

**RESOLUTION NO.                      of 2020**

**RESOLUTION DENYING DESIGN STANDARD WAIVER REQUEST BY BFB NEW  
PALTZ, LLC and TRANS-HUDSON MANAGEMENT CORP.**

At a meeting of the Town Board of the Town of New Paltz, Ulster County, New York, held virtually on Zoom pursuant to Executive Order 202.1 and subsequent orders due to the Covid-19 pandemic on the 17th day of December, 2020, at 7:00 P.M., prevailing time.

The meeting was called to order by Supervisor Bettez, and upon roll being called, the following roll was taken:

	<u><b>PRESENT</b></u>	<u><b>ABSENT</b></u>
Supervisor Neil Bettez	_____	_____
Council Member Alex Baer	_____	_____
Council Member David Brownstein	_____	_____
Council Member Julie Seyfert-Lillis	_____	_____
Council Member Daniel Torres	_____	_____

WHEREAS, the Applicants BFB New Paltz, LLC and Trans-Hudson Management Corp. (collectively, “BFB”) have applied to the Town Board for two “design standard” waivers in connection with its proposed development of a mixed-use facility consisting of four single-story buildings and associated parking (the “Project”) on a 6.10 acre property located at 12 N. Putt Corners Road, Section 86.12, Block 4 Lot 5.1 (the “Property”), in the Main Street Mixed Use (“MSMU”) Zoning District; and

WHEREAS, the Project is depicted on the Concept Plan dated 6/29/2020 (“Concept Plan”) which has been submitted to the Town Board; and

WHEREAS, the Property is vacant land bounded by North Putt Corners Road (Ulster County Highway Route 17) to the west, an adjoining Light Industrial Zoning District property located to the north, the New York State Thruway to the east and Route 299 to the south;

WHEREAS, the Project was initially submitted to the Planning Board on or about September 23, 2013, and has undergone several iterations, none of which have yet been finally approved by the Planning Board; and

WHEREAS, on October 3, 2019, the Town Board amended the Zoning Law which, among other things, rezoned the Property from B-2 to MSMU, which requires two occupiable stories and prohibits drive-thrus for restaurant uses; and

WHEREAS, the purpose of the MSMU is to “ease the transition from the Village to the Town, and transition away from auto-oriented strip development commercial development and extend the Village’s walkable, mixed-use, “Main Street” character into the Town as properties are improved and redeveloped over time” and to “provide more development opportunities including opportunities for upper floor residential units that could offer the community much needed housing diversity and affordability” § 140-22.2A; and

WHEREAS, BFP has modified the Project in response to the new Zoning Law and MSMU requirements; and

WHEREAS, BFP has requested that, pursuant to Section 140-22.G4 of the Zoning Law, the Town Board waive: 1) the requirement that buildings shall have two occupiable stories (the “2-Story Waiver”); and 2) the restriction on drive-thru windows for food service (the “Drive-Thru Waiver”, collectively, the “Requested Waivers”); and

WHEREAS, Section 140-22.1G(4) of the Zoning Law provides that:

In all cases where full compliance with the requirements of subsections F or G(1) and (2) above cannot be met, an applicant may request a waiver from the Planning Board. The request for a waiver shall include a written explanation of the difficulties in meeting the particular design standard(s) and a description of how the applicant proposes to satisfy the purposes of the appropriate district (see § 140-22.2A for MSMU, § 140-22.3A for GB, or § 140-22.4A for GH) despite lack of compliance with the design standard(s).

- (a) The Planning Board may grant a waiver of individual requirements of the design standard(s) by unanimous vote of the full Planning Board after consideration of: 1) the practical difficulties in applying the standard to the particular project; 2) the potential adverse impact on surrounding properties and the neighborhood of applying or not applying the standard to the proposed project; 3) the feasibility of alternate means or measures to attain the same goal as the standard. Such decision and findings shall be set forth in writing.
- (b) If a majority of the full Planning Board recommends approval of a waiver, an applicant may apply to the Town Board for the waiver, which may be granted at a regularly scheduled meeting of the Town Board by an affirmative vote of a majority of the full Town Board.

WHEREAS, as set forth in a memorandum to the Town Board dated September 16, 2020, on September 14, 2020, the Planning Board considered the Waivers and a majority of the Planning Board voted to grant the Requested Waivers and to recommend that the Town Board approve the Requested Waivers; and

WHEREAS, the Town Board acknowledges that the Concept Plan provided by BFP includes desired amenities, including a proposed extension of the Empire State Trail through the Property and parking spaces designated solely for the Empire State Trail; and

WHEREAS, the Town Board further acknowledges that the Project has undergone significant changes to bring it further into compliance with the standards of the MSMU; and

WHEREAS, the Town Board is generally supportive of development at the Property that complies with the MSMU requirements and the inclusion of the Empire State Trail and public parking spaces and encourages BFP to proceed with a code-compliant Project; and

WHEREAS, the Town Board has thoroughly and carefully considered BFP's request.

