

**BOROUGH OF MIDLAND PARK
COUNTY OF BERGEN
PLANNING BOARD**

**RESOLUTION GRANTING SITE PLAN AND VARIANCE APPROVAL FOR
PREMISES KNOWN AS BLOCK 20.10, LOT 5.01,
KNOWN AS 195 GODWIN AVENUE, BOROUGH OF MIDLAND PARK
COUNTY OF BERGEN, STATE OF NEW JERSEY**

WHEREAS, an application has been submitted to the Borough of Midland Park Planning Board by ABDD V, LLC for site plan and variance approval for the premises known as Block 20.01, Lot 5.01 on the current tax assessment map of the Borough of Midland Park; and

WHEREAS, public hearings of the Planning Board was held on November 15, 2021, December 20, 2021 and January 24, 2021 (in which due notice was given) and during which the Planning Board heard testimony by the Applicant and its consultants, representatives, and experts, and the Planning Board reviewed and considered all correspondence, maps, plats, reports and public input, if any, on the application, as well as a presentation by the Applicant's attorney, Craig Feldman, Esq., together with all exhibits submitted as evidence; and

WHEREAS, along with the application, the Applicant submitted a set of engineering plans prepared by Dynamic Engineering dated August 20, 2021, with a final revision date of January 10, 2022, consisting of 18 pages ("Plans"); and

WHEREAS, along with the application, the Applicant submitted a set of architectural plans prepared by GK & A Architects, PC dated August 26, 2021, with a final revision date of December 9, 2021; and

WHEREAS, during the public hearing the following was introduced by the Applicant as exhibits:

A1 – Site Plan Rendering, Colorized, dated 11/15/21. Prepared by Joshua Sewald, Dynamic Engineering, 1 sheet.

A2 – Boundary and Topographic Survey – Existing Conditions, rev 2/9/21. Prepared by Craig Black, Dynamic Survey, 1 sheet.

A3 – Proposed Plans - architectural, dated 8/26/21. Prepared by Cynthia Falls, GK+A Architects, 6 sheets.

A4 – Rendered Elevations, Colorized, dated 8/26/21. Prepared by Cynthia Falls, GK+A Architects, 1 sheet.

A5 – Rendered Elevations – signage and photos of similar existing sites, dated 7/13/21. Prepared by Cynthia Falls, GK+A Architects, 1 sheet.

A6 – Site Plan Exhibit, dated 12/3/21. Prepared by Joshua Sewald, Dynamic Engineering, 1 sheet

A7 – Grading Plan Exhibit, dated 12/10/21. Prepared by Joshua Sewald, Dynamic Engineering, 1 sheet.

A8 - Proposed Plan - architectural, rev 12/9/21. Prepared by Cynthia Falls, GK+A Architects, 1 sheet.

A9 - Rendered Elevations, Colorized, rev 12/9/21. Prepared by Cynthia Falls, GK+A Architects, 1 sheet.

A10 – Traffic Impact Study, rev 4/5/21. Prepared by Craig Peregoy, Dynamic Traffic.

A11 – Planning Exhibit, dated 5/10/21. Prepared by John McDonough, John McDonough Associates, 9 sheets.

A12 – Site Plan Rendering, dated 1/24/22. Prepared by Joshua Sewald, Dynamic Engineering, 1 sheet; and

WHEREAS, the submissions by Applicant have been reviewed by the Planning Board engineers, LAN Associates, Inc., and their comments and recommendations are set forth in their letters to the Planning Board dated October 6, 2021, November 11, 2021, December 15, 2021, and January 21, 2022; and

WHEREAS, the submissions and the testimony by the Applicant have been reviewed by the Planning Board traffic professional, HyeCraft LLC and their comments are set forth in a report dated January 21, 2022; and

WHEREAS, the Planning Board also considered the following documents:

1. Inter-office memo from the Midland Park Fire Prevention Official which is dated November 2, 2021;
2. Inter-office memo from the Midland Park Traffic Officer which is dated as received on November 1, 2021;
3. Inter-Office memo from Midland Park Fire Chief;
4. Inter-Office memo from the Superintendent of Public Works; and

WHEREAS, the Applicant requests the following variance and design waiver relief:

Variances

Section 34-16.2 – Parking prohibited in required front yard. Part of two parking stalls encroach into the front yard.

