

**Village of Airmont
Zoning Board of Appeals
Village Hall
Thursday, October 14, 2021
Via Zoom**

MEMBERS PRESENT: CHAIRMAN ARTHUR KATZ
RICHARD BERGER
MARTIN KIVELL
SHELDON MAYER
SCOTT MEIER
JACOB SIMINOVITS, AD HOC
ROBIN LUCHINS, AD HOC

PRESENT: DAN KRAUSHAAR, DEPUTY VILLAGE ATTORNEY
LOUIS ZUMMO, BUILDING INSPECTOR
SUZANNE CARLEY, P&Z SECRETARY

The meeting was called to order at 7:30 pm by Chairman Katz which was followed by the pledge of allegiance and roll call. Martin Kivell made a motion to approve the minutes from 9/9/2021 which was seconded by Scott Meier. Martin Kivell also made a motion to approve the meeting minutes from 9/23/21 which were also seconded by Scott Meier. Arthur Katz was in favor as he was the only other member beside Mr. Kivell and Mr. Meier in attendance at the 9/23/21 meeting. Motion carries. Chairman Katz asked the P&Z Secretary to read the public hearing meeting notice into the record:

CONTINUED PUBLIC HEARING on the Application of **V3 Real Estate** for approval to add to a small drive-thru to the existing Dunkin Donuts and a small addition to the rear of the existing building, with a drive-up window, a walk-in box, additional signs for the drive-up service, and additional plantings and fencing. The application is considered a fast-food restaurant which will require a special permit and will require variances from Article III Section 210-21-E (11); Article IV Section 210-28 attachment 11 Table 8; Article VI Section 210-56- A (19, 21 & 25) as follows:

Minimum Lot Area	Required 87,120 sq ft	Provided 32,092 sq ft
Lot Width	Required 300	Provided 164
Front Setback (N DeBaun)	Required 60'	Provided 40'
Front Yard (N. Airmont)	Required 20'	Provided 1'
Front Yard (N. DeBaun)	Required 20'	Provided 1'
Side Setback	Required 50'	Provided 36'
Total Side Setback	Required 100'	Provided 36'
Side Yard	Required 20'	Provided 2'
Rear Setback	Required 60'	Provided 37'
Rear Yard	Required 30'	Provided 13'
Developmental Coverage	Required 75%	Provided 80%

Buffer from Residential Areas	Required 75'	Provided 0'
Parking Spaces (Parking Waiver)	Required 15 spaces	Provided 12 spaces

The property is located on the west side of North Airmont Road at the intersection of North DeBaun Avenue. The lot is designated as Section 55.07 Block 2 Lot 8 on the Town of Ramapo Tax Map. The property is located in the VC zoning district and is comprised of .74 acres. The street address is 14 N. Airmont Road Airmont N.Y. 10901.

Ken Moran, Attorney for the application explained that they are proposing a drive thru for an existing Dunkin Donuts. They last appeared before the ZBA on 5/10/21 and 6/10/21 and due to a number of meeting cancellations for covid reasons this they are back to the ZBA seeking final approval on their variances. To recap the project, they have been asked to revise the parking and traffic circulation which they have to the satisfaction of the RC Highway, Tallman Fire Department, and the Village's PB's Traffic Engineer. The property is in the Village Center (VC Zone) on the corner of N. Airmont Road and N. DeBaun at a traffic light intersection. Because it is a proposed drive thru it changes the definition of the Dunkin Donuts from a convenience Store to a Fast-Food Restaurant, which according to the Village of Airmont Code has many larger requirements in the bulk regulations. If it were still categorized as a convenience store, they would only require three (3) variances and now that it will be classified as a fast-food restaurant it will require 13 variances. The applicant screen shared a chart showing the differences between the two uses which more than adequately explained the reason for the number of variances on the site. The fast-food restaurant category requires much larger bulk regulations. The site is located beside the Airmont Gardens apartments which are in the RSH zone and with the new bulk requirements requires a buffer. They are proposing numerous plantings and have an agreement with the neighboring property who are in total favor of the project. There is over a 250 ft. distance before front of the next building and a private road. N. DeBaun is in between which is a private road and is to the west and south of the site.

The new normal is to have a drive thru to serve the customers and neighborhood especially due to the problems with the pandemic. What they are proposing will not have a negative impact. It is the same use just adding a drive thru with additional screening, fencing and plantings. This is a Type II Action with no further action required.

Prepared a traffic study and the Village Traffic consultant and their engineer says it improved the traffic flow internally and off site changing the curb cut and closing the one entrance to help the traffic flow for N. DeBaun, N. Airmont Road and the site itself. Also worked with the RC Highway Department.

Philp Greely the applicant's traffic consultant went through the traffic flow and the plans in great deal as the screen was shared. He showed the ZBA how it was modified so that they can see the improvements. The two driveway entrances were shown and the southerly entrance closet to the traffic signal creates conflicts with vehicles. It is being closed which will cut down on friction on N. Airmont Road. They are adding a driveway tied into the site. There is room for in excess of 12 vehicle stacking and same on the east side of the property as well as coming in from the signal. The County Highway Dept does not want left turns in or out. Therefore, it will be a right turn in and a right turn out only as reflected on the plans.

