

**RESOLUTION
TOWNSHIP OF HOWELL PLANNING BOARD
RESOLUTION OF MEMORIALIZATION
MONMOUTH COUNTY, NEW JERSEY
AMENDED PRELIMINARY AND FINAL SITE PLAN
APPROVAL WITH ANCILLARY VARIANCE
AND DESIGN WAIVER RELIEF**

**Approved: September 21, 2023
Memorialized: December 14, 2023**

**IN THE MATTER OF: WEN CLAIRE REAL ESTATE, LLC
APPLICATION NO. SP-1011A-2**

WHEREAS, an application for amended preliminary and final site plan approval with ancillary variance and design wavier relief has been made to the Howell Township Planning Board (hereinafter referred to as the “Board”) by Wen Claire Real Estate, LLC (hereinafter referred to as the “Applicant”), on lands known and designated as Block 130, Lot 51.03 as depicted on the Tax Map of the Township of Howell (hereinafter “Township”), and more commonly known as US Highway Route 9 North and West Farms Road in the HD-1 (Highway Development 1) Zone; and

WHEREAS, a public hearing were held before the Board on September 21, 2023 with regard to this application; and

WHEREAS, the Board has heard testimony and comments from the Applicant, witnesses and consultants, and with the public having had an opportunity to be heard; and

WHEREAS, a complete application has been filed, the fees as required by Township Ordinance have been paid, and it otherwise appears that the jurisdiction and powers of the Board have been properly invoked and exercised.

NOW, THEREFORE, does the Howell Township Planning Board make the following findings of fact and conclusions of law with regard to this application:

1. The subject Property contains 1.84 acres with approximately 156 feet of frontage along Route 9 North and 322 feet of frontage along West Farms Road within the HD-1 Highway Development (“HD-1”) Zone. The subject Property is unimproved and wooded with the exception of a paved driveway through a 40-foot-wide access easement allowing access from West Farms Road to the Suburban Propane facility on the adjacent lot to the south.

2. The Applicant is proposing to develop the subject Property with a 2,380 square foot Wendy’s restaurant with drive-thru, containing 30 seats, 42 parking spaces and queuing for nine (9) vehicles in the drive-thru lane. A bypass lane is also provided outside of the drive-thru lane. Access to the subject Property will be provided via new one-way right-in and right-out driveways from Route 9, as well as from the existing full movement driveway along West Farms Road. The improvements also include new sidewalks located along both frontages as well as into the site, landscaping, lighting, a trash enclosure and two (2) above ground basins and porous asphalt parking areas which are proposed to address stormwater management. The proposed new structure is to be serviced by public water and sanitary sewer via a new pump station and force main from Route 9.

3. The Applicant was previously granted preliminary and final site plan approval from the Planning Board on July 16, 2015 permitting construction of a 3,429 square foot Wendy’s restaurant with drive thru. The Applicant further received an amended preliminary and final site plan approval in 2017 permitting construction of a 2,565 square foot Wendy’s restaurant. Construction has not commenced in conjunction with either approval.

4. Counsel for the Applicant, Mark Aikins, Esq., stated that the Applicant was seeking an amended preliminary and final site plan approval. He represented that the amended site plan was proposing a smaller version of the Wendy’s restaurant previously approved by the Board in 2015. Mr. Aikins stated that the original approval included a building containing 3,429 square feet and the

Applicant was now proposing a 2,380 square foot building. He also explained that the subject Property was located in the HD-1 Zone with frontage on Route 9 North and West Farms Road. Mr. Aikins stated that the Applicant was also proposing right-in and right-out driveways accessing Route 9 North and a full movement driveway accessing West Farms Road.

5. The Applicant's Engineer, Vincent Kelly, P.E., testified that the Applicant had previously received preliminary and final site plan approval in 2015 to construct a Wendy's restaurant. He noted that an amended preliminary and final site plan approval was also granted in 2017 permitting a redesigned Wendy's restaurant. Mr. Kelly stated that the Applicant was now seeking to move forward with developing the Wendy's restaurant with an updated design which required amended preliminary and final site plan approval. Mr. Kelly testified that the Applicant was now proposing a 2,380 square foot restaurant containing thirty (30) seats whereas the original design contained fifty-six (56) seats.

6. Mr. Kelly further testified that the site plan retained the same layout as the previously approved site plan. He stated that a right-in and right-out driveway access was proposed to Route 9 North as well as the existing full movement driveway accessing West Farms Road. Mr. Kelly explained that the existing driveway accessing West Farms Road had a cross access easement with the adjacent propane business. He stated that the existing driveway was gravel and the Applicant was proposing to pave and provide curbing. Mr. Kelly further explained that the on-site circulation included a combined one-way drive-thru and bypass lane from the middle of the site. He stated that the drive aisle connecting to West Farms Road was two-way.

