

Application of Kai Restaurant Group (Contract Vendee)

Property: 27 Route 59 (Sheet 65.35, Block 1, Lot 16) and Corridor Commercial ("CC") Zone

VILLAGE OF NYACK

BUILDING

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DEPARTMENT

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RESOLUTION

VILLAGE OF NYACK PLANNING BOARD

Adopted July 11, 2022

RE: Application of Kai Restaurant group (Contract Vendee)

Property: 23 Route 59 and CC Zone

Resolution of Site Plan and Special Permit Approval

Background

After due discussion and deliberation, on motion by Peter Klose, seconded by Mr. Miguel Ortiz-Crane and carried, the following site plan and special permit resolution was adopted:

1. The Applicant, Kai Restaurant Group (Contract Vendee) requested site plan approval and special permit for the demolition of existing building and redevelopment of the site for a new single-story, fast-food restaurant (Taco Bell) with a drive-thru aisle and window. The subject property is 21,939 sf in the Corridor Commercial ((CC) zoning district. The applicant proposes to construct a 2,040-sf fast food restaurant. The project provides the required 15 parking spaces with one ADA accessible space.

2. The Planning Board on May 2, 2022, determined the proposed action was a Type II action based on 617.5 (c)(9) "*construction or expansion of a primary or accessory appurtenant, non-residential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use.*" *The proposed fast-food restaurant contains 2,240 sf, thereby, ending the SEQRA review.*

3. The Planning Board opened a duly noticed public hearing on May 2, 2022, which was continued on June 13, 2022, and July 11, 2022, at which time all those wishing to be heard were given the opportunity to be heard.

4. The Planning Board has carefully examined the Application and the Consulting Engineer's (JMC) civil drawings including zoning compliance table, landscaping, lighting, utilities, tree removal, site layout, photographs of the site and surrounding properties, and Turning Analysis for Fire Apparatus, Refuse vehicles and Delivery vehicles. The Planning Board also reviewed JMC's *Comment Response letters* dated 4/20/22, May 20, 2022, and June 30, 2022, *Queuing Tables* from Applicant's Port Chester and Carmel Taco Bell restaurants, Applicant Attorney's review of Village of Nyack Code standards for site plan development and special permit in *Cover Letter* dated 6/30/22, *JMC Traffic Study* dated 1/28/22 and updated 6/30/22., and the Village Traffic Consultant's (Havestry & Hanover) *Traffic Review* dated 6/9/22 and their final review dated 7/6/22. Additionally, the Planning Board has reviewed the GML responses from *Rockland County Planning* (4/19/22), *Town of Orangetown, Dept of*

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Environmental Management & Engineering (4/7/22), Rockland County Health Department (4/29/22), Town of Clarkstown (4/28/22) and NYSDOT (4/28/22), and Village Engineer's Site Plan Review (2/28/22), Memorandum from the Village Tree Committee (5/11/22), comments and recommendations from the Village Planner and Building Inspector in Planning Board Notes dated May 2, 2022, June 13, 2022 and July 11, 2022, which the Planning Board has considered.

5. The Architectural Review Board reviewed and approved the Applicant's plans on March 16, 2022.

6. The Planning Board closed their public hearing on July 11, 2022. After closing the public hearing, the Planning Board deliberated in public on the Applicant's request for site plan and special permit approval at its meeting on July 11, 2022, and approved the applicant's request.

Determination

The Planning Board determines that based upon the findings and reasoning set forth below, the Application for site plan and special permit approval is granted subject to the conditions set forth below.

I. Findings

The Planning Board is familiar with the Property and all aspects of the proposed action and has considered the standards set forth in Village of Nyack Zoning Code ("Zoning Code") §360, Article IV (*Development Standards*) as well as the goals and policies presented in the Village's Comprehensive Plan. The Planning Board also considered the applicable general Special Permit standards set forth in § 360-5.9C of the Zoning Law and the specific standards for drive-thru fast-food restaurants contained in §360-3.2.E (2). The proposed project is a permitted use and will be constructed on a main road, in between a Dunkin Donuts and an auto body shop. This proposed use is consistent with the commercial nature of the surrounding area and will not adversely affect the surrounding neighborhood and community. It is located more than 107' downhill from Upper Depew Avenue and not adjacent to residential property.

