

ORIGINAL

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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH PLANNING BOARD

In the Matter of

received
7-7-03

KRISHNA DONUTS, INC.

Corner of Route 9W and Carter Avenue
Section 27; Block 9; Lots 1 & 2
B Zone

SITE PLAN

Date: June 5, 2003
Time: 7:30 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman
KENNETH MENNERICH
J. LEO GLYNN
EDWARD T. O'DONNELL, JR.
CLIFFORD C. BROWNE
JAMES WINSLOW

ALSO PRESENT: NORMA A. JACOBSEN
MICHAEL H. DONNELLY, ESQ.
EDWIN GARLING
GERALD CANFIELD
PATRICK HINES
MARK SARGENT
KAREN ARENT

COVENANT REPORTING
26 Fleetwood Drive
Newburgh, New York 12550
(845) 564-7477

2 CHAIRMAN EWASUTYN: The next item
3 of business we have this evening is a site
4 plan for Krishna Donuts. It's proposed to be
5 located on the corner of Route 9W and Carter
6 Avenue. It's in a B zone. It's being
7 represented by Lou Powell.

8 MR. POWELL: Good evening. I'm Lou
9 Powell from Eustance & Horowitz. With me
10 tonight is Beth Stradar, attorney for Krishna
11 Donuts, and Amish Patel in the presence of the
12 corporation, and Mr. John Bodnar who is from
13 Dunkin Donuts/Baskin Robins Corporation.

14 Before you is a conceptual plan for
15 a Dunkin Donuts and Baskin Robins ice cream
16 store at the intersection on the west side of
17 9W at its intersection with Carter Avenue. It
18 presently is an existing convenience store.
19 The proposal calls for a proposed renovation of
20 the existing building and an addition of some
21 1,393 square foot addition giving a total a
22 little over 2,500 square foot of building. The
23 lot size is six-tenths of an acre which is --
24 there's an error on the drafting which says
25 proposed 40,000 which is not true. We are

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2 proposing fourteen parking spaces which,
3 depending on if we use one parking space per
4 seat plus the two counters which would require
5 three each additional seats, we actually get
6 the proposed which is fourteen, which would be
7 what we are providing.

8 There is an existing well but the
9 property is in the water district and we will
10 be connecting into Town water.

11 There is an existing sewer disposal
12 system on the south end of the building which
13 we will determine as adequate or not. We do
14 not believe it is and we're proposing a kind of
15 a mulky flow which is kind of an aeration small
16 package system with a discharge to the stream
17 which will require a permit from DEC.

18 I do have a copy of the engineer's
19 and the planner's comments and we would propose
20 that we feel that we are in the use as an
21 eating and drinking place because more than
22 fifty percent of the product sold is consumed
23 on site.

24 I'll turn it over to any questions
25 you have.

2 CHAIRMAN EWASUTYN: Thank you.

3 We'll begin with Mark Sargent. Mark, you have
4 a concern about the traffic and all that.

5 MR. SARGENT: You mentioned that you
6 had received comments from the engineer.

7 CHAIRMAN EWASUTYN: Can you speak a
8 little louder so you can be heard?

9 MR. SARGENT: You mentioned you had
10 received comments from the engineer and
11 planner. I don't know if that included our
12 letter which we had written earlier this year.

13 MR. POWELL: I did not receive a
14 copy of that.

15 MR. SARGENT: We're that engineering
16 consultant. We had two basic concerns with the
17 site, or two issues. The first one had to do
18 with the access. We recognize right now the
19 area is not really channelized very well. The
20 site plan proposes two full access driveways,
21 however the driveway on Carter Avenue, given
22 the proximity of the stop line, it's not a
23 desirable arrangement. We were suggesting in
24 our letter that you should meet with the
25 Department of Transportation. You may want to

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2 consider retaining a traffic engineer also to
3 represent you at that meeting. We are
4 recommending some turn prohibitions at that
5 driveway just given the complexities and
6 conflicts that exist at that location.