7. In response to questions from the Board, Mr. Kelly testified that the access driveway on West Farms Road was under local jurisdiction, rather than NJDOT jurisdiction. He stated that traffic could safely cross the stripped median on West Farms Road and that traffic exiting onto West

Farms Road could continue across to access the jug handle accessing Route 9 North. He opined, however, that such traffic pattern would seldom be used because access to Route 9 North was provided at the frontage of the site. He also explained that the traffic making a left from the driveway onto West Farms Road would be using that maneuver to cross Route 9 North to continue west on West Farms Road or make a left onto Route 9 South.

8. The Board Planner, Jennifer Beahm, P.P, AICP, advised that the driveway accessing West Farms Road had previously been approved by the Board with traffic for a larger building. She stated that the cross access easement was part of the previous approval and would exist in perpetuity.

9. Mr. Kelly also stated that the Applicant was proposing to install sidewalk on both frontages which would connect to the internal sidewalks on the subject Property. He also testified that 70% of the subject Property was wooded and 30% grass. Mr. Kelly explained that the Applicant was proposing to maintain 0.5 acres of wooded area along West Farms Road, which would provide a screen of the building from West Farms Road.

10. Mr. Kelly further explained that the proposed drive-thru was the same design which had been previously approved. He opined that the drive-thru would have sufficient space to que a stack of nine (9) cars. Mr. Kelly stated that the site required one (1) EV parking space which would be located near the building. He further testified that the Applicant required relief from the number of parking spaces. He explained that the proposed building required eighty (80) parking spaces whereas the Applicant was providing forty-two (42) parking spaces to be combined with the EV credit of one (1) parking spaces for a credit of forty-three (43) parking spaces. He explained that the previous building design required eighty-six (86) parking spaces. Mr. Kelly testified that he had taken parking counts from the Applicant's other Wendy's location on Route 9 South, which has a 1,000 square foot larger building than the proposed structure. He stated that he counted seven (7) to eight (8) cars parked

at peak hours, and seven (7) to eight (8) cars in the drive-thru que during peak hours. Mr. Kelly concluded that the proposed number of parking spaces and drive-thru que would be sufficient based upon real-world traffic counts of a similar location nearby. Mr. Kelly also stated that a bypass lane would be located around the northern side of the trash enclosure to bypass the drive-thru lane and exit onto Route 9 North or recirculate around the building.

11. In response to questions from the Board, the Board Engineer, Laura Neumann, P.E., P.P., testified that there were no changes to the zoning for the subject Property, since the prior approval, however, there were changes to the Stormwater Ordinance. Mr. Neumann stated that the proposed amended site plan proposed the same layout as the previous approvals in 2015 and 2017.

12. Mr. Kelly further testified that the Woodland Management Plan was the same as the previous approvals and that approximately 0.4 acres of trees would be retained. He also stated that the Applicant would be providing a decorative landscape plan which would include additional plantings near the proposed signs. He stated that the species of the landscaping plan had been changed per the request of the Licensed Tree Expert. Mr. Kelly further testified that the Applicant was seeking relief from providing street trees spaced 40-60 feet apart. He explained that the street trees would be spaced approximately 70 feet because the stormwater basin and light pole were in the way from complying with the 40-60 feet spacing.

13. Mr. Kelly also stated that the lighting plan remained the same as was previously approved. He explained that the lighting would also remain in the same previously approved locations and would utilize LED bulbs. Mr. Kelly noted that the lighting plan included twenty (20) foot tall poles, which was compliant with the height requirements. He explained that 0.0 footcandles would exist at some parts of the subject Property, particularly in the wooded area along West Farms Road. Mr. Kelly stated that the lighting to be located at the access driveways would be 0.2 footcandles per

NJDOT requirement. Mr. Kelly stated that the Ordinance required a minimum average of 0.3 footcandle and a maximum average of 0.5 footcandles. He stated that the Applicant was proposing an average of 2.4 footcandles which required design waiver relief. Mr. Kelly agreed to update the lighting plan to provide shielding subject to review and approval of the Board Engineer and Board Planner.

14. In response to questions from the Board, Mr. Kelly testified that bollards would be provided. He also stated that a generator was not necessary because a forced main was not needed. Mr. Kelly also confirmed that the mechanical equipment on the roof would be sufficiently screened so it would not be visible down Route 9.