The Planning Board has reviewed the Applicant's traffic study and queuing information for two comparably Taco Bell restaurants.(Port Chester and Carmel). The Applicant has made all requested changes to traffic circulation and has revised the site driveways to restrict left turns from entering and exiting the site. The Planning Board has also reviewed information on the different peak hours between the adjacent Dunkin Donuts and the proposed Taco Bell restaurant. The Planning Board has reviewed the Village Traffic Consultant's preliminary and final reports concluding that the *Site Plan, as designed, provides adequate vehicle queuing. Any spillover will be in the travel aisle blocking the angled parking spaces for patrons at the restaurant. It is important to note that the travel aisle entering the site and behind the proposed parking spaces measures 16 feet in width. This will not allow a patron waiting in a vehicle queue to permit a vehicle to pass that waiting vehicle.*

The Planning Board finds that the proposed site plan is consistent with the site plan design and development principles and the standards set forth in §360, Article IV (*Development*

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Standards) and meets the general and specific special permit standards for the proposed drive-thru fast-food restaurant at this location as outlined in §360-5.9C., as well as the use specific standards listed in §360-3.2E.(2).

The Planning Board has reviewed the Applicant's site plan for the redevelopment of the site for a 2,240 sf Taco Bell restaurant located at 27 Route 59 in the Corridor Commercial (CC) zone. The subject property consists of 21,939-sf. and was formerly occupied by a metal shop. At the request of the NYSDOT, the Applicant will be donating 771 sf of the property along Route 59 to the NYS DOT (*which will reduce the property from 22,728 sf to 21,939 sf*).

The subject property is zoning compliant with the front setback being is 22'.3" where the required maximum is 25'; the side yard is 28' where 3' is required; total side yards are 71' where 15' is required; the rear yard is 107' where 25' is required; height is one story at less than 35'; building setback is 26.5' where 5' is required minimum. The parking schedule shows the required number of parking stalls is 15 spaces with 15 spaces being provided (one of which is ADA space).

The subject property is adjacent to the Dunkin Donuts. It has an approximate 22' wide minimum lightly wooded buffer area along the full width of the rear of the property. The grade of the property at the rear slopes up approximately 27' to Upper Depew Avenue. The water and gas connections are being proposed from Upper Depew Avenue. Applicant has coordinated with the Village Administrator's office and has obtained plans for the Upper Depew Avenue sidewalk work, which are now shown on the plans. In addition, applicant has spoken with the DPW and water departments and have confirmed the utility connection locations. Applicant has shown the proposed Village sidewalk improvements along Upper Depew Avenue on the site plan.

Applicant's Drawing L-100 "*Site Landscaping Plan*" shows the proposed plantings at the rear of the property between the site and Upper Depew Avenue to demonstrate compliance with the buffer requirement. This rear buffer area will maintain the existing vegetation and will be cleared of all trash, debris, dead trees, and invasive species. Additional landscaping will be added with ten "Green Giant" arborvitae and three "Red Oak" deciduous trees. The species selected for these plantings was selected based on the recommendations of the Tree Committee. The Applicant is also installing a 6' high PVC privacy fence along the rear of the property facing Upper Depew Avenue.

The Applicant has coordinated the selection of tree species in the front of the property with the Nyack Tree Committee to ensure that they are consistent with Nyack streetscape standards. Applicant has proposed three Black Tupelo trees in the front of the site and a Ginkgo tree in the island together with five Dark Green'/Dark American Arborvitae at the rear of the restaurant along the drive-thru aisle. The landscape plan includes evergreen plantings at the northern portion of the site, along NYS Route 59, to shield headlights from shining into the state right-of-way while vehicles are circulating the site. There will a 5' wide concrete sidewalk installed along the full frontage of the property. Applicant has also revised the plans to include a crosswalk and sidewalk through the recirculation area.

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The trash enclosure will have a 6' high gate and will be architecturally consistent with the proposed structure. Trash at the site will be collected during the off-peak hours. Applicant has provided Drawing C-120 "*Refuse Vehicle Turning Analysis*" which shows the turning maneuverability of the refuse vehicle within the site. Designating the three employee spaces in the area of the trash enclosure provides the applicant with the ability to access the enclosure at any time. This also maintains parking spaces for patrons when the trash enclosure needs to be accessed. All proposed signage has been shown on the site plan and conforms to the Village requirements found in §360.4.11.

