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June 29, 2022

Arthur Parrott, Chair
Zoning Board of Adjustment
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

RE: 531 Islington Street, Tax Map 157, Lot 5

Dear Chair Parrott and Board Members:

Enclosed please find supporting materials to accompany the information submitted via the City's on-line permitting system for variance relief regarding the proposed signage at the above referenced property.

We respectfully request that this matter be placed on the Board's July 19, 2022 agenda. In the meantime, if you have any questions or require additional information do not hesitate to contact me.

Very truly yours,
DONAHUE, TUCKER & CIANDELLA, PLLC

Sharon Cuddy Somers
SCS/sac
Enclosures

cc: 531 Islington Street Portsmouth, LLC

P:\SALEMA - Islington St 2022\ZBA Materials\Submission Materials\2022 06 28 zba letter.docx

DONAHUE, TUCKER & CIANDELLA, PLLC
16 Acadia Lane, P.O. Box 630, Exeter, NH 03833
111 Maplewood Avenue, Suite D, Portsmouth, NH 03801
Towle House, Unit 2, 164 NH Route 25, Meredith, NH 03253
83 Clinton Street, Concord, NH 03301

531 ISLINGTON STREET PORTSMOUTH, LLC
531 Islington Street

The Applicant requests variances from Article 8, Section 10.835.31 and Article 12, Section 10.1261.30 to erect an illuminated menu board and speaker tower to assist in ordering food and drink at the Dunkin Donuts location at 531 Islington Street. The property is depicted on Exhibit 1 and the proposed menu board and speaker tower are depicted on Exhibits 2 and 3.

INTRODUCTION

The property contains a "Dunkin Donuts" and has been in operation since approximately 1989. Like many, if not all Dunkin Donuts, the business contains a drive through service in which the customer orders food and drink from a menu board and speaker and then collects the selection from a drive-up window. (See Exhibits 9 & 10)

The business model for Dunkin Donuts requires that each franchisee operating a store must periodically update and renovate the store, both to keep up with current business objectives and to ensure that the appearance of the store is of the highest quality. One such renovation was scheduled to occur at the property this spring. However, upon submitting the permit applications, and upon review by the City, it was determined that the exterior renovations are now subject to Historic District Commission review as the property has been included in the Historic District since the last renovation. The Historic District Commission review of the renovation proposal is ongoing, however, the City determined that one of the signs, namely the menu board, requires variance relief because it has direct lighting which is not allowed in the Historic District.

In a similar fashion, the proposed speaker tower is now subject to Article 8 of the ordinance which regulates various aspects of drive through services, and which did not exist when the Dunkin Donuts first came into operation. Since it is a new speaker, it requires relief from the setback requirements to the lot lines.

Set forth below are the arguments which support why each of the variance criteria are met for both of the ordinance provisions, along with reference to relevant exhibits. Following your review of our submitted materials, we respectfully request that both variances be granted as presented.

Section I
Speaker Tower and Menu Board Setback
Variance from Article 8, Section 10.835.31

The applicant proposes to replace an existing speaker tower and menu board with a new speaker tower with canopy and menu board located 26+/- feet from the rear property line and 40+/- feet from the westerly side property line where 50 feet is required.

1. The variance will not be contrary to the public interest.

Granting the variance will not be contrary to the public interest. To be contrary to the public interest, the variance must unduly and to a marked degree violate the relevant ordinance's basic zoning objectives. Determining whether the basic objective of the ordinance is violated can be measured by whether the variance will alter the essential character of the locality, or by whether it would threaten public health, safety of welfare.

Here the basic objective of the zoning ordinance is to establish a series of guidelines for accessory drive through uses, including setbacks. Specifically, Article 8, Section 10.835.31 requires that all outdoor service facilities, including menu boards and speakers, be at least 50' from any lot line. The objective for the setback is arguably to provide some buffer for abutting properties to avoid any detrimental impacts associated with such service facilities. This objective in turn must be examined to determine whether the grant of the variance will alter the essential character of the locality. The property is located in the CD4-L2 district and is surrounded on three sides by either Islington Street or commercial properties or a mixed commercial and residential building. Of greater significance is the rear of the property, which is the only side of the property from which the menu board and speaker tower will be visible to any great extent. The rear of the property abuts vacant land occupied by a parking lot and railroad tracks. Further in the distance are the warehouses for Ricci Lumber, although the distance between the speaker tower and menu board and the warehouses is so significant that the speaker tower and menu board will barely be visible. (See Exhibits 4 & 5)