15. Mr. Kelly next introduced a Colored Elevation as Exhibit A-23 and stated that one (1) sign was proposed to be located on the front of the building, depicting Wendy's logo. He stated that one (1) sign was proposed to be located on the southern façade of the building which would depict Wendy's wordmark. He also identified a roof ladder access on the southern façade toward the rear of the building which would not be visible from Route 9. Mr. Kelly stated that one (1) wordmark sign would also be located on the northern side of the building along the drive through.

16. Mr. Kelly further testified that the Applicant was also proposing a freestanding pylon sign along Route 9 North. He stated that the sign was proposed to be seventeen (17) feet high with fifty-five (55) square feet. Mr. Kelly explained that the previous approval included an eighty (80) square foot sign. He stated that the smaller sign would help reduce sign fatigue along Route 9. Mr. Kelly further testified that the Applicant proposing a monument sign along West Farms Road, which had a height of five (5) feet and a width of eight (8) feet. He stated that the monument sign would be smaller than previously approved sign. He stated that the monument sign would have a brick base.

17. Mr. Kelly further testified that the Applicant required variance relief for the number of signs. He stated that the Applicant was proposing a total of seven (7) signs whereas the original

approval permitted eight (8) signs. He noted, however, that the Applicant had removed a façade sign from the rear of the building. He then identified the three (3) façade signs, two (2) ground mounted signs, and two (2) directional signs. Mr. Kelly stated that the directional signs would be two (2) feet tall and two (2) square feet. He confirmed that the directional signs would not include a logo.

18. Mr. Kelly also explained that the Applicant required variance relief for the setback of the entry directional sign. He stated that the minimum required setback of the directional sign was twenty (20) feet, whereas one (1) foot was proposed. He explained that a jog in the frontage property line created an issue with the setback of the sign located near the entry driveway. Mr. Kelly further testified that the sign setback would be the same as was previously approved. He stated that the Applicant was able to relocate the exit directional sign to comply with the setback.

19. Mr. Kelly further testified that the stormwater management system would comply with the most recent Ordinance and State regulations. He stated that the Applicant would comply with the comments contained within the Board's Professionals' Reports. Mr. Kelly also agreed that the Applicant would use porous pavement located within the parking spaces to assist with stormwater drainage. He then identified two (2) stormwater basins located near Route 9, one to the south of the entry driveway and one located between the entry and exit driveways. He stated that the basin located between the driveways was a detention basin and that the basin to the south of the entry driveway was a bio-retention basin. Mr. Kelly stated that the basins would discharge to Route 9. Mr. Kelly testified that the Applicant required variance relief for the front yard setback of the stormwater basins which had been previously approved. He also explained that the subject Property sloped toward Route 9 and the stormwater naturally flowed toward the front of the property.

20. Mr. Kelly next introduced a Delivery Truck Circulation as Exhibit A-24 and stated that a tractor-trailer of a length of forty-eight (48) feet would enter the site via Route 9 North drive

aisle. He stated that the loading area would be located at the rear of the building between the building and the trash enclosure. Mr. Kelly explained that unloading would take approximately 30-40 minutes and would be done in the early morning to have the least impact. He stated that after the truck was done unloading, it would back up into the drive aisle, then exit the site via the West Farms Road driveway. Mr. Kelly also testified that trash removal would be by a private hauler and would circulate in a similar manner.

21. In response to a question from the Board, Mr. Kelly testified that Wendy's restaurant was privately owned and not owned by a corporate entity. He stated that the Applicant also owned the existing Wendy's located on Route 9 South.

22. Mr. Kelly identified the following existing non-compliant conditions:

- a. **Section 188-77 (Schedule II)** – The minimum lot frontage required is 200 feet; whereas there is 156 feet of frontage along US Route 9.

23. Mr. Kelly also testified that the following variance relief was necessary:

- a. **Section 188-10** – Signs shall be subject to Chapter 256.
 - i. **Section 256-5A(6)** – Directional signs shall not be closer to any property line than 20 feet; whereas the proposed directional signs are closer than 20 feet from the northern, eastern, and western property lines.
 - ii. **Section 256-5B(3)** – Each legally existing business situated in its own free-standing building, and in the HD-1 zone and which has frontage on Route 9 is permitted to have a total of two (2) signs which must consist of only one of each type of sign set forth in Subsections A(1) through (4); whereas seven (7) signs are proposed, consisting of one pylon sign, one monument sign, three wall signs, one menu board, and one pre-sell board.
- b. **Section 188-12** – Fences and walls shall not be located in any required sight triangle and shall not be higher than four (4) feet unless set back from the street line the minimum setback required for the zone, except that there shall be no height limitations other than the maintenance of a clear sight triangle on living fences, fences around agricultural uses, and fences around utility and industrial uses. Fences and walls shall not exceed six

(6) feet in height when located more than the required setback from the street line in a residential zone nor more than eight (8) feet in height when located more than the required setback from the street line in a business zone. Fences and walls located in the required setback area shall have open space for light and air representing at least 50% of the fence area, whereas the project proposes retaining walls that are taller than four (4) feet within the front yard setback and the walls are not at least 50% open.

