

**TOWN OF PLATTEKILL  
ZONING BOARD OF APPEALS  
P.O. BOX 45  
MODENA, N.Y. 12548**

**July 9, 2015**

**THE MEETING FOR THE ZONING BOARD OF APPEALS OPENED WITH A  
SALUTE TO THE FLAG BY CHAIRMAN, WILFRIDO CASTILLO AT 8:00 P.M.**

**ROLL CALL:** Chairman, Wilfrido Castillo, Vice-Chairman, Bruce Jantzi, Lawrence Keeno, Pearl Morse, George Hickey, Joe Egan

Excused Absence: Larry Lindenauer  
Zoning Board Attorney: Richard Hoyt

***MINUTES***

June 25, 2015

The minutes were moved to the end of the meeting

***PUBLIC HEARING continuation***

*Trans-Hudson Management Corporation for Dunkin Donuts 101.1-1-11  
Variances*

Mr. Jantzi-We are here tonight with the continuance of the prior public hearing. (to Mr. Dates) would you come up and state your name for the record, please.

Mr. Justin Dates- My name is Justin Dates of Maser Consulting, I am here to represent Trans-Management Corporation for the Dunkin Donuts project on Route 32. I have a few things that I would like to talk about briefly. There was additional information that the Board and the public were looking for that I have answers to. I will start with the question from the public about truck deliveries and if they would be outside of the regular store hours. In this case it would be, they are typically outside of regular store hours. Donuts are usually dropped off in the morning as soon as the store opens. To my understanding it is a quick drop-off, but it does occur before business hours. The other thing was trash pick-up. There was a question about how many times a week they would come to pick up the trash. It is typically once a week.

Mr. Egan-Do you know the time of day the trash pick-up would happen?

Mr. Dates-Well, they would establish a contract with a local carting company, but we would not want them picking up the trash during typical business hours.

Mr. Egan-Well, people aren't going to like all that banging when they pick up the trash at 4:00 o'clock in the morning.

Mr. Dates-No, that wouldn't be the case. Now, from a traffic standpoint, our Traffic Engineer put together a memo. We did actual counts on June 24<sup>th</sup>. on a Wednesday. We looked at peak times; a.m. peak hours are between 7:00 a.m. and 9:00 a.m., and p.m. times between 4:00 p.m. and 6:00 p.m. So they put together a memo outlining the review of the project and based on their experience with the number of stacking that we have on site, consistent with other Dunkin Donuts that they have seen in the field. Table one shows a trip generation, or how many cars would use the site. They broke this down to peak a.m. and peak p.m., and it would be a one hour clip within that range. So it could be from 7:30 a.m. to 8:30 a.m., but basically within that 7:00 a.m. to 9:00 a.m. range for that. The chart says "HTGR" or hourly trip generation rate, and that is based on data taken from the ITE manual that sets up these numbers. So that 50.29 and 21.40 in the HTGR is the number of trips per thousand square feet. So, we have about a 1,400 square foot store, so that is how the volume is calculated. The volume numbers in the entrance and exit in the a.m. is 71 for entry and 30 for the p.m. There is a credit that we can take for traffic that is already on the road and would go into the Dunkin Donuts, and that is a 25% pass-by trip credit. Actually new trips on the road are not all that extensive. Comment #5 talks about additional striping and to keep the drive-thru lane separate from the by-pass. We can incorporate further striping on the plan and also through the permit process with D.O.T. and since there already is that stiped area, they would probably be looking to have us do a left hand turn lane at that spot. So there would be some minor pavement expansion towards the Dunkin Donuts store to accommodate a left hand turn. So between those list of improvements mentioned our best feel is that it would adequately accommodate the proposed Dunkin Donuts. There was a question about truck traffic and I have a table here that breaks down actual truck traffic. When we did our counts, there is a breakdown and you can see that it is based on peak a.m. and peak p.m. hours. We've broken down passenger cars, school buses and trucks from those times. You can see that truck

traffic along during those times are between 1 and 3%. With a minimum being 7 trucks and a maximum being 11 trucks. So, it's a pretty low percentage of the traffic that is going by the site. Large trucks can't enter this site, so they would need to park along the street if they were to use the store. And then again, that would be more of a policing matter. I've seen trucks across the street from Stewart's.

Mr. Castillo-And Sonny Wager (owner of Sonny's Garage) used to park his vehicles on the side also.

Mr. Hickey-(to Mr. Dates) where are these numbers generated from?

Mr. Dates-They are based on traffic counts that we conducted on June 24<sup>th</sup>.

Mr. Hickey-So you only took a sample of one day?

Mr. Dates-That's correct.