Additionally, Dunkin Donuts has been in operation at this location since 1989, and the existing menu board and associated speaker have been in operation since approximately the same time. The replacement of the existing menu board and speaker with a newer, more attractive version of these services, including a taller speaker tower with canopy, will not alter the essential character of the locality since a menu board and speaker are already present and have been present for decades. If anything, the new menu board and speaker tower will improve the appearance of the rear of the property. (See Exhibits 6, 7 & 8)

The presence of the new menu board and speaker tower will not threaten public health, safety or welfare. The intent of the new menu board and speaker tower is, in fact, to encourage better and safer traffic flow on site.

2. The spirit of the ordinance is observed.

Under New Hampshire law, this variance criteria is essentially merged with the “public interest” criteria. As stated above, the spirit of the ordinance is to provide a buffer between the service facilities associated with a drive through use, and the abutting properties. For the reasons stated above, the spirit of the ordinance will be observed if the variance is granted.

3. The values of surrounding properties are not diminished.

Granting the variance to allow a new menu board and a new speaker tower in the rear of the property will not diminish property values. The existing equipment has been on site for many years, and it faces the rear of the property which is abutted only by a parking lot and railroad track. The new equipment, to the extent it is visible from the rear of the property will, together with the general exterior renovation work on the building, greatly improve the entire property. As a result, no property values will be diminished, and the improved appearance of the exterior of the building will keep stable or improve the property values of surrounding properties.

The applicant is not aware of any information or evidence that would suggest that the location of the proposed menu board and speaker will decrease the value of the surrounding properties.

4. Substantial justice

The relevant analysis under this element of the variance criteria is whether the benefit to the applicant of granting this variance will be outweighed by a detriment or loss to the individual or to the public at large. Here, the benefit to the applicant is that long overdue exterior renovations can proceed. The applicant is a franchisee of Dunkin Donuts and is subject to contractual obligations to perform periodic renovations of the property in accordance with designated guidelines. These contractual obligations predate the property’s inclusion in the Historic District and predate the adoption of the setbacks for drive throughs. One such dedicated guideline which is not readily subject to negotiation is the proposed menu board, which must be of a certain size and have a certain lighting scheme. The proposed renovations, which include the menu board and speaker tower, have already received extensions as a result of Covid, and the scope of work and budget for same is predicated on the improvements as shown.

In short, the benefit to the applicant in granting the variance is to allow a small business owner to maintain a stable economic relationship with its corporate sponsor and not risk any negative push back. By contrast, there is absolutely no known detriment to the public or to any individual from granting a variance to continue to have service equipment for the drive through in the rear of the property in a substantially similar manner to that which has been in operation for decades.

5. Unnecessary hardship

A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

This property is distinguished from other properties in the area in that it has operated as a Dunkin Donuts with a drive through window since approximately 1989 and the existing menu board and speaker are nonconforming as to the setback requirements of Article 8, Section 10.835.31. The size of the lot and the location of the existing building does not allow for the placement of the menu board and speaker tower in virtually any spot that would conform with the setback requirements, and this condition is exacerbated by the fact that the menu board and speaker tower need to be placed to the rear of the existing building near the flow of traffic in order to allow patrons in their cars to efficiently and effectively place their orders before traveling to the pickup window.

B. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

Denying the variance for the location of the proposed replacement menu board and speaker will not advance the general public purpose of the ordinance. The proposed equipment will face outward toward the rear of the property and will overlook only a parking lot and railroad track, not other structures. The need for the protection afforded by setback requirements might make sense if the equipment faced the street or some other area from which it would be highly visible but that is simply not the case here.

C. The proposed use is a reasonable one because:

The overall impact from the proposed equipment is only felt by the property abutting the rear side of the property, if at all, and that property is occupied by a parking lot. The existing location of the menu board and speaker are non-conforming as to the westerly side of the property which is abutted by a structure containing a commercial and residential use. The proposed location of the menu board and speaker tower, while non-conforming, will be a similar amount of non-conformity and will face the side of the building where the least amount of interruption will be felt.

