



# GENESEE COUNTY PLANNING BOARD REFERRALS NOTICE OF FINAL ACTION

GCDP Referral ID

C-06-BAT-09-23

Review Date

9/14/2023

Municipality  
Board Name  
Applicant's Name  
Referral Type  
Variance(s)  
Description:

**BATAVIA, C.**

**ZONING BOARD OF APPEALS**

**Peter Sorgi for Carrols LLC**

**Area Variance(s)**

**Area Variances to build a new drive-thru restaurant (Burger King).**

**Off-street Parking**

**Minimum required: 32 spaces**

**Proposed: 26 spaces**

**Building height**

**Maximum allowed: 18 ft.**

**Proposed: 18.66 ft.**

Location  
Zoning District

**301- 305 W. Main St. (NYS Rt. 5), Batavia**

**General Commercial (C-2) District**

PLANNING BOARD RECOMMENDS:

**APPROVAL**

EXPLANATION:

**The proposed variances should pose no significant county-wide or inter-community impact.**

Director

September 14, 2023

Date

If the County Planning Board disapproved the proposal, or recommends modifications, the referring agency shall NOT act contrary to the recommendations except by a vote of a majority plus one of all the members and after the adoption of a resolution setting forth the reasons for such contrary action. Within 30 days after the final action the referring agency shall file a report of final action with the County Planning Board. An action taken form is provided for this purpose and may be obtained from the Genesee County Planning Department.

**SEND OR DELIVER TO:**

GENESEE COUNTY DEPARTMENT OF PLANNING  
3837 West Main Street Road  
Batavia, NY 14020-9404  
Phone: (585) 815-7901

**DEPARTMENT USE ONLY:**  
GCDP Referral # C-06-BAT-09-23



**\* GENESEE COUNTY \*  
PLANNING BOARD REFERRAL**

RECEIVED  
Genesee County  
Dept. of Planning  
9/5/2023

Required According to:  
**GENERAL MUNICIPAL LAW ARTICLE 12B, SECTION 239 L, M, N**  
(Please answer ALL questions as fully as possible)

**1. REFERRING BOARD(S) INFORMATION**

Board(s) ZBA  
Address One Batavia City Centre  
City, State, Zip Batavia, NY 14020  
Phone (585) 345 - 6345 Ext. \_\_\_\_\_

**2. APPLICANT INFORMATION**

Name Peter Sorgi for Carrols LLC  
Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Phone (716) 908 - 3289 Ext. \_\_\_\_\_ Email psorgi@hsmlegal.com

MUNICIPALITY:  City  Town  Village of Batavia

**3. TYPE OF REFERRAL:** (Check all applicable items)

- |   |  |   |
|---|--|---|
| <input checked="" type="checkbox"/> Area Variance | <input type="checkbox"/> Zoning Map Change         | <input type="checkbox"/> Subdivision Proposal |
| <input type="checkbox"/> Use Variance             | <input type="checkbox"/> Zoning Text Amendments    | <input type="checkbox"/> Preliminary          |
| <input type="checkbox"/> Special Use Permit       | <input type="checkbox"/> Comprehensive Plan/Update | <input type="checkbox"/> Final                |
| <input type="checkbox"/> Site Plan Review         | <input type="checkbox"/> Other: _____              |   |

**4. LOCATION OF THE REAL PROPERTY PERTAINING TO THIS REFERRAL:**

- A. Full Address 301-305 West Main St.
- B. Nearest intersecting road South Lyon St.
- C. Tax Map Parcel Number 84.039-1-4
- D. Total area of the property \_\_\_\_\_ Area of property to be disturbed \_\_\_\_\_
- E. Present zoning district(s) C-2

**5. REFERRAL CASE INFORMATION:**

- A. Has this referral been previously reviewed by the Genesee County Planning Board?  
 NO  YES If yes, give date and action taken \_\_\_\_\_
- B. Special Use Permit and/or Variances refer to the following section(s) of the present zoning ordinance and/or law  
BMC 190-29 A and Schedule 1 and BMC 190-39 A(3)(a)[27]
- C. Please describe the nature of this request Approval to reduce the number of required off-street parking space and Increase the maximum permitted height of the proposed building.

**6. ENCLOSURES** – Please enclose copy(s) of all appropriate items in regard to this referral

- |   |  |  |
|---|--|--|
| <input checked="" type="checkbox"/> Local application | <input type="checkbox"/> Zoning text/map amendments    | <input type="checkbox"/> New or updated comprehensive plan     |
| <input checked="" type="checkbox"/> Site plan         | <input type="checkbox"/> Location map or tax maps      | <input checked="" type="checkbox"/> Photos                     |
| <input type="checkbox"/> Subdivision plot plans       | <input checked="" type="checkbox"/> Elevation drawings | <input checked="" type="checkbox"/> Other: <u>Cover letter</u> |
| <input checked="" type="checkbox"/> SEQR forms        | <input type="checkbox"/> Agricultural data statement   |  |

**7. CONTACT INFORMATION** of the person representing the community in filling out this form (required information)

Name Douglas Randall Title Code Enf. Officer Phone (585) 345 - 6327 Ext. \_\_\_\_\_  
Address, City, State, Zip One Batavia City Centre, Batavia, NY 14020 Email drandall@batavianewyork.com



*City of Batavia*  
**Department of Public Works**  
**Bureau of Inspections**

One Batavia City Center, Batavia, New York 14020    (585)-345-6345    (585)-345-1385 (fax)

To: Genesee County Planning  
Planning and Development Committee  
Zoning Board of Appeals

From: Doug Randall, Code Enforcement Officer

Date: 9/1/23

Re: 301-305 West Main St.  
Tax Parcel No. 84.039-1-4

Zoning Use District: C-2

The applicant, Carrols LLC (contact Peter J. Sorgi, Esq.) has filed an application for area variance in anticipation of permit denial for the construction of a 3,140 sq. ft. restaurant with drive-through service. The applicant is requesting a reduction in required off street parking and an increase in the maximum height of the building.

**Review and Approval Procedures:**

**County Planning Board-** Pursuant to General Municipal Law 239 m, referral to the County Planning Board is required since the property is within 500 feet of the right of way of a state road or highway.

**City Planning and Development Committee-** Pursuant to section 190-49 C of the zoning ordinance, the Planning and Development Committee shall be provided the opportunity to make recommendation to the ZBA regarding variance applications involving parking.

**Zoning Board of Appeals-** Pursuant to BMC Sec. 190-49 of the zoning ordinance, the ZBA shall review and act on required variances.

Required variances- Area

**1) BMC Sec. 190-29 A. and Schedule I**

	<b>Permitted</b>	<b>Proposed</b>	<b>Difference</b>
<b>Maximum bldg. height</b>	18'	18'-8"	8"

**2) BMC 190-39 A(3)(a) [27] leasable floor area.**

	<b>Required</b>	<b>Proposed</b>	<b>Difference</b>
<b>Minimum off-street parking</b>	32 spaces	26 spaces	6 spaces

The ZBA will be the lead agency to conduct SEQR.





CITY OF BATAVIA  
APPLICATION TO THE ZONING BOARD OF APPEALS

Application No.: 2023-25

Hearing Date/Time: \_\_\_\_\_

APPLICANT: Carrols LLC dbeachel@carrols.com  
Name 968 James Street E-Mail Address 315-409-8692 716 4276501  
Street Address \_\_\_\_\_ Phone \_\_\_\_\_ Fax \_\_\_\_\_  
Syracuse NY 13203  
City State Zip

STATUS:  Owner  Agent for Owner \_\_\_\_\_ Contractor  
(contract vendee)

OWNER: See attached Authorization + applicable  
Name portions of redacted purchase agreements E-Mail Address \_\_\_\_\_  
Street Address \_\_\_\_\_ Phone \_\_\_\_\_ Fax \_\_\_\_\_  
City State Zip

LOCATION OF PROPERTY: 301-305 W. Main St, 307 W. Main St,  
4 S. Lyon St + portion of 6 S. Lyon St.

DETAILED DESCRIPTION OF REQUEST: see attached

Applicant must be present at the hearing date. Failure to do so will result in the application being discarded. It is the responsibility of the applicant to present evidence sufficient to satisfy the Zoning Board of Appeals that the benefit of the applicant does not outweigh the health, safety, morals, aesthetics and general welfare of the community or neighborhood.

Douglas P. Beachel  
Applicant's Signature

8/29/2023  
Date

Douglas P. Beachel  
Owner's Signature - see attached

8/31/2023  
Date

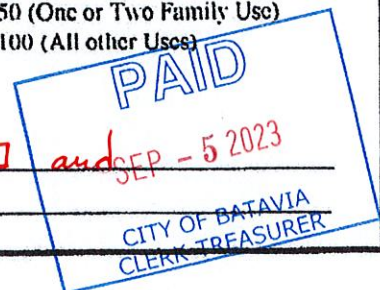
To be Filled out by Zoning Officer

TAX PARCEL: 84,039-1-4 ZONING DISTRICT: C-2 FLOOD PLAIN: C and AE.

TYPE OF APPEAL:  Area Variance  
 Use Variance  
 Interpretation  
 Decision of Planning Committee

FEE:  \$50 (One or Two Family Use)  
 \$100 (All other Uses)

Provision(s) of the Zoning Ordinance Appealed: BMC 190-3A(3)(a) [27] and  
BMC 190-2.9 A and Schedule 1 SEP - 5 2023





## Criteria to Support Area Variance

In making its determination, the zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, moral, aesthetics and welfare of the neighborhood or community. The Zoning Board of Appeals shall consider the following test, as per §81-b of the General City Law when making its determination:

Explain how the proposal conforms to EACH of the following requirements:

1. **Undesirable Change in neighborhood Character.** The granting of the variance will not produce an undesirable change in the neighborhood or a detriment to nearby properties.

*See attached*

2. **Alternative Cure Sought.** There are no other means feasible for the applicant to pursue that would result in the difficulty being avoided or remedied, other than the granting of the area variance.

*See attached*

3. **Substantiality.** The requested area variance is not substantial.

*See attached*

4. **Adverse Effect or Impact.** The requested variance will not have an adverse effect or impact on the physical or environmental condition in the neighborhood or community.

*See attached*

5. **Not Self-Created.** The alleged difficulty existed at the time of the enactment of the provision or was created by natural force or governmental action, and was not the result of any action by the owner or the predecessors in title.

*See attached*

*James J. Beecher*

Applicant's Signature

*8/24/2023*

Date

**BGW Properties, LLC**  
413 Garden Drive  
Batavia, NY 14020  
Phone/Fax 585-343-1966

August 31, 2023

To Whom This May Concern:

I authorize Carrols, LLC to make application and speak on behalf of BGW Properties, LLC to the ZBA and/or Planning Board of Batavia.

Thank you for your cooperation concerning this matter.

Sincerely,

*Brian Wormley*  
\_\_\_\_\_  
**Brian Wormley**



**REAL ESTATE PURCHASE AGREEMENT**

**THIS REAL ESTATE PURCHASE AGREEMENT** (hereinafter referred to as the "**Agreement**") is made as of the 19 day of May, 2023 (the "**Effective Date**"), by and between GREGORY BRANCHE, a an individual having a mailing address of 5025 Terry Hill Drive, Batavia, NY 14020 (the "**Seller**"), and CARROLS LLC, a Delaware limited liability company with an office and place of business at 968 James Street, Syracuse, New York 13203 (the "**Buyer**").

**IN CONSIDERATION** of the respective agreements and covenants hereinafter set forth and for other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged, Seller and Buyer agree as follows:

1. **Property Included in Sale.** Seller hereby agrees to sell, assign, transfer and convey to Buyer, and Buyer hereby agrees to purchase and acquire from Seller, the following:

1.1. That certain real property situate in the City of Batavia, County of Genesee, State of New York, located at 4 South Lyon Street, Batavia, New York being a fully platted parcel of land bearing Tax Identification number: 84.039-1-5 and as visually depicted on **Exhibit "A"** attached hereto and made a part hereof.

1.2. All rights, privileges and easements appurtenant to the Real Property, including, without limitation, all minerals, oil, gas and other hydrocarbon substances on and under the Real Property, as well as all development rights, air rights, water and water rights relating to the Real Property, utility agreements and any easements, rights-of-way, or other appurtenances used in connection with the beneficial use and enjoyment of the Real Property, and all improvements and fixtures on the Real Property, as well as any buildings and structures on the Real Property (collectively the "**Improvements**").

