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MEMORANDUM

July 18, 2020

To: Madison Borough Zoning Board of Adjustment

From: Russell Stern, AICP, PP, LLA  
Consulting Planner

Re: Carrols, LLC/Burger King - Application No. Z 20-009  
**Review #1**  
“D3” and “C” Variances and Preliminary and Final Site Plan  
317 Main Street  
Block 5101, Lot 33

This office is in receipt of application documents, including but not limited to the following:

Prepared by Dynamic Engineering - dated 4/16/20, revised 6/10/20

- Sheet 1, Cover Sheet
- Sheet 2, Aerial Map
- Sheet 3, Demolition Plan
- Sheet 4, Site Plan
- Sheet 5, Grading Plan
- Sheet 6, Landscape Plan
- Sheet 7, Lighting Plan
- Sheet 8, Soil Erosion & Sediment Control Plan
- Sheets 9 to 12, Construction Details

Prepared by Dynamic Traffic - dated 4/17/20

- Circulation and Parking Assessment

Prepared by Lauer-Manguso & Associates – dated 3/4/20, revised 4/21/20

- Sheet A-1, Floor Plan and Misc. Details
- Sheet A-3.1, Exterior Elevations
- Sheet A-3.2, Exterior Elevations
- Sheet ID-1, Interior Plan

Prepared by Federal Heath – dated 6/8/20

- Sheets S-1 to S-5, Sign Details

The subject property encompasses 24,691 square feet located in the CC Community Commercial Zone on the south side of Main Street. It is developed with a 1-story 3,601 square feet Burger King restaurant and a single lane drive-thru. Thirty-nine parking spaces serve the building, including two handicap stalls. Total impervious coverage is 70.4% (70% permitted) and floor area ratio 0.15 (0.25 permitted).

Nonconformities on the site include, but are not limited to the following:

- Front yard setback (15' permitted, 11' existing)
- Parking in the front yard (partial handicap parking stall)

- Side yard parking setback (5 feet permitted, 2.1' existing)
- Impervious coverage (70% permitted, 70.4% existing)
- Minimum gross floor area (5,000 SF required, 3,601 SF existing)
- Drive-through window setback from road right-of-way (50' required, 45.4' existing)
- Drive-through speaker setback from residential zone
- Monument and directional signs
- Mansard roof illumination
- Distance between driveways (100' required, 84.7' existing)
- Height of freestanding lights (15 feet permitted, 22 feet existing)
- Maximum illumination at the property line
- Trash enclosure setback to side yard
- Curb cuts exceed a 15' width
- Minimum landscape buffer (5' required, 0.8' existing)

Adjoining land located east and west of the subject property is similarly zone CC Community Commercial. Land to the east is developed with Mavis Discount Tire and to the west is a retail development containing Starbucks and Madison Eyes. Adjacent land to the south is zoned R-3 Single Family Residential which is developed with single family dwellings. Situated across Main Street to the north is the R-6 Single Family Attached/Patio Homes Zone and is developed with a townhouse complex known as Rosewood at Madison.

The Applicant requests approvals for “D3” variances (deviating from a conditional use standard), “c” variances, design waivers and simultaneous preliminary and final site plan. The proposal seeks to remove 39 square feet of the existing building and construct a 33 square feet addition and replace the existing single order board drive-thru layout with a dual order board drive-thru configuration. Building size will be reduced from 3,601 square feet to 3,595 square feet. Parking will be reduced from 39 spaces to 37. The current circulation pattern with one ingress only driveway and one egress only driveway will be maintained. Impervious coverage will be increased from 70.4% to 71.8% (70% permitted). The existing floor area ratio of 0.15 is slightly reduced by 6 square feet (0.25 permitted). The proposal also includes exterior façade and interior renovations, building and monument signs, directional signs, paving, lighting and additional landscaping

The application is before the Zoning Board as “D3” variances are required for deviating from a conditional use standard associated with drive-thru restaurants in the CC District. More specifically, a deviation is requested from the standard that no transaction window or speaker system shall be located closer than 60 feet to any property line or residential zone. The existing setback of 54 feet will be reduced to 42.4 feet by the new drive-thru system. “D3” variance relief is also needed for façade and monument signs.

