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VIA EMAIL & HAND DELIVERY

Chairman Peter McKnight and
Members of the Planning Board
Town of Hurley
10 Wamsley Place
Hurley, NY 12443

***Re: Dunkin– Southern Realty & Development, LLC
Project Site: State Route 28 and State Route 375 (SBL:38.10-7-9)***

Dear Chairman McKnight and Members of the Planning Board:

Our office represents Southern Realty & Development, LLC (the “Applicant”), contract vendee of property located at the corner of New York State Routes 28 and 375 (SBL:38.10-7-9) (the “Project Site”). The Applicant continues to seek site plan approval from the Town of Hurley Planning Board (“Planning Board”) for its proposed drive-thru only Dunkin development (the “Project”). We submit this letter in response to comments received from Nelson Pope Voorhis (“NPV”) per their comment letter dated July 25, 2023 (the “NPV Memo”). Given the below response to comments, we request that the Planning Board approve the Project at its August 24th Planning Board meeting to avoid further litigation and potential monetary damages that would result from any further delay.

As discussed in detail at the July 27th Planning Board meeting, and as admitted by NPV at the July 27th Planning Board meeting, the NPV Memo was a “full” and “comprehensive” review of the Project despite the Planning Board having reviewed the Project for 17-months between August 2020 and January 2022. In fact, during the Planning Board’s prior review, several NPV memos were issued and comments addressed by the Applicant. Subsequently, two court decisions were issued reversing the Planning Board’s prior denial of the Project. Prior to the Planning Board’s denial of the Project, NPV issued a comment letter dated January 5, 2023 with only two issues remaining. Shockingly, the newest NPV Memo is seven (7) pages long with several new items for the Planning Board to consider in contravention of recent court orders and ignorance of all prior NPV comment memos.

Putting that aside, the below responses and enclosed updated site plans from Medenbach & Eggers, dated last revised July 31, 2023 (“Site Plans”), demonstrating that all comments have been addressed and the Project is ready for approval at the August 24th Planning Board meeting.

NPV Memo Responses

General Comments

- 1) *Applicants. As a general matter, we raise the question whether the adjoiners 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.*

An easement for the drainage area located to the north of the Project Site has been reviewed and approved by the previous attorney for the Planning Board and has been executed by all parties, including the property owner to the north. This executed easement was last provided to the Planning Board on January 7, 2022 and demonstrates the northern property owners consent to such drainage area and work to be conducted. As such, no further consent is required.

- 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.*

The Project is drive-thru only with no customer floor area proposed within the building. Floors plans will be submitted upon application for a building permit. During the building permit review process, the Building Inspector will ensure that no customer floor area is proposed in accordance with the site plan approval.

No parking spaces will be reserved for take-out food orders. All customers are mandated to utilize the drive thru. Additional signage was added to the Site Plans (sheet 11) with proposed signage stating, “No Dining Room – Drive Thru Only”. The Project already includes signage that proposed parking spaces are for employees only.

- 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.*

The proposed elevations were most recently approved by the Town’s Architectural Review Board (“ARB”) via email on June 7, 2021. We have enclosed the most recent elevations in color and black and white details.

- 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.*

The drainage easement has been fully executed but not yet recorded. The Applicant will record the drainage easement once final approval is obtained. The recorded easement will be reflected on the site plans once recorded.

- 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).*

Notes have been added to the Site Plan demonstrating that the existing well and septic system will be abandoned in accordance with all applicable local, State and Federal regulations. In addition, all existing fuel storage tanks will be removed in accordance with New York State Department of Environmental Conservation (“NYSDEC”) and applicable Federal regulations.

- 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?*

A 20’ drop curb and related notes have been added to the Site Plans demonstrating that snow will be placed in the drainage easement area to the extent practicable. In the event of a larger storm, snow will be hauled off by a private company.

- 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?*

A garbage can at the drive-thru area is not customary for a drive-thru only Dunkin’ facilities and therefore not proposed. The Project Site will be routinely monitored by employees to ensure that no refuse or debris are on the Project Site.