24. Mr. Kelly further stated that the following design waiver relief was necessary:

- a. **Section 188-22** – The light intensity provided at ground level shall be a minimum of 0.3 footcandle anywhere and shall average a maximum of 0.5 footcandle over the entire area; whereas proposed lighting indicates an average of 2.2 footcandles.
- b. **Section 188-32C(6)** – All outdoor recycling storage areas shall be screened by a solid uniform wall or fence. Landscaping shall also be provided around any outdoor recycling storage area in an aesthetically pleasing manner; whereas additional landscaping shall be proposed around the trash enclosure.
- c. **Section 188-106F(1)(a)** – All main driveways into commercial and/or industrial areas shall be a minimum of 30 feet wide, or as controlled by outside agencies. On industrial and commercial applications, a thirty-foot-wide circulation aisle must be maintained for emergency purposes; whereas the driveways entering the site and the circulation aisles are less than 30 feet.
- d. **Section 188-106F(1)(b)** – All aisles other than the main driveways into commercial and/or industrial areas shall be a minimum of 25 feet wide; whereas the circulation aisles do not maintain a minimum width of 25 feet.
- e. **Section 188-106G** – All areas between the parking area and the building shall be landscaped; whereas adequate landscaping is not proposed.
- f. **Section 188-107C** – The minimum parking requirements for quick food establishments is 1 space per 30 square feet of gross floor area. The proposed 2,380 square foot restaurant requires 80 parking spaces; whereas 42 parking spaces are proposed.
- g. **Section 188-122** – Trees shall be planted 40 feet to 60 feet apart and parallel to but no less than 20 feet from the curblane and shall be balled and burlapped, nursery grown, free from insects and disease, will be hardy and thrive in the area and be true to species and variety. Stripping trees from a lot or filling around trees on a lot shall not be permitted unless it can be shown that grading requirements necessitate removal of trees, in

which case those lots shall be replanted with trees to reestablish the tone of the area and to conform with adjacent lots. Dead or dying trees shall be replaced by the developer during the next recommended planting season. The Applicant does not comply with same.

- h. **Section 188-106A** – Driveways with widths exceeding 24 feet shall be approved by the Planning Board giving consideration to the width, curbing, traffic flow, radii of curves, and traffic lane divider; whereas the two (2) driveways entering the site and the driveway exiting the site all exceed 24 feet.
- i. **Section 188-107A** – Off-street parking spaces shall be 19 feet in length; whereas the proposed angled parking spaces are dimensioned 19 feet long from head to toe; however, the effective length of the angled parking spaces is only approximately 17 feet long.
- j. **Section 188-195A** – All required replacement trees shall be planted on the site from which trees were removed if possible. A waiver from any portion or all of the required on-site replacement may be granted by the approving board and shall be based upon documented practical and physical difficulties and undue hardship related to conditions of the site from which trees are to be removed. The comments and recommendations of the Board Engineer in consultation with the Certified Tree Expert, Shade Tree Commission, and Environmental Commission shall be solicited in determining whether a requested waiver is required. At a minimum, it does not appear the Applicant has complied with replacement requirements and should seek a waiver to make contribution to be deposited to the Township Tree Fund. With 0.81 acres of proposed tree removal along with the proposed installation of 34 trees to be provided on site, it appears the Applicant will have a contribution of \$18,150.00. This has been indicated on the plans.

25. The Applicant's Planner, Daniel Bloch, P.P, AICP, testified that the Applicant was seeking variance relief from the minimum frontage on Route 9 North. He stated that the minimum required frontage was 200 feet whereas 156 feet existed. He stated that this variance relief could be granted under the c(1) criteria.

26. Mr. Bloch further testified that the Applicant was seeking variance relief to permit an accessory structure within the front yard for the stormwater basins as well as the associated retaining wall and fences with the basins. He stated that this variance relief could be granted under the c(1)

criteria. In response to comments from the Board, Mr. Bloch further testified that the proposed fence was chain linked, but the Applicant would agree to a split-rail fence with mesh.