7 MR. POWELL: We understand there's a
8 problem there and we need to get what your
9 comments are. We realize that that is not
10 good. John Collins is on board to help us to
11 do that and make recommendations with your
12 input, too. That's not a problem.

13 MR. SARGENT: Related to that, in
14 our letter we suggested you may want to
15 consider pursuing an easement on that adjacent
16 parcel to the north, that area that's currently
17 being used today for access to the site. You
18 may be able to come up with an approved
19 driveway if you had arranged some kind of
20 easement.

21 MR. POWELL: That is an option that
22 we will explore. We realize if we can do that
23 we can possibly get that intersection far
24 enough from that corner that it will alleviate
25 that problem. That will be a matter of dollars

2 and cents and how valuable this property now
3 will become.

4 MR. SARGENT: Just two other
5 comments. After visiting the site we notice
6 that the elevation of the parking lot is quite
7 a bit lower than the road. The road is
8 super-elevated through that area. If you can
9 bring up the driveway apron on the Route 9W
10 driveway specifically so a vehicle has a better
11 approach angle.

12 MR. POWELL: Right.

13 MR. SARGENT: Consider that if you
14 would.

15 Lastly, in terms of circulation on
16 site, we don't know what size delivery vehicles
17 will be serving this site but we had made an
18 estimate it would be a single unit truck. We
19 put a template on there and it looked tight.
20 We would like you to investigate that a little
21 bit more and confirm what size delivery
22 vehicles will be going on and demonstrate they
23 can circulate.

24 MR. POWELL: Fine.

25 CHAIRMAN EWASUTYN: Jerry?

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2 MR. CANFIELD: It's just a
3 conceptual plan so the details would be further
4 reviewed. Initially the existing buildings are
5 subject to the sprinkler ordinance.

6 CHAIRMAN EWASUTYN: Karen?

7 MS. ARENT: When you're looking into
8 the design of the building, if you can consider
9 planting areas for landscaping between the
10 building and the parking area. Also, the
11 islands shown, if they can be green islands
12 with a couple trees in them. And if DOT
13 allows, a low hedge or something in the front
14 of the site inside your property to screen the
15 parked cars.

16 MR. POWELL: They presently -- I
17 don't know how it got allowed but they
18 presently park right in the DOT right-of-way to
19 that, to the existing curb. So we've left that
20 space in there that they can landscape and do
21 whatever with it.

22 MS. ARENT: I don't know if the same
23 size -- if the delivery truck is the same size
24 as a garbage truck. It would be nice to move
25 the dumpster in the back.

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2 MR. POWELL: We were talking about
3 that today. There's no reason why that can't
4 be put at the back end of there.

5 MS. ARENT: That would be nice.

6 MR. POWELL: That would be better.

7 MS. ARENT: It would be better for
8 your building as well as the visual impacts.
9 Just put a couple of trees to soften.

10 MR. POWELL: Yeah.

11 CHAIRMAN EWASUTYN: Pat Hines?

12 MR. HINES: Again the plans are kind
13 of schematic at this point. They lack detail.

14 We did identify that you're causing
15 a surface discharge. The Board at work session
16 had some concerns about the operation and
17 maintenance of that as well as the location of
18 the school immediately across the street. The
19 playground is down gradient of that. That was
20 a concern identified by the Board.

21 Realizing that you're seeking
22 approval for any surface discharge there,
23 there's a culvert identified by that discharge
24 point. I don't know the size of that or if
25 it's a DOT culvert.

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2 MR. POWELL: It is a concrete
3 culvert about twenty-four, thirty inches in
4 diameter. When I was there it was still three-
5 quarters full of dirt or whatever. I have
6 searched and tried to find where the inlet -- I
7 thought maybe there was something, a catch
8 basin or something in the street. I don't know
9 what happens, whether it was something that was
10 originally garage, had some kind of a catch
11 basin or discharge. I will try to search that
12 out and make sure that the DOT doesn't have
13 some kind of an easement. I couldn't find any
14 source of inlet to it and there was nothing
15 coming out of it when I was there.