Section 34-16.2 – Off-Street Parking prohibited within 6 feet of side and/or rear yard. Six stalls are proposed within 2 feet 6 inches of the north side yard entry.

Section 34-15.1 – 10-Foot planted buffer zone required alongside and rear yard. Side yard adjacent to church property is 4.0 feet. Rear yard is 10.8 feet.

Section 34-15.2(c) - Prohibits parking or access aisle located in buffer zone. Proposed bypass aisle encroaches into required buffer zone.

Section 34-13.13A - Requires drive-through and outdoor ordering location to be located a minimum of 75 feet from any residential zone. Proposed ordering location is approximately 51 ½ feet from rear residential property line.

Section 34-17.8(c) - Only one freestanding sign permitted. Five freestanding signs proposed.

Section 34-17.8(c) - Limits freestanding signs to be 12 square feet. Two of proposed freestanding signs exceed 12 square feet.

Maximum improved lot coverage permitted is 75 percent. Proposed improved lot coverage is 76.2 percent.

Parking – 18 parking spaces required; 14 spaces are provided. Note that two of the parking spaces provided are "employee only" and may be blocked by the drive-through aisle.

Design Waivers

Section 32-6.2(b)(3) – Parking prohibited in buffer zones. Proposed parking in buffer zones.

Section 32-6.2(h)(3) - Requires off-street parking to have a planted buffer of at least 5 feet in width around parking area. Required buffer not provided at portions of parking area perimeter.

Section 32-6.5(f) – Minimum lighting intensity of 1.5 fc for commercial parking areas. There are some areas of the parking area with lighting levels below 1.5 fc.

Section 32-6.2(e)(4) – Driveways must be 50 feet from another driveway on the same site. The two proposed driveways are closer than 50 feet; and

WHEREAS, at the November, 2021 hearing, David Becker, Esq. advised that Board that he represents Patricia Ennis, the owner of 102 Van Blarcom Ave., which property is immediately adjacent to the rear property line of the Applicant's property. Mr. Becker advised the Board that his client has reached agreement with the Applicant, which agreement was contained in correspondence which was introduced as Exhibit E-1, and as such his client did not object to the application; and

WHEREAS, the Applicant's attorney, Craig Feldman, Esq., confirmed that the agreement has been reached; and

WHEREAS, The Planning Board heard testimony from the Applicant's representatives as follows:

Jeffrey Stewart testified that he is the executive vice president of operations for the Applicant. The Applicant is a franchisee of Dunkin', Baskin-Robbins and Taco Bell. The Applicant owns

62 Dunkin' locations, 9 of which are in Bergen County. He is responsible for all operational aspects of the locations, including employees, products, planning and development.

Approximately 60 percent of sales consist of beverages. All sandwiches and other heated items are heated on site in a convection oven, and there is no food preparation other than heating.

This location is proposed to be a Dunkin' only with no Baskin-Robbins operation. The peak hours of business are from 7:00 a.m. to 11:00 a.m., and during the peak hours he estimates 60 percent of the business is drive through. The proposed operations includes a standard drive through lane with an ordering location and separate payment and pick-up windows. The operation also proposes a mobile app lane which allows customers to order and pay in advance from their phone, which allows the customer to skip the ordering and payment windows and drive directly to the pick-up window. This mobile app lane merges with the standard ordering lane as shown on the plans for pick-up. Currently, approximately 20 percent of customers use the mobile app, but he expects that to increase. In the drive through lane, the time to service a customer is 150 seconds from the time that the order is placed to pick up. The process for the mobile app lane customers is approximately 30 seconds, as they go directly to the second window and bypass the ordering window.