27. Mr. Bloch also explained that the Applicant was seeking variance relief to permit the setback of the entry directional sign, which required a minimum setback of twenty (20) feet whereas a setback of two (2) feet was proposed. He stated that the relief was necessary due to the jog in the property line. He also stated that the variance relief could be granted under the c(2) criteria because the sign would improve traffic safety, which outweighed the negative impact.

28. Mr. Bloch also explained that the Applicant was seeking variance relief to permit the number of signs, which included the façade signs, pylon sign, monument signs, and menu boards. He stated that the Applicant had reduced the total number of signs which were previously approved. He stated that this variance relief could be granted under the c(2) criteria.

29. Mr. Bloch further testified that the proposal advanced purpose a) and purpose g) of the Municipal Land Use Law (MLUL). Mr. Bloch also testified that the grant of variance relief would not result in any substantial detriment to the public good. He explained that the location of the stormwater basins was necessary because of the natural slope of the subject Property drained the stormwater toward the frontage. Mr. Bloch further testified that the grant of variance relief would not result in any substantial detriment to the master plan and that the proposal advanced the goals of the master plan by improving the local economy and encouraging development of vacant land.

30. Mr. Bloch also stated that the Applicant was seeking several design waivers. He explained that the Applicant was seeking design waiver relief for the proposed number of parking spaces. He explained that the Applicant was providing forty-two (42) parking spaces, whereas eighty (80) parking spaces were required. Mr. Bloch stated that the previous approval required 115 parking spaces. He also testified that the parking study performed by the Applicant's Engineer demonstrated

that not even forty-two (42) parking spaces were necessary. He stated that the smaller building made the parking requirement less, thereby making the design waiver relief less intense than what was previously approved.

31. Mr. Bloch further testified that the Applicant was seeking design waiver relief for the lighting. He explained that the subject Property was unique, and that the Applicant was proposing to retain 0.5 acres of the subject Property as wooded. Mr. Bloch also stated that the lighting at the driveway entry and exit would comply with NJDOT standards but would not comply with the Township's design standards.

32. Mr. Bloch further testified that the Applicant was seeking design waiver relief for the drive aisle widths. He explained that a width of thirty (30) feet was required for an emergency drive aisle and a width of twenty-five (25) feet was required for all other drive aisles. Mr. Bloch explained that the Applicant was proposing a width of twenty (20) feet for the one-way drive aisles and twenty-five (25) feet for the two-way drive aisles. He stated that the narrow drive aisles were a result of the narrow subject Property.

33. There were no members of the public expressing an interest in this application.

34. The Board has received, reviewed and considered various exhibits and reports with regard to this application. Those exhibits and reports are set forth on the attached Exhibit List, and all exhibits and reports as set forth on said Exhibit List have been incorporated herein in their entirety.

WHEREAS, the Howell Township Planning Board, having reviewed the proposed application and having considered the impact of the proposed application on the Township and its residents to determine whether it is in furtherance of the Municipal Land Use Law; and having considered whether the proposal is conducive to the orderly development of the site and the general area in which it is located pursuant to the land use and zoning ordinances of the Township of Howell;

and upon the imposition of specific conditions to be fulfilled, hereby determines that the Applicant's request for amended preliminary and final site plan approval pursuant to N.J.S.A. 40:55D-46 and 50 along with ancillary variance relief pursuant to N.J.S.A. 40:55D-70c(2) and design waiver relief pursuant to N.J.S.A. 40:55D-51 should be granted.

I. Variance Relief

The Board finds that the Applicant has proposed a permitted use in the Zone but does require bulk variance relief. The Municipal Land Use Law, at N.J.S.A. 40:55D-70c provides Boards with the power to grant variances from strict bulk and other non-use related issues when the applicant satisfies certain specific proofs which are enunciated in the Statute. Specifically, the applicant may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. An applicant may show that exceptional topographic conditions or physical features exist which uniquely affect a specific piece of property. Further, the applicant may also supply evidence that exceptional or extraordinary circumstances exist which uniquely affect a specific piece of property or any structure lawfully existing thereon and the strict application of any regulation contained in the Zoning Ordinance would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the developer of that property. Additionally, under the c(2) criteria, the applicant has the option of showing that in a particular instance relating to a specific piece of property, the purpose of the act would be advanced by allowing a deviation from the Zoning Ordinance requirements and the benefits of any deviation will substantially outweigh any detriment. In those instances, a variance may be granted to allow departure from regulations adopted, pursuant to the Zoning Ordinance.