The Applicant has prepared Drawing C-110 "*Fire Apparatus Turning Analysis*" to show on-site maneuverability for fire apparatus. This plan has been reviewed by the Village of Nyack Fire Inspector in coordination with Rockland County Office of Fire and Emergency Services. Applicant has developed a similar turning analysis for delivery vehicles (see Drawing C-130 "*Delivery Turning Analysis*" to show maneuverability for delivery vehicles on-site. No loading or unloading operations will occur within the State right-of-way. Deliveries occur mainly during off-peak hours, and the site provides areas in which the truck can briefly stop to unload.

The Applicant has identified the snow storage area on Drawing C-100 in an area behind the proposed retaining wall in the northwest section of the site. This area will not impact any parking spaces and is adequate for snow plowing operations and storage during the winter months. Applicant proposes a retaining wall with a safety fence at the rear and south side of the property. Structural plans will be required to be provided during the permitting phase from the Building Department.

Applicant provided a Photometric Plan developed by CREE Lighting dated 1/21/22. Lighting will be provided with four 15' poles with downward lighting. Two poles are located in the bottom of the hill at the rear of the property with two in the front at the entrance and exit. The Photometric plan demonstrates that the intensity of the candle lumens is less than 0.1 at the property line and averages 0.31 across the site. At the rear property line at Upper Depew, the foot candles lumens are 0.0.

A Stormwater Pollution Prevention Plan (SWPPP) dated 4/2022 has been submitted by JMC, Applicant's Engineering consultant. The SWPPP demonstrates compliance with all applicable stormwater management requirements including no net increase in peak rate of discharge from the site. Village Engineer will review the SWPPP and provide a letter of recommendation to the Building Inspector/SWO prior to approving the SWPPP and issuing any Certificate of Occupancy.

II. Approved Plans:

The following civil plans were prepared for Kai Restaurant Group by JMC Site Planner, Civil Engineer, and landscape Architect and Surveyor, entitled "Proposed Taco Bell Restaurant, 27 Route 59, Village of Nyack, New York", dated January 28, 2022, and last revised May 20, 2022, unless otherwise noted and are part of the approved plans: The architectural plans were prepared

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for Taco Bell by Zelda Design entitled "Taco Bell, Endeavor 2.0, 27 NY-59, Nyack, New York 10960", dated 9/14/21.

Civil Drawings

C-000	"Cover Sheet"
C-010	"Existing Condition Plan"
C-020	"Site Demolition and Tree Removal Plans"
C-100	"Site Layout Plan" dated 12/28/21 and last revised 6/30/22
C-110	"Fire Apparatus Turning Analysis" dated 5/12/22
C-120	"Refuse Vehicle Turning Analysis" dated 5/12/22
C-130	"Delivery Vehicle Turning Analysis" dated 5/12/22
C-200	"Site Grading Plans"
C-300	"Site Utilities Plans"
C-400	"Site Erosion and Sediment Control Plan"
C-900	"Construction Details"
C-901	"Construction Details"
C-902	"Construction Details"
C-903	"Construction Details"
C-904	"Construction Details"
C-905	"Construction Details" dated 4/20/22 and revised 5/20/22
L-100	"Site Landscaping Plan" dated 4/20/22 and revised 5/20/22

Architectural Drawings

A 2.0	"Equipment & Seating Plan – First Floor"
A 4.0	"Exterior Elevation"
A 4.1	"Exterior Elevation – Continued"

Stormwater Pollution Prevention Plan (SWPPP) prepared by JMC dated 4/2022.

(the "Approved Plans")

NOW, THEREFORE, BE IT RESOLVED that the Site Plan and Special Permit application submitted by Kai Restaurant Group (Contract Vendee) for the redevelopment of the site for a new single-story, 2,240 sf fast-food restaurant (Taco Bell) with a drive-thru aisle and window in the Corridor Commercial (CC) zone located at 27 Route 59 as reflected on the set of approved plans listed above is hereby granted, subject to the following conditions:

- (a) The Applicant shall obtain all required state, county and local permits and approvals including any required permits from the NYS Department of Transportation.
- (b) The Applicant shall apply to the Rockland County Department of Health (RCDOH) for review of the stormwater management system for compliance with the County Mosquito Code. Applicant will also be required to obtain a

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permit from RCDOH for the kitchen on the premises.