Traffic after window with pick up will be stop controlled towards N. DeBaun Avenue. They are also adding parking spaces and moving so spaces closer to building and allows pedestrians to walk to cars from building not going across the pump isles. They are creating designated loading location south of the building to keep out of the drive area. There will be a new garbage truck and garbage area. This was all reviewed and approved by the Fire Department to ensure it can take in the turning radii can accommodate with the vehicles and has been signed off on. Most parking spaces are closer to the building. Traffic at pump isle stays as is today and they are widening width so traffic can flow past pump isles. Driveway at Northerly end is right turn in or right turn out.

The flow is left at signal make a right if Dunkin Drive thru at the eastern perimeters traffic can still pass through that point. The driveway is right turn in and right turn out. Only looking South on Airmont Road. Additional signage being added as per RC Highway.

For the overall site plan many improvements were made: Extensive landscaping along frontage on N. Airmont Road and in an area where they were closing the existing driveway with plantings along N. DeBaun to provide further screening and Airmont Gardens. All driveways will have good sight distance signage and striping. Heading along the whole perimeter and buffer with fencing.

Adding additional planting along frontage some within the Right of way and will be part of their permit at the request of RC Highway Dept. Some will be where they are closing the existing driveway. Some plantings along N. Debaun on the south side of the site. On the northern side of the property is where the O& R substation is and there will be plantings and improvements there as well.

Dan Kraushaar inquired how are they handling the Fast- Food Special Permit. Ken Moran responded that they need their variances and then they will apply for Special Permit and the site plan approval to the Planning Board. Need the variances first or cannot proceed.

Dan looked at §210-107 which requires on a minimum of 2 acres in the VC district and this property is .75 acres - so how would you not request this as a variance? Ken Moran advised that they are seeking the variance which is the minimum lot area. It is listed in the notice and application. Ken stated that in the GML dated 5/10/2021 one of their comments may be incorrect that is related to the special permit for fast-food restaurant. It does not need to go to the Village Board it goes to the PB. Dan noted that this will be challenging as the GML concluded disapproval which will therefore require supermajority overrides. Dan asked if there were changes made to this plan that actually addressed some or many of their GML comments? Philip Grealy responded yes as it is noted in the response to the 5/10/21 GML by Sparaco's office in their letter dated 5/26 office as a response to the GML noting where they complied. Dan noted that the quality of the responses to the GML were excellent and detailed and really get to all the information required for the core of the items of the responses. It's a road map for any applicant. Very detailed and well done. Probably would have helped if it were re-submitted to the RCP the new plans with the response memo. We are going to spend a lot of time for plans that changed dramatically or already addressed. It was noted that the new plans were sent but the comments were very much the same. RC Planning didn't appear to comment on any revisions anyway.

Jeff Stewart – most of all the GML comments pertain to the potential impact on the neighboring properties. They have made sure that they are cooperative and supportive with their neighbor and have engaged in an initial easement agreement. He noted it that it feels as though RC Planning has opposition throughout, but they have adequately addressed all items. Should the ZBA take into consideration to grant these variances he wanted to assure them they are working diligently with all neighbors so there is no impact anywhere or so can in certain circumstances work with them given the reality. They have spent a great deal of time in reviewing the traffic flow and re-worked the site plan to ensure it is optimal. Their goal is to get this project approved.

Ken Moran noted that they are in fact improving the situation not making it worse and that RC Planning really never changes their mindset on their GML's regardless of any changes. Their previous review did not change when a new submission was sent in. They repeated things that have been refined to a better plan and the 5/10/21 GML repeated comments that they addressed, and the County didn't change their letter, so the applicant responded in their 5/10/2021. Dan asked if anything changed on plans from the 5/10 GML and Dave Panella confirmed that it did not.

Marty Kivell had a question on the prepare time and Jeff Stewart answered how it is handled from point of order to prepare. Most items are reheated, so their response time is quick under 100 seconds, they are in and out. This particular location the beverage service is primary, and the food is secondary but could that could change slightly going forward with a drive-thru.

Dan noted that §210-158 to be shown to be granted a variance from our code. Responsibility of the ZBA is to review the application to see whether or not each of the variances being applied for meet the standards in order to be granted the relief for what is being sought. Dan asked Ken Moran, the applicants attorney the to do the showing which is in his narrative to the ZBA as follows:

1. The proposed use is permitted as part of the Village of Airmont's Zoning Code in the VC District and is an addition to a proposed use with a special permit from the Planning Board.
2. The applicant meets all the criteria for granting bulk and area variances required by state and local law. The current use is gas station, convenience store and Dunkin Donuts, which is the same as the proposed use, The use will not change by adding a drive-thru, screening and fencing. There will be no undesirable change.
3. There is no feasible way to construct the drive-thru without the requested variances. The additional variances are required as the drive-thru in the Airmont Village Code is categorized as fast-food thus triggering 12 variances and one PB parking waiver, vs. 3 variances if it were just categorized as a restaurant use as demonstrated in the ZBA Narrative Summary dated 4/1/21. The benefit to the applicant is that the proposed drive thru will allow the applicant to continue to operate its business at the same location at which it has been in operation for over 15 years.
4. There will be no undesirable change will be produced in the character of the neighborhood, and there will be little or no detriment to nearby properties. The neighborhood consists of an Orange & Rockland substation, commercial properties on

North Airmont Road, and senior housing on North DeBaun behind the site. The residential property is separated from the site by North DeBaun Avenue, and there are extensive plantings and fencing proposed.