Section II
Illuminated Signage in Historic District
Variance from Article 12, Section 10.1261.30

The applicant proposes to replace an existing menu board with internal lighting with a new menu board with direct lighting in the Historic District where the only type of lighting which is allowed is external lighting.

1. The variance will not be contrary to the public interest.

Here, the zoning ordinance in question requires that any illuminated signage within the Historic District be externally illuminated. The definition of “external illumination” is “A sign that is illuminated by a light source that is not contained within, or on the surface of, the sign itself”. The basic zoning objective of this ordinance appears to be to limit the type of lighting for any sign within the historic district as part of the design regulation and constraints associated with the exterior of properties in the Historic District.

The signage which is the subject of the variance request is a menu board with direct illumination located on the rear of the building, and which is not plainly visible to any abutting property except the property to the rear. The existing menu board predates the inclusion of the subject property into the Historic District and is considered non-conforming, however, because it is being replaced with a new menu board, it now needs to comply with the provisions of the zoning ordinance. The proposed menu board will contain more modern technology and will be lit by LED lighting which will produce an equivalent amount of light to two TV screens. Because the new menu board is on the rear of the building and faces away from the street and the two abutting properties to either side, the effect of the lighting of the new menu board will only be experienced by the property to the rear of the building which is occupied only by a parking lot and the railroad tracks, with Ricci Lumber warehouses in the distance.

The essential character of the locality will not be altered by a menu board with a new form of illumination since it will not have any greater impact than the menu board which has been on site for decades, and the new menu board will continue to face the rear property which is not occupied by any structures. The proposed menu board with new illumination will not threaten the public health, safety or welfare and, in fact, the proposed lighting for the new menu board is designed to increase the safety of patrons travelling through the drive through service.

2. The spirit of the ordinance is observed.

Under New Hampshire law, this variance criteria is essentially merged with the “public interest” criteria. As stated above, the spirit of the ordinance is to limit the type of lighting which can be used for signage in the historic district as part of the regulation of the exterior of properties within the historic district. For the reasons stated above, the spirit of the ordinance will be observed if the variance is granted.

3. The values of surrounding properties are not diminished.

Granting the variance to allow a menu board with lighting other than external illumination will not diminish the value of surrounding properties. An existing menu board with internal illumination has been on site since approximately the late 1980s. The proposed menu board with LED lighting will also face the rear of the property where there are no structures and the amount of light emitted will not affect surrounding properties to any appreciable degree. Moreover, the proposed menu board is a component of a package of improvements to the exterior of the building, the net effect of which will be to stabilize values of surrounding properties or to possibly have a beneficial effect on the value of such properties.

The applicant is not aware of any information or evidence that would suggest that the TV screen lighting of the proposed menu board, rather than external lighting, will decrease the value of the surrounding properties.

4. Substantial justice

For the reasons set forth in Section I, the setback variance, the benefit to the applicant in having the variances for setback and sign lighting granted will not be outweighed by any detriment to the general public or any individual.

5. Unnecessary hardship

- A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

The property is distinguished from other properties in the area in that it has operated as a Dunkin Donuts with drive through service since 1989 where orders are placed in the rear of the building and collected on the west side of the building. The menu board from which the orders are made has been internally lit for decades. The very nature of a menu board requires that it have lighting, and lighting of the highest quality so that the menu is clearly visible to patrons ordering from their cars. The LED lighting, rather than external lighting, will provide this quality of light. Under Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 NH 508 2011, the unique nature of the property can make a sign itself a reasonable use of the property. Here, the longstanding operation of the property as a drive through food service makes it unique relative to other properties in the area, and denial of the variance to allow the most effective lighting to assist ordering at the drive through would contribute an unnecessary hardship.

B. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

The general public purpose of the ordinance provision is to regulate the lighting associated with signage in the historic district, with particular attention to visibility from other properties and the street. The proposed signage faces the rear of the property, and the abutting property to the rear contains a parking lot and a railroad track. Likewise, the amount of light emitted will not have any greater impact on abutting properties than what is there already. As a result, there is no substantial relationship between the purpose of prohibiting certain signage lighting within the historic district and the application to the lighting associated with the menu board on the rear of the building facing the rear of the property.

