



MEMORANDUM

TO: Peter McKnight, Planning Board Chair
Members, Hurley Planning Board

FROM: Bonnie Franson, AICP CEP

RE: Dunkin' (SBL: 38.10-7-9)

DATE: July 25, 2023

CC: Maggie Colan, Planning Board Clerk
Dennis Larios, P.E., Town Engineer

We are in receipt of the following items, transmitted recently by Charles Gottlieb, Esq., attorney for the Applicant, on July 18, 2023. We are not in receipt of any hard copies of the materials:

- Site Plan for Proposed Dunkin', last revised December 17, 2021, prepared by Medenbach & Eggers, consisting of 11 sheets;
- Letter from Charles Gottlieb, dated January 7, 2021¹ [sic], to the Hurley Planning Board, with the following Exhibits:
 - Exhibit A, Drainage Easement;
 - Exhibit B, Highway Work Permit, issued January 7, 2022, Expiration date January 9, 2023;
- Letter from Brinnier & Larios, PC, dated July 27, 2021, to the Hurley Planning Board, regarding traffic and drainage matters;
- Letter from Charles Gottlieb, dated December 20, 2021, to the Hurley Planning Board, with various enclosures
- Letter from Charles Gottlieb, dated November 19, 2021, to the Hurley Planning Board, with the following Exhibits:
 - Comment Response Memo, preparers unknown;
 - Exhibit A, Email from Starke Hipp to John Reilly, NYSDOT, dated October 19, 2021;
 - Exhibit B, Memo prepared by Creighton Manning, dated August 2, 2021, to the Hurley Planning Board, with attachments;
 - Exhibit C, Memo prepared by Creighton Manning, dated August 16, 2021, to the Hurley Planning Board, with attachments;

¹ The letter should have been dated 2022.

- Exhibit D, Memo prepared by Creighton Manning, dated August 30, 2021, to the Hurley Planning Board;
- Exhibit E, Maneuverability Analyses, prepared by Creighton Manning, dated October 2021;
- Exhibit F, USDOH Permit to Construct a Waste Disposal System, issued November 10, 2021;
- Exhibit G, Letter from Dunkin' to Hurley Planning Board, undated, regarding drive thru;
- Exhibit H, email from Starke Hipp, dated October 19, 2021, regarding sight distance.

This memorandum also includes review of prior submissions and addresses the open items that still existed prior to the Planning Board's decision in 2022. We relied on the 6/21/21² Proposed Elevations as part of this review.

The applicant proposes to construct a Dunkin' with drive-through on 0.5 acres at the corner of Route 28 and Route 375. The use is permitted with site plan review approval by the Planning Board within the B-1 General Business³ district.

General Comments

1. Applicants. As a general matter, we raise the question whether the adjoining owners who own property on which disturbances will occur should also consent to the site plan application and improvements on these lots, specifically Donald Germond (SBL 38.10-7-9) for drainage-related improvements, and Summit 1000 LLC (38.10-7-12), on which grading activity is shown (See Sheet 4 of 11 which shows the limits of disturbance encroaching on to the adjoining property). **We defer to the Planning Board attorneys.**
2. Floor plans. The Applicant's traffic consultant has represented that this facility is for drive-through use only. Floor plans have not been submitted, documenting the interior of the building, which would provide evidence that the interior space does not have a counter area or is open to the general public. Floor area has been raised in prior NPV comment memos (e.g., 7/29/21 memo). While Creighton Manning indicated there is no customer floor area, floor plans have not been submitted to document this. Floor plans are needed to confirm that the number of parking spaces that are provided are reasonable for the proposed use as per Section 210-29.A(1)(c) of the zoning chapter. Also, will any of the parking spaces be reserved for take-out orders (this became very common during and post-COVID)? Signs may be needed to make the public aware that there is no on-site parking or indoor customer service/public bathroom area.
3. Elevations. The most up to date elevations, showing all the signs on the façade, need to be incorporated into the site plan. The last plan set we have is dated June 21, 2021, and it is in black and white. The elevations are needed as the signs need to be reviewed as per the sign standards in the zoning chapter. Also, the site plan standards (210-41B) require that the site plan application and plan include "design of all buildings and structures." See additional sign-related comments below.
4. Drainage easement. The drainage easement note on the site plan (Sheet 1 of 11) needs to be updated on the plans if it has been recorded, and all improvements need to be shown on the plans.