In the Board’s deliberation of this application, they should keep in mind the purpose of the CC Community Commercial Zone regulations:

*The purpose of this zone is to provide community commercial uses which will primarily serve the residents of the Borough. This zone is not intended for the development of large, regional retail uses. The development of small-scale office buildings and multifamily housing are permitted uses which complement the community retail uses. The standards of this zone are intended to create a visually pleasing streetscape which establishes a positive aesthetic relationship between the public spaces (e.g., roads and sidewalks) and the building facades and layout of the sites. (emphasis added)*

Principal permitted uses in the CC Community Commercial Zone include:

- 1) Retail sales and service.
- 2) Business, medical, professional, executive or administrative offices.
- 3) Restaurants, non-drive-through.
- 4) Institutional uses.
- 5) Theaters.
- 6) Apartments over retail and/or office uses (subject to Section 195-32.5F).
- 7) Financial institutions, non-drive-up window.
- 8) Any use permitted in any residential zone.
- 9) Funeral homes.
- 10) Recreational facilities, commercial or private.

Conditional permitted uses include:

- 1) Assisted-living residences.
- 2) Long-term care facilities.
- 3) Restaurants, drive-through
- 4) Gasoline service stations.
- 5) Financial institutions, with drive-up window.
- 6) Public garages.
- 7) Outdoor dining.

This review may be supplemented and revised based upon testimony, additional documentation and submission of a Professional Planner's Report.

Comments are as follows:

## **1.0 GENERAL**

1.1 An overview of the application should be presented in testimony.

1.2 The new speaker system for the drive through should comply with the Borough noise ordinances.

1.3 Litter on the property should be removed on a daily basis. As noted in the April 7, 1998 Planning Board Resolution, "*The applicant shall prepare and submit a litter management plan and will implement and enforce said plan on a regular and reasonable basis.*"

1.4 In accordance with the conditional use requirement of Section 195-33(5)(j), trash receptacles of an attractive design, without any advertising or branding, shall be provided along pedestrian walkways and at points of egress from the site. Existing trash receptacles should be replaced with contemporary receptacles. Details should be provided.

1.5 Testimony should address whether the existing overhead utility lines servicing the building will be retained. Section 195-24.9B, requires underground utilities for all new developments.

1.6 Existing freestanding lights are noted at a height of 22 feet. The Applicant proposes to replace the fixtures with LED heads and retain the 22 feet height. Conformance to the conditional use standards of Section 195-33(5)(n), which limits the fixture height to 15 feet should be addressed.

It should be noted that the general lighting regulations allow a pole height of 20 feet (base plus pole).

1.7 On Sheet 4, general note 8N should be revised to state that the light fixture height (pole plus base) shall not exceed 15 feet (20' height is noted on the drawing).

1.8 The lighting plan should note that only downward-facing fixtures are permitted and timers shall be required to turn off all non-security lighting after business closing.

1.9 Waiver - A waiver is necessary from Section 195-25.6(2)(a), as illumination at the property lines exceeds 0.1 foot-candles.

1.10 The architectural building elevations depict three (3) wall mounted lights which should be included on the engineer's Lighting Plan along with foot-candle distribution and details.

1.11 Light fixture and pole color should match.

1.12 Damaged light poles should be repaired/painted and/or replaced.

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1.13 The bicycle rack detail and traffic/handicap sign posts should specify a black color finish.

1.14 Under the "Schedule of Zoning Requirements," Sheet 4, the last line of the table should be noted as a "Maximum Building Footprint" of 5,000 SF. No variance is required as the proposal is for a 3,595 SF building footprint.

1.15 Ownership and maintenance responsibilities for the rear fence should be addressed as the fence crosses from the applicant's property into adjoining lots. Is the fence accurately located? It is identified as stockade while a white PVC board fence currently exists.

1.16 The white PVC board fence should be cleaned.

1.17 The existing retaining wall should be repaired/replaced at the direction of the Borough Engineer.

1.18 Six (6) yellow painted steel bollards are proposed along the westerly building sidewalk. These should be replaced with decorative bollards. Details should be provided.