- (c) The Applicant shall pay all outstanding consultant review fees in connection with Planning Board review of this application prior to the issuance of a building permit.
- (d) If the Applicant, during the course of construction, encounters such conditions as flood areas, underground water, soft or silty areas, improper drainage, insufficient sized piping or any other unusual circumstances or conditions that were not foreseen in the original planning, he shall report such conditions immediately to the Village Engineer. The developer may submit, if he so desires, his recommendations as to the special treatment to be given to alternate solutions to secure adequate, permanent, and satisfactory construction. The Village Engineer, without unnecessary delay, shall investigate the condition or conditions, and shall either approve the Applicant's recommendations to correct the conditions, order a modification thereof, or issue her own specifications for the correction of the conditions.
- (e) The applicant will provide a final set of completed, revised plans for the signing of the approved set of plans by the Chairman of the Planning Board.
- (f) Prior to the start of construction or grading, all soil and erosion control measures must be in place for the site. These measures must meet the latest edition (November 2016) of the New York State Standards for Urban Erosion and Sediment Control.
- (g) Prior to the issuance of a building permit, a *Construction, Maintenance and Inspection Agreement* for the stormwater management facilities related to the redevelopment of the of the site for a new single-story, 2,240 sf fast-food restaurant (Taco Bell) with a drive-thru aisle and window, in a form satisfactory to the Village Engineer and Village Attorney, shall be fully executed and submitted to the Building Department with proof that the Agreement has been submitted for recording in the Rockland County Clerk's Office.
- (h) Prior to the issuance of any certificate of occupancy, the Applicant shall submit to the Building Department a copy of the fully executed *Stormwater Management Agreement* with proof of its recording in the Rockland County Clerk's Office.
- (i) As described in the approved Site *Landscaping Plan* (L-100) last revised May 20, 2022, and prepared by JMC, all landscaping shall be installed in a healthy growing condition throughout the duration of the Project. Any planting not so maintained shall be replaced with new plants at the beginning of the next immediately following Planting Season at the owner's expense. Landscaping shall be maintained for the life of the facility.

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- (j) As described in the approved Site *Landscaping Plan* (L-100) last revised May 20, 2022, and prepared by JMC, all landscaping shall be installed in a healthy growing condition throughout the duration of the Project. Any planting not so maintained shall be replaced with new plants at the beginning of the next immediately following Planting Season at the owner's expense. Landscaping shall be maintained for the life of the facility.
- (k) Note # 4 has been added to the approved *Site Utilities Plan* (C-300) last revised May 20, 2022, and prepared by JMC, that the Town of Orangetown Sewer Inspector shall be notified at least 48 hours in advance of any and all construction on or near any existing and/or proposed sanitary sewer facilities.
- (l) Retaining walls that are over four (4) feet in vertical height shall be designed by a licensed New York State Professional Engineer and be in compliance with the NYS Fire Prevention and Building Code. Design plans shall be signed and sealed by the licensed NYS Professional Engineer and submitted to the Building Department. .

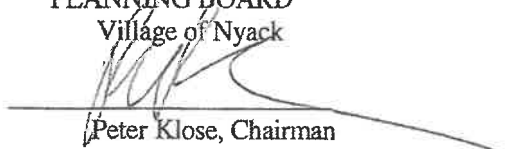
NOW BE IT FURTHER RESOLVED that the recommendations of the Rockland County Planning Department set forth in the General Municipal Law Review letter dated April 19, 2022, have been accepted by the Planning Board. Applicant has provided final revised site plans listed in Section II ("*Approved Plans*") of this resolution responsive to these comments. The Planning Board has determined that the revised application, submitted documents, JMC's *Comment Response Letters dated April 20, 2022, May 20, 2022, and Jun 30, 2022* and Applicant's set of approved plans have satisfied the items specified in the Rockland County Planning Department April 19, 2022, GML letter.

VOTE:

Ayes: 5

Nays: 0

PLANNING BOARD
Village of Nyack


Peter Klose, Chairman

Date: July 11, 2022