Those categories specifically enumerated above constitute the affirmative proofs necessary in order to obtain "bulk" or (c) variance relief. Finally, an applicant must also show that the

proposed variance relief sought will not have a substantial detriment to the public good and, further, will not substantially impair the intent and purpose of the zone plan and Zoning Ordinance. It is only in those instances when the applicant has satisfied both these tests, that a Board, acting pursuant to the Statute and case law, can grant relief. The burden of proof is upon the applicant to establish these criteria.

The Board first finds that the Applicant has not provided sufficient testimony or evidence to determine whether any purported hardship was a pre-existing non-conformity or if the hardship was self-created. The Board is therefore constrained from granting hardship variance relief pursuant to N.J.S.A. 40:55D-70c(1).

The Board does, however, find that the Applicant has satisfied the positive criteria in regard to c(2) criteria. The Board shall address the variance relief collectively. The Board finds that the required variance relief for the frontage is able to provide sufficient space in an appropriate location for a commercial use. The Board also finds that the proposed signage helps identify the site for drivers travelling on the highway which promotes public safety. The Board also finds that the proposed stormwater basin locations and associated fences and retaining walls promote the public health, safety, and general welfare by retaining stormwater runoff where it naturally flows toward Route 9. The Board therefore finds that the goals of planning enumerated at N.J.S.A. 40:55D-2 have been advanced and the positive criteria has therefore been satisfied. The Board also finds that the existing unsightly vacant lot will benefit from infill development with a new and attractive building.

The Board also finds that the negative criteria has been satisfied. The grant of variance relief will not increase traffic, noise, or density beyond what is contemplated by the Ordinance. The Board therefore concludes that the grant of variance relief will not result in substantial

detriment to the public welfare or substantial detriment to the zone plan or zoning ordinance. The negative criteria has therefore been satisfied.

The Board concludes that the positive criteria substantially outweighs the negative criteria and that variance relief pursuant to N.J.S.A. 40:55D-70c(2) may be granted.

II. Design Waiver Relief

The Board finds that the Applicant is seeking design waiver relief from Section 188-22. The Board finds that this Section requires a minimum of 0.3 footcandles at ground level and an average maximum of 0.5 footcandles, whereas a minimum of 0.0 footcandles and an average of 2.2 footcandles is proposed. The Board finds that the 0.0 footcandles is located within the wooded area of the subject Property. The Board finds that retaining the wooded area is a better alternative than providing compliant lighting within the wooded area. The Board also finds that the Applicant has proposed a minimum of 0.2 footcandles at the driveway entry and exit to comply with NJDOT regulations. The Board therefore determines that the Applicant would encounter practicable difficulty in developing the subject Property for its permitted use in the most efficient manner if the strict requirements of the Ordinance were enforced and that design waiver relief pursuant to N.J.S.A. 40:55D-51 is therefore appropriate.

The Board finds that the Applicant is seeking design waiver relief from Section 188-106F(1)(a), Section 188-106F(1)(b), and Section 188-106A. The Board will analyze these sections collectively. The Board finds that these sections require driveways into commercial areas to be a minimum width of thirty (30) feet for emergency purposes and require all driveways to be a minimum width of twenty-five (25) feet on commercial areas. Section 188-106A also requires Planning Board approval for all driveway widths exceeding twenty-four (24) feet. The Board finds the proposed driveway widths are sufficient and the narrowness of the frontage creates difficulties

in providing sufficient driveway widths. The Board therefore determines that the Applicant would encounter practicable difficulty in developing the subject Property for its permitted use is the most efficient manner if the strict requirements of the Ordinance were enforced and that design waiver relief pursuant to N.J.S.A. 40:55D-51 is therefore appropriate.

The Board finds that the Applicant is seeking design waiver relief from Section 188-107C. The Board finds that this Section requires 80 parking spaces, whereas 42 parking spaces are proposed. The Board finds that sufficient testimony has been provided indicating that the proposed 42 parking spaces were sufficient for the actual use of the site. The Board also finds that requiring 80 parking spaces would create an excessive amount of impervious coverage. The Board therefore determines that the Applicant would encounter impracticable difficulty in developing the subject Property is the most efficient manner if the strict requirements of the Ordinance were enforced and that design waiver relief pursuant to N.J.S.A. 40:55D-51 is therefore appropriate.