1.3 All of the items referred to in Sections 1.1 and 1.2 of this Agreement are collectively referred to as the "**Property**". Seller and Buyer acknowledge that the description of the Real Property contained in this Agreement technically may be legally insufficient for the purposes of supporting an action for specific performance or other enforcement hereof. As such, Seller and Buyer confirm to each other that notwithstanding any such insufficiency, the Seller and Buyer desire to proceed to sell and purchase the Property. Therefore, since Seller and Buyer are desirous of executing this Agreement and to provide for the right of Buyer to demand and successfully enforce specific performance and to insure such right is not precluded due to the description of the Property, the Seller and Buyer agree that (a) they are experienced in transactions of the nature provided for in this transaction, (b) that, in fact, they specifically are familiar with the location of the Real Property, (c) each party waives any and all claims of an insufficient legal description in a cause of action for specific performance hereunder, and (d) upon Buyer's approval of the Survey and Title Commitment (as those terms are defined in Sections 4.5 and 4.6 of this Agreement) the metes and bounds of the Real Property prepared by the surveyor shall become its legal description.

2. **Purchase Price.** The Purchase Price is xxxxxxxxxxxxxxxxxxxx and shall be paid as follows:

2.1 The title company shall be Old Republic Title Insurance, 530 South Main Street, #1031, Akron, OH 44311, Attn: Jennifer Goforth, Email: [jgoforth@oldrepublictitle.com](mailto:jgoforth@oldrepublictitle.com) ("**Title Company**"). The parties and Title Company shall execute an Escrow Agreement in the form attached hereto as **Exhibit "B"** and made a part hereof.

4.8 Satisfactory results, in Buyer's sole discretion, of any and all inspections, tests and procedures within the Due Diligence Period.

4.9 Seller granting Buyer easements in form and content acceptable to Buyer and in recordable form to include, but not be limited to, parking of motor vehicles, pedestrian traffic, access to and from public streets and parking areas, municipal water lines, telephone lines, gas lines, sanitary sewer lines, storm sewer lines, electrical lines, signage, and use of common areas throughout the remaining real property owned by Seller as Buyer shall reasonably require for the Intended Use of the Property and which Buyer shall identify and approve as to form and content in writing before the expiration of the Due Diligence Period. Seller shall also convey, in form satisfactory to Buyer and its counsel, utility easements and assignments of rights of use of common areas, if any, as Buyer may reasonably require for the Intended Use of the Property and which Buyer shall identify and approve as to form and content in writing before the expiration of the Due Diligence Period.

4.10 It shall be a condition precedent to Buyer's obligation to purchase the Property that Buyer simultaneously complete the acquisition of the following parcel which adjoin the Property commonly known as 301-307 West Main Street (the "**Adjacent Parcel**").

4.11 Receipt during the Due Diligence Period or any Extension Period of any and all variances and Approvals required to construct a free-standing pole sign, signage on the building to be constructed on the Property, directional signage, and a drive-thru menu board and speakers.

4.12 If any of the foregoing conditions are not satisfied, then Buyer shall have the right, in its sole discretion, on or before the expiration of the Due Diligence Period to either: (i) waive the condition in question and proceed with the purchase, or (ii) terminate this Agreement. Provided that Buyer or Seller is not in default under this Agreement, if Buyer elects to terminate this Agreement, neither party shall have any further rights or obligations under this Agreement.

## 5. Due Diligence Period.

5.1 Buyer shall have a period of one hundred eighty (180) days from the Effective Date (the "**Due Diligence Period**"), to: (i) examine all of the title, survey, environmental and soil conditions of the Property and surrounding lands and all zoning, land use, environmental, building and construction laws and regulations restricting or regulating or otherwise affecting the use, occupancy or enjoyment of the Property, including by way of illustration and not limitation, conducting any licensing, permitting, engineering, geotechnical, market and economic feasibility studies for the Property and any physical inspections of the Property all of which Buyer, in its sole discretion, deems necessary to determine the suitability of the Property to construct and operate a Burger King® restaurant with drive-thru window (the "**Intended Use**"); and (ii) review and obtain all necessary governmental and third party consents, permits, licenses, and approvals of any nature (collectively the "**Approvals**") needed to construct and operate a Burger King® restaurant with drive-thru window service.


5.2 Provided Buyer is diligently seeking to satisfy municipal or regulatory requirements to obtain approval as contemplated hereunder, the Due Diligence Period may, at Buyer's option, be extended for three (3) thirty (30) day periods (each 30-day period shall hereinafter be referenced to as an "**Extension Period**") by Buyer giving written notice thereof to Seller.

5.3 At any time during the Due Diligence Period or any Extension Period Buyer, in its sole discretion, may terminate this Agreement by providing written notice to Seller



IN WITNESS WHEREOF the parties' duly authorized representatives have executed this Agreement on the date first written above.

SELLER:

  
\_\_\_\_\_  
Gregory Branche

19 MAY 23  
Date

IN WITNESS WHEREOF the parties' duly authorized representatives have executed this Agreement on the date first written above.

BUYER:

CARROL LLC

By: 

Name: Richard G. Gross

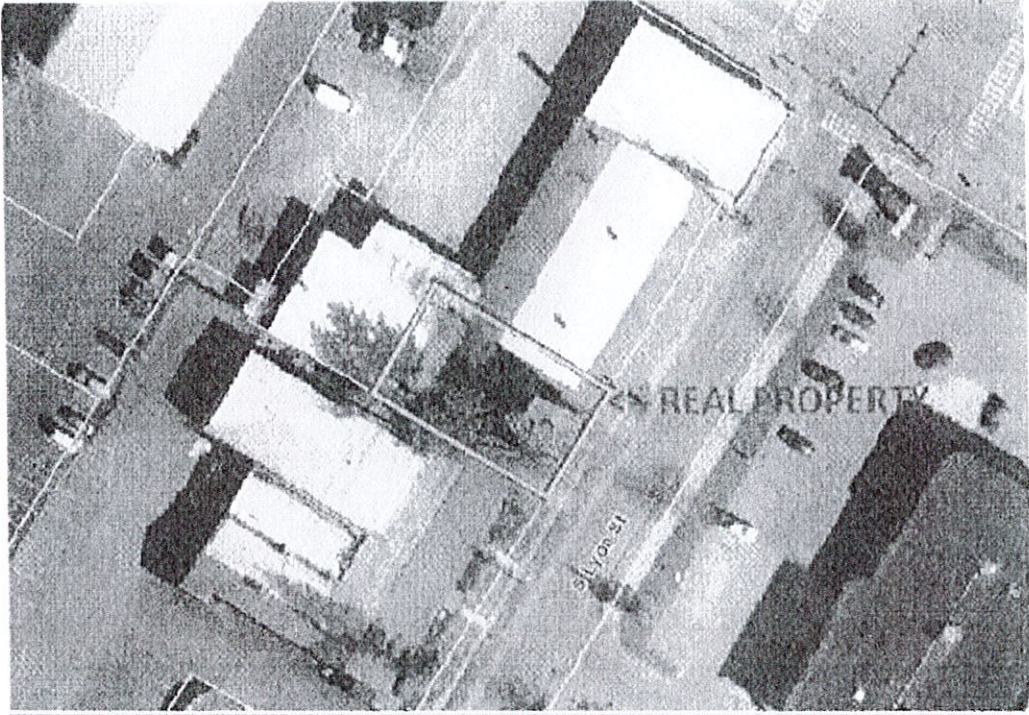
Title: Vice President

5/11/2023

Date



EXHIBIT "A"  
DEPICTION OF REAL PROPERTY



## REAL ESTATE PURCHASE AGREEMENT

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1.2. All rights, privileges and easements appurtenant to the Real Property, including, without limitation, all minerals, oil, gas and other hydrocarbon substances on and under the Real Property, as well as all development rights, air rights, water and water rights relating to the Real Property, utility agreements and any easements, rights-of-way, or other appurtenances used in connection with the beneficial use and enjoyment of the Real Property, and all improvements and fixtures on the Real Property, as well as any buildings and structures on the Real Property (collectively the "**Improvements**").

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Batavia, NY



4.8 Satisfactory results, in Buyer's sole discretion, of any and all inspections, tests and procedures within the Due Diligence Period.

4.9 Seller granting Buyer easements in form and content acceptable to Buyer and in recordable form to include, but not be limited to, parking of motor vehicles, pedestrian traffic, access to and from public streets and parking areas, municipal water lines, telephone lines, gas lines, sanitary sewer lines, storm sewer lines, electrical lines, signage, and use of common areas throughout the remaining real property owned by Seller as Buyer shall reasonably require for the Intended Use of the Property and which Buyer shall identify and approve as to form and content in writing before the expiration of the Due Diligence Period. Seller shall also convey, in form satisfactory to Buyer and its counsel, utility easements and assignments of rights of use of common areas, if any, as Buyer may reasonably require for the Intended Use of the Property and which Buyer shall identify and approve as to form and content in writing before the expiration of the Due Diligence Period.

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4.11 Receipt during the Due Diligence Period or any Extension Period of any and all variances and Approvals required to construct a free-standing pole sign, signage on the building to be constructed on the Property, directional signage, and a drive-thru menu board and speakers.

4.12 If any of the foregoing conditions are not satisfied, then Buyer shall have the right, in its sole discretion, on or before the expiration of the Due Diligence Period to either: (i) waive the condition in question and proceed with the purchase, or (ii) terminate this Agreement. Provided that Buyer or Seller is not in default under this Agreement, if Buyer elects to terminate this Agreement, neither party shall have any further rights or obligations under this Agreement.

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5.2 Provided Buyer is diligently seeking to satisfy municipal or regulatory requirements to obtain approval as contemplated hereunder, the Due Diligence Period may, at Buyer's option, be extended for three (3) thirty (30) day periods (each 30-day period shall hereinafter be referenced to as an "*Extension Period*") by Buyer giving written notice thereof to Seller .

5.3 At any time during the Due Diligence Period or any Extension Period Buyer, in its sole discretion, may terminate this Agreement by providing written notice to Seller



IN WITNESS WHEREOF the parties' duly authorized representatives have executed this Agreement on the date first written above.

SELLER:

  
\_\_\_\_\_  
Gregory Branche

19 July 23  
Date

IN WITNESS WHEREOF the parties' duly authorized representatives have executed this Agreement on the date first written above.

BUYER:

CARROUSELL

By: 

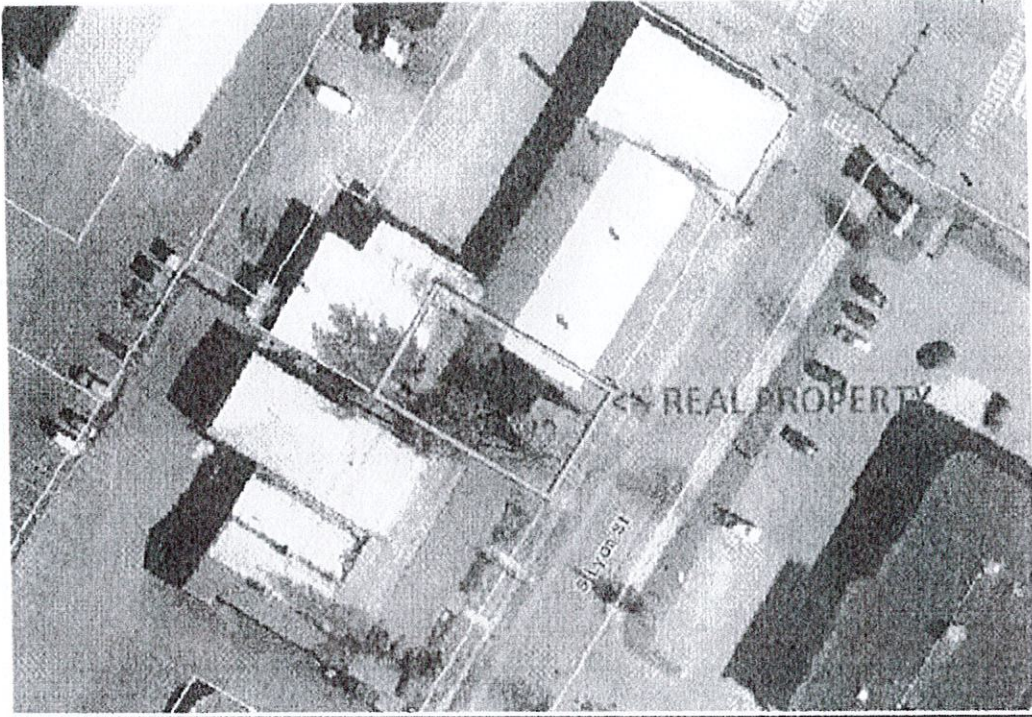
Name: Richard G. Gross

Title: Vice President

5/11/2023

Date

EXHIBIT "A"  
DEPICTION OF REAL PROPERTY





Narrative Justifying  
Granting of Area  
Variances



August 31, 2023

City of Batavia Zoning Board of Appeals  
One Batavia City Center  
Batavia, New York 14020

Attention: Doug Randall, City of Batavia Code Enforcement Officer

**Re: Application for Area Variances – Proposed Burger King**  
**Applicant: Carrols LLC**  
**Properties: 301-305 West Main Street;**  
**307 West Main Street;**  
**4 South Lyon Street; and**  
**Portion of 6 South Lyon Street**

Dear City of Batavia Zoning Board of Appeals:

Our firm represents Carrols LLC (“Applicant”), the applicant regarding the above referenced Application for Two Area Variances. The Applicant has entered into contracts to purchase 301-305 West Main Street, 307 West Main Street, 4 South Lyon Street and a portion of 6 South Lyon Street, which combined comprise 1.11± acres (“Project Site”).

