

**PROPOSED RESOLUTION**



**Resolution of the Town of Hurley Planning Board**

**In the matter of the Application of Southern Development and Realty, LLC,  
for Site Plan Approval  
(corner of New York State Route 28 & New York State Route 375 in West Hurley, NY,  
Tax Parcel No. 38.10-7-9)**

WHEREAS:

**The Property, the Applicant, & the Project**

1. The Property that is the subject of this application is owned by Brown Cow Rental, LLC (hereafter the "Property Owner"). The lot is located at the northwest corner of the intersection of New York State Route 28 with New York State Route 375 in the Town of Hurley, Ulster County, New York, and bears the Tax Map Parcel Number Section-Block-Lot (SBL) 38.10-7-9 (hereafter "Property"). The Property is 0.50 acres in area.
2. The Property is located in the B-1 General Business zoning district.
3. The Applicant is Southern Development and Realty, LLC (the "Applicant"). Upon information and belief, John Joseph is a member of Southern Development and Realty LLC and has appeared on its behalf before this Board. Charles Gottlieb, Esq., of the law firm of Whiteman Osterman & Hanna has appeared before the Planning Board as the attorney for the Applicant.
4. On August 17, 2020, the Applicant submitted an Application to the Planning Board for Site Plan Approval to construct a 900 square foot concrete block building to be developed as a drive-thru only Dunkin' (hereafter the "Project") restaurant.

**Planning Board Procedural History  
from Inception to January 10, 2023**

5. The Application was placed on the Planning Board's agenda under "New Business" on the August 31, 2020. The Planning Board meeting was held virtually, via Zoom, pursuant to New York State Executive Order 202.1, which suspended certain provisions of the Open Meetings Law to allow a municipal board to convene meetings during the Covid-19 Pandemic via videoconferencing and/or telephone conferencing. The public was afforded the opportunity to view and participate, as necessary, during this meeting. The Planning Board voted to refer the application to the Town of Hurley Architectural

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Review Board ("ARB").

6. The Application was referred to the Planning Board's planning consultant, Adriana Beltrani (hereafter "Planner") of Nelson, Pope, Voorhis (hereafter "NPV"), and she prepared and submitted to the Planning Board a memorandum dated October 2, 2020 commenting on the application.
7. The Planning Board reviewed the Planner's October 2, 2020 memo with the Applicant. A considerable portion of the comments were about the proposed access, traffic patterns and the internal stacking proposed for the double drive-thru only restaurant.
8. On October 5, 2020, the Planning Board determined that the Project should be classified as a Type II Action under SEQRA pursuant to Part 617.5-C(9) of the SEQRA regulations, as it is a construction of a primary non-residential structure or facility involving less than 4,000 square feet of gross floor area, not involving a change in zoning or a use variance, and consistent with land use controls. The Planning Board voted to classify the Project as a Type II action. Thus, the Project was exempt from environmental review under SEQRA.
9. At the Planning Board meeting held on November 2, 2020 (held via Zoom), the Planning Board met with ARB Chairman Frank Dunn, John Joseph of Southern Development and Realty, LLC, and Mario Sardhina, operator of Dunkin'. A rendering of architecture and materials, different than those initially proposed, were presented. ARB Chairman Dunn stated that the revised architecture was an improvement over the initial proposal and would better fit the character of the surrounding community. Mr. Dunn asked for renderings showing cultured gray stone integrated into the color scheme and preferred a small house/cottage building design. Planning Board Chairman Cohen polled the members of the Planning Board, who indicated that they agreed with ARB Chairman Dunn's architecture design recommendations. All Planning Board Members were also in agreement with Mr. Dunn's structural recommendations. Mr. Joseph sought a consensus from the Board and asked if a color scheme of gray, charcoal and white would be acceptable. It was agreed that the final color scheme could be discussed at a future meeting upon the submission of alternative renderings in advance.
10. On June 23, 2021, the Planning Board Chairman received an email from ARB Chair Frank Dunn in which Mr. Dunn indicated that he had recently reviewed revised elevations received from the Applicant and indicated that the revised design and elevations were appropriate for the Project's location as presented in the drawings.
11. On July 9, 2021, the Ulster County Department of Health ("UCDOH") issued comments on its review of the application. Comments were made addressing:
  - Wastewater.
  - Water.
  - General comment that a brief report (letter) should be included that

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outlines the project and explains the engineering calculations.