The Board finds that the Applicant is seeking design waiver relief from Section 188-122. The Board finds that this Section requires street trees be planted 40 feet to 60 feet apart. The Board finds that the location of the stormwater basins and access driveways make it difficult to plant street trees 40 feet to 60 feet apart. The Board therefore determines that the Applicant would encounter impracticable difficulty in developing the subject Property is the most efficient manner if the strict requirements of the Ordinance were enforced and that design waiver relief pursuant to N.J.S.A. 40:55D-51 is therefore appropriate.

The Board finds that the Applicant is seeking design waiver relief from Section 188-195A. The Board finds that this Section requires all replacement trees to be planted on site. The Board finds that the subject Property is currently heavily wooded. The Board also finds that planting all replacement trees on site would be difficult. The Board therefore determines that the Applicant

would encounter practicable difficulty in developing the subject Property with its permitted use is the most efficient manner if the strict requirements of the Ordinance were enforced and that design waiver relief pursuant to N.J.S.A. 40:55D-51 is therefore appropriate. The Applicant shall make a financial contribution to be deposited to the Township Tree Fund.

III. Site Plan Approval

The Board first recognizes that it has previously granted preliminary and final site plan approval on two separate occasions for a larger Wendy's restaurant. With the exception of the above referenced relief, the Applicant has satisfied all other site plan, zoning and design standard Ordinances. The Applicant further agreed to all of the previously referenced conditions of approval. The Board therefore determines that amended preliminary site plan approval and amended final site plan approval pursuant to N.J.S.A. 40:55D-46 and N.J.S.A. 40:55D-50 are appropriate in this instance.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Howell on this 14th day of December 2023, that the action of the Planning Board taken on September 21, 2023, granting application No. SP-1011A-2 of Wen Claire Real Estate, LLC, for amended preliminary and final site plan approval pursuant to N.J.S.A. 40:55D-46 and 50, ancillary variance relief pursuant to N.J.S.A. 40:55D-70c(2) and design waiver relief pursuant to N.J.S.A. 40:55D-51 are hereby memorialized as follows:

The application is granted subject to the following conditions:

1. All site improvement shall take place in the strict compliance with the testimony and with the plans and drawings which have been submitted to the Board with this application, or to be revised.
2. Except where specifically modified by the terms of this Resolution, the Applicant shall comply with all recommendations contained in the Reports of the Board's Professionals.

3. Split rail fences with mesh shall be used in lieu of chain-linked fences.
4. The Applicant shall update the lighting plan to depict light shielding subject to review and approval by the Board Engineer and Board Planner.
5. All terms and conditions of the prior approval remain in full force and effect unless modified herein.
6. The Applicant shall make a financial contribution to the Township's Tree Replacement Fund.
7. The Applicant shall revise the plan to depict bollards subject to the review and approval of the Board's Professionals.
8. All rooftop mechanicals shall be shielded subject to review and approval of the Board's Professionals.
9. The Applicant shall provide a certificate that taxes are paid to date of approval.
10. Payment of all fees, costs, escrows due and to become due. Any monies are to be paid within twenty (20) days of said request by the Board Secretary.
11. Subject to all other applicable rules, regulations, ordinances and statutes of the Township of Howell, County of Monmouth, State of New Jersey or any other jurisdiction.

BE IT FURTHER RESOLVED that the Board secretary is hereby authorized and directed to cause a notice of this decision to be published in the official newspaper at the Applicant's expense and to send a certified copy of this Resolution to the Applicant and to the Township Clerk, Engineer, Attorney and Tax Assessor, and shall make same available to all other interested parties.

Paul Boisvert, Chairman
Howell Township Planning Board

ON MOTION OF:

SECONDED BY:

ROLL CALL:

YES:

NO:

ABSTAINED:

ABSENT:

DATED:

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Howell Township Planning Board, Monmouth County, New Jersey at a public meeting held on December 14, 2023.

Eileen Rubano, Secretary
Howell Township Planning Board

HOWELL TOWNSHIP PLANNING BOARD
EXHIBITS

Case No. SP-1011A-2 / Wen Claire Real Estate, LLC
Amended Preliminary and Final Major Site Plan
With Ancillary Variance and Design Waiver Relief
August 17, 2023
September 21, 2023