As described in more detail below, the Applicant seeks two area variances:

1. Number of Parking Spaces; and
2. Building Height.

This letter shall constitute the Applicant’s justification for approval of its Application for Two Area Variances as required by the City of Batavia Application to the Zoning Board of Appeals Form as well as City of Batavia Zoning Ordinance §190-49(F)(4) and New York General City Law §81-b(4)<sup>1</sup>.

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<sup>1</sup> As required by New York Law, City of Batavia Zoning Ordinance §190-49(F)(4) and New York General City Law §81-b(4) contain the identical requirements for the granting of area variances.



**Application for Two Area Variances**

**Applicant: Carrols LLC**

**Project: Burger King**

**Property: 301-305 West Main Street, 307 West Main Street, 4 South Lyon Street & portion of 6 South Lyon Street  
August 31, 2023**

**Project Overview**

The Applicant seeks to construct a new Burger King restaurant consisting of the construction of a new 3,140± square feet Burger King with a drive-thru, a mobile order lane and related site infrastructure, parking and site improvements. This project would relocate the existing Burger King located nearby at 230 West Main Street.

The Property is zoned C-2 – General Commercial District which expressly allows the proposed use. In addition to the two area variances requested, the Applicant will be applying to the City of Batavia Planning & Development Committee (“PDC”) for Site Plan Approval and a Lot Division of 6 South Lyon Street. The necessary approvals, including the two area variances, were confirmed in an E-Mail from Doug Randall, City of Batavia Code Enforcement Officer to Peter J. Sorgi, Project Attorney, on July 27, 2023.

The Applicant has availed itself of the Zoning Ordinance’s option to have pre-application, sketch plan review with the PDC and has met with the PDC at their June 2023, July 2023 and August 2023 meetings and the result of these meetings has been several modifications of the plan which is discussed in more detail below.

Enclosed please find as follows:

- Exhibit 1: Concept Site Plan with a table of the two required area variances located in the upper right corner.
- Exhibit 2: Survey.
- Exhibit 3: E-Mail from Doug Randall, City of Batavia Code Enforcement Officer to Peter J. Sorgi, Project Attorney, on July 27, 2023, confirming the necessary approvals including the two area variances.
- Exhibit 4: Short Environmental Assessment Form pursuant to the New York State Environmental Quality Review Act (“SEQR”) – please note that the granting of the two area variances constitutes an Unlisted Action pursuant to SEQR.



**Application for Two Area Variances**

**Applicant: Carrols LLC**

**Project: Burger King**

**Property: 301-305 West Main Street, 307 West Main Street, 4 South Lyon Street & portion of 6 South Lyon Street  
August 31, 2023**

**Requested Area Variances**

The two requested area variances are:

<b>DESCRIPTION</b>	<b>CODE SECTION</b>	<b>REQUIRED</b>	<b>REQUESTED</b>	<b>VARIANCE</b>
Number of Parking Spaces	190-39(A)(3)(a)(27)	32	26	6 spaces
Building Height	190-37(E)(2)(d)	18'-0"	18'-8"	8 inches

Section 190-39(A)(3)(a)(27) of the Zoning Ordinance (parking spaces) is attached as Exhibit 5. Section 190-37(E)(2)(d) of the Zoning Ordinance (parking spaces) is attached as Exhibit 6.

**Legal Criteria for Granting of Area Variances**

The Zoning Board of Appeals has the jurisdiction to grant area variances pursuant to City of Batavia Zoning Ordinance §190-49(F)(4) and New York General City Law §81-b(4), both of which set forth the following legal criteria for the granting of area variances:

Area variances.

(a) The zoning board of appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.

(b) In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:

(1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;

(2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;

*Application for Two Area Variances*

*Applicant: Carrols LLC*

*Project: Burger King*

*Property: 301-305 West Main Street, 307 West Main Street, 4 South Lyon Street & portion of 6 South Lyon Street  
August 31, 2023*

(3) whether the requested area variance is substantial;

(4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

(5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

The five factors set forth above provide guidance as to the types of issues that must be considered, but no one factor is dispositive, meaning that the applicant does not need to demonstrate all five factors or even a majority of the factors to be granted an area variance. Rather, what is required by the Zoning Board of Appeals is the balancing test, after considering the five above referenced factors to determine whether **“the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant”**.

**Justification for Granting of Area Variances**

As stated above, the overall test for the granting of the requested area variances is **“the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant”**.

The **“benefit to the Applicant”** is that the Applicant is able to construct a new Burger King with its newest building design and a site layout the provides substantially more landscaping than the Zoning Ordinance requires, especially at the corner of West Main Street and South Lyon Street, which was strongly suggested by the PDC.

The benefit described above, must be weighed against the **“detriment to the health, safety and welfare of the neighborhood or community”** and no detriment exists. To the contrary, the Project redevelops several sites and actually reduces the number of curb cuts from four to two.

The five factors that must be considered for each area variance are set forth below with the criteria written in **black bold** and the Applicant’s justification for each criteria written regarding **the parking spaces variance written in red** and the building height variance written in **green**:

*Application for Two Area Variances*

*Applicant: Carrols LLC*

*Project: Burger King*

*Property: 301-305 West Main Street, 307 West Main Street, 4 South Lyon Street & portion of 6 South Lyon Street  
August 31, 2023*

1. **“whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance”:**

**Parking Spaces Variance**

The area variance for parking spaces will not produce an undesirable change to the character of the neighborhood or a detriment to nearby properties.

The plan reduces the parking spaces by 6 spaces which enabled the Applicant to increase its landscaping, especially at the corner of West Main Street and South Lyons at the strong suggestion of the PDC.

The reduction in parking spaces, which was a result of the increase in landscaping, will still provide ample parking.

Industry trends reveal a substantial increase in drive-thru or mobile ordering and a reduction of dining in the restaurant. For instance, a QSR article, entitled “How Drive-thru can Boost Sales Post-Pandemic<sup>2</sup>,” a copy of which is attached as Exhibit 7, states: “When the COVID-19 pandemic began, it sparked a major change in the restaurant industry: an increased focus on takeout options. Even as the world enters the recovery phase of the pandemic, several experts agree that this sudden shift to the emerging on-the-go lifestyle isn’t going anywhere.”

Moreover, an article by FOODTRUCKEMPIRE, entitled “47 Stunning Drive-Thru Statistics for 2020<sup>3</sup>,” a copy of which is attached as Exhibit 8, states: “Even before the COVID pandemic hit, between 60% – 70% of some certain quick serve restaurant’s sales came from drive thru lanes.”

This trend and data are consistent with Burger King’s internal data for its existing Batavia site: “Peak hours for our current Batavia, NY Burger King Restaurant are between the hours of 11 AM and 2 PM. Drive-through accounts for approximately 70% of our business during those hours. We typically have between 6 – 8 employees during that time and an average of 8-12 customers in the restaurant. We have monitored the parking lot during the lunch period over the last 30 days and have averaged 15 cars in the lot.”

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<sup>2</sup> <https://www.qsr magazine.com/outside-insights/how-drive-thrus-can-boost-sales-post-pandemic>

<sup>3</sup> <https://foodtruckempire.com/news/drive-thru-statistics/>



*Application for Two Area Variances*

*Applicant: Carrols LLC*

*Project: Burger King*

*Property: 301-305 West Main Street, 307 West Main Street, 4 South Lyon Street & portion of 6 South Lyon Street  
August 31, 2023*

**Building Height Variance**

The area variance for building height will not produce an undesirable change or a detriment to nearby properties. The variance is only for 8 inches and the building is not inconsistent with other buildings in the immediate area.

2. **“whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance”:**

**Parking Spaces Variance**

The initial plan reviewed by the PDC at its June 2023 meeting complied with the parking requirements and the landscape requirements of the Zoning Ordinance. However, after much discussion with the PDC, they requested additional landscaping which we have accommodated but which also led to the required variance. Accordingly, there is no feasible alternative to increase the landscaping without reducing the parking spaces which led to the need for the variance.

**Building Height Variance**

The “benefit sought by the applicant” is to construct the Burger King with its newest building style. Unfortunately, the existence of a flood plain and the related engineering to address this led to an increase in grade and thus in building height. Accordingly, there is no feasible alternative to achieve the “benefit sought by the applicant.”

3. **“whether the requested area variance is substantial”:**

**Parking Spaces Variance**

The parking spaces area variance is a difference of 6 spaces which will not have a substantial impact given the data set forth above from Burger King and the industry articles.

**Building Height Variance**

An Eight inches building height variance is clearly not substantial.

4. **“whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district”:**

**Application for Two Area Variances**

**Applicant: Carrols LLC**

**Project: Burger King**

**Property: 301-305 West Main Street, 307 West Main Street, 4 South Lyon Street & portion of 6 South Lyon Street August 31, 2023**

**Parking Spaces Variance**

No adverse physical or environmental impacts exist regarding the parking variance as it results in more greenspace and landscaping at the Project Site.

**Building Height Variance**

No adverse physical or environmental impacts exist regarding the fence variance because the variance is so minimal and is not inconsistent with the height of other buildings in the surrounding area.

**5. “whether the alleged difficulty was self-created”:**

**Parking Spaces Variance**

It can be argued that any variances sought by an applicant when they were aware of the Zoning Code provisions results in a self-created difficulty, however the need for the variance for parking spaces was caused in part by the PDC’s strong suggestion to increase landscaping (even though the initial plan which complied with parking requirements also complied with the landscaping requirements). This suggestion by the PDC was agreed to by the Applicant and resulted in a better project.

**Building Height Variance**

It can be argued that any variances sought by an applicant when they were aware of the Zoning Code provisions results in a self-created difficulty, however the difficulty was also created by the flood plain on a portion of the Project Site.

Accordingly, we request that the Area Variances be granted. Thank you for your consideration of our application.

Sincerely,

HOPKINS SORGI & MCCARTHY PLLC



Peter J. Sorgi, Esq.

Enc.

***Application for Two Area Variances***

***Applicant: Carrols LLC***

***Project: Burger King***

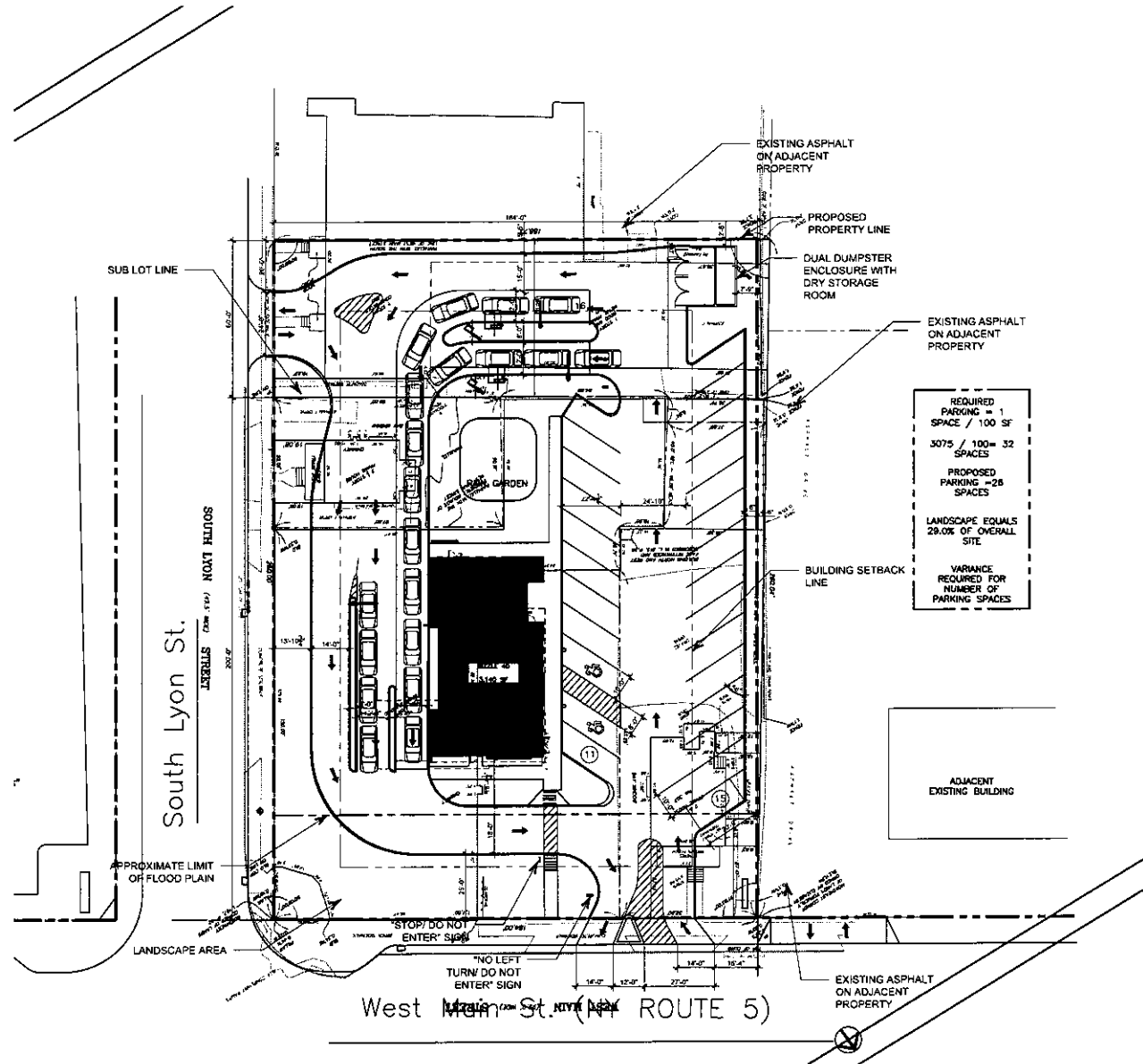
***Property: 301-305 West Main Street, 307 West Main Street, 4 South Lyon Street & portion of 6 South Lyon Street  
August 31, 2023***