12. On July 25, 2021, the Planning Board referred the application to the Ulster County Planning Board in conformity with the requirements pursuant to New York State General Municipal Law (“GML”) § 239-m.
13. On July 27, 2021 the Planning Board received a report from Dennis M. Larios, PE, of the firm Brinnier & Larios, PC, consulting engineers to the Planning Board. The Brinnier & Larios report made the following recommendations to the Planning Board based on its review:
  - That the Planning Board condition its approval on New York State Department of Transportation (NYSDOT) approval of both the Traffic Impact Study and the entrance plan which are subject to NYSDOT permit and approval (PERM 33 issuance).
  - That the Planning Board condition its approval on NYSDOT approval of the drainage plan (PERM 32 issuance).
  - That the Planning Board condition its approval on UCDOH final approval of the water supply system and wastewater disposal system.
14. At its meeting held on August 2, 2021, the Planning Board opened a duly noticed public hearing for this Project at 7:48 PM. The public hearing was held at the Hurley Reformed Church, located at 11 Main Street, Hurley, NY.
15. During the course of the public hearing, the Planning Board received multiple comments from the public. Comments included: general concerns about traffic safety; safety concerns about ingress to and egress from the Project site; traffic safety concerns about the Project’s impact on the intersection of Routes 375 and Route 28; litter generated; the constrained size of the lot; and internal traffic stacking. The Planning Board voted to continue the public hearing to its meeting to be held on August 30, 2021.
16. On August 4, 2021, the Ulster County Planning Board (“UCPB”) issued a written recommendation and response to the Planning Board in response to the Planning Board’s referral pursuant to NYS GML § 239-m. The UCPB noted that:

Fast food restaurants with a drive-thru are of significant concern to the Board. There are now multiple locations in the County where, despite repeated assurances from applicants and considerable efforts by local boards during the review, drive-thru impacts spill over onto adjacent roadways or clog internal site movements. In general, problems that arise relate to inadequate queue lengths, poor turning movements, and an overall lack of space to accommodate needed site improvements. There are many lessons to be learned from the missteps in other communities and the concerns expressed by the Board in its recommendations should be viewed as cautionary to the changing popularity associated with

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drive-thrus and the demands they place on site design.

The current site exhibits all the hallmarks noted above with site size that pushes the limits of design, including not only the need for a double drive-thru but also the placement of water and sewer.

17. The UCPB response also included Recommendations and Required Modifications to several issues. What follows in this Paragraph is a description of the key UCPB comments and the Town of Hurley Planning Board's responses to those comments.

- A. **UCPB Comment:** Regarding NYSDOT, UCPB noted that the applicant proposes new access along NYS Route 28 and NYS Route 375. The UCPB stated that the Route 28 access will be restricted to "right in and out only with full movements allowed from NYS Route 375." UCPB required that final approval of the proposed curb cuts and proposed improvements to the adjoining traffic movements on the State Routes will be necessary. UCPB also recommended that NYSDOT and the Hurley Planning Board include an in-depth analysis of the proposed queue for the project, noting concerns for traffic backing up in the travel lane of NYS Route 28 and NYS Route 375.

**Hurley Planning Board Response:** Traffic studies were conducted. The Planning Board took note of the UCPB concerns regarding traffic, and expressed similar concerns. However, as will be discussed in further detail, the Supreme Court and Appellate Division have ruled that traffic concerns have been addressed by the Applicant.

- B. **UCPB Comment:** Regarding Traffic, the UCPB noted that the traffic study only reviewed weekday AM and PM peaks. UCPB recommended that the traffic analysis be expanded to analyze the weekend peak traffic volumes as well as the weekday volumes.

**Hurley Planning Board Response:** The above recommendations were done as part of the analysis, and weekend traffic volumes were included as part of the traffic analysis.

- C. **UCPB Comment:** Regarding Queuing, UCPB noted that the applicant had proposed a queue of 18 vehicles. UCPB also noted that experience elsewhere in Ulster County has shown this queuing room as being "consistently inadequate to serve the queues, resulting in vehicles queuing in the public right-of-way." UCPB mentioned three locations in particular within Ulster County which caused this concern. These locations were Route 9W in the Town of Ulster, Route 32 in the Town of Ulster, and Route 32 in Modena.

UCPB recommended that the applicant provide a detailed study of queue lengths with similar traffic volumes.

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**Hurley Planning Board Response:** The recommendation was utilized as part of the traffic studies conducted during the review. The Planning Board requested a traffic analysis with 21 vehicle queuing, which was provided by the Applicant.

- D. **UCPB Comment:** Regarding Truck Traffic, UCPB stated it was unclear how larger vehicles, including delivery and emergency response vehicles, would maneuver the site.

UCPB required that truck-turning templates shall be provided for review to show that there is adequate room for them to perform the necessary turning movements.

**Hurley Planning Board Response:** The Applicant supplied truck-turning templates to the Planning Board.

- E. **UCPB Comment:** Regarding Signage, UCPB noted that the Applicant was proposing a pylon-style sign with the entirety of the sign internally illuminated.

UCPB recommended the use of a monument-style sign with landscaping. UCPB further recommended that either the background of the signage be opaque with only the letters lit, to reduce off-site glare or for the lighting to accent it externally. UCPB also stated that the square footage of the signage should conform to the standards of the Hurley Zoning Law.

UCPB also noted that the Applicant will be utilizing a double queue for the drive-thru, which is unique to Ulster County and should be reviewed carefully. Internal signs were noted by UCPB, but stated that "some are less than informative with messages such as welcome back and come again vs informational such as right turn only, use two lanes, or allow vehicles to merge."