Mr. Hoyt-The question is a clarification on the last public hearing. You had said your client had submitted a letter that said no trucks greater than 30 feet in length would ever make a deliver to the site. Was that to be just box trucks or would that include those pup trailers that may be less than 30 feet.

Mr. Dates-No, it was a box truck dimensions.

Mr. Hoyt-Do you know if a pup trailer is larger than 30 feet?

Mr. Dates-I think a pup trailer is 28 feet long by itself. So, the tractor itself is about 15 feet.

Mr. Hoyt-So by definition, a pup trailer would not be allowed to go in there.

Mr. Dates-No.

Mr. Jantzi-The ironic thing is that the pup trailer would be more maneuverable than a 30 feet box truck. Can we assume that the bulk of that information regarding

Page 4 July 9, 2015 Zoning Board minutes

the delivery trucks is based on whom they currently have as distributors and deliverers of their product?

Mr. Dates-That is correct. They manage quite a few facilities around here so, from what I understand he reached out to all the suppliers to see if that would even be possible, and he was able to restrict them as per the letter. (see letter in file limiting the size of the delivery trucks to 30 feet in length.)

Mr. Hoyt-The letter just said no trucks greater than 30 feet would be making deliveries.

Mr. Dates-It is typically a 42 foot trailer that makes deliveries.

Mr. Hickey-(to Mr. Dates) how do you correlate the volumes from your observations to the table? It is my understanding that you were saying the book says there will be 'x' amount of business per square feet.

Mr. Dates-Per thousand square feet.

Mr. Hickey-Is that the store or the property?

Mr. Dates-No, the store. It's based on the building size.

Mr. Hickey-I just want to make sure we are clear on that. How can you correlate the traffic on Route 32 to the number of visits?

Mr. Dates-That's where item #5 talks about the capacity analysis. Capacity analysis is the overall volume of the traffic that is on Route 32, and State highways have a high volume of traffic. And existing conditions peak a.m. there was 308 trips going Southbound and 293 going Northbound. And that was within a one hour period. So there is a good amount of traffic that goes by this site already.

Mr. Hickey-So what you are saying is that this study was not only just one day, but only two hours at a peak slice?

Mr. Dates-The peak times are between 7:00a.m. and 9:00 a.m. in the morning and the evening peaks are typically between 4:00 p.m. and 6:00 p.m. at night. Those are your typical peak commuter hours. Within those times, and it could be larger, there is a one hour period, so it could be 7:00 to 8:00 or 7:15 to 8:15 it depends on the site itself.

Mr. Hickey-I am just a little concerned that you got the slices so narrow on your observations as opposed to something that was done over a weeks time.

Mr. Dates-These are accepted practices. Mr. Grealy from my firm is probably one of the most well know traffic engineers in the Hudson Valley. I don't think we are just trying to push this thing through. I think I've shown to the Board that I have been willing to answer everyone's questions.

Mr. Castillo-(to Mr. Hoyt) have you dealt with this company before?

Mr. Hoyt-I can certainly vouch for Mr. Philip J. Grealy, P.H.D. He is one of the most renowned experts on traffic in the Hudson Valley. I urged Justin to get something at least preliminary to the Board because we thought traffic was obviously an issue. I might suspect that the Planning Board would delve into that issue even further.

Mr. Jantzi-It is more an issue with Planning than it is with us.

Mr. Hoyt-Yes, I agree with that, and that is why I wanted something but wasn't expecting a full blown certified traffic study.

Mr. Castillo-And to answer the Ulster County Planning Board comments, we had to have something here in order to do that.

Mr. Dates-And at the prior Planning Board meeting, it was already discussed that I would be providing a traffic study. It is even in the preliminary traffic evaluation that a more detailed traffic study will follow.

Mr. Jantzi-Are there any further questions from the audience?

Page 6 July 9, 2015 Zoning Board minutes

Ms. Vertullo-Well you answered all the questions they had about the trash, delivery hours and fencing. However for myself for the garbage, are they going to have one for cardboard and one for trash?

Mr. Dates-I think they have separate bins. Hopefully we can use a trash collector that can do that.

Mr. Jantzi-Most of those items are Planning Board items which will come up at their public hearing as well.

**MOTION:** Mr. Castillo made a motion to close the public hearing with Mr. Egan seconding the motion. On the vote: Mr. Castillo-aye Mr. Hickey-aye Mr. Egan-aye Mr. Jantzi-aye Mrs. Morse-aye Mr. Keeno-aye

Mrs. Vertullo-When it goes to the Planning Board do we get a notice?

Mr. Castillo-When Planning has a public hearing yes.

Mr. Jantzi-Does everyone have the Ulster County Planning Board comments that That we received prior?