16 MR. HINES: Jim Osborne was at the
17 work session and he mentioned the Town does
18 have existing drainage problems in that area on
19 Carter Avenue. It may be associated with that
20 culvert.

21 MR. POWELL: I don't know. Up here
22 across from Stewart's, right about at this
23 point there is a stream that covers some kind
24 of drainage that comes into there, but I don't
25 know what the -- what's going on. I couldn't

2 find anything. I was going to find something
3 myself. There's no easement in the deeds. I
4 will search that out and verify what it is.

5 MR. HINES: The application
6 identified two tax map parcels. They're not
7 shown.

8 MR. POWELL: There is a sliver that
9 went around this existing one. That will be
10 merged and taken care of. I can show it dashed
11 on the plans so you can see where it is. If
12 the present owner doesn't take care of it we
13 will see that it's taken care of as one tax
14 lot. It's of no use one as good as the other.

15 MR. HINES: Right. Our final
16 comment had to do with the fast food use and
17 traffic which I'll defer to Mr. Garling on
18 that. He has comments related to that.

19 CHAIRMAN EWASUTYN: Thank you. Ed?

20 MR. GARLING: Based on the Board's
21 policy over the past few years with this type
22 of use, it's been determined that this would be
23 a drive-up or drive-in fast food restaurant and
24 that it would not be permitted in the B
25 district without a variance. We would

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2 recommend it go to the ZBA and let them
3 determine whether or not this applies, whether
4 or not you're fifty percent or more a sit-down
5 facility.

6 The other minor questions, we
7 mentioned the U-shaped lot. We also mentioned
8 the square footage in the bulk table is not a
9 big issue but it should be clarified because
10 the proposed 40,000, we weren't sure what that
11 stood for.

12 MR. POWELL: That was a drafting
13 error.

14 MR. GARLING: Okay. The other
15 question that came up in my mind, though, with
16 our discussions, we now know it's going to be a
17 Dunkin Donuts/Baskin Robins from what you
18 mentioned tonight. However, is the entire
19 building going to be Baskin Robins/Dunkin
20 Donuts or is the convenience store still going
21 to remain?

22 MR. POWELL: There will be no
23 convenience store. It will be strictly a
24 Dunkin Donuts/Baskin Robins ice cream.

25 MR. GARLING: We would like to

2 probably see that noted on the footprint when
3 you provide more detail.

4 MR. POWELL: Yes.

5 CHAIRMAN EWASUTYN: I'll turn it
6 over to the Board Members for comments. Cliff?

7 MR. BROWNE: Seeing that we had the
8 major concerns as far as what the DOT would do
9 and as far as going to the ZBA, I think they
10 have to address the problem I would assume
11 first before we go much further.

12 CHAIRMAN EWASUTYN: Ken?

13 MR. MENNERICH: I don't have any
14 questions at this point. I think the fact that
15 there will be space to put some landscaping
16 next to 9W, it would be good to have that
17 added.

18 CHAIRMAN EWASUTYN: Ed?

19 MR. O'DONNELL: Being a Dunkin
20 Donuts, could you help me, is it going to be
21 like the one on Route 300, the one that's in
22 Vails Gate, the one across from the mall or the
23 one in the City of Newburgh? What's it going
24 to look like?

25 MR. PATEL: It's going to be just

2 like the one, from the exterior, like the one
3 in the City of Newburgh.

4 MS. STRADAR: Minus the drive-
5 through.

6 MR. O'DONNELL: Minus the drive-
7 through. Got it. Good choice.

8 MR. POWELL: They also own a store
9 in the Village of Cornwall.

10 MS. STRADAR: As well as the store
11 on Broadway in Newburgh they just renovated. I
12 think everybody would agree it looks much
13 nicer.

14 CHAIRMAN EWASUTYN: Would you be
15 baking on premises at this location or will you
16 be transporting product baked to this location?