- 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).*

The Project is compliant with Local Law 2 of 2023 and includes two front yards along Rt. 28 and Rt. 375.

- 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.*

The Building Department will issue a demolition permit, which will provide requirements of the demolition process and any fencing needed to control site access during construction. This is not within the purview of the Planning Board.

- 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?*

The NYSDOT has recently extended its permit for the off-site improvements in this area and have considered the bus stop. This is purely a NYSDOT issue and not within the purview of the Planning Board. In addition, this comment was raised in the NPV memo dated July 7, 2021 and previously addressed.

- 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.*

The hours of operation will be 5:00am-8:00pm, which has been added to the Site Plans.

Site Plan Comments – Sheet 1

- 1) *See comment above regarding snow storage.*

Comment addressed. See above, general comment #6

- 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?*

The location of the bus stop sign is strictly within the purview of the NYSDOT and will be constructed as directed by the NYSDOT.

- 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.*

Given that this is a small drive-thru only facility there is no need for any additional points of ingress or egress. We have previously stated that the Project is compliant with the New York State Fire Code, which will be confirmed upon obtaining a building permit. Notwithstanding, we have confirmed with the Project architect that only one access point is required per NYS Fire Code Table 1006.2.1(B).

- 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?*

Per prior Planning Board comments and NYSDOT comments, this walkway was removed and replaced with diamond signage to control internal traffic circulation.

- 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.*

Property monuments will be added and can be a condition of approval. The Project does not include fencing in this area. All current encroachments will be rectified.

- 6) *A general note should be added that there will be no outdoor storage, consistent with Section 210-22.D of the zoning chapter.*

Despite outdoor storage being permitted by the Town's Zoning Code, the Project does not propose any outdoor storage.

- 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.*

For restaurants, Section 210-29(A)(1)(c) requires “[f]or a restaurant, bar or nightclub: one space for each 50 square feet of customer floor area.” Considering that no customer floor area is proposed, there are no off-street parking requirements for the development. That said, the Project proposes a total of six (6) parking spaces to accommodate employees. This has been added to the Site Plans.

- 8) *A loading calculation is not provided on the site plan sheet. Please provide as per Section 210-29.E of the zoning chapter.*

Per Section 210-29(E), the 900 SF Project requires 1 loading area, which has been depicted on the site plans. A note to this effect has been added to the Site Plans.

- 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?*

The proposed employee only off-street parking has been relocated outside of the required front yard, which has resulted in additional green space fronting Route 28.

- 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.*

The proposed off-street loading area was provided at the request of the Planning Board and previously noted as satisfactory by NPV. At the additional request of NPV, the loading zone has been relocated outside of the required side yard and is adjacent the concrete loading pad within the drive thru area. The new location of the loading zone is within the drive-thru lane and not within any dedicated access drive. Deliveries will only be conducted on off hours while the Dunkin’ is not in operation.

- 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.*

The proposed green space has been re-calculated and is 28%.

Site Plan Comments – Sheet 2

- 1) *The existing conditions map should show the location of the existing well on the site. It is missing from this sheet.*

Comment noted. Please see enclosed Site Plans.

- 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.*

To the extent that any encroachments currently exist they will be rectified. No fence is proposed. Once the Project Site is occupied with new development the encroachments will be eliminated.

Site Plan Comments – Sheet 3

- 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.*

See general comments #5 above. The Site Plans note that all septic and well abandonments will be in accordance with local, State and Federal regulations.

- 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?*

The UCDOH did not require any easement for the location of the well or septic and therefore no impacts to the site plan exist. The UCDOH permit has been issued and provided to the Planning Board.

Site Plan Comments – Sheet 4

- 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?*

This has been addressed on the Site Plans with corrected limits of disturbance identified.

- 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.*

This note has been removed on the Site Plans.

Site Plan Comments – Sheet 5

- 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.*

The landscaping and lighting plan have been located on the same sheet to demonstrate the lighting mitigation that is provided by the proposed landscaping.

- 2) *As a general comment, this site is lightly landscaped. Section 210-29.I(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”.*

All proposed landscaping was previously reviewed by the Planning Board. Additional landscaping was never requested by the Planning Board or in prior NPV memorandums. The Site Plans now include clearer symbology to properly identify all proposed landscaping per the above.

