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April 21, 2004

Town of Newburgh  
Zoning Board of Appeals  
308 Gardnertown Road  
Newburgh, New York 12550

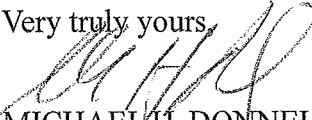
RE: Krishna Donuts (03.29)  
20-2-40

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Members of the Board:

I write to you as the attorney for the Town of Newburgh Planning Board. The above referenced applicant has applied to the Town of Newburgh Planning Board for site plan approval for a Dunkin Donuts/Baskin Robbins. The Planning Board now writes to refer this matter to you for consideration of a use variance allowing the operation of a "fast food" business or for an interpretation that the type of business proposed falls within the defined "food preparation shop use" authorized under one of the uses subject to site plan review by the planning board within the "B" zoning district (e.g., retail and personal service stores, eating and drinking places or convenience stores).

Thank you.

Very truly yours,  
  
MICHAEL H. DONNELLY

MHD/jlc

Cc: Carolyn Martini, Esq.  
26 Route 17K  
Newburgh, NY 12550

Town of Newburgh Planning Board  
308 Gardnertown Road  
Newburgh, NY 12550

Gerald Canfield  
Town of Newburgh  
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# TOWN OF NEWBURGH

*Crossroads of the Northeast*

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ZONING BOARD OF APPEALS  
OLD TOWN HALL  
308 GARDNERTOWN ROAD  
NEWBURGH, NEW YORK 12550

June 24, 2004

OFFICE OF ZONING BOARD

(845) 566-4901

JOSEPH P. O'BRIEN

(KRISHNA DONUTS)

5277 Route 9W

Section 20, Block 2, Lot 40

B Zone

Applicant is seeking to operate a fast food business in a "B" zone on premises located at 5277 Route 17K in the Town of Newburgh.

A fast food business is not a permitted use in a "B" Zone. Article IV, Section 185-11.

All mailings were in order.

Elizabeth Stradar, Attorney, represented applicant at the hearing.

Ms. Stradar stated she was here on behalf of Joseph P. O'Brien and Krishna Donuts. What her clients are seeking is an interpretation that the Dunkin Donuts/Baskin Robbins they would like to put up is not in fact "fast food" not permitted in a "B" Zone.

Mrs. Eaton asked if there is a drive-thru.

Ms. Stradar replied no there is not.

Ms. Stradar stated she didn't know if the members of the Board had a chance to read the package. If you look at Attachment A it might help you out as to the type of business that her clients intend to carry on there. It also has a little explanation that the U.S. Census Bureau does not consider donuts and ice cream to be fast food. If we sold hotdogs, if we sold hamburgers, if we sold chicken, the Census Bureau considers that fast food but donuts and ice cream are specifically excluded from this designation. She had highlighted on the original packet where all that information was. She didn't know if they had copied the highlights.

Mr. Hughes stated that part of their responsibility is to go out and look at the site and read all the attachments directed to the Board and we make our site inspections individually so there are a lot of different angles to look at.

Mrs Eaton asked if the property had been sold to Krishna Donuts.

Ms. Stradar replied no there is an agreement to sell if the interpretation is granted, otherwise it is not good for her client to purchase it.

Mr. Hughes asked if there were any plans in the future for a drive-thru.

Ms. Stradar replied not that she was aware of.

In response to a question from Mrs. Cardone, Ms. Stradar stated she had the engineer here and he has been working with the Planning Board.

Mrs. Cardone asked if there were any other questions from the Board or questions or comments from the public.

Richard Marciniak of 5281 Route 9W right next door stated just for the record they feel it would be inappropriate for that area of 9W. We have no place to pull up. The only thing they would be against because of the traffic problem, is a drive-thru but if there is no drive-thru we have no objection.

Mrs. Cardone asked if there were further questions.

Mrs. Eaton asked what else do you plan to use in that building. It has so much space.

Ms. Stradar replied that hasn't been determined yet.

There being no further questions, Mrs. Cardone declared this part of the hearing closed.