**Hurley Planning Board Response:** A monument sign has been proposed by the Applicant. Directional signs for the drive-thru access were also included to provide direction for those vehicles entering and using the drive-thru on the site.

- F. **UCPB Comment:** Regarding Health Department, the UCPB referred to the Ulster County Department of Health letter by Timothy Rose, dated July 9, 2021, which indicated several issues with the proposed septic service and water service for the site.

UCPB required that final approval of the proposed septic and 100% reserve area by the Ulster County Department of Health is required as is the proposed location of the well.

**Hurley Planning Board Response:** The applicant has received a permit from the Ulster County Department of Health (UCDOH). The UCDOH permit identifies a reserve septic area.

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- G. **UCPB Comment:** Regarding Landscaping, UCPB notes that landscaping proposed is minimal, and recommends that additional landscaping should be added between the queue and the building, as well as along the frontage of Route 375 and Route 28.

**Hurley Planning Board Response:** The Planning Board reviewed the landscaping suggestions made by UCPB with the Applicant and his Consultants and has applied the ones that were applicable as part of the approved 'Landscape Plan'

- H. **UCPB Comment:** Regarding Snow Storage, given the small size of the site, UCPB raised a question as to where snow will be stored.

UCPB recommended that the site plan should show where snow storage is proposed or that removal should be part of any site plan approval.

**Hurley Planning Board Response:** The Applicant will push snow onto the drainage easement area on the Germond site (SBL 38.10-7-9) and any snow that doesn't fit there will be removed off-site. A note indicating "ALL SNOW WILL BE REMOVED FROM SITE DRIVEWAY AND NOT STORED ON SITE" has also been added to the site plan.

- I. **UCPB Comment:** Regarding Pedestrian Access, UCPB noted that the drive-thru model eliminates those walking/cycling from using the facility. Given the proximity of the Ashokan Rail Trail and the popularity of cycling, UCPB recommended that consideration should be given for pedestrian/bicycle access to a walkup/take-out window on site.

**Hurley Planning Board Response:** Given the small size of the lot, and number of vehicles that will be utilizing the drive-thru, the Planning Board felt that it was a safer solution to not encourage pedestrian or cyclists from using the drive-thru only restaurant. As such, signs have been added to represent that no customers are permitted inside the building.

18. In summary, with the exception of some of the traffic concerns, all of the required modifications from the UCPB have either been incorporated or addressed by the Applicant. The Planning Board took note of the UCPB concerns regarding traffic, and expressed similar concerns. However, as will be discussed in further detail, the Supreme Court and Appellate Division have ruled that traffic concerns have been addressed by the Applicant.
19. At its meeting held on August 30, 2021, the Planning Board continued the public hearing. During the course of this session of the public hearing, the Planning Board received multiple comments from the public during the course of the public hearing. Comments included: concerns about accuracy of the traffic study; continued traffic safety concerns; concerns about litter; adverse impacts to community character; internal

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traffic stacking; and adverse impacts to the gateway to the Town of Woodstock. At the conclusion of the public hearing session, the Planning Board voted to close the public hearing.

20. At the October 4, 2021 Planning Board meeting, Planner Beltrani reviewed the content of her recommendations to the Planning Board and remaining items that needed to be addressed, which included the details for the monument sign, lighting to the North of the property needed to comply with Dark Sky standards.
21. Also at the October 4, 2021 Planning Board meeting, the Town's traffic consultant, Osman Barry of NPV, provided a report with observations relative to traffic and queuing. Continued discussions were had regarding the Planning Board's concerns with traffic, particularly for Route 375 queuing, the UCPB responses, and the safety concerns navigating the Route 375 and Route 28 intersection.
22. During this meeting, Planner Beltrani stated that the two mitigation measures offered by the NYSDOT could be considered by the Planning Board. Chairman Cohen polled the Members as to whether the two additional mitigation measures were sufficient. All Members had remaining concerns with the traffic and safety.
23. At the October 4, 2021 Planning Board meeting, the Applicant also advised the Planning Board that an easement from the property owner to the north (SBL 38.10-7-9) would allow the Project property to drain onto that property.
24. At the October 4, 2021 Planning Board meeting, Planning Board members Rice and McKnight agreed to coordinate with the Applicant to conduct a site visit during the 8:00 a.m.-9:00 a.m. peak hours the week of October 18, 2021.
25. On November 10, 2021, the Ulster County Department of Health issued to the Applicant a permit to construct a wastewater disposal system for a commercial retail donut shop. The permit authorized the construction of an in-ground infiltrators wastewater disposal system and the construction of an on-site well. The duration of the permit was two years from the date of issuance, expiring on November 10, 2023.
26. On November 19, 2021, the Applicant's attorney, Mr. Gottlieb, submitted to the Planning Board a response document with supporting exhibits which provided technical responses to each of the comments received by the Applicant on the Project from the Ulster County Planning Board, and the Hurley Planning Board's planning consultant, NPV.
27. On January 5, 2022, the UCPB issued a letter to the Hurley Planning Board which acknowledged its receipt of a detailed response to its comments in its Referral/Recommendation to the Hurley Planning Board dated August 4, 2021 (Referral No. 2121-174). The letter further acknowledged that a "Gateway Meeting" was also conducted by the UCPB on December 15, 2021, in coordination with the Applicant, the Hurley Planning Board, and a representative of the NYSDOT during which the concerns of UCPB staff and the Town's consultants, as well as the NYSDOT position on the

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Project, were all discussed.