*Clerk made a copy of the Ulster County Planning Board comments for the Zoning Board members, along with a copy of the narrative summary from Maser Consulting listing the requested variances.*

Mr. Castillo-(to Mr. Jantzi) Did you go over this two weeks ago?

Mr. Hoyt-We did not address this. At the last meeting. We had the document, but we didn't address it.

Mr. Castillo-(to Mr. Hoyt) do we normally go over every variance?

Mr. Hoyt-It is not necessary. By the way there is a report of final action that all boards have to send to the Ulster County Planning Board.

Mr. Jantzi-Does the Ulster County Planning Board even know that there is an existing facility there with similarities to what wants to go in there?

Page 7 July 9, 2015 Zoning Board minutes

Mr. Hoyt-I understand that it is a very large board made up of Ulster County Officials, and they do things their own way.

Mr. Castillo-On the signage. We are going to eventually have to send a memo to the Town Board on the signage because the way our law reads it is every sign because the menu board is going to be in the back and nobody is even going to see it.

Mr. Hickey-Currently there is 99 square feet?

Mr. Dates-Yes, and five signs

Mr. Hickey-In the spirit of trying to conform, and I understand that the current law could be considered being egregious to this, but it is the law. Going from 99 square feet to 139 square feet appears to be going in the wrong direction.

Mr. Castillo-Let me bring up past practice.

Mr. Hickey-And that was going to be my question, what has been done in the past?

Mr. Castillo-The Planning Board sent Hannaford here. Basically, they came before the Board for the sign on the face of the building, which we gave them a variance for. And on the monument sign the code calls for a 4 x 8 and Stewart's is 5 x 8 so we made allowances, and we told them they could have a monument sign that no greater than what was on Stewart's.

Mr. Hickey-This is the first time that we have something of this magnitude.

Mr. Jantzi-I think one other aspect of it is when the sign code was written, there are guidelines set forth as to what you can include in the sign code. At that time the local towns included everything that can be included in it. I think the spirit of the sign code is to monitor and track what is out by the road. What the traffic sees coming and going. And the sign code that is written, that includes the menu board that is located in the back of the

building. But the traffic that goes by the building doesn't see that sign that is in the back of the building. So, should that really be included in the sign square footage? And that wouldn't hurt to address that part of the code with the Town as far as the code is written. In the meantime, the way the code is written, it does include everything, but I think we have discretion.

Mr. Keeno-How many small signs do you have, again?

Mr. Dates-Because of how the code reads, everything is included. There are entry signs, which are directional in nature, and menu board, preview board,. If you were to look at a standard zoning code on signage you would be looking at the pylon sign, and the building sign. And between those two, we would be a 64 square feet.

Mr. Hickey-I just wanted to make sure I understand what the precedent has been.

Mr. Dates-The examples you are talking about are a grocery store and the Family Dollar. They don't have these accessory signs such as the menu board of a preview board. I don't know if the comparison is apples to apples. Unfortunately, everything has to be accounted for by the code.

Mr. Keeno-I would also point out that the County has something in their comments about the Town looking at the signage. So they recognize that there is an issue there.

Mr. Egan-We can say something about the fact that the menu signs were not part of the intent. If you are going down Route 32 and you want to make sure that everything is semi-uniform, not trying to outdo one another, and they didn't anticipate drive-thru at that time.

Mr. Keeno-And we are here to see if it poses a safety issue to the neighbors.

Mr. Hickey-I agree that we need to look at the law and adjust it to more modern times.

Mr. Castillo-(to Mr. Jantzi) would you like to read the comments from the Ulster County Planning Board?

Page 9 July 9, 2015 Zoning Board minutes

*Mr. Jantzi read the Ulster County Planning Board comments with review date of: June 03, 2015. (please see file for Ulster Count Planning Board comments)*

Mr. Castillo-The Ulster County Planning Board did not have the traffic study that we received. We discussed the signage. I as a member of the Board do not feel comfortable with the Ulster County comments, because they didn't come down and look at the site.

Mr. Castillo-(to the Board members) do you feel strongly that everything has been answered to override the County comments?

Mr. Keeno-It doesn't state anywhere in their comments that this is a pre-existing non-conforming lot. And we discussed because they weren't grossly going to change what is existing that we were o.k. with it.

Mr. Castillo-I would like to poll the Board before we do an official vote.

Mr. Hickey-I feel that we have sufficient justification to overrule the Ulster County Planning Board comments. I just want to make sure that when we send back the negative position, that justification will hold water, just because of the sheer number of variances. And I understand pre-existing non-conforming and you (Justin Dates) have done a very good job of how you are going to handle that. To a certain extent, two wrongs don't make a right. Just because it is pre-existing, non-conforming doesn't mean we should always allow that condition to continue and grant relief solely on that. I think I am in agreement now, after having listened that it holds water, as it goes back, to not have our decision challenged.