C. The proposed use is a reasonable one.

The lighting associated with the proposed menu board is part of the menu board configuration mandated by the Dunkin Donuts franchise corporation and the applicant is required to use this configuration of menu board. Given that an illuminated menu board has been on the property since approximately 1989 and given that the new menu board will be more attractive and will not generate an amount or type of light that will have greater visibility to other properties than what is presently there, then the proposed use is reasonable.

Exhibit 1



Property Information

Property ID 0157-0005-0000
Location 531 ISLINGTON ST
Owner 531 ISLINGTON ST PORTSMOUTH LLC

MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 3/9/2022
Data updated 3/9/2022

Print map scale is approximate.
Critical layout or measurement
activities should not be done using
this resource.

Exhibit 2

BLADE SIGN NOTES

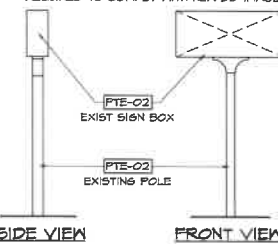
- 1) FACE TO BE FORMED CLEAR POLYCARBONATE, DECORATED SECOND SURFACE VINYL.
- 2) VINYL COLORS TO BE: DD ORANGE 3M #S630-9123; DD MAGENTA 3M #S630-1514.
- 3) ILLUMINATION: EXISTING INTERNALLY ILLUMINATED. SIGN VENDOR TO VERIFY IF LIGHTING IS LED & REPLACE W/ LEDS AS REQUIRED.
- 4) SEE NATIONAL ACCOUNTS FOR ORDERING INFORMATION.
- 5) SEE AT.2 & AT.3 FOR FINISH INFORMATION.



9 BLADE SIGN DETAIL
A0.2 SCALE: 1/4" = 1'-0"

DIRECTIONAL SIGN FACES

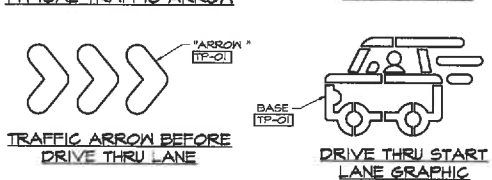
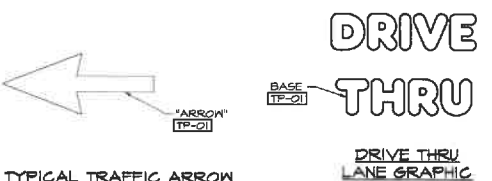
REPLACE EXISTING SIGN FACES AS REQUIRED TO COMPLY WITH NEW DD IMAGE



8 DIRECTIONAL SIGN DETAILS
A0.2 SCALE: 1/2" = 1'-0"

SITE GRAPHIC & STRIPING NOTES

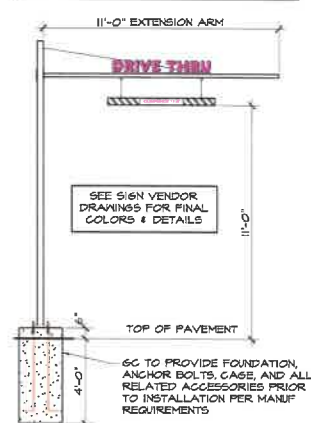
- 1) PROPERLY PREP THE ASPHALT BEING PAINTED VIA PRESSURE WASH BEFORE PAINTING ALL DIRECTIONAL GRAPHICS.
- 2) COORDINATE WITH FRANCHISEE ON FINAL LOCATIONS OF ALL GRAPHICS & DIRECTIONALS.
- 3) SEE FINISH SCHEDULES FOR TRAFFIC STRIPING INFORMATION.
- 4) PAINT TEMPLATE FOR SITE GRAPHIC AVAILABLE THROUGH PAVEMENT STENCIL COMPANY - SEE NATL. ACCOUNTS.



7 TRAFFIC STRIPING DETAILS
A0.2 SCALE: 1/4" = 1'-0"

LIMIT BAR NOTE

GC & FRANCHISEE TO FIELD VERIFY FINAL HEIGHT OF D/T HEIGHT LIMIT BAR W/ PRE-FAB CANOPY & SPEAKER TOWER CANOPY PRIOR TO START OF CONSTR. MAINTAIN 6" FROM BOT PRE-FAB CANOPY & SPEAKER TOWER CANOPY TO HEIGHT LIMIT BAR 'CRASH TUBE' FROM HIGHEST POINT OF PAVEMENT AT D/T WINDOW.