² This appears to be the last set of elevations received from the Applicant.

³ The Building Inspector confirmed the zoning district.

5. Utilities. In general, notes need to be added as to how the existing septic system and well will be abandoned, to ensure these abandoned systems do not become conduits for pollutants to enter groundwater (see <https://www.dec.ny.gov/lands/86955.html>). Also, will the facility utilize electricity? The existing building had an aboveground oil tank. The site plan does not show any propane or fuel storage tank. The site plan requires consideration of the “power” provided on the site (210-41B).
6. Snow removal. As a general matter, it is impractical for snow to be hauled off-site. Is there any place it can be located on the site in the vicinity of the drainage area?
7. Garbage disposal. Many Dunkin' and other fast-food restaurants install garbage cans at the windows or after the menu board where customers will discard their garbage. Will garbage cans be provided?
8. Corner lot. The definition of corner lot was recently updated – the Applicant should review the yard requirements in light of the new definition (Local Law 2 of 2023).
9. Demolition. As a general comment, it is recommended that a plan sheet be added that addresses demolition, i.e., what is being removed, any fencing needed to control site access during construction (the westerly property line and improvements are very close to an existing building and should be demarcated), signs that will remain versus being removed, etc. This sheet could also include the water abandonment and septic tank procedures.
10. NYSDOT permit. The NYSDOT permit has expired. Has it been renewed? If renewed, we note that the highway maps submitted to the NYSDOT do not show the location of a bus stop where the shoulder is proposed to be expanded. Was this considered by the NYSDOT, in terms of safety and bus pick-up/delivery?
11. Hours of operation. What will be the hours of operation for the use? The information is needed to review the proposed lighting and delivery (loading) time periods relative to the operations.

Site Plan Comments

Sheet 1 of 11

1. See comment above regarding snow storage.
2. The site plan should label the location of the existing bus stop on Route 375. With the changes to the shoulder, is this bus stop to remain?



3. One door entrance appears to be shown. Are there other doors into the building? All exterior access points into and out of the building should be identified for safety purposes.

4. There was a striped walkway that extended from the on-site parking to the sidewalk – was this intended to be removed? What visual or other cues have been added to ensure that the on-site vehicles are aware that this is a pedestrian crossing?
5. Are property monuments being added to the property lines? This is recommended for the northwest corner of the site given the potential for the adjoiner to encroach upon the property. A fence is also recommended.
6. A general note should be added that there will be no outdoor storage, consistent with Section 210-22.D of the zoning chapter.
7. A parking calculation is not provided on the site plan sheet. Please provide how the number of spaces was arrived at, as per Section 210-29.A(1)(c) of the zoning chapter.
8. A loading calculation is not provided on the site plan sheet. Please provide as per Section 210-29.E of the zoning chapter.
9. As per Section 210-29.D(3) regarding the location of required parking spaces: *“In any nonresidential district, no open or enclosed parking area shall encroach on any required front yard or required open areas. Open parking areas may encroach on a required side or rear yard to within three feet of a property line.”* Are parking spaces encroaching into the required front yard along Route 28? Was an interpretation ever sought by the Planning Board or applicant?
10. As per Section 210-29.G(1) of the zoning chapter: *“All off-street loading areas shall be located on the same lot as the use for which they are permitted or required. Open off-street loading areas shall not encroach on any **required front or side yard, accessway or off-street parking area**, except that in **business districts, off-street parking areas**, where they exist, **may be used for loading or unloading**, provided that such spaces shall not be so used for more than three hours during the daily period that the establishment is open for business.”* (emphasis added). The loading area is shown in the required side yard setback and is not in the off-street parking area. A variance may be necessary.
11. Please check the minimum green space requirement. Our calculation was closer to 28 percent. The calculation should not include green space within the NYSDOT right-of-way or the off-site easement.