5. The required variances are not substantial. A numerical deviation from the bulk requirements alone do not make any of the requested variances substantial. The Board must determine the impact that the deviation will have on the community compared to the impact of the current operations. The impact will not be substantial because of all the screening and changes made to the proposed site plan as suggested by the PB and CDRC to minimize the impact. Additionally, the PB determined that this is a Type II action and that the approval of the site plan, as proposed, is not anticipated to result in any adverse environmental impacts.
6. There will not be any adverse impact on the physical or environmental conditions of the neighborhood. The proposed drive thru is to an existing building in the VC Zone, which is currently being used for a use permitted by the Zoning Code. The same use plus a drive-thru will be continued if the variances are granted. It has been determined that this is a Type II action under SEQRA and no further environmental review is required.
7. The difficulty is not self-created because of covid-19 created the need and demand by customers for the drive-thru for this type of business beyond the applicant's control. The requested variances are the minimum necessary to permit the proposed development of a drive thru.
8. The applicant has demonstrated that there is no detriment to health, safety and welfare of the neighborhood and community by granting the variances.
9. The proposed use will not have a negative impact on traffic as it is located at a traffic signal, ingress and egress to the property has been improved and some parking spaces have been relocated to improve traffic circulation. Philip Gready read into the record the comments from the NPV traffic letter 2/22/2021 that further substantiates their changes 1) the proposed the proposed addition will not significantly impact the operations of the roadways and intersections in the vicinity of the site 2) The modification of the site plan to provide a separate drive-thru exit only driveway to N. DeBaun Avenue in addition to the previously proposed site access modifications including elimination of the southerly driveway and restricting left turns on the northerly driveway on Airmont Road will further improve traffic circulation and safety.
10. The proposed drive-thru was thoroughly reviewed by the RC Highway Department, the Fire Department, and the Traffic Engineers. The fire trucks and emergency vehicles will be able to access the rear of the property when the drive-thru is in use, however the Planning Board will determine the final impact on fire and emergency services.

In summary the number of variances required is not the criteria to determine if they should be granted. The criteria, if any, negative impact there will be if the variances are granted. Based on all the modifications and safeguards that were made, there will be no negative impact. The drive thru will have a positive effect and will be a benefit, and accommodate the community needs to minimize exposure and protect the public from Covid and other similar viruses. Since the pandemic started over a year ago, the public has changed its buying habits and businesses have been forced to change the way they

conduct business. A majority of the applicant's customers prefer and want to use a drive-thru rather than get out of their cars. The applicant meets all the criteria for granting bulk and area variances required by state and local law. Granting the requested variances will not set a precedent.

The ZBA has taken into consideration the benefit of the proposed drive-thru to the applicant if the variances are granted as weighed against the detriment to the health, safety and welfare of the neighborhood and community by granting the variances. It has been demonstrated by the applicant that there is no detriment. The traffic movements and circulation will be improved with the proposed development. The applicant has obtained a negative declaration pursuant to SEQR requirements from the Village, part of which review evaluated impacts to drainage, sewer, water and traffic concerns. All of these items were considered by Airmont's Planning Board, and it was determined that these potential issues would not cause any significant impact offsite.

Specifically, the applicant has addressed traffic concerns with a traffic report and improvements as noted above, sewer and water impacts were insignificant, if any as the site is already used as a Dunkin facility. The applicant has addressed the stormwater impacts with provision of an onsite underground detention system to attenuate increases in discharge otherwise associated with development to ensure peak offsite discharges are equal or less than pre-development conditions.

Letter read into the record from property owner Chris Vasti dated 10/14/2022. The ZBA is ready to vote on the application's request for variances. Sheldon Mayer had questions on how we vote on the variances. Dan noted that it needs to be indicated but felt that the applicant met their burden with regard to the factors to be shown to grant the variance or did not meet it or if found that they met some of the items and did not meet other but in weighing the evidence you find the factors that try to meet outweigh the factors that they did not meet.

Review of the Rockland County Department of Planning GML dated 5-10-2021

For GML item#1 (1.1-1.7) as follows:

1.1 The traffic patterns associated with a gasoline station and a drive-thru fast-food establishment are mutually incompatible and cannot both be adequately accommodated on an undersized parcel. A drive thru funnels vehicle to a single access point while a gas station can create haphazard traffic pattern as vehicles queue and jockey for open pump stations. The onsite traffic circulation has significant deficiencies and creates several points of conflict, some of which will likely produce traffic overflows onto the County highway: *Response: There is already a Dunkin and convenience store functioning on this site together with the gasoline pumps. The Site has been redesigned to improve circulation. The traffic patterns have been designated to separate the Dunkin drive-thru traffic from gasoline traffic at the pump islands. The provision of a 12+car queuing lane for the drive-thru provides adequate capacity and a full by-pass lane around the property. The drive-thru traffic coming from the south is directed along the eastern edge of the property away from the pump islands. All drive thru existing traffic is also separated from the gasoline traffic by the provision of a separate driveway connection to North DeBaun*

Avenue. The presentation plan highlights the designated drive-thru lane, by-pass lane and separate driveway connection to North DeBaun Avenue.