cc: City Planning & Development Committee  
Doug Randall, City of Batavia Code Enforcement Officer  
Doug Beachel, Carrols LLC  
Patrick Mahoney, AIA, NCARB, Project Architect  
Bob Blood, Project Landscape Architect



# Exhibit 1

## Site Plan



**PROPOSED SITE PLAN** ①  
SCALE: 1" = 20'-0"

**PRELIMINARY**

ISSUED FOR SKETCH PLAN REVIEW 6/29/23

No.	Description	Date
△	REVISIONS	

**BURGER KING**  
301-307 W MAIN STREET  
BATAVIA, NEW YORK

CARROLS, LLC  
SYRACUSE, NEW YORK

**CONCEPT SITE PLAN**

**ISSUE**  
6/29/23  
LAUER-MANGUSO ASSOCIATES ARCHITECTS

**LAUER-MANGUSO & ASSOCIATES ARCHITECTS**  
4080 Ridge Lea Road  
Buffalo, NY 14228  
(716) 837-9833

Date: 6/29/23	Drawing No. C-14
Drawn By: KJP, RAB	
Checked By: PJM	
Job Number: 2006	

30929C. It is a violation of Section 220, Subsection 2, of the New York State Law for any person, unless acting under the direction of a Licensed Architect or Professional Engineer, to alter in any way, plan, specification, or report in which the seal of a Licensed Architect or Professional Engineer has been applied.



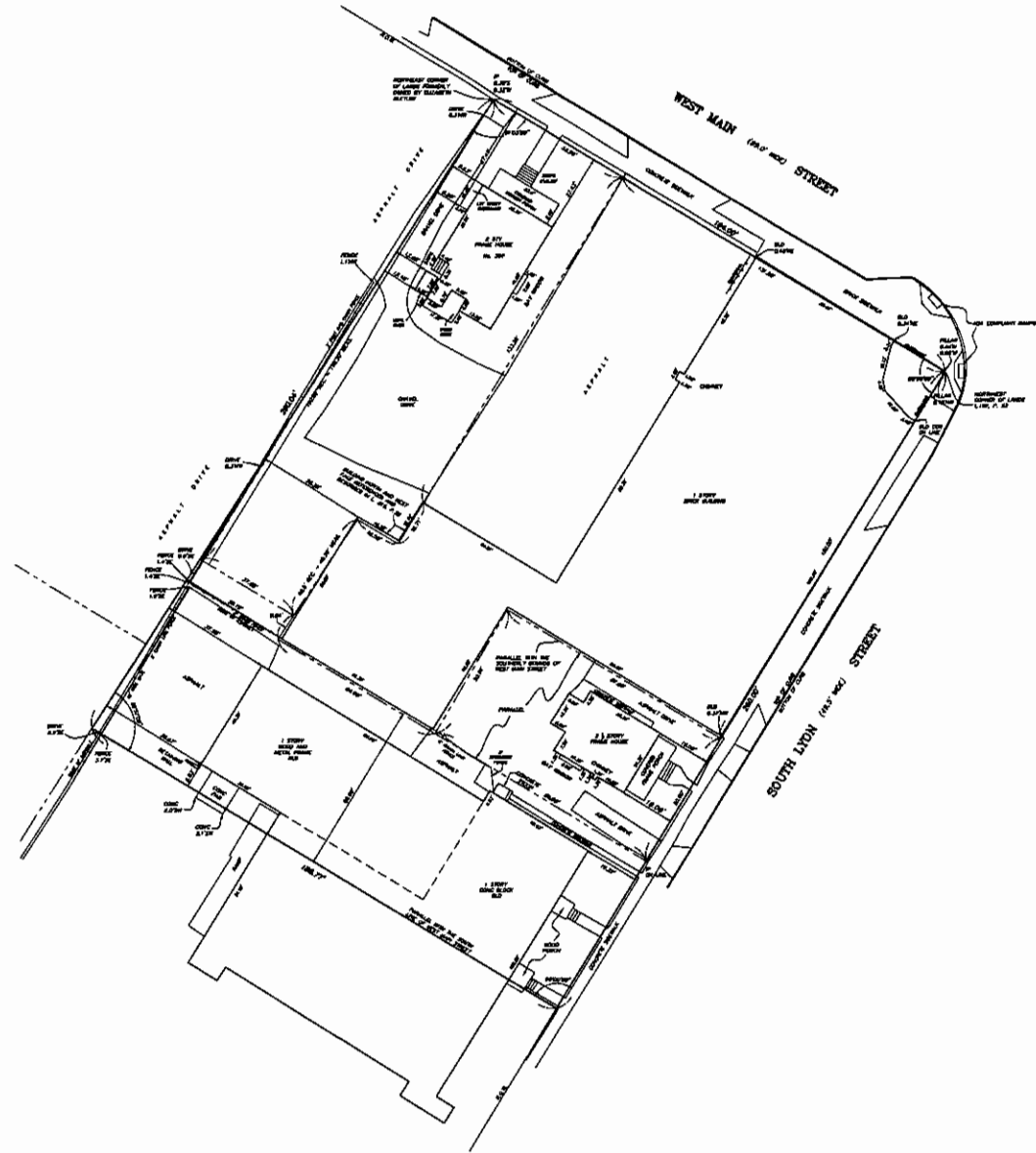
# Exhibit 2

## Survey



THIS SURVEY AND PLAN HAS BEEN PREPARED BY THE SURVEYOR IN ACCORDANCE WITH THE REQUIREMENTS OF THE SURVEYING AND MAPPING ACT OF 1988, CHAPTER 108, SECTION 108-10.

THIS SURVEY AND PLAN HAS BEEN PREPARED BY THE SURVEYOR IN ACCORDANCE WITH THE REQUIREMENTS OF THE SURVEYING AND MAPPING ACT OF 1988, CHAPTER 108, SECTION 108-10.



DATE	REVISION/TYP

SURVEY OF  
PART OF LOT 70  
CITY OF BATAVIA, GORHAM COUNTY, NEW YORK

**CPL**  
CITY ENGINEERING, LANDSCAPE  
ARCHITECTURE & SURVEYING, LLP  
MEMBERSHIP LICENSED PROFESSIONALS  
100 AVENUE 1900, SUITE 400  
BATAVIA, NY 14020  
(716) 343-3333 FAX (716) 343-3334

JOB NO. 2021-2300003.00 DATE: AUGUST 17, 2023  
Scale: 1" = 20' T&E No.

# Exhibit 3

Doug Randall E-Mail

## Peter Sorgi

---

**From:** Douglas E. Randall <DRandall@batavianewyork.com>  
**Sent:** Thursday, July 27, 2023 4:55 PM  
**To:** Peter Sorgi  
**Subject:** RE: [City of Batavia NY] Proposed Burger King, W. Main / S. Lyon -- City of (Sent by Peter Sorgi, psorgi@hsmlegal.com)  
**Attachments:** DOC072313 zba app for area var.pdf; Lot Division-Minor Subdivision application 2022.doc; Lot divisions - parcel mergers process.doc; Lot division- Draft Deed statement.doc

Peter,

I'll make sure this is placed on the August 15th agenda for sketch plan review.

After careful review of the definitions listed in the Batavia Municipal Code, the City has determined that the proposed Burger King project is not subject to the "Special Use Permit" requirements for "Drive-in Restaurants". "Restaurants and other places for serving food" is a permitted principal use within the C-2 General Commercial district. An area variance will not be required for item number 1 and 2 listed below. Variances will be needed for the building height and number of off-street parking spaces. I have attached a ZBA application for your use.

The individual parcels that comprise this development, 4 South Lyon, 301-305 West Main, and 307 West Main, will need to be merged prior to permit issuance. The PDC could approve the project with that condition. The City does not need to approve the mergers.

The subdivision of 6-8 South Lyon St. can be approved in this office as a "Lot Division". I have attached an application and information detailing the process.

Let me know if you have any questions.

Doug



# Exhibit 4

## Short Environmental Assessment Form



# Short Environmental Assessment Form

## Part 1 - Project Information

### Instructions for Completing

**Part 1 – Project Information.** The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

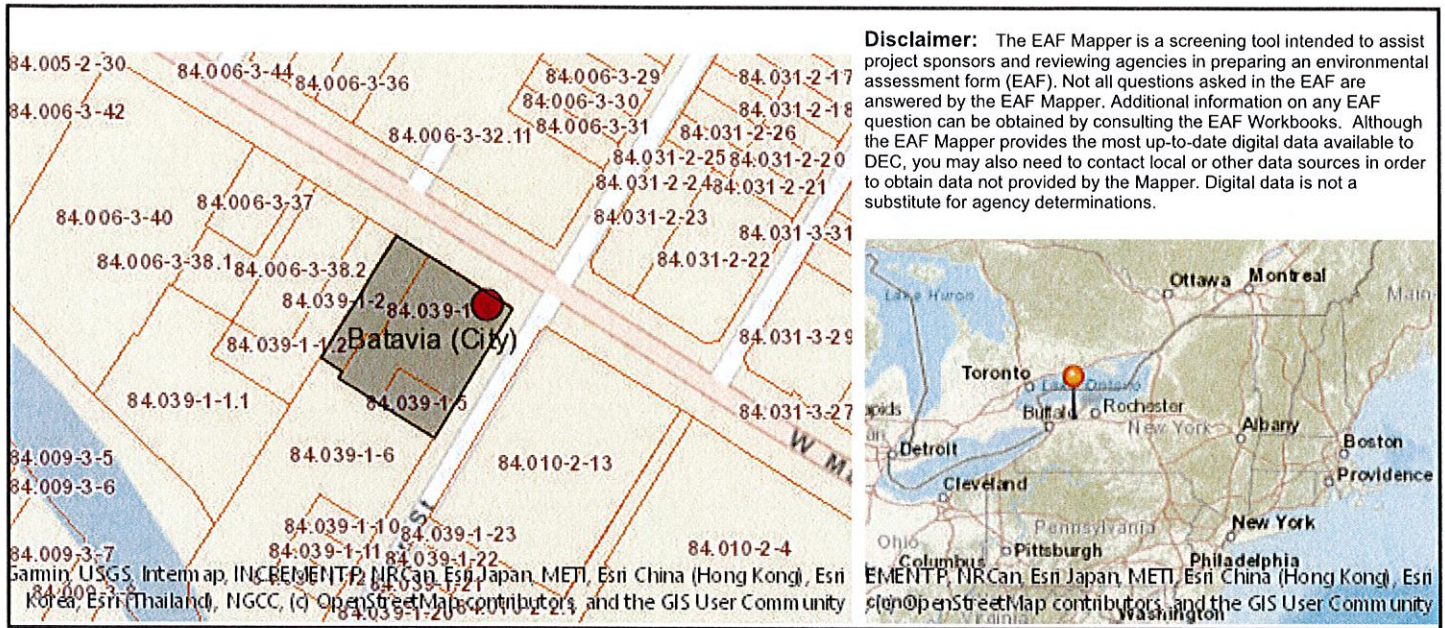
<b>Part 1 – Project and Sponsor Information</b>				
Name of Action or Project: Burger King, City of Batavia				
Project Location (describe, and attach a location map): 301-305 West Main Street, 307 West Main Street, 4 South Lyon Street and Portion of 6 South Lyon Street, City of Batavia, NY				
Brief Description of Proposed Action: The Applicant seeks to construct a new Burger King restaurant consisting of the construction of a new 3,140± square feet Burger King with a drive-thru, a mobile order land and related site infrastructure, parking and site improvements. This project would relocate the existing Burger King located nearby at 230 West Main Street.				
Name of Applicant or Sponsor: Carrols LLC		Telephone: (315) 409-8692 E-Mail: dbeachel@carrols.com		
Address: 968 James Street				
City/PO: Syracuse		State: NY	Zip Code: 13203	
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval: NYSDOT (curb cut), NYSDEC (SPDES permit), Genesee County Health Department, City Planning (Site Plan), City Building /Subdivision			NO <input type="checkbox"/>	YES <input type="checkbox"/>
3. a. Total acreage of the site of the proposed action? _____ 1.11 acres b. Total acreage to be physically disturbed? _____ 1.11 acres c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ 1.11 acres				
4. Check all land uses that occur on, are adjoining or near the proposed action: <input checked="" type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input checked="" type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban) <input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input checked="" type="checkbox"/> Aquatic <input type="checkbox"/> Other(Specify): <input type="checkbox"/> Parkland				