Mr. Hoyt-As far as challenging, only people with standing can challenge your decision, and I'm not seeing them hanging off the rafter's. We try to do everything as if we are being challenged.

Mr. Jantzi-The Ulster County Planning Board can't challenge us as long as we present the super majority and have our ducks in a row?

Mr. Hoyt-Two things; the County has no statutory ability to continue the debate.

And I also don't think they have the resources or necessarily the desire to engage one of their Towns in a legal battle over an opinion. Keep in mind, their rights here are just to give an opinion. And if you reject their opinion there is nothing they can do about it, as long as five board members do it. If I can back up, about the sign issue, you may want to keep for the Town the protection of these tight sign regulations and vary them as you see fit on a particular case. Because be careful what you ask for, if the Town Board says everything else is exempt you will get a project where they are loading signs up all over the place.

Mr. Castillo-Before I take an official vote of the Board. I would like to know how the Board feels.

Mr. Keeno-No problem at all. Mrs. Morse-No problem. Mr. Jantzi-good with it. Mr. Castillo-good with it. Mr. Hickey-good with it.

Mr. Jantzi-Do we have an over-riding vote to the Ulster County's comments?

**MOTION**: Mrs. Morse made a motion to over-ride the Ulster County Planning Board comments seconded by Mr. Hickey. On the vote: Mr. Castillo-aye Mr. Hickey-aye Mr. Egan-aye Mr. Jantzi-aye Mrs. Morse-aye Mr. Keeno-aye.

Vote: 6-aye 0 nay 1-absent

Mr. Jantzi-A motion has passed to accept an over-ride to the Ulster County Planning Board comments.

### **SEQRA Negative Declaration**

Mr. Hoyt went over the SEQRA Negative Declaration with the Zoning Board Members.

**MOTION**: Mr. Egan made a motion to accept the Negative Declaration with Mr. seconding the motion. On the vote: Mr. Castillo-aye Mr. Hickey-aye Mr. Egan-aye Mr. Jantzi-aye Mrs. Morse-aye Mr. Keeno-aye.

**AREA VARIANCE FINDINGS & DECISION**

**APPLICANT: Trans-Hudson Management Corporation for Dunkin Donut**

**FACTORS CONSIDERED:**

- 1. Whether the variance will result in an undesirable change in the character of the neighborhood or a detriment to nearby properties;

N N N N N N  
 WC GH JE BJ LK PM

- 2. Whether the benefit sought by the applicant can be achieved by some other feasible alternative to the variance:

N N N N N N  
 WC GH JE BJ LK PM

- 3. Whether the requested variance is substantial:

N Y Y Y Y Y  
 WC GH JE BJ LK PM

- 4. Whether the variance will have an adverse impact on the physical or environmental conditions in the neighborhood:

N N N N N N  
 WC GH JE BJ LK PM

- 5. Whether the alleged difficulty was self-created which will be relevant but not necessarily conclusive on the application for the variance;

Y Y Y Y Y Y  
 WC GH JE BJ LK PM

Based on the above, does the benefit to the applicant outweigh the detriment to the community?

Y Y Y Y Y Y  
 WC GH JE BJ LK PM

**VOTE ON THE RESOLUTION**

**MOTION:** Mrs. Morse made a motion to approve the resolution with Mr. Hickey seconding the motion.

On the vote:	AYE	NAY	ABSTAIN
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Chair: Wilfrido Castillo	X		
Vice-chair: Bruce Jantzi	X		
Larry Lindenauer			X
Joseph Egan	X		
George Hickey	X		
Lawrence Keeno	X		
Pearl Morse	X		

***DISCUSSION***

Mr. Castillo and the Zoning Board members spoke with Mr. Hoyt about a possible training session on SEQRA. Mr. Hoyt was amendable to that and the Board will pick a date.

***MINUTES***

**MOTION:** Mr. Hickey made a motion to approve the minutes as written with Mr. Egan seconding the motion. On the vote: Mr. Castillo-aye Mr. Hickey-aye Mr. Eagan-aye Mr. Jantzi-aye Mrs. Morse-aye Mr. Keeno-aye

***ADJOURNMENT***

**MOTION:** Mr. Egan made a motion to adjourn with Mr. Castillo seconding the motion. On the vote: Mr. Castillo-aye Mr. Hickey-aye Mr. Egan-aye Mr. Jantzi-aye Mrs. Morse-aye Mr. Keeno-aye.

The meeting adjourned at 9:30 p.m.

Respectfully submitted by

Susan Bolde, Zoning Board Clerk