17 MR. PATEL: We would be transporting
18 baked.

19 CHAIRMAN EWASUTYN: Your hours of
20 operation at this location?

21 MR. PATEL: At this time the
22 franchise requires us to have twenty-four hour
23 operation.

24 CHAIRMAN EWASUTYN: Jim?

25 MR. WINSLOW: It was communicated to

1
2 us that you're on the west side of the road to
3 maximize getting traffic coming into the City
4 of Newburgh in the morning drive time. Is that
5 accurate?

6 MR. PATEL: That's correct.

7 MR. WINSLOW: Your representative is
8 telling us that fifty percent of your business
9 is going to be sit-down business. How did you
10 determine that?

11 MR. PATEL: Based on our past
12 experience and current experience with the
13 shops we currently own.

14 MR. WINSLOW: At that location?

15 MR. PATEL: In the Cornwall
16 location.

17 MS. STRADAR: Mr. Winslow and the
18 Board, if you'd like we have Mr. Jack Bodnar
19 with us from corporate who could answer any of
20 your questions about the use of the building.
21 We really think it's being built bigger to
22 accommodate -- what they're looking for is
23 people to sit there and have coffee rather than
24 be your standard take away. That's why they
25 took away the drive-through, they're

1
2 anticipating everybody to stay. Plus the ice
3 cream business all stays in the store, which is
4 a large part of the business.

5 CHAIRMAN EWASUTYN: I think in order
6 to have a drive-through there -- Ed, would this
7 be in the right zone for a drive-through?

8 MR. PATEL: No.

9 MS. STRADAR: We're not proposing a
10 drive-through.

11 CHAIRMAN EWASUTYN: I'm saying you
12 said rather than we took away.

13 MS. STRADAR: When they were
14 conceptualizing or thinking about the drive-
15 through.

16 CHAIRMAN EWASUTYN: I don't think
17 that conception could have been possible
18 without a variance.

19 MS. STRADAR: So you look at a store
20 and you think why are we going to build this
21 store and what makes sense economically for us.
22 What makes sense for them is to have the people
23 stay there. Mr. Bodnar can testify with more
24 than twenty years of experience as to what
25 happens in a sit-down store with thirty seats.

2 CHAIRMAN EWASUTYN: I think there's
3 some issues that we have here that are
4 important issues as far as the possibility for
5 a use variance, and then we have issues here
6 that the Board is concerned about as far as
7 traffic and its location. The Board was
8 considering whether you would want to meet with
9 the DOT first to have them look over your site
10 plan to advise you on what they think can or
11 cannot work, or if the Board should refer this
12 to the ZBA for a use variance with comments
13 from our consultants as far as the issues
14 concern what we would like to bring to the
15 attention of the ZBA. I don't know if we're
16 really at this point going to be going through
17 whether it's going to sit fifty or not. There
18 are issues of concern that we do have.

19 MS. STRADAR: I understand your DOT
20 concern but I think it's within the Board's
21 discretion to see that this is an eating and
22 drinking place which would not require a
23 variance. We have Mr. Bodnar here --

24 CHAIRMAN EWASUTYN: I'll refer to
25 counsel for his opinion. Thank you.

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2 MR. DONNELLY: I'm not going to
3 disagree if this were a clean slate and we had
4 never seen a Dunkin Donuts before, given the
5 definition and how it works on a factual basis
6 this Board could make the determination that it
7 was a sit-down restaurant and not a fast food
8 establishment. However, I'm told that the
9 Zoning Board in this Town has, on several
10 occasions, reviewed Dunkin Donuts' proposals
11 and determined with or without a drive-in that
12 they are fast food establishments. I think we
13 should defer to that board if this one is
14 factually different for their ruling or a use
15 variance if they feel that it remains a fast
16 food restaurant.

17 MS. STRADAR: If I may, I think the
18 Board might be stuck on the fact that this is
19 Dunkin Donuts. It's Dunkin Donuts/Baskin
20 Robins. A lot of the business is the ice cream
21 business. We can tell you about our store in
22 Newburgh, we can tell you what goes on in
23 Cornwall, and with the expansion of the number
24 of seats being thirty seats it's really meant
25 for people to sit in the morning, have your cup

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2 of coffee, have a meeting, bring your kids
3 there after school, have your kid's party
4 there, to come in the evening and people do
5 their work is what we're finding.

