

Time to Make the Donuts? Appeals Court Rules Hopkinton Dunkin' Donuts Could Be a Retail Store



image credit: Amy

Fast-food coffee shops may look virtually the same from town to town, but as a recent Appeals Court decision reminds planners and local land use boards, what a town's zoning by-law says—and local officials' reasonable interpretations of that by-law—can dictate how they are characterized for zoning purposes.

In a modest victory for municipal zoning officials' discretion to adopt reasonable interpretations of their own zoning bylaws, the Appeals Court overturned a decision of the Land Court and held that the Hopkinton Zoning Board of Appeals could reasonably characterize a proposed Dunkin' Donuts as a "retail store" rather than a "restaurant" under the town's zoning by-law.

The project applicant proposed to locate a Dunkin' Donuts on a parcel in Hopkinton's "Rural Business" zone in which retail stores, but only sit-down "restaurants" (not take-out establishments), are permitted. The Hopkinton Planning Board approved the site plan for the Dunkin' Donuts, treating it as a retail store, and the Town's Zoning Board of Appeals affirmed that approval. A residential abutter challenged those approvals, and the Land Court held that an establishment serving primarily take-out food was the type of "restaurant" not permitted in the district. The Land Court reasoned that the Dunkin' Donuts was a "restaurant" and not a "retail store" in that food is prepared on-site and because its sales would be subject to the state meal tax.

In an unpublished opinion, the Appeals Court rejected the Land Court's logic and held that the Town boards had reasonably interpreted the zoning by-law. Looking to dictionary definitions of the terms "restaurant" and "retail store" the Appeals Court held that the Dunkin Donuts could be defined as either. However, the Appeals Court found the Board's choice to treat the establishment as a retail store a reasonable one for several reasons. First, the zoning by-law also permitted "accessory uses" in the Rural Business zone, defining them as "customarily incidental and subordinate to the lawful principal use of the lot." Citing Supreme Judicial Court precedent that a bakery selling donuts and pastries is a retail store, the Appeals Court found that the on-site food preparation at the Dunkin' Donuts was "accessory" to its principal retail use. Second, pointing to more thorough restrictions on retail stores in other Hopkinton zoning districts, the Appeals Court observed that the town knew how to define "retail stores" more narrowly if it wanted to. Third, the Appeals Court found no value in looking to General Laws to determine the meaning of "restaurant" in the zoning by-law, noting that the term is used inconsistently in different chapters. Finally, the Appeals Court explained that Hopkinton previously had authorized other similar establishments, including a Starbucks and another Dunkin' Donuts, in the Rural Business zone as support for the reasonableness for the Town's decision.

In short, the Appeals Court affirmed that although this dispute may have been avoided if the zoning by-law had been more specific, zoning by-laws need not anticipate every potential use in great detail. If by-laws include flexibly worded provisions, towns retain reasonable discretion to interpret them, especially if their interpretations are consistent from application to application.