The number of employees onsite varies. Typically, there are two employees on to open in the morning with seven total employees present during the peak hours. During other hours the number of employees varies between with only two employees present at closing time. There is one daily delivery of donut product which occurs before the opening. The delivery vehicle is a box truck and this delivery only takes a few minutes. There may be up to two other deliveries of supplies a week which is also done with a small box truck. These deliveries occur during off-peak hours.

Trash is picked up by a private hauler two to three times a week and one for recycling pick up. These pick-ups are also scheduled during off-peak hours.

The initial plan provided for 12 parking spaces (which was later increased by the 2 employee-only parking spaces). It is his opinion that the number of parking spaces is sufficient for the operations. There are only eight seats in the restaurant and one interior ordering station. The trend in the industry is for drive through ordering and pick up. In addition, he finds that a significant number of his employees either take public transportation or carpool.

Joshua Sewald of Dynamic Engineering testified on behalf of the Applicant. The Board accepted Mr. Sewald as an expert in the field of engineering. At the November 2021 hearing, Mr. Sewald referenced Exhibit A-2, which is an existing conditions plan showing the site as it exists today. He described the existing restaurant building as being 2,534 square feet with 27 parking spaces. He noted that there were a number of existing non-conforming conditions on the site. The existing building is located almost right on the west property line immediately adjacent to the parking lot of the adjoining post office. There are virtually no buffer areas around the parking lot, which encompasses the remainder of the lot. The parking lot is immediately adjacent to the eastern property line, which is immediately adjacent to the parking lot of the church on the adjoining lot, and the rear property line which is on the boundary of the residential

zone. The impervious coverage on the lot as it exists is 78.8 percent, where the zoning ordinance permits a maximum of 75 percent. The configuration of the parking is such that it is a dead-end aisle, so vehicles accessing the rear must do a K-turn to leave the property or to find a parking space closer to the front, if necessary. There is a fairly significant change in grade in the parking area immediately adjacent to the church parking lot,

He then referenced Exhibit A-1, which is a colored rendering of the proposed site plan and improvements. He described the buffer areas with new plantings that were proposed. He described the site improvements as including a circular ingress and egress with nine foot by eighteen-foot parking spaces, with the parallel spaces measured at nine foot by twenty-four foot. Site lighting is proposed with 14-foot tall, shielded fixtures. Two drive-through lanes are proposed, one for the order window drive through and a second for the mobile app drive through. There is also a lane that will permit egress from the site from the parking area for those customers that are not using the drive through.

The Board questioned the size of the dumpsters and whether the dumpster area was of sufficient size. The Board also questioned whether an irrigation system is proposed and was advised by the Applicant that it was not. The Board expressed further concern about the length of the queue lanes and the maneuverability, given the width of the queue lanes. There were also questions concerning the details of the proposed retaining walls.

At the December 20, 2021, hearing, Mr. Sewald presented Exhibit A-6, which was the site plan with revisions based on the Board's prior comments. The overall size of the building has been reduced by 321 square feet to 1,852 square feet. In addition, the outdoor freezer has been brought inside of the building. Two parking spaces have been added, which will be for employee-only parking. These two spaces are located in the loading area. In addition, the trash area has been modified to provide two separate enclosures, for trash and for recycling. Because the size of the building was reduced, the drive-through lanes were modified, bringing the lanes closer to the building, which also allowed increased buffering around the property, particularly along the southern/rear property line immediately adjacent to a residential zone. The size of the retaining walls on the east property line have also been reduced as a result of these changes. The Applicant has also agreed to install irrigation for the landscaped areas.

The Board engineer suggested that with a higher wall to the south, a more significant and higher buffer planting could be provided. The queue length of the drive-through ordering lane is 195 feet from the first window to the end of the employee parking spaces. It is 165 feet from the first window to the start of the employee spaces. With either measurement, the length required by the Zoning Ordinance is met. These measurements do not include the additional length of the mobile app lane.