1.2 Two existing vehicles stopped at the North Airmont Road entrance would effectively block an entering vehicle from accessing the gasoline pumps or parking areas. Any subsequent entering vehicles would be forced to stop within the entrance apron potentially creating an overflow into the highway. *Response: There would be no additional Dunkin traffic exiting the northerly access which has been further defined and widened for right turn entry/right turn exit traffic only with dedicated exit driveway to North DeBaun Avenue. In addition, if two vehicles were stopped making a right turn out onto N. Airmont Road, entering vehicles could utilize the by-pass area and/or drive into and across the striper area immediately to the west to get to the pump islands. Provided a 10 ft. area for the pumps. Also note that based on existing traffic counts, minimal traffic exists at the north driveway and most of the existing site traffic already exists at that the North DeBaun Avenue traffic signal since it isa protected movement. Based on the adequate stacking and maneuverability area provided on the proposed site plan, traffic will not back up onto N. Airmont Road. Note that in addition to the 12-13 car stacking in the drive thru lane, there is additional stacking area for 5+ vehicles that arrive from the south in a designated drive-thru area.*

1.3 Vehicles entering from North DeBaun Avenue may attempt to shortcut a line by driving through the pump area. Also, the gasoline pumping area bisects the site and, along with the drive-thru aisle, separates the northern parking spaces from the North DeBaun Avenue exit. Vehicles parked in the parking space wishing to proceed north on North Airmont Road, will have to go through the pump area in order to exit onto North DeBaun Avenue, which will create a hazardous point of conflict. *Response: With the proposed striping and signing, other than during low traffic periods, it is unlikely that traffic will cut-through where the gasoline pumps are. The majority of the parking spaces are also moved to the southwestern portion of the site closer to the store to allow ease of access. Thus, the travel path to get to the drive thru coming from the south is clearly defined and we do not anticipate any significant number of vehicles cutting through that gas pump area during peak periods. In addition, this is an existing station with convenience and vehicles in the vicinity of the pump would move as they do today, and the existing Dunkin traffic would have its own dedicated drive thru lane and would eliminate these conflicts.*

1.4 It is likely that a queue of vehicles between the North DeBaun Avenue entrance and the drive-thru entrance could form since they will be forced to stop for possibly an extended period of time at the interior stop sin adjacent to the North Airmont Road entrance. These vehicles would block vehicles attempting to enter or exit the parking spaces at the southeastern corner of the lot. *Response: Vehicles at the northern parking spaces could utilize the drive-thru by-pass lane and can drive in the existing wider clear areas between the first and second set of pump islands on the site. This is more than adequate width to accommodate these vehicles. The two parking spaces at the at the southeast corner of the lot are primarily for the vacuum and/or employee use. If vehicles did stack along that eastern edge. At least four vehicles can stack before they would block those parking spaces and it would only be temporary blockage if it did occur. Notre that it is unlikely that a significant queue would extend there since there are over*

12 spaces of stacking in the drive-thru lane on the other side of that driveway. As previously mentioned, the majority of the parking spaces are on the opposite side in the southwest corner of the lot closest to the store.

1.5 A vehicle stopped at the interior stop sign adjacent to the North Airmont Road entrance will have a reduced sight distance compared to vehicles leaving the property as they attempt to cross an active entrance. *Response: A vehicle stopped at the interior stop sign adjacent to N. Airmont Road has adequate sight lines to see other vehicles since it can see vehicles to the left or vehicles that would be entering at the driveway coming from the north on Airmont Road. No left turning vehicles from N. Airmont Road into the site would be permitted based on the County Highway's restrictions of no left turns and would provide better lines of sight for these vehicles.*

1.6 A truck parked in the proposed loading zone will block two of the parking spaces along the southern property line. It will also impede the visibility of the driver in the adjacent parking space, which could create a hazardous conflict between an existing vehicle and pedestrians existing the structure. *Response: The proposed loading zone is not expected to be heavily used for long durations and it is an improvement over existing conditions where vehicles load in front of the store sometimes blocking flow. With the proposed loading area, if the adjacent parking spaces blocked temporarily, it would be for a short duration and note that the site only has 10 spaces currently and we are providing 12. In addition, based on ITE data, the provision of a drive-thru at this type of facility tends to reduce the overall parking demand by as much as 50%. Any large deliveries would be coordinated to occur during off-peak time periods. The pedestrian movements, as at any gas station or convenience store, the area to walk to and from the store is often also used by drivers. With the proposed spaces, pedestrians to and from the primary spaces are away from the vehicle travel paths. Additional striping could be provided in those areas if the Planning Board so desires, and this area is away from the primary traffic flow at the entrance onto North DeBaun Avenue.*

1.7 Overall, these deficiencies will create hazardous conflicts between pedestrians, vehicles using the drive-thru, and vehicles using the gasoline pumps, and will likely cause traffic to overflow onto the County highway. This application does not adequately demonstrate how safe access for users of all the services on site can be provided on an undersized parcel. This application must be disapproved. *Response: The proposed modifications to the plan are an improvement to this existing facility by providing parking spaces closer to the store, improving signing, and the provision of the drive-thru will actually reduce the overall parking demand, based on ITE data. The closure of the southern driveway onto N. Airmont Road will also reduce vehicular conflicts and improve flow approaching the traffic signal. The application has also been reviewed by the Village's Traffic Engineer and also found that these modification and improvement, including the provision of the separate drive-thru connection to North DeBaun Avenue, will improve overall safety and operations on the site.*

The applicant demonstrated that the existing conditions are not as safe. The proposed is a safer proposal and was confirmed by expert testimony. Same with the trash and it was moved to the back of the lot, so it is unobstructed.