Sheet 2 of 11

1. The existing conditions map should show the location of the existing well on the site. It is missing from this sheet.
2. Are the vehicles from the Summit property parking on the project site? The note “parking lot” appears at the northwest corner of the property and aerials appear to show parking encroaching onto this property. A barrier is not provided that would stop this encroachment from occurring (no curb or fence) in the future. It is recommended that an opaque fence be added to the plans along the westerly property line.

Sheet 3 of 11

1. This sheet indicates “well to be abandoned”. It does not indicate what is to occur to the septic tank which is still shown on the sheet. Also, notes are needed to address standards by which they well and septic will be abandoned as previously noted.
2. Regarding water supply, and as per the Brinnier & Larios memo dated July 27, 2021, the Town engineering consultant noted that there be evidence of an “easement” and a full Part 5 as per his discussions with the UCDOH? What is the status of these items? Does it in any way impact the site layout? What easement is required, and is it shown on the site plan, or is the same easement area as the drainage easement?

Sheet 4 of 11

1. The soil erosion and sediment control plan shows the limits of disturbance extending on to the Summit Property to the west. Does the owner/applicant have consent to encroach into this area?
2. Where is the vegetation protection detail being used? It does not appear any tree is being retained. The limits of disturbance covers the entire site. Please indicate what trees are remaining to which this detail applies.

Sheet 5 of 11

1. As a general comment, we would recommend that there be a separate lighting plan with the lighting details, and a landscaping plan with the landscaping details, for clarity and review.
2. As a general comment, this site is lightly landscaped. Section 210-29.1(2) states: "All parking areas shall be landscaped" – the parking area itself is not landscaped. Given the amount of impervious surface being introduced by this project, it is recommended that additional landscaping, including trees and shrubs. The amount and spacing of plantings should reflect recommended separation distances. For example, it is unclear whether the Ilex opaca are being grown as shrub or tree cultivars. If a shrub, they should be planted 4-5 feet on center. The tree is not recommended for "small yards".
3. Provide the specific species name for each planting type.
4. The east elevation is a solid façade with a sign. It is recommended that additional plantings need to be added along the wall to break up the blank façade appearance. We question whether the sidewalk should be extended away from the building, to allow 5-10 feet of landscaping to be placed by the building.
5. As shown, the quantities of landscaping cannot be confirmed. Different symbology needs to be used. The symbology is not entirely legible.
6. Details for fixtures A and B are provided. Fixtures C, D and E need to be included as per the site plan standards.
7. The lighting legend and quantities do not match what is shown on the plan. For example, the site plan shows a quantity of 6 Fixture A's, but 7 are noted on the table. Also, the lighting plan does not consider illumination from the multiplicity of signs being proposed for this site. See comments below regarding allowable signs.
8. Provide kelvin values for all fixtures – they should not exceed 2700-3000 kelvin to meet dark sky standards as per Section 210-41B of the zoning chapter.
9. Will lights be on timers or dimmers? Will menu boards, etc. be turned off during non-operational hours?
10. As per Section 210-29.1, all exterior lighting shall be arranged and oriented in a manner that provides for on-site safety while minimizing potentially hazardous glare upon motorists or upon adjacent residential properties, and maintaining an illumination level not exceeding 0.2 footcandle at any lot line. The lot lines need to be shown on the lighting plan, and checked to determine whether there are exceedances. For example, measurements along the northern property line are at 0.6 footcandles, and 0.3 at the westerly property line. They are 0.6 at the easterly property line, and 0.5 along the southerly property line. In addition, all light sources needed to be considered, including signage (e.g., internally lit LED Dunkin Go wall sign) and LED strips (shown on the elevations by canopy).