1.19 A favorable Resolution should note that signage mounted on bollards is prohibited.

1.20 As applicable, the payment of an affordable housing development fee shall be required in accordance with Section 195-46 and other ordinances, if the application receives approval.

## **2.0 ARCHITECTURE**

2.1 Architectural testimony should address the proposed improvements to the building's interior and exterior. Please include general exterior building materials, colors, lighting, etc.

2.2 Testimony should address the screening of rooftop mechanical equipment.

2.3 Testimony should address any proposal for building illumination.

2.4 Testimony should address the proposal for an illuminated red light band along the top of the front and side (east and west) parapet walls.

2.5 The application proposes the removal of the westerly side building door, which conveniently services the patrons from the parking lot. The only public access points into the building are now along the Main Street façade. Without the benefit of testimony, this office recommends a side entrance for the patron's ease of access.

2.6 In accordance with conditional use requirement of Section 195-33(5)(l), testimony and a favorable Resolution should address provisions for odor reduction devices to minimize the effect of odor production from cooking and frying activities. The Applicant shall demonstrate that proposed techniques shall keep the odors on site, to the maximum extent feasible.

### **3.0 CIRCULATION AND PARKING**

3.1 Testimony should address the adequacy of the site to accommodate parking demand (39 spaces existing, 29 required, 37 proposed). The application proposes the removal of two parking spaces. Can additional spaces be eliminated to reduce impervious coverage?

3.2 The proposed number of seats should be confirmed. Sheet ID-1 graphically depicts 55 seats while Sheet 4 identifies 72 seats. The larger number was utilized in the parking calculation.

3.3 Testimony should be provided to address conditional use standard Section 195-33(5)(h), which requires that stacked vehicles for the drive-through windows shall not interfere with general circulation and parking or pedestrian circulation on the site.

3.4 Waiver – Sheet 4 notes that relief is necessary from Section 195-25.15G, which requires a minimum 18 feet wide traffic aisle accessing the 60 degree parking spaces on the east side of the property. Aisle width is dimensioned as 15.8 feet. Testimony should address if this is a pre-existing condition.

3.5 The “No Left Turn” restriction, as noted in the April 7, 1998 Planning Board Resolution should be maintained. Title 39 enforcement by the Borough should be confirmed.

3.6 The existing “No Left Turn” signs located at the exit drive should be depicted on the Site Plan (Sheet 4).

3.7 A “Stop” sign should be posted at the exit onto Main Street.

3.8 Currently, in front of the building are two sidewalks that run parallel to the façade (one along the building and the other within the Main Street right-of-way). The application now proposes three sidewalks which will be separated from one another by 4 to 5 feet. The site plan should be redesigned to eliminate one of the sidewalks, reduce impervious coverage and increase landscaping. This may mean relocating the handicap parking stalls across from a new side building entrance.

3.9 Cracked and damaged curb, sidewalk and concrete aprons should be repaired and/or replaced at the direction of the Borough Engineer.

3.10 Hairpin parking stall striping should be provided as required per Section 195-25.15F

3.11 Sheet 4 notes the replacement of all existing Belgium block curb with concrete. Section 195-25.15M(5) requires Belgium block curb. From an aesthetic perspective, Belgium block curb is preferred.

#### 4.0 “D3” CONDITIONAL USE VARIANCES

4.1 A request for variance relief from the conditional use standards for a restaurant with drive-through windows (Section 195-33(5)) are governed by N.J.S.A. 40:55D-70(d)(3). As a consequence, 5 affirmative votes are necessary in order to grant these variances. The positive criteria requirement for (d) variances is a showing of “special reasons.” As in the case of both (c) and (d) variances, the applicant must also satisfy the statutory negative criteria, which requires a determination that approval of the variances will not result in substantial detriment to the public good or substantial impairment of the Master Plan or Zoning Ordinance.

The specific legal analysis applicable to conditional use variances was articulated by the New Jersey Supreme Court in Coventry Square, Inc. v. Westwood Zoning Board of Adjustment. This decision addresses both the special reasons and negative criteria requirements for conditional use variances.