GML item #2 – Permitting development that does not comply with the applicable bulk standards can set an undesirable land use precedent and result in the overutilization of individual sites. The proposed lot area is 37% of the required minimum, and the lot width is only 55% of the required minimum. The North DeBaun Avenue front setback is deficient by 33%. Both front yards require a 95% variance to be compliant. The side and rear setbacks are deficient by 28% and 38% respectively. The side and rear yards are only 10% and 43% complaint, respectively. The required buffer from the residential area has been eliminated and the development coverage ratio exceeds the maximum standard by 7%. The ability of the existing infrastructure to accommodate the increased intensity of use on undersized parcels is a county wide concern and must be evaluated. The evaluation must consider whether local roads will become more congested and the sewer system, stormwater management systems and the public water supply will be overburdened. The Village must consider the cumulative and regional impacts of permitting such as development. Given the concerns in the previous comment that arise from placing an intense use on an undersized parcel, and the extent of the required variances, the application must be disapproved, and the property developed in a manner more consistent with the bulk requirements of the Village.

Response: The number of variances required is not the criteria to determine if they should be granted. The criteria are what if any, negative impact there will be if the variances are granted. Based on all the modifications and safeguards that were made, there will be no negative impact. The drive thru will have a positive effect, will be a benefit, and accommodate the community needs to minimize exposure and protect the public from COVID and other similar viruses. Since the pandemic started over a year ago, the public has changed its buying habits and businesses have been forced to change the way they conduct business. A majority of the applicant's customers want to use a drive-thru rather than get out of their cars. The applicant meets all the criteria for granting bulk and area variances required by state and local law. Granting variances will not set a precedent as Airmont ZBA resolution granted 7 variances for 130 Route 59 including a 0 ft buffer that was required because of the adjoining residential zone. A number of the other variances that were granted had large numerical deviations. The applicant addressed all concerns, and the variances were granted. Airmont ZBA resolution for 124 Route 59 granted 8 variances including a variance to reduce the size of the buffer by 50%. A majority of the variances had a large numerical deviation from the requirements. The zoning local law of Airmont & the State of NY Village Law §210-169 governs granting variances. The Airmont ZBA has to take into consideration the benefit to the applicant if variance granted weighed against detriment to the health, safety and welfare of the neighborhood.

The criteria are not the number of variances pointing out all the modifications and safeguards. There is no negative impact. Complied with.

GML item #3 –The proposed plan was discussed with the Rockland County Highway Department and has been conceptually approved and a Highway Work Permit will be obtained from them before any construction commences. Complied with.

GML item #4 – Agreed, the applicant will submit the project to the Rockland County Department of Health for review and approval prior to obtaining final approval by the Village. Complied with.

GML item #5 – Agreed, the applicant will submit the project to the NYS Thruway Authority and obtain any permits required.

GML item #6- Agreed, the applicant will comply with comments as required by the Tallman Fire Department.

GML item #7 – Agreed, the applicant will coordinate with the Village to extend review requests to the Village of Montebello and the Town of Ramapo. P& Z Clerk verified that submission have been sent to several times and no comments have ever been received. This has been complied with.

GML item #8 – Agreed, although no extensions to the sewer mains are proposed at this time. If it is ever proposed in conjunction with this application, the applicant will coordinate with the RCDOH.

GML item #9 – The applicant has a working agreement dated 2-17-21 of which a copy has been presented as part of the record, with Airmont Gardens who are the owners of the adjacent property and will secure a formal easement agreement before any landscaping or work is done on land outside of existing property lines.

GML item #10 – The existing site only has 10 existing parking spaces. 12 parking spaces are proposed on site. The ITE data indicated that with the drive-thru, the actual parking demand can be reduced by as much as 50%. The TBR symbols references in the comment were based upon the County’s review of the presentation plan provided by the applicant. These TBR labels actually refer to removal of a maintenance sign and an air fill pump onsite, not the onsite parking when you cross reference the full set of site plans. The presentation has also been modified to ensure the TBR labels do not appear so there will be no confusion on the number of proposed parking spaces. Complied with.

GML item #11 – The proposed site plan calls for a two-foot widening along the eastern portion of the drive-thru area adjacent to N. Airmont Road to create a total width of 20 feet with a full 10-foot travel lane and a remaining area of 10 feet between that lane and the pump island. Thus, it is not 18 feet, that is incorrect, it is a total of 20 ft. This 10-foot width would eliminate any conflicts with the vehicles at the pump and is typical width for accommodation this type of flow. Complied with.