28. On January 7, 2022, the NYSDOT issued to Brown Cow Rental, LLC and Leo Boice a Highway Work Permit , Permit No. 2021-08-95657. Approved work under the permit included:

- remove existing curbs;
- supply and install new NYSDOT curbs, guard rails and end sections; and
- supply and install new drainage system.

It is noted that any off-site improvements that are required from NYSDOT are solely those approved by NYSDOT and in consultation with the Applicant. Such improvements are not at the direction or approval of the Planning Board. The expiration date of the permit was January 9, 2023.

### **Denial of Site Plan Approval Issued on January 10, 2022**

29. At the January 10, 2022, Planning Board meeting, Board members expressed continued concerns about the potential adverse traffic impacts of the Project, and the fact that, even in view of the responses by the Applicant and its consultants to the concerns raised by the Hurley Planning Board, the Ulster County Planning Board, and the public, they were not satisfied that those adverse impacts had been adequately addressed or mitigated by the revisions to the plans and comment responses. A motion was made during the meeting to deny site plan approval to the project based on those concerns. A motion was made and seconded and passed by a vote of Six (6) ayes, Zero (0) nays, One (1) absent and Zero (0) abstentions to deny site plan approval for the proposed project.

### **Article 78 Challenge Court Decisions**

30. On February 09, 2022, the Applicant filed an Article 78 proceeding in the New York State Supreme Court in Ulster County (“Supreme Court”) requesting that the Court annul the Planning Board’s denial of site plan approval issued on January 10, 2022, and further requesting that the Court direct the Planning Board to grant site plan approval.
31. On June 27, 2022, the State Supreme Court issued a Decision and Order, vacating the Planning Board’s January 10, 2022 denial of site plan approval due to flaws in the record. The State Supreme Court then remanded the matter to the Hurley Planning Board for further proceedings consistent with the Court’s decision.
32. On August 12, 2022, the Town of Hurley and the Planning Board appealed the Supreme Court decision to the Appellate Division of the Supreme Court, Third Judicial Department (“Appellate Division”).



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33. On July 6, 2023, the Appellate Division upheld the Supreme Court decision to vacate the Planning Board's denial of site plan approval and remand the matter to the Hurley Planning Board for further proceedings (the "Appellate Division decision"). The Appellate Division held that the Supreme Court erred in its determination that there were violations of the Open Meetings Law, particularly with respect to the "Gateway Meeting", and that such meetings could be relied upon by the Planning Board. The Appellate Division also clarified that the Supreme Court did not direct the Planning Board to grant approval to the Applicant, as the Supreme Court's order is "devoid of any specific language to that effect."
34. The Appellate Division also disagreed with the Supreme Court's determination regarding the flaws in the record, and held that the January 10, 2022 meeting minutes provided adequate indicia for its reasoning for denial.
35. However, the Appellate Division found the concerns raised on traffic upon which the Planning Board's denial was based, particularly "the outstanding traffic-related issues included concerns over the shoulder widening planned for northbound Route 375; the southbound queues on Route 375 that would block ingress and egress into the project site; the amount of stacking capacity within the project site during peak hours; and issues concerning the maneuverability of fire, delivery and garbage trucks in the project site when other vehicles were present" to be "unsupported by the record."
36. The Appellate Division ultimately found that the record demonstrates that the traffic-related concerns were "adequately addressed" by the Applicant. The Appellate Division stated that the Planning Board must engage in further proceedings "not inconsistent with this decision."

### **Planning Board Review After the Appellate Division Decision**

37. Following the Appellate Division decision, the Application was placed on the Planning Board's agenda for July 27, 2023, as "old business" for further proceedings by the Planning Board. The Planning Board's intention was to pick up and continue its review of the application in accordance with the terms of the Appellate Division court decision.
38. In accordance with the Appellate Division court decision, the traffic and traffic-related issues which the Appellate Division ruled had been adequately addressed by the Applicant, could not be reexamined as part of the Planning Board's continuation and completion of its review. However, the Appellate Division decision remanded the application to the Planning Board with the Board's authority intact to review all other aspects of the application pursuant to Town of Hurley Zoning Law.
39. At the direction of the Planning Board, the Planning Board's planning consultant, Bonnie Franson, AICP, ("Planner Franson") of NPV was directed to conduct a review of the application to assess the application in accordance with the directives in the Appellate Division decision. Planner Franson was asked to review the latest submission package from the Applicant to confirm that all other issues, outside of traffic concerns, had been addressed. These included clarification of snow removal, garbage removal, floor plan

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demonstrating the restaurant would be drive-thru only, number of entrances on the building, drainage easement, well and septic removal and installation, landscaping design, and lighting plans.