6 LIMIT BAR DETAIL
A0.2 SCALE: 1/4" = 1'-0"

SITE NOTES

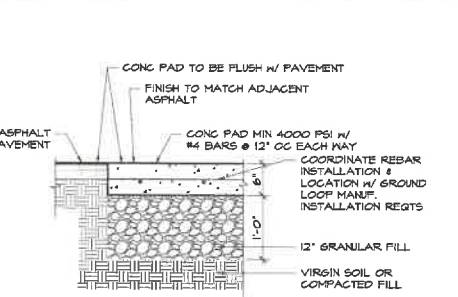
- 1) CLEAN & PREP ALL SURFACES AS REQD PER PAINT MANUF. SPECIFICATIONS PRIOR TO PAINTING. VERIFY CONDITION OF EXISTING MATERIALS - REPAIR / REPLACE MATERIALS TO MATCH EXISTING AS REQD. APPLY PAINT IN STRICT ACCORDANCE WITH PAINT MANUF. SPECIFICATIONS.
- 2) SITE & SIGN DETAILS SHOWN ARE SCHEMATIC ONLY. COORDINATE LOCATIONS IN FIELD WITH FRANCHISEE.
- 3) CUT/PATCH/REPAIR EXISTING PAVEMENT AS REQUIRED. COORDINATE WITH FRANCHISEE FOR EXTENT OF WORK.
- 4) SEALCOAT & RESTRIPE EXISTING PARKING LOT. SEE T/AO.2 FOR STRIPING DETAILS.
- 5) POWERWASH EXISTING SIDEWALKS, CURBS & CONC PADS. CLEAN, WEED & REMULCH ANY EXISTING LANDSCAPING.
- 6) PROVIDE NEXTGEN BOLLARD COVERS ON ALL ETR BOLLARDS ON SITE. COORD W/ NATIONAL ACCOUNTS FOR ORDERING. GC TO ENSURE ALL ETR BOLLARDS ARE PROPERLY SET & CONSULT WITH FRANCHISEE IF ADDITIONAL WORK IS REQUIRED.

SITE / BUILDING SIGN SCHEDULE

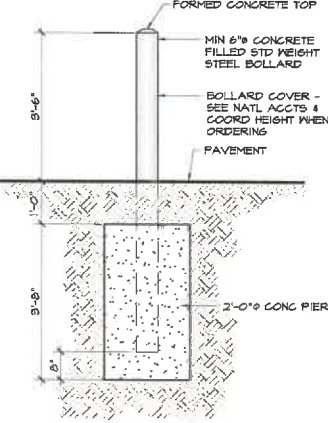
QTY	LOCATION	OVERALL DIMENSIONS	LETTERS	AREA
1	X BLADE SIGN	VERIFY IN FIELD	VIF	VIF
2	SITE (DIRECTIONAL)	VERIFY IN FIELD	VIF	VIF
1	X BUILDING (DIRECTIONAL)	VERIFY IN FIELD	VIF	VIF