GML item #12- With the closure of the southerly driveway, additional maneuvering area will be available for vehicles to move in this area and would minimize any temporary blockage of the 2 parking spaces. Any blockage would be temporary and not much different than when a car is leaving a parking space and backing into an aisle of any parking area that has active traffic flow passing it. Complied with and changes noted on the plan.

GML item #13- The application materials provided indicate that the variances are required for the North DeBaun Avenue front yard and setback, which is consistent with the property being considered a corner lot. However, these materials also indicate that a variance of the total side setback is required, which is not consistent with the requirements for a corner lot. Since North DeBaun Avenue is a private road, it is unclear whether or not the Village should consider the site a corner lot or not. The Board must determine which interpretation is correct and the application

materials must be amended as appropriate. The public hearing must be reviewed and, it contains inaccurate information, re-issued. *Response: The setbacks and yards indicated on the site plans have been coordinated and shown in accordance with the determination of the Village of Airmont's Building Inspector.*

Additionally, this had been complied as the Building Inspector agreed and worked with the applicants professional and re-evaluated what variances are required. The Building Inspector determined that the variances being sought are proper variances being sought and all other issues in this paragraph has been complied with, have been addressed to his satisfaction. The Public Hearing notice was accurate and does not need to be re-noticed.

GML #14 -The garbage enclosure is designed for a pull-in pick up. The garbage truck would proceed to access it using the by-pass lane, drive head in, pick up the dumpster, back-up, and exit via the by-pass lane. There is adequate width as demonstrated by the turning tracks for that area. The full site and full truck analysis is included, and the Fire Department is satisfied. Complied with.

GML #15 – This will be added on the site plan. The applicant will review snow storage areas with the Village and will ensure access and visibility issues are adequately addressed with plans submitted for final approval. The applicant agrees to provide snow removal offsite as necessary to accommodate larger snow events if the allocated areas indicated on the plans are insufficient. This will be addressed by the Planning Board. No override required.

GML #16 –The special permit for Fast Food establishments is allowed by Special Permit of the Airmont Planning Board. The Village Board no longer reviews or approves the Special Permit. The application by the applicant for Site Plan Approval included an application for the Special Permit. The Planning Board has reviewed the application and sent it to all required agencies including the RC Department of Planning. Everything will be addressed by the appropriate Board. Even though there is a reference to the wrong Boar, this does not require an override as they are applying for a Special Permit for Fast Food to the Planning Board and they will have an opportunity to review if it goes to the Planning Board.

GML #17 – Exactly what the Board and the applicants have been doing and going through each item one by one of the GML with a detailed explanation. The results of the vote and the resolution to be sent to RC Planning & Airmont's Zoning Board of Appeals.

GML #18- Same as #17 will include the results and the resolution with stated reasons for the land use boards' override as noted in #17.

Scott Meier made a motion to open the public hearing which was seconded by Chairman Katz.

Peter Murray – resides at 3 Sycamore Lane White Plains NY and sworn in by Chairman Katz. He is the managing agent for Airmont Gardens which is the adjacent property next to the site. Two concerns with the proposal have been the visual and traffic impact. Airmont Gardens is a Sr Development with 146 units and concerned about traffic onto Airmont Rd and the safety of his residents. Spoke with the applicant and their traffic consultant. Absolutely thinks the plan will enhance their property and Airmont Gardens and will have no negative impact to his

residents. He is in 100% absolute support of the application and wishes that you all grant their variances and the overall proposal for a drive-thru Dunkin.

Judd Wishnow – 183 Brownville Road Greenwich, CT Franchisee Owner with his wife. Sworn in by Chairman Katz. Blown away by the presentation and how well his team has provided all the imperative information. Very appreciative of the entire counsel and the Boards and their time to hear everything. Everything he has heard and from the technical experts is going to improve traffic and beautify the area. They are up against a residential neighbor which was his biggest concern and you just heard testimony that the neighboring property owner is in absolute favor of the project. As a franchisee owner knows that the result of what they are proposing will enhance and improve the area and make everything safer. It is a positive for them and for the customers. It will also make it safer for those that don't want to be exposed to covid. They have done everything that has been asked of them and feel that they have a very strong case. Have been in the community 12-13 years and appreciate everyone's time in reviewing this. They also are the franchisees for the Kosher Dunkin Donuts on Route 59 and look forward to continuing working with the community.

Martin Kivell made a motion to close the public hearing which was seconded by Scott Meier. All in favor motion carries.

ZBA confirmed that this is a Type 2 Action for SEQRA which does not require further review.

Chairman Katz if the ZBA has any questions. Sheldon Mayer had some questions regarding the traffic.

Mr. Mayer asked if coming in from N. DeBaun not to cut directly across gas pump into the driveway and was their consideration for a barrier. Philip Grearly applicants traffic consultant sworn in -there was consideration to putting something to block the at northern portion of the drive thru stacking in the area that's marked as stripping to put in bollards and curbing however the fire department wanted it as drivable as possible, so they kept it that way. Idea was to create an orderly fashion in the counter clock work fashion. The bollards or raised areas was initiated but requested by the fire Department to be kept open and fully drivable. It was fully considered, and they followed the Fire Departments request. This was part of their review as part of the turning radius review and why it was kept as stripping and was discussed in the beginning at CDRC. It is not in a current letter. Their current letter approves the proposal as you see it.