Under the Coventry Square decision, the focus is not on the use itself (restaurant with drive-through windows) since it has been legislatively determined to be permitted subject to the conditional use regulations. Instead, the variance analysis is confined to reconciling the specific departures from the conditional use standards and evaluating the significance of those deviations in the context of the specific development proposal, the site and surrounding land uses. Thus, the Coventry Square decision directs the Board to focus on the impact of the specific conditions not being met and the overall purpose of the regulations governing the particular conditional use. In other words, can the site accommodate the problems caused by the deviation from the conditional use standards?

4.2 “D3” Variance - A ‘d3’ variance is necessary from Section 195-33(5)(c), which prohibits a transaction window or speaker system located closer than 60 feet to any property line of any residential use or any residential zone line. By the addition of the second order board, the existing nonconforming setback of 54 feet will be reduced to 42.2 feet.

In evaluating the variance, the Board should review the effectiveness of the existing fence, existing/proposed landscaping and grade change to minimize impact to the adjoining residential district.

4.3 “D3” Variance - A ‘d3’ variance is necessary from Section 195-33(5)(m), which limits drive-through restaurant signage to one non-internally illuminated building sign not exceeding 30 square feet and one non-internally illuminated monument sign, not exceeding six feet in height (including base plus sign area) and 20 square feet in area.

The Applicant is proposing four (4) internally building mounted signs, with a combined area exceeding 30 square feet, and an internally illuminated eight (8) feet high monument sign encompassing 19.6 square feet (excluding base) and two (2) freestanding message board signs.

This conditional use variance should be considered comprehensively with the entire sign proposal, building/canopy setback, architecture (illuminated red light band along parapet), lighting, landscaping and prior sign 1998 variance approval (no building signs approved).

## 5.0 “C” VARIANCES

5.1 Pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-70C, criteria is established for the granting of “C1” (hardship) and “C-2” (flexible “C”) variances. As a “C1” variance the applicant must show that (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of the zoning code would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the developer.

As a “C2” variance, it must be shown that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriments.

For both a “C1” and “C2” variance, the Applicant must further show how the variance can be granted without a substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

5.2 “C” Variance – A “C” variance is necessary from Section 195-29.3, Schedule I, which requires a minimum front yard setback of 15 feet. The Applicant proposes to remove the existing overhang which has an 11feet setback and put up metal canopies along a portion of front elevation that will provide a setback of 11.4 feet. In hearing this variance, the Board should be aware that one of the metal canopies has an approximate 13 feet setback and is proposed with a 22’-5” long by 14” high “Home of the Whopper” sign mounted on top of it. Such roof signage is prohibited – see item 6.6 below).

5.3 “C” Variance – A “C” variance is necessary from Section 195-29.3, Schedule I, which permits a maximum impervious coverage of 70%. The Applicant proposes an increase of impervious coverage from 70.4% (17,386 SF) to 71.5% (17,717 SF).

5.4 “C” Variance – A “C” variance is necessary from Section 195-32.5E(5)(b), which prohibits flat roofs. The existing roof has a slight mansard design so the proposed modification will require a variance.

## 6.0 SIGNAGE

6.1 Testimony should be provided to address the signage proposal.

6.2 Scaled, dimensioned and color details of all proposed signs should be provided. This includes and is not limited to, wall signs, roof sign, monument sign, directional signs, menu boards, order confirmation and clearance bars.

6.3 As noted under item 4.3 of this review, a “D3” variance is necessary from Section 195-33(5)(m), for the proposed drive-through restaurant signage. The multiple variances for wall signs, monument sign, menu boards and directional signs should be considered comprehensively taking into account the entire sign proposal, front building/canopy setback, architecture (illuminated red light band), lighting, landscaping and prior sign variance approval.

On July 7, 1998 the Planning Board approved a Resolution of Memorialization for the Burger King property. Testimony by the applicant’s planner noted that the proposed freestanding sign

(sand blasted wood) was a substantial improvement over the existing “plastic” freestanding Burger King sign. He also reminded the Board that the applicant had removed the Burger King sign from the front façade of the building. That approval ultimately led to no façade signs and the current sand blasted freestanding sign.

It should be noted that the 1998 approval granted an 8 feet sign setback from the road right-of-way, whereas a 10 feet setback was and is currently required. The existing sign is located at a 2 feet setback and the applicant seeks to retain it with the new sign. An additional variance will be required for this setback.