6 MR. DONNELLY: The Board would need
7 to see something more than just a statement to
8 that effect but whatever data, or research, or
9 reports that Baskin Robins could produce to
10 bear that out. I think the Board should also
11 have an opportunity to see the floor plan
12 inside to see if what you're saying makes
13 sense.

14 MS. STRADAR: Are there any
15 questions Mr. Bodnar could answer for you while
16 he's here today?

17 CHAIRMAN EWASUTYN: I don't think
18 so. I think what counsel is saying is if you
19 want to support your presentation now by
20 written documents, we'll circulate them to our
21 consultants. Also I would suggest that Phil
22 Greeley talk with Mark Sargent as far as
23 referring this to the DOT very early on to get
24 the DOT's input on this. I think that's the
25 way we'll conclude the meeting.

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2 MS. STRADAR: I can't say I'm not
3 disappointed, but if that's your decision
4 that's what we have.

5 CHAIRMAN EWASUTYN: Is this the
6 Board's decision?

7 MR. BROWNE: Agreed.

8 MR. MENNERICH: Mm'hm'.

9 CHAIRMAN EWASUTYN: Jim?

10 MR. WINSLOW: Yes.

11 CHAIRMAN EWASUTYN: Leo?

12 MR. GLYNN: I have a couple
13 questions. Mr. Powell indicated there was a
14 septic system on the existing building, to the
15 south of it. I see no reference to it on the
16 plan here. He also indicated you were going to
17 tie the two buildings together into a new
18 system with an outfall back to that stream
19 which winds its way south alongside and
20 parallel to 9W and then gets down by the
21 Balmville School and goes around the
22 circumference of part of the school property.
23 I see no indication yet of flow quantities or
24 anything like that that you expect out of the
25 building, and I would be quite concerned about

1
2 what appears to be a very small septic
3 building.

4 MR. POWELL: The flows are
5 approximately 600 gallons a day which is like a
6 four-bedroom house.

7 MR. GLYNN: 600 gallons a day for a
8 shop? What about tying in with the existing
9 building? What happens to that septic system?

10 MR. POWELL: We'll have to explore
11 whether that system is large enough to handle
12 the flow. It's basically -- they tell me
13 there's a 1,000 gallon septic tank with a 1,000
14 gallon cesspool but I have not explored that to
15 find out whether that's true or not. We'll
16 have to evaluate that.

17 MR. GLYNN: Would you have two
18 separate systems for the building?

19 MR. POWELL: No, because there is no
20 area for in-ground septic here I believe. This
21 is mostly probably fill, and I don't know --
22 we'll explore that. I don't believe that we
23 could split -- there would be a question of
24 splitting the flow which might be more
25 difficult than doing one system.

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2 MR. GLYNN: What kind of disposal do
3 you have for the existing building? A field?

4 MR. POWELL: Pardon?

5 MR. GLYNN: Do you have a field?

6 MR. POWELL: No. They have a 1,000
7 gallon septic tank and they have a 1,000 gallon
8 cesspool.

9 MR. GLYNN: How often is that
10 pumped?

11 MR. POWELL: I think they pump it
12 once a year but they only have like two
13 employees and very few -- very little flow into
14 it actually.

15 MR. GLYNN: I would have concerns
16 that had to be addressed with regard to the
17 septic system, frankly.

18 CHAIRMAN EWASUTYN: Any additional
19 comments from the Board Members?

20 (No verbal response.)

21 CHAIRMAN EWASUTYN: Thank you, Mr.
22 Powell.

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24 (Time noted: 7:50 p.m.)
25

C E R T I F I C A T I O N

I, Michelle Conero, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that I recorded stenographically the proceedings herein at the time and place noted in the heading hereof, and that the foregoing is an accurate and complete transcript of same to the best of my knowledge and belief.

Michelle Conero

DATED: June 18, 2003