At the January 24, 2022, hearing, Mr. Sewald introduced Exhibit A-12, which is a colored rendering of a revised site plan. In response to suggestions by the Board, the width of the queue lanes for the two drive through lanes has been increased from 9 feet to 9¹/₂ feet to provide a better turning radius. The outside lane will stay at 9 feet wide. The retaining wall that was proposed along the north property line has been eliminated. and a grass area has been added to that area. The length of the retaining wall along the south property line has been reduced, and

the Applicant proposes to stabilize the slope with additional landscaping. The lighting plan has been modified to eliminate any variance requirement and is now fully compliant with the zoning ordinance. The proposed fences are 6 feet high with a 4-foot high fence on top of the retaining wall adjoining the church property. The length of the drive-through lane has not changed. The length of the mobile app drive-through lane is 120 feet. The combined length of the two drive-throughs is 315 feet of que lane. The total available queue area including drive aisle from the first window to Godwin Avenue is 390 feet. In response to a comment from a Board member, the forsythia bushes in front of the building can be moved back or a different reduced height planting can be substituted to eliminate any sight distance issues.

Cynthia Falls testified on behalf of the Applicant. Ms. Falls was accepted by the Board as an expert in the field of architecture. At the November 2022, meeting, Ms. Falls introduced Exhibit A-3 and described the proposed structure. The building's square footage is 2,008 square feet with a walk-in freezer located outside of the building. There are eight seats located inside the building. There are two registers inside the building with two drive-through windows plus the ordering station on the exterior. One drive-through window is for collecting payment and the second is for picking up the order. She noted that the air conditioning units would be located on the roof but would be hidden so that they are not visible from the street.

At the December 2022 meeting, Ms. Falls introduced revised plans marked as Exhibits A-8. She testified that the size of the building had been reduced to 1,852 square feet, which would reduce the number of parking spaces required. The walk-in refrigerator box is now located in the interior of the building. Previously, the building was to be 2,173 square feet plus the exterior box size. The seating is the same. The parapet has been raised 1 foot to further hide the air conditioning equipment. With respect to the freestanding signs the clearance bar sign is approximately 28 square feet, and the menu board, which is considered a sign, is approximately 20 square feet, both of which exceed the ordinance limitations. The remaining freestanding signs are all directional signs.

Craig Perego testified on behalf of the Applicant. The Board accepted him as an expert in traffic engineering. Mr. Perego appeared at the December 2021 meeting and the January 2022 meeting. At the December meeting, he introduced his traffic report which was marked as Exhibit A-10. He described his methodology in compiling the report. He noted the peak periods of this type of operation as being in the morning period being the most critical time and later in the afternoon. He advised the Board that he used traffic counts taken prior to the pandemic and then repeated the count during the pandemic to establish a base. He also reviewed the Institute of Traffic Engineers (ITE) traffic guides for coffee/donut shops with a drive-through. Most customers that will use the site will be pass-by customers, meaning these customers would be passing on the street normally and would not be making a special trip to visit this business and increasing the amount of traffic on Godwin Ave. In analyzing the volume of traffic and anticipated volume of traffic at the site, it is his opinion that the level of service on Godwin Ave acceptable and, as such, there are sufficient breaks in traffic to allow a left turn in and a left turn out. Notwithstanding, the Applicant is proposing a conservative approach by restricting left-hand turns out between the hours of 7:00 a.m. to 10:00 a.m. and 3:00 p.m. to 6:00 p.m.

In reviewing the parking requirements for the site, he testified that he had studied other Dunkin'

locations, and the levels of walk-in business require 6.32 spaces per 1,000 square feet, which would require 12 spaces at this site. The sites studied did not have mobile app ordering lanes which he anticipated would reduce the parking requirement. Using the ITE data for coffee shops is less, at six spaces per 1,000 square feet.