- A-1 Development application
- A-2 Application Checklist
- A-3 Amended Preliminary and Final Major Site Plan consisting of twenty-one (21) sheets prepared by Colliers Engineering and Design, dated 11/30/22
- A-4 ALTA/ACSM Land Title Survey consisting of one (1) sheet prepared by Maser Consultants P.A., dated 8/7/14, last revised 3/10/17
- A-5 Architectural Color Elevations consisting of one (1) sheet prepared by Wallin Gomez Architects, dated 11/18/22, unrevised
- A-6 Stormwater Management Report prepared by Colliers Engineering and Design, dated 11/10/22, unrevised
- A-7 Traffic Impact Study prepared by Colliers Engineering and Design, dated 4/21/15, last revised 12/7/22
- A-8 Engineer's Report and Technical Specifications for Sanitary Sewerage System prepared by Colliers Engineering and Design, dated 1/19/23, unrevised,
- A-9 Engineer's Report for Water Demand prepared by Collier's Engineering and Design, dated 1/19/23, unrevised
- A-10 Letter of Interpretation from NJDEP dated 10/25/22
- A-11 Freehold Soil Conservation District application dated 12/7/22
- A-12 Monmouth County Planning Board application dated 12/7/22
- A-13 Prior Resolution of Approval dated 8/20/15
- A-14 Bulk Variance and Waiver Request List prepared by Colliers Engineering and Design, dated 11/30/22

- A-15 200 Foot list exhibit consisting of one (1) sheet prepared by Colliers Engineering and Design dated 4/14/23, unrevised
- A-16 Drainage Exhibit consisting of one (1) sheet prepared by Colliers Engineering and Design dated 5/2/23, unrevised.
- A-17 Equipment Plan consisting of one (1) sheet prepared by Wallin Gomez Architects, Ltd. dated 4/21/23
- A-18 Equipment Schedule consisting of one (1) sheet prepared by Wallin Gomez Architects, Ltd. dated 4/21/23
- A-19 Report of Subsurface Exploration and Infiltration Evaluation prepared by Maser Consulting P.A. dated 3/15/16
- A-20 NJDOT Access Permit Plans consisting of four (4) sheets prepared by Colliers Engineering and Design dated 3/10/23

INTEROFFICE REPORTS

- B-1 Freehold Soil Conservation District review of certified plan revisions dated 12/16/22
- B-2 Monmouth County Planning Board letter of exemption dated 1/9/23
- B-3 Fire Bureau site plan review dated 2/1/23
- B-4 Building SubCode Official's site plan review dated 2/8/23
- B-5 Environmental Commission site plan review dated 2/8/23
- B-6 Shade Tree Commission site plan review dated 2/15/23
- B-7 Farmers Advisory Committee site plan review dated 2/23/23
- B-8 Freehold Soil Conservation District review of certified plan revisions dated 2/24/23
- B-9 Board Engineer's review letter dated 3/10/23
- B-10 Monmouth County Board of Health site plan review dated 2/24/23
- B-11 Board Engineer's memo deeming the application incomplete dated 4/14/23
- B-12 Board Engineer's completeness memo dated 5/16/23

- B-13 Shade Tree Commission site plan review dated 5/17/23
- B-14 Board Planner's review letter dated 5/24/23
- B-15 Farmers Advisory Committee site plan review dated 5/25/23
- B-16 Environmental Commission site plan review dated 6/14/23
- B-17 Environmental Commission site plan review dated 8/9/23
- B-18 Board Engineer's review letter dated 8/11/23
- B-19 Board Planner's review letter dated 8/16/23
- B-20 Monmouth County Board of Health site plan review dated 8/11/23
- B-21 Shade Tree Commission site plan review dated 8/16/23

NOTICE

PLEASE TAKE NOTICE THAT ON SEPTEMBER 21, 2023, THE PLANNING BOARD OF THE TOWNSHIP OF HOWELL GRANTED AMENDED PRELIMINARY AND FINAL SITE PLAN APPROVAL WITH ANCILLARY VARIANCE AND DESIGN WAIVER RELIEF TO WEN CLAIRE REAL ESTATE, LLC FOR BLOCK 130, LOT 51.03 AS DEPICTED ON THE TAX MAP OF THE TOWNSHIP OF HOWELL, AND MORE COMMONLY KNOWN AS US HIGHWAY 9 SOUTH AND WEST FARMS ROAD, HOWELL TOWNSHIP, MONMOUTH COUNTY, NEW JERSEY, APPLICATION NUMBER SP-1011A-2 TO PERMIT THE CONSTRUCTION OF A WENDY'S RESTAURANT DRIVE THRU WITH ASSOCIATED IMPROVEMENTS. MAPS AND ACCOMPANYING DOCUMENTS ARE AVAILABLE FOR REVIEW IN THE OFFICE OF THE PLANNING BOARD, HOWELL TOWNSHIP MUNICIPAL BUILDING, 4567 ROUTE 9 NORTH, HOWELL, NEW JERSEY.

WEN CLAIRE REAL ESTATE, LLC