40. The Planning Board also engaged its counsel, the law firm of Grant & Lyons, LLP, to provide guidance and advice as to how to understand the Appellate Division decision and to continue its review of the Project application in full compliance with the court's decision.
41. On July 21, 2023, the Ulster County Department of Health issued to the Applicant a renewal of its permit to construct a wastewater disposal system for a commercial retail donut shop and well on the Project property. The duration of the permit renewal was two years from the date of issuance of the renewal, expiring on July 21, 2025.
42. On July 25, 2023, Planner Franson issued a written memorandum to the Planning Board discussing her review of the latest version of the application, within the boundaries of the Appellate Division decision, and set forth her comments on topics including signage, clarification of snow removal, garbage removal, floor plan demonstrating the restaurant would be drive-thru only, number of entrances on the building, drainage easement, well and septic removal and installation, landscaping design, and lighting plans.
43. In her July 25, 2023 memorandum, Planner Franson raised a question regarding the number of signs proposed for the Project, as the Town of Hurley Zoning Law §210-32(B), states that no more than two signs per business unit are permitted in the general business district. Planner Franson noted the plans for the proposed project appear to exceed this number, counting at least three signs on the building facade and a monument sign by Route 28.
44. On July 26, 2023, by letter to the Applicant, the NYSDOT extended the duration of Highway Work Permit No. 2121-08-95657 to January 9, 2024. A copy of that letter was submitted to the Planning Board by the Applicant.
45. On July 27, 2023, the Planning Board's consulting engineer, Dennis Larios, PE, submitted an email to the Planning Board indicating that his comments on the Project has not changed since the its earlier memorandum of comment on the Project dated July 27, 2021, and that he stands by that report and the recommendations therein.
46. At the July 27, 2023, Planning Board meeting, the Planning Board began its meeting on that date, as it always does at regular meetings, with an open microphone speaking opportunity, and several comments were received from the public pertaining to the Project.
47. The Applicant, the Applicant's engineer, and the Applicant's attorney then made a presentation to the Planning Board members to refresh the recollections of those that had been on the Board in January of 2022, and to bring the knowledge of new Planning Board members up to date on the present status of the Project. Following those presentations, the Applicant and Planning Board discussed the plan revisions that are

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needed to finalize the site plan. It was agreed that the Applicant would submit responsive plans and information to the Planning Board by August 10, 2023.

48. The Planning Board approved a motion to hold a special meeting on August 24, 2023, at 6:00 pm, to continue its review of the application.
49. On August 9, 2023, John Lyons, Esq., of Grant & Lyons, LLP, counsel to the Planning Board, submitted a written memorandum to the Planning Board detailing his review of the drainage easement between Brown Cow Rental, LLC and Donald Germond, the owner of the property to the north of the Project site. Mr. Lyons's memorandum indicated that he found the drainage easement to be adequate and in conformity with the Applicant's representations to the Planning Board as to its terms.
50. On August 10, 2023, Mr. Lyons submitted a written memorandum to the Planning Board discussing his review of the Ulster County Planning Board ("UCPB") comments and his review of the New York State ("NYS") General Municipal Law ("GML") § 239-m and explaining his opinion that "re-referral" of the application to the UCPB was not required by NYS GML § 239-m.
51. On August 10, 2023, the Applicant submitted plan revisions that address the Planning Board and consultants comments.
52. On August 17, 2023, Kimberly Garrison, Esq., of Grant & Lyons, LLP, submitted a written memorandum to the Planning Board detailing her review of the Town of Hurley Sign Regulations. Ms. Garrison's memorandum indicated that, based on the review of the Sign Definition and Sign Regulation, Dunkins' proposal seems to exceed the number of permitted signs, counting, at the bare minimum, the monument sign, Sign C on Sheet 11, and the three (3) signs shown on the Building Elevations, and noted that more signs may be included, if the directional signs are included in the sign count.
53. Due to a lack of quorum, the August 24, 2023 special meeting was postponed and rescheduled to August 30, 2023.
54. On August 30, 2023, the Planning Board held a duly noticed special meeting in order to continue its review of this application, and to consider this resolution.
55. The Planning Board then considered this resolution.

### **Board Statement on the Result of the Court Decisions**

56. The starting point regarding this application is that the use proposed is a use that is permitted as of right by the Town of Hurley Zoning Law, subject to site plan approval. Allowing this use at the location proposed is a land use policy decision that was already in place before this Board began its review of this application.
57. As noted above, the Planning Board had previously voted to disapprove this Project almost two years ago due to the Board's concerns about the traffic and the potential for

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harm to the public should an accident occur at or near the intersection of Route 28 and Route 375.