Sheet 6 of 11

1. See previous comment regarding the location of the bus stop.

Sheet 7 of 11

1. There is one detail for site pavement and concrete curb detail and site pavement and curb without concrete sidewalk. Is this intended?
2. Where are the NYSDOT signs being installed? Signage is to be shown as per Section 210-41B of the zoning chapter.

Sheet 8 of 11

We defer to the Town engineering consultant.

Sheet 9 of 11

1. All fixture light details are required as per the site plan standards (210-41B). Submission of catalog cut sheets is recommended since the site plan is not legible. Colors and design of all fixtures are to be provided. In general, the standard box fixtures for the pole lights are very utilitarian, and a more decorative fixture is recommended, as this is a major road intersection and gateway into the community and into Catskill Park.
2. In general, the details of the light fixtures are illegible and cannot be reviewed.
3. It is recommended that light pole bases match the color of the light posts.
4. The typical light base and pole mounted light detail do not match? One detail shows a different pole base.
5. What is the color of the dumpster enclosure and fence? It is recommended the color be coordinated with the building. The material for the enclosure door is not identified?
6. A detail of the bollard is to be provided, and what is the proposed color?
7. Planting details are needed for the shrubs and trees. Is there any topsoil to use for plantings? Notes are recommended that the landscaping shall be maintained for the life of the use, and that any substitutions shall require Planning Board approval.

Sheet 10 of 11

We defer to the Town engineering consultant.

Sheet 11 of 11

1. The zoning chapter defines sign (Section 210-5) as: *“Any structure or part thereof or any device attached to a structure or painted or represented on a structure which shall display or include any **lettering**, wording, model, **drawing**, picture, banner, flag, insignia, device, **marking** or **representation** used as or which is in the **nature** of an announcement, **direction** or **advertisement**. A sign includes a billboard, neon tube, fluorescent tube or other artificial light or string of lights outlining or hung upon any part of a building or lot for the purposes mentioned above, but does not include the flag or insignia of any nation or of any governmental agency or of any political, educational, charitable, philanthropic, civic, professional, religious or similar organization, campaign, drive, movement or event which is temporary in nature.”* (emphasis added) Based on the definition, all of the “Dunkin” signs are regulated “signs”.

As per the zoning chapter (Section 210-32.B): *“Signs in general business and neighborhood commercial districts. No more than **two signs per business unit**, having an aggregate total face area of not more than **one square foot per linear foot of principal frontage of the lot**, but **not to exceed a total area of 50 square feet may be displayed**. Such signs shall not project more than **five feet***

beyond the principal buildings on the lot, and there shall be no more than one projecting sign per business unit, provided further that such signs shall not extend more than 20 feet above the ground level or exceed the highest part of the building housing the business or service advertised, whichever is less restrictive. "Principal frontage," throughout this subsection, shall mean the frontage of the lot adjacent to the principal street in the case of a corner lot. Where a corner lot faces two principal business streets, only one such frontage shall be considered the "principal frontage." (emphasis added) With that as background:

- a. Sheet 11 of 11 shows 7 signs strictly related to the business (not NYSDOT signs). In addition, there are at least three signs (each showing the word Dunkin) on the building, as well as an additional sign. Two of these signs are identified as "externally illuminated graphics" although they fit within the nature of an advertisement.
- b. A sign calculation of all proposed signs is to be provided on the site plan to determine compliance with the sign dimensional requirements as per Section 210-32.B.

- c. The monument sign does not appear to be allowed given the zoning limitations that signs not project more than five (5) feet beyond the principal building, and not more than one projecting sign is allowed per business unit.

Monument signs are allowed in the highway and light industrial zoning districts, but not the general business district. Projecting sign does not appear to be defined. As

per Section 210-4 of the zoning chapter, *"except where specifically defined herein, all words used in this chapter shall carry their customary meanings."* Based on a review of various definitions, the image provided represents a projecting sign, i.e., a building-mounted sign that projects from and is perpendicular to the building.



SEQR

1. Action. As per prior findings, it was determined that the action is a Type II action, and no further SEQR review is required.