In analyzing the length of the que for the drive-throughs, he noted that the 60 percent level of customers using the drive-through included locations with Baskin Robbins. For locations without Baskin Robbins, as this location, the percentage is 70 to 75 percent. It is his opinion that the 9-foot aisle width is adequate but agreed that an increase to 9.5 feet would help the turning radius. He suggested that the outside aisle be left as 9 feet. He has conducted studies at drive-through que counts at 5 Dunkin' locations during the morning peak hour and found that the maximum average que length was eight cars. This site will allow for 14 cars in the que. Including the area from the end of the que to the street, the site would accommodate 23 cars, though he acknowledged that this would block parking spaces.

At the January meeting, he further explained the methodology for the traffic count on Godwin Ave. used to establish the estimated post-COVID traffic count. He analyzed previous counts at other locations and then took new counts to establish a percentage which was applied to this location. This was compared with the traffic counts taken for the CVS application before the Midland Park Planning Board, which counts were taken prior to the COVID pandemic. This analysis supports his conclusion that there is an adequate service level to allow the left turn in and the left turn out. With respect to the parking, he noted that the number of service stations had been reduced to three, one inside and the two exterior windows. This along with the reduction in the size of the building resulted in a reduction of the required parking spaces from 22 to 18. He noted that 14 are proposed. He acknowledged that two of his parking spaces were employee only and were located in front of the delivery area and within the proposed drive-through que; however, these parking spaces would alleviate the parking concern as they will provide spaces for employees who would not be going in and out while the drive through was busy and could be moved for deliveries. He had reviewed three other Dunkin' locations in the area and using the car counts at those areas confirmed that 12 spaces are needed at this location. This data was pre-COVID. He further noted that all three locations studied were highway locations with minimal foot traffic.

With respect to the que requirements of the drive-through lanes he confirmed that studies of the service time from the menu board to the pickup window shows the length of time to be 150 seconds. Dunkin' uses a 25-second time period for the pickup window, meaning that each car should move a car length every 25 seconds. Responding to a concern from a Board member that the left turns out process may delay a car from leaving the window, he noted that there were room for two vehicles after the window to the street and felt that the no-left-turn requirement during peak hours would eliminate this concern. He compared the Dunkin' service time with other fast-food restaurants and noted that Dunkin' is faster as the menu items are limited and beverages are a higher percentage than most other types, which is a faster process. In particular, he noted that Starbucks has a 50 percent higher service time than Dunkin' because of its specialty items. In response to an inquiry from a Board member, he noted that the Applicant would be willing to extend the no-left-turn prohibition hours, if necessary.

Matthew Flynn testified on behalf of the Applicant. Mr. Flynn was accepted as an expert in the field of planning. He referenced his report that was submitted and marked as Exhibit A-11. In evaluating whether the Applicant had met the standards for variance relief, it is his opinion that there is a significant improvement in the use and layout of the site. He noted that the current site has virtually no buffers and the existing building is located almost directly on the side property line. There is a benefit as the existing building coverage will decrease from 11.5 percent to 9.89 percent as there is a much smaller building proposed and the lot coverage is decreased from 78.8 percent to 72.2 percent [later amended to 76.2 percent]. There is extensive landscaping proposed which buffers the residence in the rear and the church parking lot to the east. Although there are variances required for buffers it represents a substantial increase over the existing buffers. He noted that the buffer requirement for part of the property to the east is based on residential, which is more than required for business use, but he further noted that the property to the east located in the residential zone is a church parking lot. Applying the C2 criteria of the Municipal Land Use Law, it is his opinion that as the site is proposed for a permitted use which is the same as the previous use and the site will be significantly improved with landscaping, drainage and traffic flow, and a reduction in the building and lot coverage, the benefits to the public outweigh any detriments.