58. All of the members of our Board continue to have serious concerns about public health and safety stemming from our concerns about traffic, particularly stemming from ingress and egress to the site at the intersection of Routes 28 and 375, a junction that already suffers from suboptimal traffic safety conditions.
59. At the same time, as a matter of law, this Board is unquestionably bound by the decision of the panel of appellate judges which held that the record before this Board demonstrated that the Applicant has adequately addressed traffic-related concerns.
60. Hence, the Appellate Division's order requires this Board to engage in further proceedings "not inconsistent" with the court's ruling (i.e., that traffic issues have been adequately addressed).
61. Neither time nor the court's decision has changed the views of the members of this Board who do not agree with the Appellate Court's decision that traffic issues have been adequately addressed.
62. But despite the Board's continued concerns and reservations about those issues, the Board recognizes and understands its legal duty to abide by the law, and to follow and implement as best it can the holdings of both the State Supreme Court and the Appellate Division.
63. This Board will fulfill its duty.
64. The Board also wishes to state for the record that, in fulfilling its legal duty, the Board has tried hard, with the assistance of its consultants and within the boundaries of the court rulings and the Zoning Law, to fulfill the Zoning Law's site plan criteria to the best of its ability with the aim of making this Project, outside the traffic issues, as positive a Project as possible.
65. Although the Board's concerns relating to traffic have not been alleviated, we must respect to courts' decisions on the matter and proceed to complete our review in accordance with the dictates of those decisions. To do otherwise, would breach our legal duty to abide by the decisions, and at the same time, expose this Board and the Town to additional costly litigation without the prospect of a benefit to the Town or the community.

### **Findings of Facts and Conclusions of Law**

66. A restaurant use is permitted in the B-1 Zoning District by right, subject to site plan review.
67. The Appellate Division decision held that, with respect to those issues pertaining to the southbound queues on Route 375 and the widening of the shoulder on the northbound

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lane, such concerns were previously identified by NPV and responded to by the Applicant's engineering consultant, Creighton Manning Engineering, LLP (hereafter "Creighton Manning"). The Appellate Division noted that "the queue in the southbound lane of Route 375 would occasionally extend beyond the proposed entrance to the site on that road", but stated that in consultation with the NYSDOT, the Applicant received permission to widen the shoulder in order to allow for northbound traffic on Route 375 to pass vehicles waiting to make a left-hand turn into the Project site." The Appellate Division decision also found that NYSDOT had granted the permits concerning ingress and egress into the Project site and had approved the proposed traffic pattern.

68. Regarding concerns that southbound queues may still cause the northbound left turn queues to extend into the intersection of Route 28 and Route 375, creating traffic congestion and safety issues, the Appellate Division decision found that Creighton Manning had addressed those comments, "primarily noting that this traffic condition would continue regardless of the Project, and that video of the intersection revealed that the southbound queue would clear entirely after each traffic light cycle."
69. Regarding concerns relating to stacking capacity on the Project lot, the Appellate Division decision held that Creighton Manning submitted to the Planning Board "an analysis of the stacking capacity at two Dunkin' locations in Ulster County on Friday and Saturday mornings – locations with similar traffic volume to that at the proposed site – finding that the longest observed queue was 14 vehicles at a Dunkin' location in the City of Kingston, Ulster County." NPV requested a stacking capacity of 21 vehicles be conducted due to observations at a Dunkin' location in the Town of Saugerties, Ulster County. Creighton Manning provided site plans depicting a queue of 21 vehicles. Although we, as the Planning Board, continued to raise concerns of stacking, the Appellate Division found that such concerns were "unfounded." While we disagree that such concerns are unfounded, we acknowledge and abide by the Appellate Division's holding and decision on the matter.
70. As to concerns relating to the maneuverability of large vehicles, the Appellate Division decision held that Creighton Manning "submitted maneuverability studies concerning box trucks, tractor trailers and a front-end loading garbage truck, noting that deliveries would be scheduled on site during off-business hours and that [the Applicant] would be amenable to such an arrangement being a condition of approval." The Applicant has stated that, in the event of an emergency, the lot would be cleared to allow maneuverability of emergency vehicles. The Applicant has also stated that deliveries would be made during off-business hours.
71. The Applicant has confirmed that the proposed use will be drive-thru only. No customers will be permitted inside the building. A sign will be located on the building which states "No Dining Room – Drive-Thru Only." There will be no pedestrian access, and there will be no walk-thru or walk-up windows. No public restrooms will be available to customers or the public on site. There is one door entrance for the building, to be used for employees, garbage removal, and deliveries received off-business hours.
72. There is no striped walkway on the Property that extends from the on-site parking to the

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sidewalk. This walkway was removed pursuant to Planning Board comments and NYSDOT comments, and replaced with diamond pavement markings to control internal traffic circulation.