5. Is the proposed action,	NO	YES	N/A
a. A permitted use under the zoning regulations?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Consistent with the adopted comprehensive plan?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels? b. Are public transportation services available at or near the site of the proposed action? c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	NO <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	YES <input type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____ _____	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____ _____	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____ _____	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places?  b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	NO <input checked="" type="checkbox"/> <input type="checkbox"/>	YES <input type="checkbox"/> <input checked="" type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency? b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____	NO <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	YES <input type="checkbox"/> <input type="checkbox"/>	









B.i.i [Coastal or Waterfront Area]	No
B.i.ii [Local Waterfront Revitalization Area]	No
C.2.b. [Special Planning District]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h [DEC Spills or Remediation Site - Potential Contamination History]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Listed]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Environmental Site Remediation Database]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.iii [Within 2,000' of DEC Remediation Site]	No
E.2.g [Unique Geologic Features]	No
E.2.h.i [Surface Water Features]	No
E.2.h.ii [Surface Water Features]	Yes
E.2.h.iii [Surface Water Features]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
E.2.h.v [Impaired Water Bodies]	No
E.2.i. [Floodway]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.2.j. [100 Year Floodplain]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.2.k. [500 Year Floodplain]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.2.l. [Aquifers]	Yes
E.2.l. [Aquifer Names]	Principal Aquifer, Primary Aquifer
E.2.n. [Natural Communities]	No

E.2.o. [Endangered or Threatened Species]	No
E.2.p. [Rare Plants or Animals]	No
E.3.a. [Agricultural District]	No
E.3.c. [National Natural Landmark]	No
E.3.d [Critical Environmental Area]	No
E.3.e. [National or State Register of Historic Places or State Eligible Sites]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.3.f. [Archeological Sites]	Yes
E.3.i. [Designated River Corridor]	No



# Exhibit 5

Section 190-  
39(A)(3)(a)(27) of the  
Zoning Ordinance



- H. Industrial sewage wastes. It shall be unlawful for any person, firm or corporation to permit the discharge of industrial wastes of any nature, into an open stream, until it is treated according to the regulations set by the New York State Departments of Health and Environmental Conservation. Any wastes discharged into a public sewer shall be treated in accordance with the regulations established in Chapter 147 of the Code of the City of Batavia.
- I. Radioactive materials. It shall be unlawful for any person, firm or corporation to permit the emission of such quantities of radioactive materials, in any nature whatever, such as to be unsafe as established by the United States Bureau of Standards.
- J. Electrical interference. It shall be unlawful for any use, activity or process to be conducted which produces electromagnetic interference with radio or television reception in neighboring residential or commercial districts.
- K. Outside storage. All materials which might cause fumes or dust or which constitute a fire hazard or which may be edible by or otherwise be attractive to rodents or insects shall be stored outdoors only in closed containers.
- L. Noncompliance.
  - (1) If it has been adequately demonstrated to the Board of Appeals that compliance with the terms of this chapter cannot be effectively and immediately made, the Code Enforcement Officer shall have the authority to grant a temporary permit for the continued operation of such noncomplying equipment, but only in the event that the party has taken all necessary steps to secure compliance with this chapter.
  - (2) Such temporary permit shall be issued for no longer a period than three months, at the expiration of which period of time the party holding such permit shall be deemed in violation of this chapter.

**§ 190-39. Parking requirements. [Amended 2-22-1982; 8-14-2000]**

For every building or structure erected, altered, or extended after the enactment of this chapter there shall be provided parking facilities of vehicle storage as set forth below. As defined in this chapter an off-street parking space shall measure no less than eight feet in width and 19 feet in depth and include sufficient space for aisles and maneuverability.

**A. Off-street parking.**

- (1) Purpose: The City finds that large and highly visible parking areas represent one of the most objectionable aspects of commercial development. Such parking lots may damage the historic layout and architectural fabric of historic areas, harm the natural environment and visual character of the community, interfere with pedestrian safety and accessibility and reduce the quality of life in developed areas, as measured by the City's Visual Preference Survey™. However, the City also recognizes that inadequate parking can diminish quality of life by creating traffic congestion, safety hazards and inconvenience. The City therefore seeks to balance the need for adequate parking with the need to minimize harm resulting from the provision of parking and to avoid the negative impacts of excessive parking requirements.
- (2) Residential and related uses. Minimum parking spaces required for residential and related uses:
  - (a) For single family or two-family dwelling: two spaces per dwelling unit.
  - (b) For multifamily dwellings, large-scale multifamily and high-rise apartments: 1 1/2 spaces per dwelling unit.

- (c) Home occupation in a dwelling: one space for each 400 square feet devoted to such home occupation, plus the required spaces per dwelling unit.
  - (d) These requirements may be reduced for dwelling units with less than 1,000 square feet of floor space, senior citizen housing, mixed-use development or other appropriate circumstances if the Planning and Development Committee determines that such reductions are warranted.
- (3) Nonresidential uses. The number and layout of parking spaces for nonresidential uses shall be based on the need to protect public safety and convenience while minimizing harm to the character of the community and to environmental, historic and scenic resources. Since businesses vary widely in their need for off-street parking, it is most appropriate to establish parking requirements based on the specific operational characteristics of the proposed uses. The provisional parking standards in Subsection A(3)(a) below may be varied by the Planning and Development Committee according to the criteria in subsection A(3)(b).
- (a) Provisional parking standards.
    - [1] Art gallery or museum: one space per 400 square feet of floor area plus one space per two employees.
    - [2] Auditorium, movie theater or other places of public assembly: one space for each two employees and five seats.
    - [3] Auto rental: one space per 250 square feet of sales floor area plus one space per company vehicle.
    - [4] Auto repair: one space per 200 square feet of sales floor area plus one space per 600 square feet of service floor area, plus one space per company vehicle.
    - [5] Auto sales: one space per 200 square feet of enclosed sales floor area, plus one space per 600 square feet of service floor area, plus one space per company vehicle.
    - [6] Bakery: one space per 200 square feet of sales plus one space per two employees.
    - [7] Bank (with drive-in and walk-in facilities): one space for each 100 square feet of floor area for customers plus one space for each 250 square feet devoted to office use.
    - [8] Barbershop/beauty parlor: one space per 200 square feet plus one space per two employees.
    - [9] Boardinghouse or rooming house: one space for each roomer owning and/or keeping a motor vehicle. **[Amended 7-13-2015 by L.L. No. 2-2015]**
    - [10] Bowling alley: five spaces for each lane of the bowling alley.
    - [11] Car wash: one space per bay plus one space per two employees
    - [12] Church, synagogue or other place of worship: one space per eight seats.
    - [13] Clubs and lodges: one space per four seats plus one space per two employees.
    - [14] Convalescent center or nursing home: one space per two beds plus one space per two employees.
    - [15] Convenience store: one space per 200 square feet of sales floor area, plus one space per two employees.
    - [16] Day-care center: two spaces plus one space for each employee.



- [17] Funeral home: one space per four seats, plus one space per two employees, plus one reserved space for each hearse or company vehicle.
  - [18] Furniture store: one space per 400 square feet of sales floor area.
  - [19] Gas station: five spaces per facility or, if the station's floor area is primarily devoted to convenience store items, then one space per 200 square feet of floor area.
  - [20] Hospital: one space per two beds plus one space per two employees.
  - [21] Hotel, motel or bed-and-breakfast: one parking space per guest room plus one parking space per four employees.
  - [22] Library: one space per 300 square feet of floor area.
  - [23] Manufacturing/industrial: one space per two employees, plus one space per company vehicle.
  - [24] Night club: one space per four seats.
  - [25] Office (not including medical or dental offices): one space per 300 square feet of professional office floor area.
  - [26] Office, medical/dental: one space per 200 square feet of building area.
  - [27] Restaurant: one space per 100 square feet of leasable area.
  - [28] Retail store: one space per 300 square feet of sales floor area plus one space per two employees.
  - [29] School, elementary: one space per employee plus two spaces per classroom.
  - [30] School, high school: five spaces for each classroom.
  - [31] Shopping center: one space per 250 square feet of gross leasable area
  - [32] Supermarket: one space per 300 square feet of sales floor area plus one space per two employees.
- (b) Criteria for applying provisional standards. In applying or modifying the provisional parking standards for any proposed use, the Planning and Development Committee shall consider:
- [1] The maximum number of persons who would be driving to the use at times of peak usage. Parking spaces shall be sufficient to satisfy 85% of the anticipated peak demand. The likelihood of people walking or bicycling to the proposed use shall also be taken into consideration.
  - [2] The size of the structure(s) and site.
  - [3] The environmental, scenic or historic sensitivity of the site (including applicable limitations on impermeable surfaces). In cases where sufficient area for parking cannot be created on the site without disturbance to these resource values, the Planning and Development Committee or Code Enforcement Officer may require a reduction in the size of the structure so that the available parking will be sufficient.
  - [4] The availability of safely usable on-street parking.
  - [5] The availability of off-site, off-street parking within 400 feet that is open to the public, owned or controlled by the applicant, or available on a shared-use basis, provided that the applicant demonstrates a legal right to shared use. Availability of available satellite parking shall also



# Exhibit 6

Section 190-37(E)(2)(d)  
of the Zoning  
Ordinance



- (7) Not more than 40% of the lot area shall be covered by building area.
  - (8) Each building shall be provided with at least one passenger elevator and one service/passenger elevator.
  - (9) One project identification sign shall be permitted which shall not exceed 25 square feet in area and shall be situated not less than 10 feet within the property lines. The sign may include only the name of the project, the street address, and the presence or lack of vacancies.
- D. Cleaning establishments. Cleaning establishments may be permitted by special use permit in the C-2 General Commercial and Industrial Districts, provided that:
- (1) It shall be determined that the proposed use is compatible in the adjoining land uses.
  - (2) The proposed use will not adversely affect the general health, safety and welfare of the public.
  - (3) The applicant shall indicate precautions taken to protect the general health, safety and welfare of the public.
- E. Automobile service stations; garages; drive-in restaurants. Automobile service stations and/or garages for the storage, adjustment or repair of motor vehicles, drive-in restaurants and other similar uses where specific attention and consideration must be given to traffic generation and the disruption of traffic flow as well as the danger to the general public due to hazards by fire and explosion may be permitted by special use permit in C-2, I-1 and I-2 Districts, provided that: **[Amended 11-9-2020 by Ord. No. 2-2020]**
- (1) A site plan shall be prepared to show the location of buildings, parking areas, and driveways. In addition, the site plan shall show the number and location of fuel tanks to be installed; the dimensions and capacity of each storage tank; the depth the tanks will be placed below the ground; the number and location of pumps to be installed; the type of structure and accessory buildings to be constructed; the location, height, and lighting power of proposed lighting standards; and the manner in which buffering is to be provided.
  - (2) Automobile service stations and drive-in restaurants shall have the following yard restrictions:
    - (a) A minimum lot size of 15,000 square feet with a minimum width of 125 feet.
    - (b) Minimum front and side yard areas of 25 feet with a minimum rear yard of 35 feet.
    - (c) Maximum lot coverage of 20%.
    - (d) Maximum building height of one story or 18 feet.
  - (3) Driveways at service stations, drive-in restaurants and other uses providing drive-in service shall not be less than 20 feet nor more than 24 feet in width at any point. Driveways must be at least 20 feet from any side lot line and 50 feet from the intersection of street lines. No more than two driveways shall be permitted for each 125 feet of street frontage.
  - (4) The entire area of the site traveled by motor vehicles shall be hard surfaced.
  - (5) Any repair of motor vehicles shall be performed in a fully enclosed building, and no motor vehicle shall be offered for sale on the site. No motor vehicle parts or partially dismantled motor vehicles shall be stored outside an enclosed building.
  - (6) Accessory goods for sale may be displayed on the pump island and the building island only. The outdoor display of oil cans and/or antifreeze and similar products may be displayed on the respective island if provided for in a suitable stand or rack.
  - (7) All fuel pumps shall be located at least 20 feet from any street or property line and pumps shall have automatic shutoffs as approved by the Fire Department.