WHEREAS, at the conclusion of each witness's testimony the public was given the opportunity to ask questions and was given the opportunity to make comments at the conclusion of the Applicant's presentation; and

WHEREAS, the Planning Board makes the following findings of fact/conclusions of law:

1. The property is located in the B-1 Business Retail Zone. Restaurants are permitted uses in this zone.
2. The property was previously operated as a Friendly's Restaurant for many years. It has been closed and the property has been vacant for a number of years.
3. The existing structure is located on the westerly property line immediately adjacent to the parking lot for the post office. The rear/south property line adjoins the residential zone and a residential use. The east side lot line is adjacent to the church parking lot. Part of the church parking lot is located in the residential zone while the front part of the parking lot is located in the B-1 zone.
4. There are virtually no buffers along the property lines.
5. The parking lot is a "dead-end" lot and the drive-aisle runs from Godwin Ave. to the south property line, with no turn around. Vehicles entering the site and looking for a space at the end of the aisle are required to make a K-turn if no spaces were available. It is also noted that there is a fairly significant slope in the parking lot along the east property line.
6. The Midland Park Zoning Ordinance requires a drive-thru que length of a minimum of 150 feet from the first service window. While the Board is aware that this ordinance was amended to provide for a 150-foot requirement to the first service location, which

would be the ordering board, this amendment was effective after the Applicant submitted this application and thus is not applicable to this application. In addition, the Board is also mindful that the ordinance has been further amended to prohibit drive-thru restaurants in the Borough, which amendment also was effective after this Applicant was filed.

7. The Applicant has provided two drive-through lanes. One is a standard ordering drive-thru and the second is a mobile app ordering drive-thru. The length of the proposed standard ordering drive-thru exceeds the requirement of the ordinance which was effective at the time of this application. The combination of the ordering drive-thru and the mobile drive-thru length significantly exceeds the requirement of the Zoning Ordinance. In addition, there is an additional 95 feet of access drive aisle from the end of the drive-thru que to the street. While this area is not part of the drive-thru que, and not considered as part of the que, it does provide an "overflow" area before the cars would protrude into the street. The Board is mindful of traffic difficulties experienced by the recent Starbucks site but finds that que length provided in this application is significantly longer than the Starbucks and provides an additional access aisle area that Starbucks does not have.

8. While the Board is concerned about potential backups created through the drive-thru aisles and the safety of left-hand turns out of the site during busy peak periods, the no left turn prohibition will act to reduce the safety concerns. However, the Board finds it is a necessary precaution that the Board have the authority to extend the times of the left turn out prohibition if necessary and the Applicant has agreed to that.

9. The parking requirement for the site according to the Midland Park Zoning Ordinance is 18 parking spaces. The Applicant has proposed 14 spaces, with two of the spaces designated as employee only. The two employee-only spaces are also part of the delivery area and directly behind the end of the drive-thru que. The Board finds the testimony of the Applicant's traffic expert to be credible in that studies taken at other Dunkin' locations indicate that the nature of the business and the emphasis on the drive-thru aspect reduce the parking requirements from that contained in the Midland Park Ordinance for restaurants.

10. With respect to the remaining bulk variances, the Board finds that the standards set in NJSA 40:55D-70c2 are met. The improvement of the property over the existing condition is significant. The size of the restaurant is significantly reduced from the existing building and moving the location of the building off of the property line eliminates existing non-conforming conditions. The landscaping that is proposed is significantly greater than exists at the site and provides a sufficient and desirable buffer between the residential zone and use to the rear and to the Church parking lot to the east. While the buffer to the east does not meet the requirements of the ordinance for buffering between a commercial use and a residential zone, the use of the property to the east is a church parking lot and not a residence. As a restaurant is a permitted use, the volume of the traffic created by the proposed use is not a consideration. However, the Board has considered the safety of the traffic ingress and egress to the site. The proposed circular ingress and egress represents an improvement of the current site access and circulation. The no left turn restriction will allow safe egress from the site with minimal impact on the traffic on Godwin Avenue. The overall improvement of the site cited above significantly outweighs any detriment created by these variance conditions.

11. The Board also acknowledges that the property owner immediately adjacent to the property to the rear, which is the residential lot most affected by this application, has reached agreement with the Applicant and does not object to the application.