73. There are six (6) parking spaces reserved for employees only. No parking spaces will be reserved for take-out food orders or customers.
74. The Applicant has stated that food items, such as donuts, bagels, rolls, etc, will not be baked on the Property. All food items will be delivered during off-business hours to the restaurant. Applicant will use these items in the assembly and preparation of the orders sold at the drive-thru window.
75. Snow will either be placed within the drainage easement or removed off-site. A 20 foot 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.
76. This Dunkin' restaurant is not a 24 hour operated drive-thru. The anticipated hours of operation will be 5:00 am to 8:00 pm. Deliveries for product and supplies will only be made during off-business hours. Lights on the buildings and on any sign (both external or internal) will not be on at all hours of the night. The Applicant has agreed that lights will go off within thirty (30) minutes of the store closing for the day, with the exception of those required for security.
77. 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.
78. No propane or oil tanks will be installed.
79. One dumpster will be located on site. The dumpster enclosure will be wood and painted to match the color of the building per the Town's ARB approval. No additional garbage cans will be located in or along the drive-thru area. The Applicant has stated that the Property will be routinely monitored by employees to ensure that no refuse or debris are left on the Property.
80. There is one (1) loading zone, which 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.
81. No outdoor storage is proposed.
82. An easement for the drainage area located to the north of the Project Site (property currently owned by Donald Germond, SBL 38.10-7-9) has been reviewed and approved by the attorney for the Planning Board and has been executed by all parties, including

## PROPOSED RESOLUTION

the property owner to the north.

### Planning Board Action by Resolution

NOW, THEREFORE BE IT RESOLVED, based on all the facts described above and upon the reasoning described above, as follows:

- Section 1. The Planning Board approves the proposed nine hundred (900) square foot, drive-thru restaurant as delineated on site plans submitted by Medenbach & Eggers, dated June 28, 2021; revised July 28, 2021; revised August 12, 2021; revised September 14, 2021; revised November 09, 2021; revised December 17, 2021; revised July 31, 2023, and which shall be further revised to reflect to the conditions of this approval.
- Section 2. The granting of such site plan approval shall be expressly contingent upon the Applicant's compliance with all of following conditions and no business permit(s) shall be issued until such conditions are met and the site plan is signed by the Chairman:
- A. Such restaurant shall be drive-thru only. No pedestrians or walk-up customers are permitted in the building or through the drive-thru. No parking spaces will be reserved for take-out food orders.
  - B. No pedestrians or bicyclists or e-bicyclists will be served.
  - C. Only customers in modes of transportation that are registered with a governmental Department of Motor Vehicles will be served.
  - D. Such drive-thru restaurant shall not be a 24-hour operation. Lights on the building and lights for the signs (both external and internal) shall turn off approximately thirty (30) minutes after close of the restaurant. Any lights that must remain on for security reasons must be noted on the site plan.
  - E. Food items, such as donuts, bagels, rolls, etc, will not be baked on the Property. Any and all deliveries for food product or supply will be delivered to the premises during off-business hours. The Applicant will use these items in the assembly and preparation of the orders sold at the drive-thru window.
  - F. Snow will be pushed into the easement area on the Germond property (SBL 38.10-7-9) as much as possible. Any additional snow that cannot be plowed onto the Germond property shall be removed promptly from the premises.
  - G. The Property will be routinely monitored by employees to ensure that no litter, refuse or debris are left on the Property, including but not limited to, any litter, refuse or debris left from customers utilizing the drive-thru

## PROPOSED RESOLUTION

restaurant.

- H. As part of the required landscaping, the Applicant shall plant a year-round buffer at the edge of the easement on the Germond property (SBL 38.10-7-9) to ensure a screening of the existing Germond residence.
- I. The Property Owner, and all successors in ownership of the Property, must implement and maintain the landscaping plan as it has been approved by the Planning Board. It is an express condition of this approval that all landscaping shown on the approved landscape plan must be maintained in good condition throughout the operating life of the restaurant. If substantial substitutions are made to the approved landscaping, the Property Owner shall come back before the Planning Board for an amendment to this site plan approval.
- J. The site plan shall be revised to show the location of Property Monuments to demarcate the boundaries of the property.
- K. The Applicant will record the drainage easement once final approval is obtained. The recorded easement will be reflected on the site plans once recorded. Site plan shall not be signed until the drainage easement is recorded and reflected on the site plans.
- L. In accordance with the recommendation of our consulting engineer, it is a condition of site plan approval that the NYSDOT approve of both the Traffic Impact Study and the entrance plan which are subject to NYSDOT permit and approval (PERM 33 issuance). This shall include all additional comments as set forth in the Brinnier and Larios, PC, letter, dated July 27, 2021. A copy of this letter is annexed as Exhibit #1. A copy of the final approval and design shall be submitted to the Town prior to the start on construction of said accesses
- M. In accordance with the recommendation of our consulting engineer, it is a condition of site plan approval that the NYSDOT approve the drainage plan (PERM 32 issuance). This shall include all additional comments as set forth in the Brinnier and Larios, PC, letter, dated July 27, 2021. A copy of this letter is annexed as Exhibit #1.
- N. In accordance with the recommendation of our consulting engineer, it is a condition of site plan approval that the Ulster County Department of Health grant final approval of the water supply system and wastewater disposal system. This shall include all additional comments as set forth in the Brinnier and Larios, PC, letter, dated July 27, 2021. A copy of this letter is annexed as Exhibit #1. A copy of the UCDOH final approval post construction is to be submitted to the Town.
- O. The exterior design of the building shall be in conformity with color,