## Exhibit 7

QSR Article, entitled  
“How Drive-thru can  
Boost Sales Post-  
Pandemic”



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---

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## How Drive-Thrus Can Boost Sales Post-Pandemic

The emerging on-the-go lifestyle isn't going anywhere.

---

OUTSIDE INSIGHTS | JULY 21, 2021 | RYAN STANSBURY



PJ'S COFFEE

Last year, PJ Coffee's drive-thru locations averaged 53.4 percent more revenue than locations without a drive-thru.

---

When the COVID-19 pandemic began, it sparked a major change in the restaurant industry: an increased focus on takeout options. Even as the world enters the recovery phase of the pandemic, several experts agree that this sudden shift to the emerging on-the-go lifestyle isn't going anywhere.

Ahead of National Drive-Thru Day on July 24, we're taking a closer look at the positive impact drive-thrus can have for quick-service restaurant concepts.

PJ's Coffee, the New Orleans-based, direct trade coffee roaster, experienced firsthand how having a drive-thru at their locations impacted sales. Last year, their drive-thru locations averaged 53.4 percent more revenue than locations without a drive-thru. Furthermore, drive-thru purchases make up 65 percent of their total sales overall at drive-thru enabled locations.

They embraced this increase in drive-thru traffic by launching innovative concepts, such as drive-thru only locations. So what does this mean for quick-service restaurant brands as a whole, and what can they do to make the most of this ongoing trend?

**To-go is for good.** With options like in-store pickup, curbside pickup, delivery and- of course- drive thrus, there are endless possibilities when it comes to targeting "on-the-go" customers. Drive-thrus, in particular, are an excellent way to address this increased demand.

Unlike other to-go options, drive-thrus do not charge customers an additional service fee to use. They are also the perfect pit stop for drivers on the way to work, school, the gym, or wherever their destination may be. For years, it has been apparent that one of the factors that customers value the most is convenience. Drive-thrus allow quick-service restaurant concepts to fulfill this need and maintain a competitive edge.

**It's time to get creative.** Just as PJ's Coffee did, getting creative with how your locations are set up is just one way to maximize your profits. This can best be demonstrated by the PJ's Coffee drive-thru only model, which is beneficial to the brand as a whole and to their individual franchisees. Given



the smaller space, this model requires less investment to open, but can be just as busy- if not busier- than traditional locations. At PJ's, it can save franchisees as much as \$100,000 on their investment.

This unique model also offers franchisees the benefit of simple operations. The smaller space means they will have more awareness of everything that is going on at a given time and it allows them to manage their location more efficiently versus having to pace back and forth between the dining area and drive-thru.

The rollout of this model was accelerated by the pandemic, which forced quick-service restaurant establishments to close their dining rooms. PJ's was quick to notice that some of their stores were doing just as well having only their drive-thrus up and running, and they adapted accordingly. Many of these drive-thru locations are in high-traffic areas, such as right off a freeway or in the midst of a busy intersection.

**Signage works wonders.** For traditional establishments, drive-thrus themselves serve as an additional revenue stream. What if there was a way to enhance this revenue stream even further? One way to reap the benefits of a strong drive-thru model is by increasing signage. Whether it be signs letting customers know that your drive-thru is nearby or exterior signage at your location promoting LTOs or other promotions, generating awareness is a great place to start when it comes to driving traffic and sales.

**Integration is key.** Of course, with the abundance of to-go options, it's important to be able to manage your takeout platform effectively. The PJ's Coffee mobile app offers a convenient way for customers to order and pay ahead of time, as well as a quick way for them to find a PJ's to make a pit stop at when they're out and about. In terms of the drive-thru, this also means making sure everything is set up efficiently on the back end. Ensuring your processes are running smoothly will set you up for success and allow you to take advantage of all the perks that drive-thrus allow their operators.

Overall, drive-thrus are an excellent way to fulfill the needs of busy customers and offer a lower investment option to franchisees, all while increasing your revenue. PJ's Coffee is even celebrating the success they have seen with drive-thrus with their "Drive-Thru SurPRIZE" contest on National Drive-Thru Day, where select locations will be offering an array of prizes and PJ's swag to customers who steer their way into the drive-thru lane.

Keeping up with the trends is one way to manifest success, but staying ahead of them with innovative thinking is a way to ensure it- just take it from PJ's Coffee.

*Since 2010, **Ryan Stansbury** has served as the Vice President of Franchise Development for Ballard Brands. With over 20 years of franchise development experience, Mr. Stansbury's primary responsibility is to facilitate domestic and international growth of a portfolio of retail brands. Mr. Stansbury is also a Certified Franchise Executive (CFE), a designation issued by the International Franchising Association in February of 2007 for his work and study in the franchise.*

---

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## Exhibit 8

QSR Article, entitled  
FOODTRUCKEMPIRE  
Article, entitled “47  
Stunning Drive-Thru  
Statistics for 2020



# 47 Stunning Drive-Thru Industry Statistics for 2020

By [Patrick Limdico](#) | May 29th, 2020 | [Industry News](#) | [Comments Off](#)

Since their inception in the 1960s, the drive-thru has been a growing channel of fast food industry sales. But in 2020 as the global pandemic has hit, the drive-thru became a mission critical sales channel for preserving store revenue.

Even before the COVID pandemic hit, between 60% – 70% of some certain quick serve restaurant's sales came from drive thru lanes. In the current environment Wendy's reported generating 90% of all business from drive thru. Those are staggering numbers even given the current environment.

But it's not just traditional fast food that have taken note of this channel. The coffee industry, particularly Starbucks **accelerated their strategy** add more drive-thru's and less mall locations.



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Based on the data, you can expect many more restaurants and coffee shops to add drive-thru options over the next decade. Let's examine some of the industry statistics and data-backed predictions for this sales channel organized by category.

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## Drive-Thru Fast Facts



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Coffee chains like Starbucks are adding more drive-thru service locations over the next 18 months.

Drive thru sales represent 70% of fast food sales which generates billions of dollars for the industry each month.

([The New York Times](#))

According to the NPD Group, a leading market research company, 57% of hamburger fast food customers use the drive-thru lane, 40% with Mexican QSRs, and 38% of chicken fast food customers went straight to drive through lanes.



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*\$8.3 billion just this last March, an increase of \$300 million compared to the same period in 2019. (The New York Times)*

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In a survey made in 2015 on customers favorite drive-thru restaurants yielded McDonald's at the top, followed by Burger King and Wendy's.

Back in 2009, Wendy's was the fastest serving drive thru with an 134 second average service time, while Chick-fil-A got a high grade for accuracy of orders served with a whopping 96%.

## Drive thru and Climate Change



- According to a study made by the U.S. Govern having your engine idle longer than 10 second consumes more fuel and generates more emis than restarting your engine. The government s that an idle engine in a drive-thru is both bad fi

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laws banning the creation of new drive thru in fast food restaurants with Minneapolis recently joining the group of states. (World Economic Forum)

## Drive-Through Coffee Statistics

- Recognizing higher profits, Starbucks announced last year that they would include a drive-thru on 60% of new coffee shops to be built (pre-pandemic figures).  
([Nextep Systems](#))
- In the drive-thru industry, Starbucks still lags behind major competitors such as McDonald's and Dunkin'.  
([Bloomberg](#))
- An espresso drive-thru can sell an average of 250 cups of coffee drinks and espresso in any given day.  
([Nextep Systems](#))
- An order of tea, coffee, and a peanut butter cookie around 6 minutes on a typical Thursday in Chicago. During that time, 6 cars lined up showing customer eagerness to wait despite the long wait. (Bloom

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**FOODTRUCKEMPIRE**

- According to restaurant consultant, Tom Cook of King-Casey, 70% of customers go for drive thru in Starbucks with car service while only a small percentage stayed inside. (Bloomberg)

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**Related Reading: [57 Global Coffee Industry Statistics and Consumption Trends](#)**

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Last year, customers waited an average of 255 seconds in a drive-thru lane, 20 seconds more compared to 2018. (Forbes)

McDonald's came last in a SeeLevel HX study made last 2018, with 273.29 seconds. ([QSRMagazine.com](#))

In a study made last year, Dunkin' came in as the fastest serving fast food drive thru with 217 seconds, while Chick-fil-A came in last with 323 seconds or about 5 minutes and 20 seconds from speaker box to window. (Today)

*Despite setting the benchmark in 2011, Wendy's record of 116 seconds serving time 2003 hasn't been beat yet. Wendy's in 2011 posted an industry-best average time of only 145 seconds, followed by Taco Bell with 146 The slowest average time was held by McDonald's with 184 seconds that same yea*



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In a QSR survey done in 2013, the former fastest serving fast food chain (Wendy's) clocked in at 133 seconds. Three years prior, Wendy's went for a record-setting time of 116 seconds of serving time. (Today)

Last year, Wendy's and Burger King were 2nd and 3rd in the ranking, each posting a serving time of 210 and 213 seconds respectively. ([Statista](#))

The acceptable time limit with customers is between 3 to 4 minutes. Anything beyond that is unsatisfactory according to experts.



A SeeLevel HX study made between June 1 to July 30 in 2018 of 10 fast food chain's speed of service, Burger King came out on top with 193.31 seconds or about 3 m and 22 seconds. (QSRMagazine)

Deterioration in the speed of service times has caused food stats to decline in recent years. Despite maintaining a range of 2 to 3 minutes serving time, the fast food industry should not disregard this to sustain consumer satisfaction

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A QSR Magazine study revealed that Chick-fil-A has the longest drive-through lines in the industry. On average, an average of 6 or more vehicles lined up in their drive-thru lanes, a number greater than any of their competitors. (Statista)

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Back in 2013, QSR Magazine reported that 65% of McDonald’s sales in the U.S. came from drive-thru customers.

**Related Reading: 57 Critical Fast Food Industry Statistics and Trends**

In 2018, Dunkin’ introduced its dual-lane drive through system. Chipotle unveiled the “Chipotlanes” in 2019, its own version of the said drive through. (CNBC)

Complex items, as well as higher volume orders, were seen as factors affecting slower serving time in drive throughs across the fast food industry, according to a survey. (Today)

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Chick-fil-A had the best order accuracy rate according to a 2019 study made by industry publisher, QSR. (Statista)

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60% of Chick-fil-A's drive throughs have employees taking orders outside the queue. (Forbes)

Depending on how you tally them, but there is an estimated 200,000 drive-thru operations across the United States. (Altrends)

Convenience, menu variety, and price are how customers rate their favorite drive-thru restaurants according to a survey made in 2015. (AYTM)

34% of customers eat on-site at quick-service Mexican restaurants with drive-thru, while 26% do takeouts. It's a different story with chicken fast food chains with 25% dining in while 36% order to-go.

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COVID-19 has closed dine-in service.



Starbucks, Taco Bell, and Chick-fil-A are just some of the fast food chains pushing for their patrons to get their food via takeout. The 3 companies are making full use of drive through lanes to disburse their food while maintaining distancing among customers. (CNBC)

Curbside pick up in fast food chains is gaining popularity as it offers the best option to distribute their food. The service is fresher and hotter, convenient, and it eliminates the need for a delivery person. Claiming food from curbside pick

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according to some experts. (CNBC)

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*Being a pioneer in the fast food industry, McDonald's is seen as the one who could weather through this pandemic among all of its rivals. McDonald's has invested largely on its drive throughs by putting up digital menu boards that entice customers to order bigger, more premium items. (The New York Times)*

Our world is heading towards the "new normal", a society with less to no-touch/contact, triggering certain industries to innovate with ways to deliver their product. Some fast food chains are now turning to curbside pick up to limit customer-staff contact. It also provides a better control process as well as maintaining food quality from kitchen to consumer. Curbside pick up is seen as a more safe and sanitary way of handling food than 3rd party delivery services. (QSR Web)

The current health emergency will make every restaurant consider adding drive thru service. This includes separate take-out/curbside pick up lanes and a new kitchen <sup>ⓧ</sup> dedicated for off-premises dining. This move is expected to be the new standard moving forward. (QSR Web)

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## The Drive-Thru Renaissance



Vintage drive-thru restaurant from the 1960s.

Chipotle is planning to add “Chipotlanes” in 60 locations by the end of 2019, this includes putting up drive through lanes in more than half of the new locations in 2020 (pre-pandemic figures). ([Business Insider](#))

McDonald’s bought a company last year for \$300 million to enhance its menu boards.



