

**Village of Woodbury  
Planning Board Meeting  
April 20, 2022**

Minutes of the Virtual Planning Board Meeting held on April 20, 2022, at 7:30 PM

Board Members Present: Christopher Gerver, Chairman  
Richard Cataggio  
Thomas DeLuca  
Michael Pastel  
Evan Yan

Representing the Village of Woodbury Planning Board:

Richard Golden, Attorney  
Natalie D. Barber, Engineer  
Philip Grealy, Traffic Consultant

Chairman Gerver opened the meeting with the Pledge of Allegiance.

1. **Executive Session:** No Executive Session was necessary.
2. **Public Comment:** No member of the public had comments.
3. **Approval and Acceptance of Previous Minutes:**

A motion was offered by Chairman Gerver, seconded by T. DeLuca, to approve and accept the minutes of the meeting held on April 6, 2022. Chairman Gerver conducted a roll call of the Board which resulted in the motion being:

**ADOPTED**

AYES 5 Chairman Gerver, R. Cataggio, T. DeLuca, M. Pastel, E. Yan  
NOES 0

**4. Regular Agenda:**

- A. **Kiryas Joel Well 33** – Review Draft resolution for proposed site plan submitted for a new Kiryas Joel municipal water supply well located at 147 Seven Springs Rd in Highland Mills. Said property is known on the Village of Woodbury Tax Maps as Section 213 block 1 Lot 49.

Present, Attorney Marissa Logan.

The public hearing was held and closed on April 6, 2022.

Confirming to have reviewed pages on facts and findings, Chairman Gerver began to read the Specific Conditions of the draft Resolution of Approval ARB for VILLAGE OF KIRYAS JOEL (WELL 33 DEVELOPMENT).

*SPECIFIC CONDITIONS*

1. *Prior to the signing of the plans, the Applicant shall comply with the memorandum of the Village Engineer, dated March 31, 2022, to the satisfaction of the Village Engineer.*
2. *Prior to the issuance of a building permit, the Applicant shall supply the Building Department with confirmation of Department of Health approval for permanent operation of Well 33.*
3. *Prior to the signing of the plans, the Applicant shall supply the Building Department with an executed version of the Department of Environmental Conservation Water Withdrawal Permit, which was authorized previously.*
4. *All tree clearing shall occur between October 1st and April 1st of any year so as to mitigate any adverse impacts on roosting Indiana and/or Northern Long-eared bats. This time period may be modified by the*

*Department of Environmental Conservation guidelines.*

- If the directional drill method is not used, is unsuccessful and/or if an access road is constructed for the well, the Applicant shall provide the required supplemental archaeological investigative studies of the areas to be disturbed prior to the issuance of a building permit.*

Attorney Richard Golden adjusted Specific Condition number six, as discussed.

- Prior to the signing of the plans, the Applicant shall provide the Planning Board Attorney with proof of filing a permanent easement (subject to the satisfaction of the Planning Board Attorney as to form) providing the Applicant with the right to utilize the access path across Section 213, Block 1, Lot 46.1 with rights for access, maintenance, and improvement of the access path. **Additionally, the easement, or such other alternative means of ingress/egress to Well 33 satisfactory to the Village, shall grant the Village of Woodbury rights to use such access for inspection purposes.***

Attorney Logan agreed with this modification to Specific Condition number six and confirmed previously discussed it with Attorney Golden.

A motion was offered by Chairman Gerver, seconded by R. Cataggio, to accept counsel's draft Resolution of Approval with the modification to Specific Condition number six as stated by Attorney Golden for VILLAGE OF KIRYAS JOEL (WELL 33 DEVELOPMENT). Chairman Gerver conducted a roll call of the Board which resulted in the motion being:

**ADOPTED**

AYES 5 Chairman Gerver, R. Cataggio, T. DeLuca, M. Pastel, E. Yan  
NOES 0

- B. Eastgate Mgmt. 300 Forest Rd ARB** – Review draft resolution for ARB and Ridge Preservation of a proposed addition to an existing single-family dwelling. Said property is located at 300 Forest Road in Highland Mills and is known on the Village of Woodbury Tax Maps as Section 213 Block 1 Lot 63.