- 3) *Provide the specific species name for each planting type.*

Please see enclosed Site Plans for identification of the specific species name for each planting.

- 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.*

Please see enclosed Site Plans. All proposed landscaping was previously reviewed by the Planning Board and deemed satisfactory.

- 5) *As shown, the quantities of landscaping cannot be confirmed. Different symbology needs to be used. The symbology is not entirely legible.*

Please see enclosed Site Plans with updated symbology.

- 6) *Details for fixtures A and B are provided. Fixtures C, D and E need to be included as per the site plan standards.*

Please see enclosed Site Plans with updated details.

- 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.*

Please see enclosed Site Plans with updated information.

- 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.*

Please see enclosed Site Plans with updated information.

- 9) *Will lights be on timers or dimmers? Will menu boards, etc. be turned off during non-operational hours?*

The proposed hours of operation are 5:00am to 8:00pm. Thirty (30) minutes prior to closing all lights will be shut off except those required for security.

- 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).*

Please see enclosed Site Plans for updated lighting information.

Site Plan Comments – Sheet 6

- 1) *See previous comment regarding the location of the bus stop.*

See general comment response #10 above.

Site Plan Comments – Sheet 7

- 1) *There is one detail for site pavement and concrete curb detail and site pavement and curb without concrete sidewalk. Is this intended?*

Please see enclosed Site Plans for correction.

- 2) *Where are the NYSDOT signs being installed? Signage is to be shown as per Section 210-41B of the zoning chapter.*

All NYSDOT signage is located in the ROW and not on the Project Site per NYSDOT requirements.

Site Plan Comments – Sheet 8

- 1) *We defer to the Town engineering consultant.*

Comment noted. Additional comments have not been provided by the Town's engineering consultant. We have contacted the Town's engineering consultant and additional comments were not obtained.

Site Plan Comments – Sheet 9

- 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.*

Comments related to all proposed lighting has been previously addressed per prior Planning Board comments and during the Town's ARB approval. That said, please find a catalog cut sheet on the enclosed Site Plans.

- 2) *In general, the details of the light fixtures are illegible and cannot be reviewed.*

Please see enclosed Site Plans.

- 3) *It is recommended that light pole bases match the color of the light posts.*

As discussed at the Planning Board July 27th meeting, the light pole bases will be low laying and therefore shielded by the grass. Please see enclosed Site Plan details.

- 4) *The typical light base and pole mounted light detail do not match? One detail shows a different pole base.*

Please see enclosed Site Plan details.

- 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?*

The dumpster enclosure will be wood and painted to match the color of the building per the Town's ARB approval.

- 6) *A detail of the bollard is to be provided, and what is the proposed color?*

Please see the enclosed Site Plans for a detail of the bollards. The bollards will be a natural 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.*

Planting details have been added to the enclosed Site Plans. Topsoil will be used for the plantings as needed. A note has been added to the enclosed Site Plans indicating that “all landscaping must be maintained in conformance with the approved site plan for the duration of the use.”

Site Plan Comments – Sheet 10

- 1) *We defer to the Town engineering consultant.*

Comment noted. Additional comments have not been provided by the Town’s engineering consultant. We have contacted the Town’s engineering consultant and additional comments were not obtained.

Site Plan Comments – Sheet 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.*

Comment noted.

- 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.*

Please note that all signage will be compliant with the Town Code. Building sign one is equal to +/- 34.10 SF and building sign two is +/- 22.80 SF.

- 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.*

The Applicant has reviewed the Town's signage regulations and see no prohibition against monument signs on the Project Site. The proposed monument sign is the result of prior Planning Board, County and Town ARB comments recommending the proposed monument sign in its current location and design.

Conclusion

We hope that the above makes clear that the Applicant has satisfied all reasonable concerns of the Planning Board. We look forward to Project approval on August 24, 2023

Very Truly Yours,

/s/ *Charles J. Gottlieb*

Charles J. Gottlieb

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