McDonald’s acquisition of tech startup companies with on-the-side retooling shows a promising sign for drive-thru renaissance. ([Business Insider](#))

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*San Diego based Jack in the Box chose to streamline their plans of remodeling their old chains by concentrating on drive thru. These upgrades include adding more canopies, LED lighting, and improved digital menu boards.*

*(Restaurant Business)*

Chipotle isn't alone in looking at a more high-tech drive thru. Dunkin' and Starbucks shops are already in the testing stage of drive thru pick up lanes utilizing mobile orders. (Business Insider)

Chipotlanes exhibit the fusion of efficiency with tailor-made technology. Using their app or ordering through their website, customers can effortlessly pick up their food from these windows quickly. Chipotle shows the way for other fast food chains to follow by adapting to available technology. (Restaurant Business)

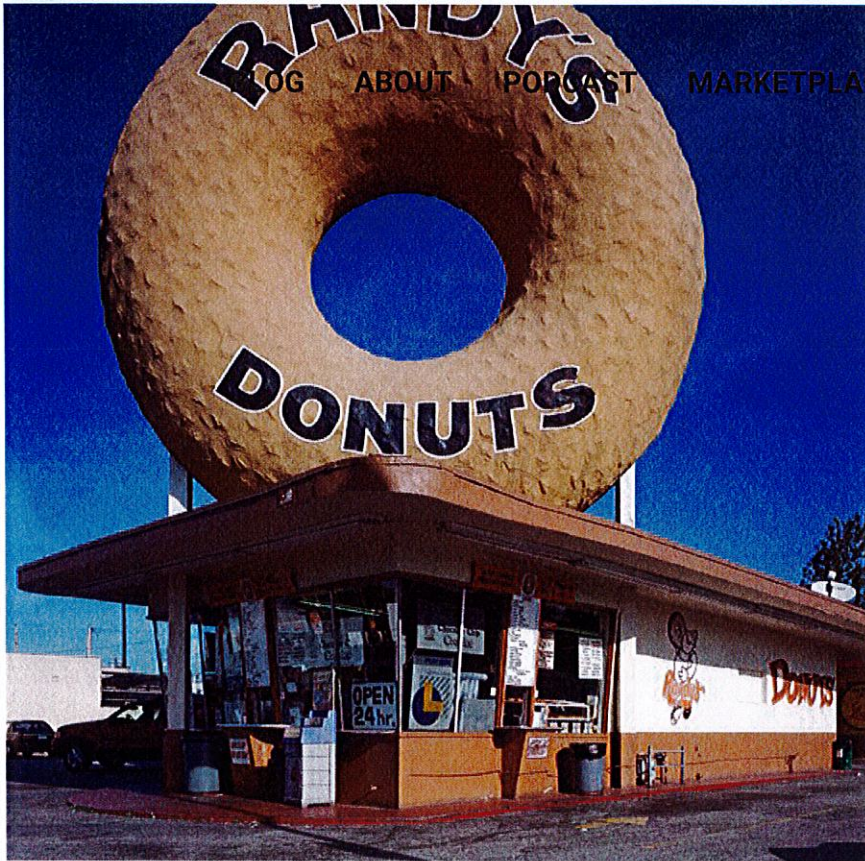
## Industry Predictions



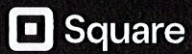
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What's next for the drive-thru and take out industry?



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Since a large portion of fast food sales comes from sales channel, fast-food chains are expected to we through the current global health crisis better than





meal is complete, an employee will hand deliver the food through the car door window.

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The drive thru is viewed as a lifeline for most fast food chains which are just some of the industries expected to take a big hit with this current global pandemic.

Despite the grim outlook, the food industry is adapting to the “new normal” by introducing innovative ways to distribute their food to their customers. With McDonald’s and Chipotle leading the way, other fast food chains are sure to follow their lead in an effort to survive the current crisis.

Unfortunately according to studies, drive through lanes remain piled up with an average waiting time of 255 seconds or around 4.25 minutes from the speaker box to the window. This can be attributed to complex menus to unexpected volume orders among other factors that delay the serving of the so-called “fast food”.

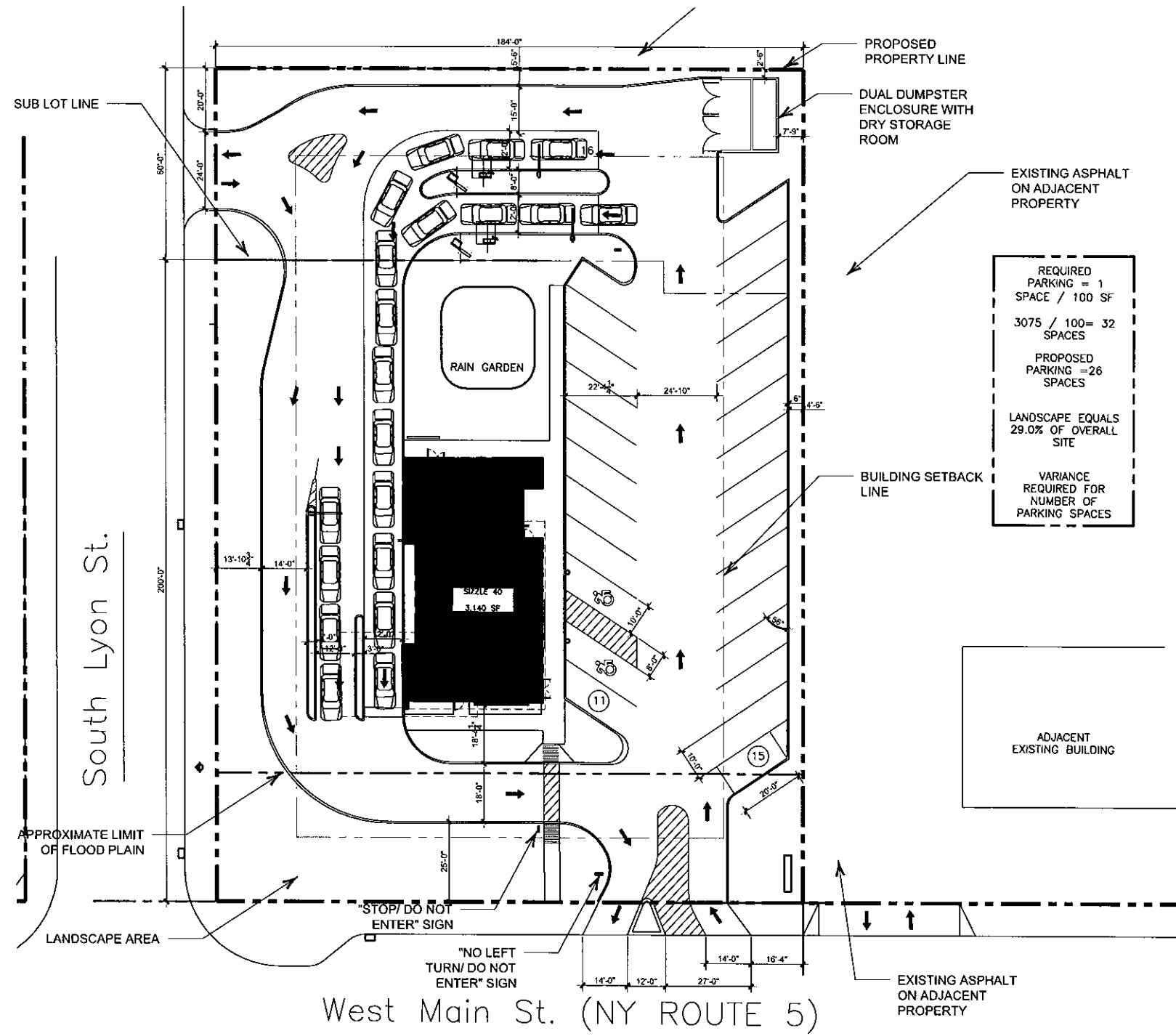


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As drive-thru traffic increases we predict scaled do



REQUIRED PARKING = 1 SPACE / 100 SF  
 3075 / 100 = 32 SPACES  
 PROPOSED PARKING = 26 SPACES  
 LANDSCAPE EQUALS 29.0% OF OVERALL SITE  
 VARIANCE REQUIRED FOR NUMBER OF PARKING SPACES

**Variances Required**

1. Number of Parking Spaces  
 Required Parking = 32 cars  
 Parking Provided = 26 cars
2. Height of Building  
 Maximum Height of Building = 18'-0"  
 Proposed Height of Building = 18'-8"

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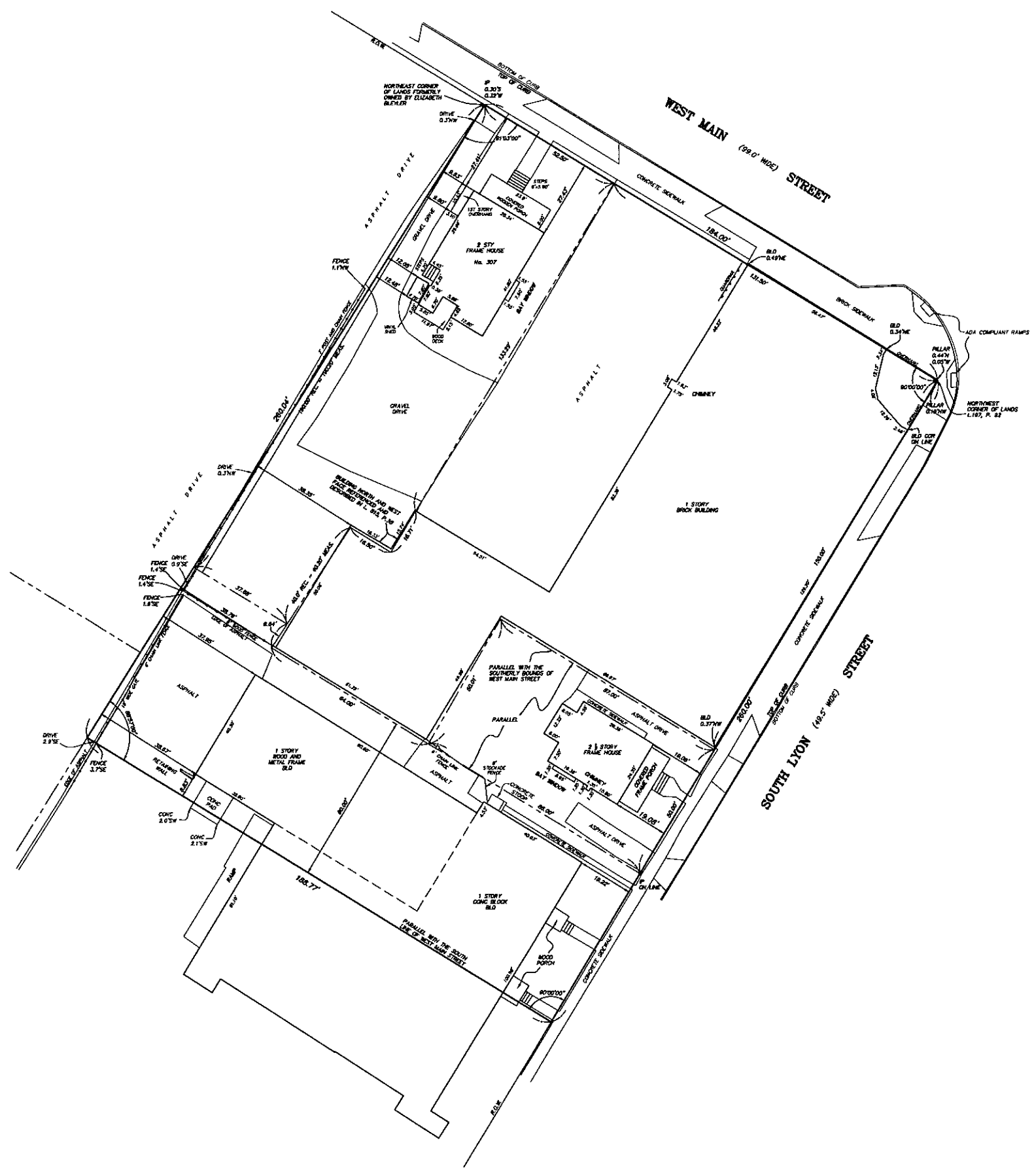
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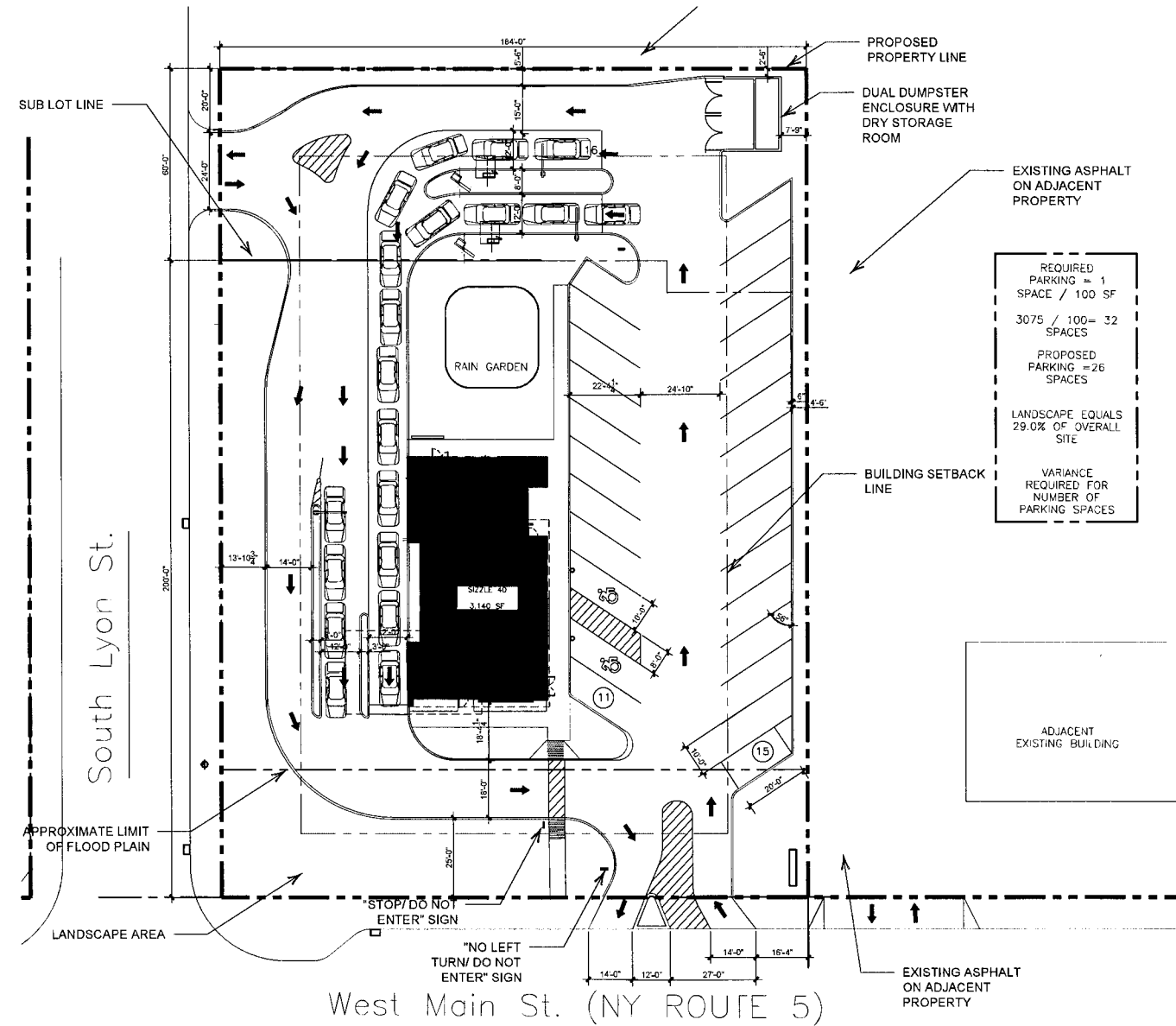
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VARIANCE REQUIRED FOR NUMBER OF PARKING SPACES