KEYED PLAN NOTES

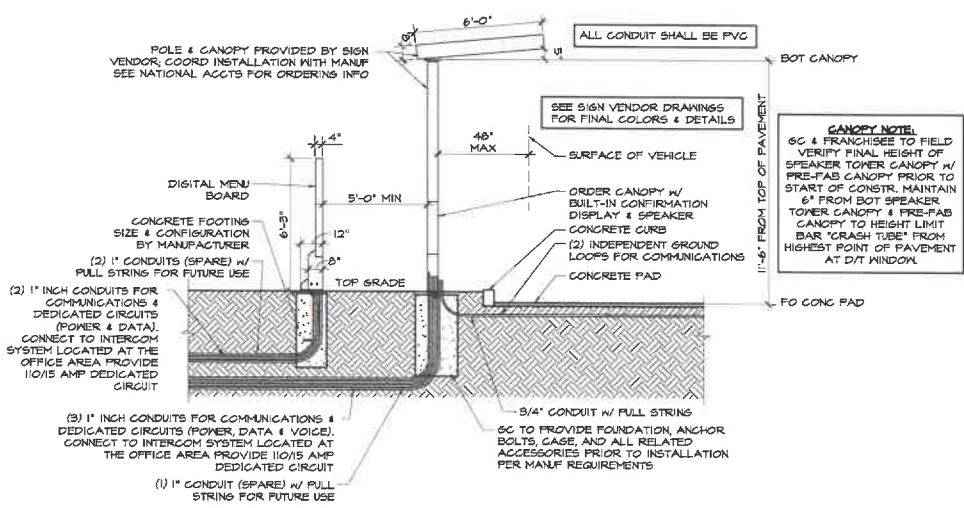
- 1) 18"x54" GROUND LOOP W/ 1" PVC CONDUIT, HOME RUN CONDUIT TO DRIVE THRU THRU MONITOR ADJACENT TO DRIVE THRU WINDOW. REFER TO SITE PLAN, DETAILS & SELECT DRAWINGS FOR CONDUIT SIZE REQUIREMENTS. MULTIPLE GROUND LOOP WIRING MUST BE IN SEPARATE CONDUITS TO AVOID INTERFERENCE.
- 2) 20"x10"x6" THICK CONC PAD W/ REINFORCING. TOP OF SLAB SHALL BE FLUSH WITH ADJACENT PAVEMENT. CONTOUR CONC PAD TO MATCH THE ADJACENT CONC CURBING AS REQD. SEE A/AO.2.
- 3) SIGN VENDOR TO PROVIDE 'WELCOME BACK' FACE ON ETR DIRECTIONAL SIGN. SEE B/AO.2.
- 4) SIGN VENDOR TO PROVIDE 'SEE YOU SOON' FACE ON ETR DIRECTIONAL SIGN. SEE B/AO.2.
- 5) DRIVE THRU HEIGHT LIMIT BAR. SEE 6/AO.2.
- 6) CONCRETE FILLED STEEL BOLLARD. SEE B/AO.2.
- 7) 'DRIVE THRU LANE GRAPHIC'. SEE T/AO.2.
- 8) 'TRAFFIC ARROW BEFORE D/T LANE' [TP-01] SEE T/AO.2.
- 9) 'DRIVE THRU START LANE GRAPHIC'. SEE T/AO.2.
- 10) 'TYPICAL TRAFFIC ARROW' [TP-01] SEE T/AO.2.
- 11) LINE STRIPING - [TP-01]
- 12) D/T STACK & MENU BOARD CAMERA MTD TO BUILDING. COORD FINAL LOCATION W/ OWNER.
- 13) ETR DRIVE THRU WINDOW LOCATION.
- 14) SIGN VENDOR TO PROVIDE NEW FACE ON ETR BLADE SIGN SIGN. SEE B/AO.2.
- 15) PROVIDE NEW VINYL SLATS FOR ETR CHAIN LINK FENCE AROUND ETR DUMPSTER. COLOR TO BE GRAY.
- 16) DIGITAL MENU BOARD - SEE 3/AO.2.
- 17) ORDER CANOPY W/ BUILT-IN CONFIRMATION DISPLAY & SPEAKER. SEE 3/AO.2.
- 18) PATCH / REPAIR ALL SITE AS REQD TO MATCH EXIST IN ALL AREAS OF DEMOLITION. COORD W/ D/I.
- 19) NEW CURBING TO ACCOMMODATE NEW DT MENU BOARD LOCATION.
- 20) ETR CONCRETE PAD & GROUND LOOP.
- 21) SIGN VENDOR TO PROVIDE 'DRIVE THRU' FACE ON ETR DIRECTIONAL SIGN. SEE B/AO.2.



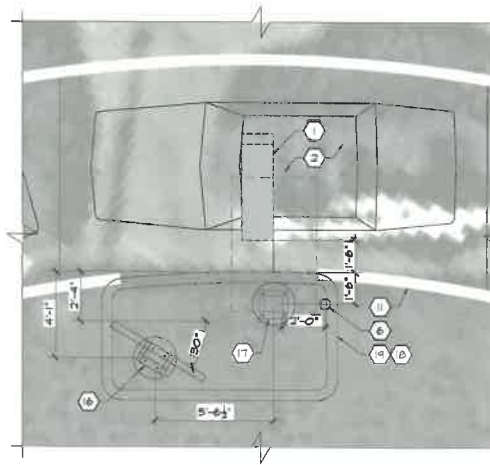
4 SECTION @ CONC PAD
A0.2 SCALE: 3/4" = 1'-0"