The new proposal includes:

- Replacing the existing freestanding sign made of sand blasted wood, illuminated by ground mounted floodlights, with an internally illuminated monument sign.
- Three “Burger King” logo façade signs
- One “Home of the Whopper” canopy roof sign
- Two menu board signs
- Two illuminated directional signs

Without the benefit of testimony, this office is of the professional opinion that the sign proposal is excessive and should be reduced.

6.4 In addition to the above “D3” sign variance, the following “C” variance sign relief is needed:

- 1) Section 195-34E(3) – The 22’-5” long by 14” high “Home of the Whopper” sign located on the canopy roof is a prohibited roof sign. The sign is located approximately 13 feet from the road right-of-way
- 2) Section 195-34E(17) – Illumination of the facade/parapet wall elements. A similar feature associated with the current mansard roof was allowed in the July 7, 1998 Planning Board Resolution.
- 3) Section 195-34I, Schedule IV, 195 Attachment 12 Sign Regulations:
  - a. Building signs are only permitted on a façade that front a public right-of-way, public parking lot or an alleyway for which public access is permitted. A façade sign is proposed on each of the side building elevations.
  - b. Menu boards associated with eating establishments shall be calculated as part of building signs, shall not be illuminated and shall not exceed 1.5 square feet in size or the same as the establishment’s menu, whichever is smaller. The two menu board signs exceed the permitted area of façade signs.
  - c. Internally illuminated building signs shall be calculated as 1.5 times their actual area. Permitted façade sign area (including menu boards), for the six (6) internally illuminated signs has been calculated on Sheet 4 at 194 square feet. The conditional use standards allow only one non-internally illuminated building sign not to exceed an area of 30 square feet.
  - d. For the monument sign the CC District requires a minimum 10 feet setback from the road right-of-way. The 1998 approval granted an 8 feet setback, but the sign exits at a 2 feet setback. The application proposes a 2 feet setback.
  - e. Internal illumination of the monument sign is prohibited.
  - f. Directional signs are permitted up to 2 square feet in area and a height of 2 feet. Illumination is prohibited and the signs must be setback a minimum 7.5 feet from the road right-of-way. The proposed signs exceed 2 square feet and have a height of 3.5 feet. The setback of the “Enter” sign is 0.3’ and the “Exit” sign 5.1 feet.

6.5 The “Clearance Bar Detail” on Sheet 12 should remove the Burger King logo along with the text, “The Easiest Game of Limbo Ever.”

6.6 On Sheet 12, both the “Clearance Bar Detail” and the “Order Confirmation Unit Detail” have clearance bars. Are both necessary?

6.7 Directional signs should be further detailed. Lettering as depicted on the detail graphically extends beyond the sign perimeter (Sheet 10). Identify all colors.

## **7.0 LANDSCAPING**

7.1 As noted by Mr. Russo in his July 7, 2020 Technical Review #2, the existing Threadleaf Japanese Red Maple will be removed to enhance visibility of the proposed monument sign. The plant should be relocated on-site. Preferably in front of the building if one of the three parallel sidewalks can be eliminated (item 3.8).

7.2 The applicant may wish to consider incorporating additional existing plants that are in good condition into the new landscape plan.

7.3 Existing street trees along Main Street should be depicted on the landscape plan.

7.4 Street trees along Main Street should be provided as directed by the Shade Tree Commission.

7.5 The existing evergreen tree by the northeasterly property corner should be noted “To Remain.” It is incorrectly identified as a pine tree. An adjacent street tree should also be located on the site plan.

7.6 Infill landscaping should be provided along the westerly property line and by the northeasterly property corner.

7.7 “TPG” are proposed between a Euonymus hedge and the rear PVC fence and 5 “JSB” and 3 “JSM” by the easterly rear fence. Shade tolerant plants should be specified.

7.8 Ivory Silk Japanese Tree Lilac should also be specified at a minimum 2” caliper.

7.9 The existing irrigation system should be functioning and modified for the new landscape plan. Existing irrigation lines should be buried.

7.10 All planting beds should be weeded and mulched.

7.11 As a continuation of the April 7, 1998 Resolution, the applicant shall be responsible to maintain the site landscaping.

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