## PROPOSED RESOLUTION

material and all other design items that were discussed and agreed upon by the Board and the ARB Chair. A copy of the approved design is annexed to this Determination as Exhibit #2.

- P. Any construction must comply with the recommendations of the Board's Engineer, Dennis Larios, PE which are annexed to this determination as Exhibit # 3.
- Q. The Town takes zero emissions very seriously and was awarded the Bronze status. As such, there shall be no idling of delivery trucks, garbage trucks, etc. on-site in order to reduce emissions.

Section 3. The granting of this site plan approval does not include approval of the proposed signs, as they are currently shown on Sheet 11 of the Site Plan, last revised July 31, 2023 and on the Proposed Elevations, drawing R 1.0, dated June 21, 2021. The signs, as currently proposed, appear to exceed the permitted two signs per business units in the Town of Hurley Zoning Code. A redacted version of Ms. Garrison's Sign Memorandum has been provided to the Applicant, and the Applicant has indicated a willingness to reduce the number of signs, and reduce the square footage of the signs to be in compliance with the Zoning Law. The granting of this site plan approval shall be expressly contingent upon the Applicant's proposed signage to be in conformity with the Town of Hurley Zoning Law. The Applicant shall submit the revised signage to the Town of Hurley Building Inspector to confirm compliance with the Town's sign regulations. Upon approval of such signs, the Applicant shall provide the Planning Board with an amended Sheet 11 of the Site Plan and amended Elevation, indicating the approved signage, allowing the Planning Board Chairman to stamp and sign the final site plan.

Section 4. The Planning Board hereby authorizes the Planning Board Chairman to stamp and sign the above cited site plan upon the Applicant's satisfaction of the above conditions. Upon completion and satisfaction of the above conditions, including any amendments made to Sheet 11 of the Site Plan and amended Elevation, as discussed in Section 3 above, the Applicant shall submit a minimum of eight (8) prints, one electronic file, and one reproducible Mylar of the site plan to the Planning Board for stamping and signature by the Chairman. The site plan submitted for stamping shall conform strictly to the site plan approved by the Planning Board, except that it shall further incorporate any revisions or other modifications required by the Planning Board.

Section 5. Upon stamping and signature by the Chairman, the Planning Board shall forward a copy of the approved site plan to the Code Enforcement Officer and/or Building Inspector and the applicant. The Code Enforcement Officer and/or Building Inspector may then issue a building permit or certificate of occupancy if the project conforms to all other applicable requirements.

Section 6. The granting of this site plan approval is for a drive-thru only restaurant with no

**PROPOSED RESOLUTION**

customer seating indoors or outdoors. Any changes to this use which requires changes from a drive-thru only restaurant to a restaurant offering customer seating of any kind requires an amended site plan approval from the Planning Board, particularly with respect to floor plan and parking.

Section 7. The granting of this site plan approval shall be expressly contingent upon the Applicant and Property Owner’s full payment to the Town of Hurley of any and all fees and escrow deposits due in connection with this application and in full compliance with Chapter 19 “Escrows and Consultants Fees” of the Town of Hurley Zoning Code. This approval will only take force and effect upon the satisfaction of this condition.

Section 8. The granting of this approval does not absolve the Applicant and the Property Owners from having to secure any other required permits or approvals.

The motion, being made by Planning Board member \_\_\_\_\_ and seconded by Planning Board member \_\_\_\_\_, was brought to the following vote:

	In favor	Against	Abstain	Absent
Peter McKnight (Chair)	_____	_____	_____	_____
Kathryn Kiewel (Vice Chair)	_____	_____	_____	_____
Karl Brueckner	_____	_____	_____	_____
Debbie Kossar	_____	_____	_____	_____
Griff Liewa	_____	_____	_____	_____
Dennis O’Clair	_____	_____	_____	_____
Diana Cline	_____	_____	_____	_____
Mitchell Cohen (Alternate 1)	_____	_____	_____	_____

Upon a roll call of the members present, the Resolution \_\_\_\_\_ with a vote of \_\_\_\_\_.

Dated this 30<sup>th</sup> day of August, 2023

\_\_\_\_\_  
Maggie Colan, Planning Board Clerk

This Resolution was filed in the office of the Town of Hurley Town Clerk on the \_\_\_\_\_ day of August 2023.

\_\_\_\_\_  
Annie Reed, Town Clerk