site in whole or in part, the Project Owner shall notify the Community Development Department of the name and address of the new owner(s). The Project Owner shall provide the new owner(s) with a copy of these conditions.
- 7) The Community Development Board hereby reserves the right to serve notice on applicant of a cease and desist work order should a violation of the endorsement, the approval, the conditions or the restrictions be found to exist. Such cease and desist work order, when served in writing, directing itself to the violation occurring, shall act to prohibit any and all work on the areas as mentioned in such order.
- 8) This Special Permit shall be deemed to have lapsed two years after the date of the grant of this approval if a substantial use thereof has not sooner commenced, except for good cause. Such approval may, for good cause, be extended in writing by the Community Development Board upon the written request of the applicant.
- 9) The following documents and plans shall be deemed part of the decision:
- a) Site Development Plans for Taco John's, 436 Broadway, Methuen, MA 01844; prepared or Shri Swamine LLC; prepared by Allen & Major Associates, Inc.; dated March 31, 2022, rev. through June 27, 2023.
 - b) Drainage Summary Letter, prepared by Allen & Major Associates, Inc. dated May 26, 2023; revised June 27, 2023
 - c) Transportation Traffic Impact Assessment and Appendices, Taco Johns, Methuen, MA; prepared for Taco John's; submitted by ASB Design Group; dated July 8, 2023