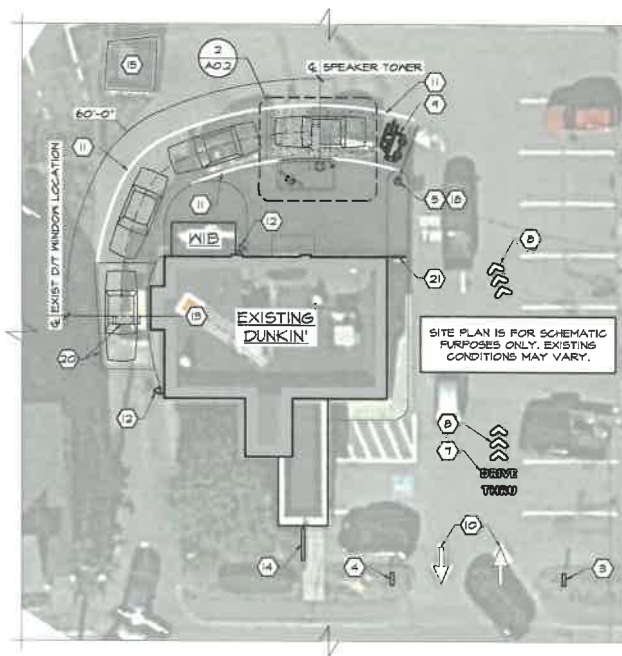
5 BOLLARD DETAIL
A0.2 SCALE: 1/2" = 1'-0"



3 MENU BOARD & SPEAKER TOWER DETAIL
A0.2 NOT TO SCALE



2 MENU BOARD LOCATION
A0.2 SCALE: 1/4" = 1'-0"



1 SCHEMATIC SITE PLAN
SCALE: 1/16" = 1'-0"



AHARONIAN & ASSOCIATES INC. ARCHITECTS

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DISCLAIMER

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REVISIONS	NUMBER	REMARKS	DATE

FOR CONSTRUCTION

PROJECT TITLE

DUNKIN'
PC# 307396
IMAGE: NEXTGEN WARM
PALETTE

531 ISLINGTON STREET
PORTSMOUTH, NH 03801
Rockingham County

DRAWING TITLE
**SCHEMATIC SITE
PLAN, SCHEDULE &
DETAILS**

DATE	NOV 19, 2021	PROJ NO	21051
DRAWN BY	ZRA	CHECKED BY	AH

DRAWING NUMBER

A0.2

Exhibit 3

Existing Menuboard
and speaker tower



Proposed Digital Menuboard
with Speaker Canopy



654 County Road
Acton, ME 04001
207-477-2956

Existing vs Proposed
Menuboard and
speaker set up

Location: 531 Islington St
Portsmouth NH
Layout by: MS
Layout: menu set up
Date: 4/27/22

Notes:
These drawings are the exclusive property of Dasco Signs and are the result of the original work of its employees. All rights to its use, or duplication in any manner without express written permission of Dasco Signs is prohibited.

This is a sketch only-field measurements may or may not need to be verified.

The accuracy of this color rendering is limited by media and output devices and is intended for representational use only. Actual manufacturing graphic colors also vary depending on processes and materials used. 100% color matches of submitted specifications cannot be guaranteed.

If an electric sign, compliance with the National Electric Code, Underwriters Laboratory, and/or local codes will be adhered to, including proper grounding and bonding of the sign.

Exhibit 4



Exhibit 5





Exhibit 6



Exhibit 7

Exhibit 8



Exhibit 9



Exhibit 10

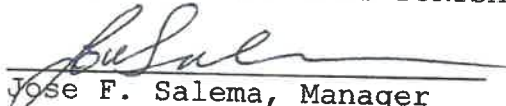


LETTER OF AUTHORIZATION

I, Jose F. Salema, Manager of 531 Islington Street
Portsmouth, LLC, owner of property depicted on Tax Map 157, Lot
5, do hereby authorize Donahue, Tucker and Ciandella, PLLC, to
execute any land use applications to the City of Portsmouth and
to take any action necessary for the application and permitting
process, including but not limited to, attendance and
presentation at public hearings, of the said property.

Dated: 6/22/22

531 ISLINGTON STREET PORTSMOUTH, LLC


Jose F. Salema, Manager