At the stop line coming from N. DeBaun potentially traffic coming in and out and is there good sight distance. Mr. Grearly noted that the vehicle is stopped and has good sight distance can see on coming vehicles. Vehicles and have full visibility looking to the left for anyone coming from the pump islands. Very few vehicles attempt it even today and then exit on N. DeBaun. There are three opportunities to exit the site via the wide drive aisle swing and go right out the site or they can also exit via the by-pass lane adjacent out that way. Sheldon also had a question about signage and Mr. Grearly responded that as part of the PB review and there is a signing and stripping plans and a sign that directs you to the drive thru and there is a height bar as well.

ZBA discussed that they are ready to vote on the applicant's request. Sheldon Mayer inquired on how they determine their vote. Dan Kraushaar explained that the ZBA needs to determine that

the applicant met their burden with regards to the factors to be shown to grant the variance or did not meet it. If found met some of the factors and did meet others but in weighing the evidence, you find the factors that try met outweighed the factors they did not meet.

In terms of the GML items #1 (1.1-1.7) and all its paragraphs of explanation, #2 and its previously explanation #13 – based on Lou’s review and comments having gone over applicant’s presentations and letters and determined exactly what was required. All items have been addressed or will be when the applicant goes back to the Planning Board.

It was noted for the records that in 1.7 of #1 of the GML – The Rockland County Highway reviewed the plan and conceptually approved it. They need a permit as noted in the 4/21/2021 review letter and all other points satisfied appropriately.

Martin Kivell indicated in summary that is their responsibility as a quasi-judicial board to either agree, disagree or chose to override the GML.

Martin Kivell made a motion to override #1, 2, 13 of the Rockland County Planning GML dated 5/10/2021 on and all paragraphs with the with applicants’ portrayal. Satisfied with the information provided by the applicant. More than adequate basis that was offered for the overrides in the actual written resolution as per Sparaco response memo letter dated 5/26/2021 would more than satisfy the requirements. The first part of the evidence and testimony was put forth by the applicants, Village & and applicant professionals, RC Highway are all part of the record and will be put in the resolution based on all the facts and factors. Motion was seconded by Scott Meier. All in favor.

Roll call vote on the GML Overrides #1, #2, #13:

Member Meier – with regard to the RCP GML dated 5/10/2021 all items and 7 paragraphs addressed in #1, #2 and #13. Applicant, professionals, traffic engineers all experts more than adequately addressed all traffic concerns and more than adequately responded to all the issues in their response memo dated 5/24/21 from Sparaco. I am in total favor of the overrides.

Member Mayer – I approve #1, #2 and #13 as the Sparaco response memo of 5/26/2021 was adequately responded to.

Member Kivell – was on the fence, however in hearing testimony from applicant and adjacent property owner, RC Highway and the traffic consultant consistent with Mr. Meier’s’ comment with respect the GML is highly credible by our consultants, and applicants, I vote yes.

Member Berger – I also agree with Members based on the evidence and feel it will be an asset to the community. I am in favor and vote yes.

Chairman Katz – vote in favor as the applicant and its professionals more than adequately satisfied all concerns. Greatly detail and well thought out. This will be an asset and I vote yes for the override.

Motion 5 to 0 unanimously for the overrides to #1, 2 & 13 of the RC Planning GML dated 5/10/2021.

Scott Meier made a motion to approve the following 12 variances for the Dunkin Donuts Drive Thru for the application of V3 Real Estate LLC-14 N. Airmont Road from Airmont’s Zoning Code Article III Section 210-21-E (11); Article IV Section 210-28 attachment 11 Table 8; Article VI Section 210-56- A (19, 21 & 25) as follows:

:	Minimum Lot Area	Required 87,120 sq ft	Provided 32,092 sq ft
	Lot Width	Required 300	Provided 164
	Front Setback (N DeBaun)	Required 60’	Provided 40’
	Front Yard (N. Airmont)	Required 20’	Provided 1’
	Front Yard (N. DeBaun)	Required 20’	Provided 1’
	Side Setback	Required 50’	Provided 36’
	Total Side Setback	Required 100’	Provided 36’
	Side Yard	Required 20’	Provided 2’
	Rear Setback	Required 60’	Provided 37’
	Rear Yard	Required 30’	Provided 13’
	Developmental Coverage	Required 75%	Provided 80%
	Buffer from Residential Areas	Required 75’	Provided 0’

Motion was seconded by Martin Kivell. Roll call vote as follows:

Member Kivell – vote yes to approve all variances requested given the myriad of testimony which convinced the character of the neighborhood which I do not believe will change and that all traffic concerns are satisfied. See no reason not to approve and it will better serve the community

Member Berger- also going to express that they demonstrated the need for the drive thru and the variances. Application should be approved as it will be an asset to the community. I vote yes.

Member Mayer – I vote yes likewise f variances based on the comments of my fellow members. The weight and balancing test in the five factors requirement were met. It will improve the health & safety of the property.

Member Meier – I vote yes to approve all requested variances for all the previous reasons and comments previously stated and by those of my fellow board members.