Submitted by:

Mary Salantrie, Secretary  
Zoning Board of Appeals

/ms

After consultation with the Board's attorney, Mrs. Cardone stated they were looking for an interpretation and failing an interpretation, a use variance. We will address the interpretation first. They were looking for an interpretation that the type of business proposed falls within the "food preparation shop use" authorized under one of the uses subject to site plan review by the Planning Board within the "B" zone district. Do we have discussion on this application. Mr. Hughes stated the schedule that was attached clearly defined in the records that the use seems to be consistent with the wording. Mrs. Eaton didn't think they should be allowed to have a drive-thru window. Mr. Hughes added that should be part of the decision "no future drive-in". Mrs. Cardone asked if we have a motion that this is interpreted as the type of business proposed under the "Defined Food Preparation Shop Use". Mr. Hughes made a motion, Mr. Kunkel seconded the motion. Mrs. Cardone asked all those in favor to please say "aye". All Board Members who were present approved by saying "Aye". Board member Paul Blanchard was absent. The motion was carried.

TOWN OF NEWBURGH  
ZONING BOARD OF APPEALS

2005

-----X  
In the matter of the application of:

**DECISION OF RESOLUTION**

JOSEPH O' BRIEN  
(KRISHNA DONUTS, INC.)

Tax Map # 20-2-40

for an interpretation that the proposed business  
is a "food preparation shop use" in a "B" Zone

-----X  
The property which is the subject of this application is located at 5277 Route 9W, Newburgh, New York and is designated on the tax map as Section 20, Block 2, Lot 40. It is located in the "B" District.

Applicant has applied to the Town of Newburgh Planning Board for site plan approval of a new 4,900 square foot building containing a Dunkin Donuts/Baskin Robbins. The Planning Board refers the instant matter for this Board's consideration of a use variance allowing the operation of a Dunkin Donuts/Baskin Robbins as a "fast food" business or for an interpretation that the type of business proposed falls within the defined "food preparation shop use" authorized under one of the uses subject to site plan review by the Planning Board within the "B" zoning district.

A public hearing on the application was scheduled for June 24, 2004 at the Town Hall, 1496 Route 300, Newburgh, New York. Notice of said public hearing, including the subject, date, place and time, was duly published and mailed. Proper affidavits of publication and mailing have been received from the applicant.

The public hearing was held on June 24, 2004. The applicant and applicant's attorney Elizabeth Stradar, Esq. of Northrop, Stradar, and Glenn appeared at the public hearing and testified before the Board. The testimony and exhibits at the public hearing established that applicant is currently the owner of a Dunkin Donuts/Baskin Robbins in the City of Newburgh and proposes to build a new Dunkin Donuts/Baskin Robbins on land which formerly was a car wash and has fallen into serious disrepair. The Board determined that applicant's proposal falls within the defined "food preparation shop use" as authorized under one of the uses subject to site plan review by the Planning Board within the "B" zoning district. "Food preparation shop" is defined at page 18508 of the Code as follows: "A business devoted to the preparation of food to

be consumed primarily off premises, including but no limited to delicatessens and bakeries. This use may be located within a large use such as a convenience or grocery store.” The proposed Dunkin Donuts/Baskin Robbins will retail baked goods baked on the premises, ice cream, sandwiches, and hot and cold beverages and the like. In support of applicant’s proposal, applicant submitted the most recent census information available, a 2002 United States Census Bureau’s definitions of Limited-Service Restaurants. The census information distinguished donut and ice cream shops from retail stores which sell hamburgers, hot dogs, pizza, chicken and specialty cuisines, which are considered by the bureau to be “fast food” establishments. In further support of applicant’s proposal, this Board noted that similar businesses such as Bagel World, Stewart’s Shops and Mary Jane’s Diary Bar exist nearby, and the character of the neighborhood will not be altered by applicant’s business.


**RESOLUTION**

The Board determines that applicant’s business falls within the definition of “food preparation shop use” and grants the operation of applicant’s business on the condition that no drive-thru window be installed in the future.

Present and Voting on motion to define applicant’s business as a “food preparation shop”

Grace Cardone	Aye
Paul Blanchard	Absent
Ruth Eaton	Aye
Michael Maher	Aye
Robert Kunkel	Aye
John McKelvey	Aye

Dated: April , 2005  
Newburgh, New York

  
GRACE CARDONE, Chairwoman  
Town of Newburgh, Zoning  
Board of Appeals