**PROPOSED SITE PLAN** ①  
SCALE: 1" = 20'-0"

**Variations Required**

1. Number of Parking Spaces  
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Parking Provided = 26 cars
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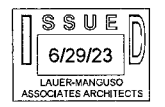
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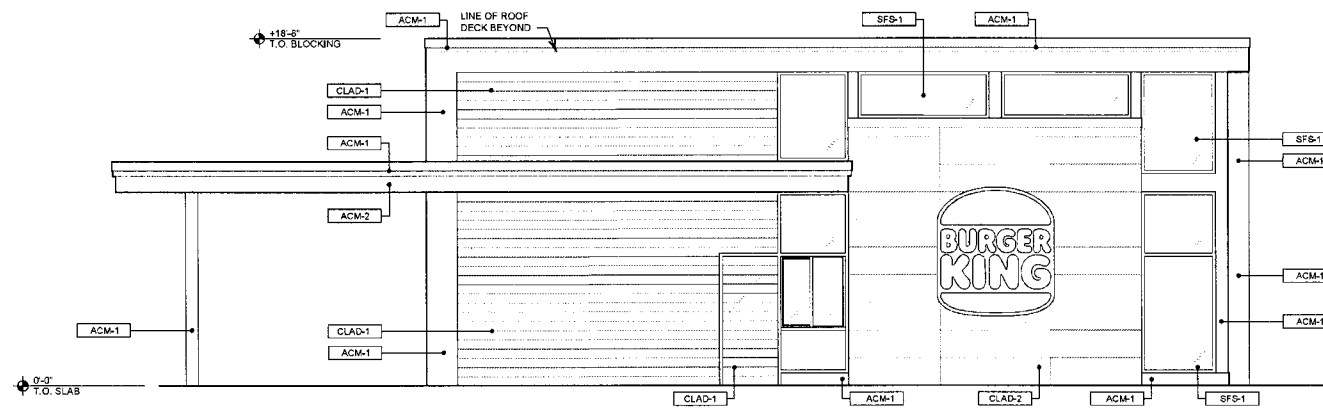
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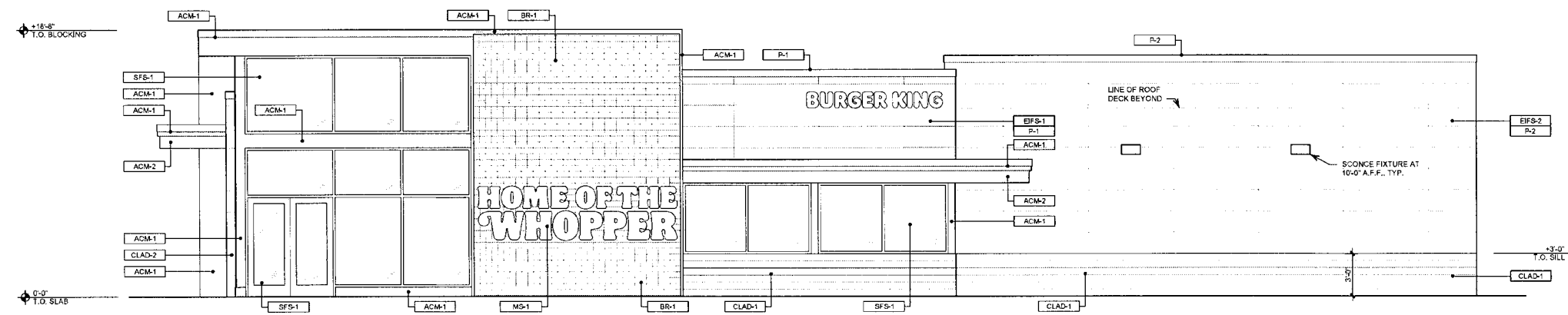
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ELEVATION 2  
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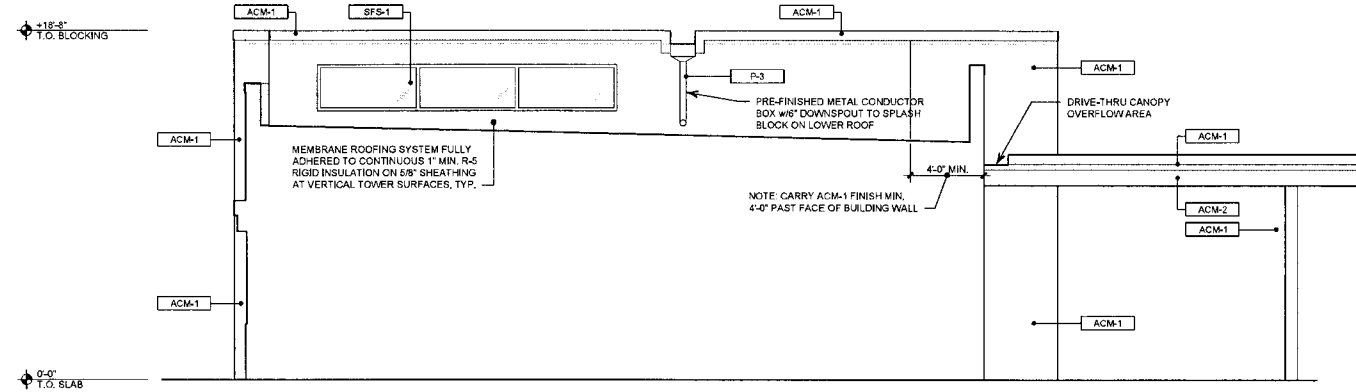
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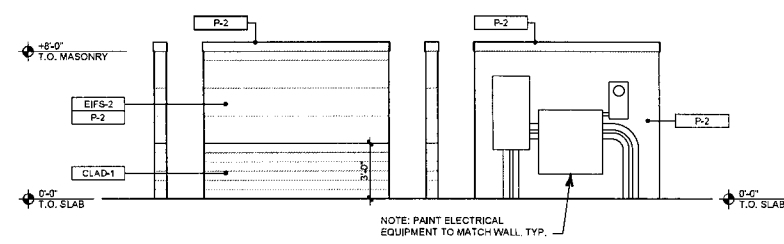
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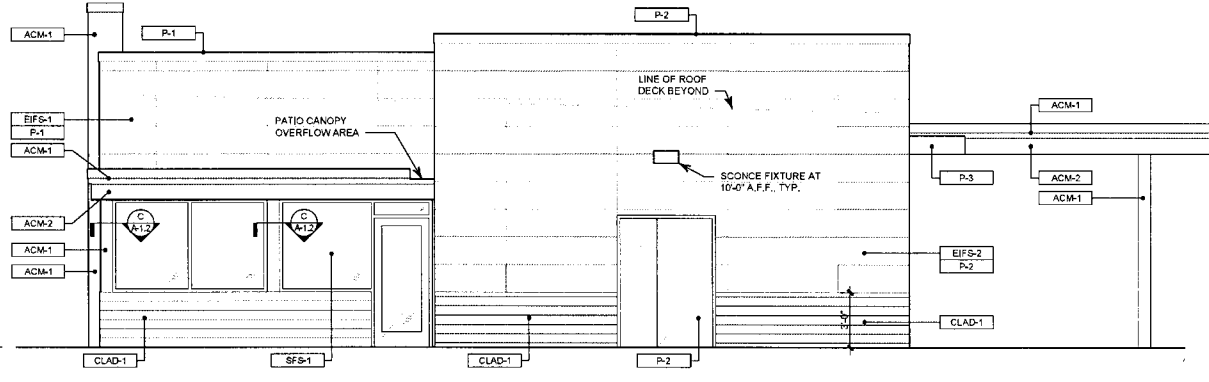
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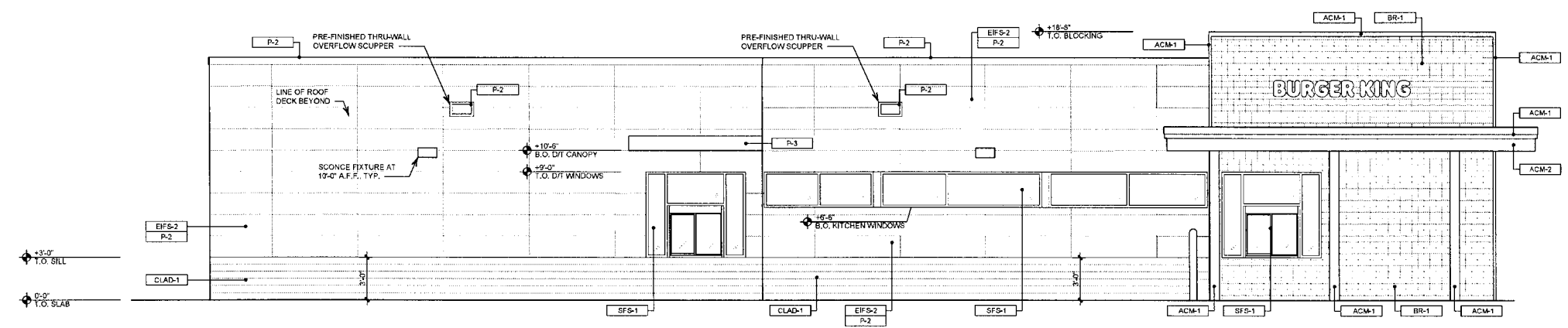
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ELEVATION 3  
SCALE: 1/4"=1'-0"



ELEVATION 4  
SCALE: 1/4"=1'-0"

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