WHEREAS, the Planning Board has considered the request by the Applicant for the variances and waivers set forth above. In considering the overall application to be in accordance with sound and proven zoning and planning principles, the Planning Board has determined that, based on the above-mentioned facts and the testimony of the witnesses, the requested variances can be granted without causing a substantial detriment to the public good, nor substantially impairing the intent and purpose of the Midland Park Zoning and Land Use Ordinance.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board that based upon the above findings of fact and conclusions of law that the application of ABDD V, LLC for preliminary and final site plan approval for those premises known as Block 20.10, Lot 5.01, 195 Godwin Ave., along with the waivers and variances set forth herein in accordance with the plans and exhibits is hereby granted; and

BE IT FURTHER RESOLVED that the approvals set forth above are subject to the following conditions:

1. That the granting of the application is subject to the approval of the Bergen County Planning Board.
2. All improvements will be constructed in accordance with the Plans. Notwithstanding, no approval granted herein shall be deemed to supersede any building code requirements.
3. The Applicant shall obtain and comply with any federal, state, county, and borough government rules, ordinances, or regulations with regard to the granting of the applications hereto, including the payment of all fees and escrows, established by the Borough for the review of the subject application.
4. To the extent not set forth above, the Applicant shall comply with any and all applicable requirements of the Federal Americans with Disabilities Act.
5. All lighting on the site shall be restricted to this site and shall not spill over on any other sites. The Applicant shall install shields, if required. The Board shall have a period of six months from the date that Applicant opens for business to review the lighting and require adjustments to prevent glare or spillage onto adjoining properties.
6. This approval is subject to all of the representations made by the Applicant and its experts.
7. The Applicant shall obtain and submit to the Planning Board a certification from the

Bergen County Soil Conservation District.

8. Applicant shall enter into a Developer's Agreement in a form to be prepared by the Planning Board or Borough Attorney and shall post of Performance Guaranty pursuant to Municipal Land Use Law in accordance with the engineer's estimate.
9. Compliance with all requirements in the correspondence from LAN Associates identified herein.
10. The Board acknowledges the agreement reached with the adjoining property owner as memorialized in Exhibit E-1 but, except to the extent that the terms are incorporated in the approved plans or the conditions of this resolution, the Board shall have no obligation of enforcement of such agreement.
11. The hours of operation shall be limited to 5 AM to 9 PM as represented by the Applicant.
12. A sprinkler system shall be installed for all landscaped areas.
13. The Borough and the Board shall have a period of six months from the date that Applicant opens for business to review the noise level of the speakers at the order station and require the equipment to be adjusted to reduce the level.
14. Left turns for vehicles exiting the property shall be prohibited from 7 AM to 10 AM and 3 PM to 6 PM and appropriate signage shall be posted. The Board shall have a period of one year from the date that Applicant opens for business to review the traffic congestion created by the left turn out from the property and require the hours such restriction is in effect to be amended.
15. The Board may require that Applicant install signage that there is no parking permitted on other properties in the area.
16. The Applicant will move or replace any plantings near the exit drive that would interfere with the sight line for vehicles subject to the approval of the Board engineer.
17. Snow shall be removed from the property to prevent snow from damaging fencing and buffer plantings.
18. The fence shall be white vinyl.
19. Three trees located along the rear property line shall be removed in accordance with the agreement with the neighbor as set forth in Exhibit E-1.

BE IT FURTHER RESOLVED that the Chairman and the Secretary of the Board are hereby authorized to affix their signatures to this resolution granting approval for preliminary and final site

plan and variances. The Secretary of the Board is hereby authorized to advertise the action taken by way of this resolution in the local newspaper and furthermore send certified copies of this resolution to the Borough tax assessor, construction code enforcement official, building sub-code official, zoning official, the borough attorney, and the Applicant's attorney.

Approved:
Planning Board of the Borough of Midland Park

JESSICA HARMON, *Secretary*

By: _____
KENT RIGG, *Chairman*

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