NOW THEREFORE BE IT RESOLVED, that pursuant to Section 140-22.1G(4) of the Zoning Law, the Town Board makes the following findings with respect to the 2-Story Waiver:

- 1) There are no practical difficulties in applying the standard to the Project. BFP has not established that there are practical difficulties in building a second story on the property. No evidence has been presented indicating that the site cannot support a second story or that there is a unique site feature that would be impacted by the required second story. In the applicant's letter to the Board dated October 6, 2020, BFP's attorney states that "common sense dictates the no retail/commercial tenant can make sufficient use of, or seeks to lease two occupiable stories and therefor a waiver is requested . . . ." A showing of practical difficulties requires more than an unsupported anecdote about commercial leases.

BFP also cites to the undesirability of placing residential units near the New York State Thruway, but the Zoning Law does not require that the second floor be residential. The second floor could be used for office space or studio space, among other permitted uses in the district. The applicant has not provided any evidence supporting its assertion that a second occupiable story for any use is impracticable.

2. There is a potential adverse impact to surrounding properties and the neighborhood of not applying the standard to the Project. The Property is prominently located at the gateway to the Town of New Paltz on a lot that can be seen from the Thruway. One purpose of the Main Street Mixed Use District is to "transition away from auto-oriented strip development". § 140-22.2A. Another is to extend the Village's "main street character." § 140-22.2A. The elimination of the second floor is contrary to the goals of the MSMU. Permitting one of the few undeveloped lots to be developed in a manner that is contrary to the Zoning Law will have a lasting impact on the character of the MSMU.

The MSMU requires density of people in a single location in order to concentrate development and fulfill the goals of smart growth. The Comprehensive Plan Amendment for the Route 299 Gateway Corridor and the stated Purpose section of the MSMU

regulations set forth in the Zoning Law clearly indicate that concentrated development is a goal for the town. Concentrating development in certain areas eliminates vehicle trips, allows for shared parking which lessens environmental impact, and permits efficient design such as shared entrances/egresses. The loss of these potential residents or additional customers will have a negative effect on the district.

3. BFP has not proposed any alternate means to attain the same goal as the standard.

BE IT FURTHER RESOLVED, that pursuant to Section 140-22.1G(4) of the Zoning Law, the Town Board makes the following findings with respect to the Drive-Thru Waiver:

1. BFP has not met its burden of proving that there are practical difficulties that warrant a waiver of the standard. BFP asserts that the drive thru window should be allowed for purposes of public health and cites the Covid-19 pandemic for support that no food establishment would enter into a new lease without a drive-thru. While the pandemic has temporarily changed operations throughout the country, the prohibition on drive-thrus is intended to make the Property more pedestrian friendly in the long term and to “transition away from auto-oriented development”. Allowing additional drive-thrus at the Property is contrary to the goals of the MSMU.

BFP could easily repurpose proposed parking spaces for curbside delivery programs, which meet the needs of customers to remain in cars while allowing vehicles to be turned off while waiting. Smart phone apps will continue to evolve to make curbside ordering more convenient.

2. There is a potential adverse impact to surrounding properties and the neighborhood of not applying the standard to the Project. BFP has not provided the Town Board with the location of the proposed drive-thrus to provide for a full evaluation of the impacts, but the presence of the drive thrus generally is contrary to the purposes of the MSMU, including transitioning away from auto-oriented development and encouraging village style development. Although a specific proposal was not provided, drive-thrus increase the potential for car and bicycle/pedestrian conflicts. Drive-thru businesses also generate air pollution through idling vehicles. Ordering speakers generate noise and take away containers generate litter. These secondary impacts decrease the desirability of having residential second floor uses on this Property or on neighboring properties.
3. BFP has not proposed any alternate means to attain the same goal as the standard. The applicant could easily repurpose proposed parking spaces for curbside delivery programs, which meet the needs of customers to remain in cars while allowing vehicles to be turned off while waiting. Smart phone apps will continue to evolve to make curbside ordering more convenient.

BE IT FURTHER RESOLVED, that, for the foregoing reasons, the Town Board hereby denies the requests for the Waivers.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

**VOTE**

**AYE**   **NAY**   **ABSTAIN**

Supervisor Neil Bettez	_____	_____
Council Member Alex Baer	_____	_____
Council Member David Brownstein	_____	_____
Council Member Julie Seyfert-Lillis	_____	_____
Council Member Daniel Torres	_____	_____

The foregoing resolution was thereupon declared duly adopted.