Chairman Katz- vote yes for all the variances although I am a bit bothered by the front yard going down 1 ft and the side yard down 2 ft, however, feel that the overall plan is sound, is an asset to our community

and better serves the property and ad is better for all.

All in favor. Motion carries. Variances approved 5 to 0 unanimously. All 12 variances granted.

Jeff Stewart thanked the ZBA for their time on their application.

Public Hearing on the Application of **Suez Water New York Inc. – Tallman Well #26** to permit construction, maintenance and use of a new 1,012.50 SF treatment building to house the proposed treatment requiring a variance from the requirements of Article VI Section 210-42 of Airmont's Zoning Code for separation distance between two buildings. The required bulk dimension is 15 ft., and the proposed bulk requirements are 4.63 ft., 8.23 ft. and 8.38 ft. The property is located on the east side of DeBaun Avenue +/- 476 feet east of DeBaun Avenue. The lot is designated as Section 55.12, Block 1 and Lot 52 on the Town of Ramapo Tax Map. The property is located in the Neighborhood Shopping (NS) zoning district and is comprised of .772 acres. The street address is 239 Route 59 Suffern, NY 10901.

Mr. Kilpatrick attorney for the applicant and a city planner. Due to the minimum amount of time, they will introduce the project. Erin Albine 96 Route 206 Flaunders, NJ Engineer or Suburban Engineering and sworn in by Chairman Katz Explained that it is a public drinking water facility. The site is part of a water distribution network and operates year-round. There are PFAS in the water above the EPA levels of drinking water. As per the NY State Department of Health they are proposing to install another building as a treatment plant to filter the PFAS. The proposed new treatment building will need to be accessed through an access easement with O&R. The property is in the NS Zone and is behind and next to the Town for Ramapo Town Hall and Police Department. There is no frontage on Route 59. It is a year-round active critical water treatment facility. The access drive serves as access to two buildings where there will be a fence line and there are wetlands and an unnamed tributary to the Montebello Creek. The existing site is very restricted, and land locked. They are proposing to install a new filtration system 1013 sf and will be approximately 30 ft tall. It is within a flood plain and is .10 acres. There are O&R high voltage overhead wires. Existing site is very restricted and is a very tight site. Looking to limit the amount of fill. Minor driveway improvements and piping are proposed. The site is land located with no frontage and there is access through lot #54 through an access easement.

As per the Villages code §210-42 minimum distance between two principal buildings. Required is 15 ft and proposed is 4.63 ft. This is the only one variance request. The relief is to avoid a negative impact to the surrounding wetlands, creek and overhead wires of O&R. They are trying to stay within the cross-access easement and the O&R overhead wires. There is no change in the existing use. The water infiltration system are improvements and listed as required by NY State Health mandate. Existing structures are critical, active and are proposed to remain. The relief is required to avoid a negative impact to the creek and to stay within the request of O&R. No change in existing use waters is required.

Chairman Katz asked a question on contaminants and asked if there will be any discharges. The applicant's attorney advised that every now and then the treatment facility is backwashed, and a tanker truck will take the contaminated water to an approved facility in N.J.

Marty Kivell opened the public hearing for the application of Suez - Tallman Water Well #28. Scott Meier seconded the motion. There were no comments from the public. Marty Kivell made a motion to continue the public hearing on the application of Suez Water New York Inc. – Tallman Well #26 to the November 2021 ZBA Meeting via Zoom at 7:30 PM. Scott Meyer seconded it.

Roll call:

Scott Meier - Yes

Sheldon Mayer – yes
Richard Berger – yes
Martin Kivell – yes
Chairman Katz – yes.

All in favor. Motion carried. Application continued to 11/9/2021 ZBA Meeting via Zoom at 7:30 pm.

Public Hearing on the Application of owner **Israel Wiesenfeld** for a variance from Article 5 Section 210-15 Table 2: R-40 of Airmont’s Zoning Code for developmental coverage with a required bulk dimension of 20% and a proposed bulk dimension of 37%, for a single-family residence to build a spa house accessory structure. The property is located on the west side of Church Road approximately 390 feet north of Smith Hill Road. The lot is designated as Section 61.07, Block 2 and Lot 17 on the Town of Ramapo Tax Map. The property is located in the R-40 zoning district and is comprised of 1.36 acres. The street address is 42 Church Road Airmont, NY 10952.

Marty Kivell opened the public hearing on the application of 42 Church Road owner Israel Weisenfeld which was seconded by Sheldon Mayer. Roll call vote:

Scott Meier – yes
Sheldon Mayer – yes
Richard Berger – yes
Martin Kivell – yes
Chairman Katz – yes
All in favor motion carried.

Due to the late hour and the interest of time Martin Kivell made a motion to continue the public hearing for the application of 42 Church Road to the 11/9/2021 ZBA Meeting at 7:30pm via zoom. Richard Berger seconded it. Roll call vote:

Scott Meier – yes
Sheldon Mayer -yes
Richard Berger – yes
Marty Kivell – yes
Chairman Katz – yes

All in favor. Motion carried. Application continued to the 11/9/2021 ZBA Meeting via Zoon at 7:30pm.

Martin Kivell made a motion to adjourn the meeting at 11:15pm Scott Meier seconded it. All in favor. Motion carried and the meeting ended.