Present Attorney Jay Myrow.

A public hearing on this Application was waived by the Planning Board in accordance with the Village Code on April 6, 2022.

Attorney Golden stated he needed a copy of the easement for the septic. Attorney Myrow said it was previously sent by the engineer, but he will forward it via email as well as to the Building Department.

Confirming to have reviewed pages on facts and findings, Chairman Gerver began to read the Specific Conditions of the draft Resolution of Approval ARB for 300 FOREST ROAD LLC.

*SPECIFIC CONDITIONS*

- No building permit shall be issued authorizing construction of structures inconsistent with the architectural renderings submitted to, and approved by, the Architectural Review Board as part of this approval, nor shall any Certificate of Occupancy issue for any structures constructed except in conformance with such renderings. Any deviation from such renderings will require further Planning Board review.*
- All new windows shall be constructed of or coated with non-reflective material or anti-reflection window film will be applied to any new low-e windows installed.*
- Prior to the signing of the plans, the Applicant shall*

- a) *Comply with the memorandum of the Village Engineer dated March 30, 2022, to the satisfaction of the Village Engineer.*
- b) *Comply with the memorandum of the Village Planner dated December 9, 2021, to the satisfaction of the Village Planner.*
- c) *Confirm with the Planning Board Attorney that the easement for the septic system for this property is sufficient. If it is not sufficient, it shall be modified to the satisfaction of the Planning Board Attorney.*

A motion was offered by Chairman Gerver, seconded by T. DeLuca, to accept counsel’s draft Resolution of Approval for 300 FOREST ROAD LLC. Chairman Gerver conducted a roll call of the Board which resulted in the motion being:

**ADOPTED**

AYES	5	Chairman Gerver, R. Cataggio, T. DeLuca, M. Pastel, E. Yan
NOES	0	

- C. **Woodbury Commons/RMU** - Review the proposed amended Site Plan and Special Permit for an increase in the size of the previously approved Retail Merchandise Units from 50 sq. ft. to 100 sq. ft. within the Woodbury Common Shopping Center. Said property is located on Route 32 in Central Valley and is known on the Village of Woodbury Tax Maps as Section 225 Block 1 Lot 70.2 and Section 226 Block 1 Lot 1.

General – The application before the Board is for an amendment to the prior Retail Merchandising Units (RMU) approvals to permit larger structures with varying architectural features to meet the branding needs of vendors. The applicant’s recent correspondence indicates the proposal is for 25 operational units up to 100 SF for each.

Background – This application was last before the Board in December 2021. At that time, the Board discussed whether this application for a larger RMU is raised to the threshold of classification as a kiosk and if it should be considered GLA. The board agreed to a site visit to consider an existing and larger type RMU at Woodbury Common. The applicant previously provided renderings of the existing and proposed RMUs, as well as branded type RMUs for you to consider this request. SEQRA and public hearing remain to be decided.

Present Vice President Of Construction at Simon Property Group Bill Pendergast, and General Manager at Simon Property Group Dave Mistretta.

Mr. Pendergast began giving a brief description as to why they are before the Board tonight. Not only will they like to increase ten or so RMU square footage from 50 sq. ft. to 100 sq. ft., but to broaden the use of these units.

Engineer Natalie D. Barber said at the Applicant’s last appearance, discussion as to whether or not to increase the RMU size and have them considered as kiosks and if it should be tallied into the GLA. She also recalls the Board taking the opportunity to visit the existing large RMUs to consider the Applicant’s request. Engineer Barber referred to her H2M memo dated April 14, 2022, where she states the definition of an RMU.

*H2M Memo:*

*1. RMU Definition – In 2001, your approval (appended for ready reference) provided a definition for RMU’s as follows:*

*By RMUs, the Planning Board means Retail Merchandizing Unit: A structure, typically metal framed, with shutters or doors that enclose merchandise and are lockable; more like a structure or a building, but with wheels to make it movable. Shelving is built-in (but can extend out somewhat from the footprint). Salespeople cannot get inside the unit – they have to walk around unit to make sales.*

*RMUs are different from Pushcarts and Kiosks, which the Planning Board defines as follows:*

*Pushcart: a portable cart, typically wooden, with two large “wagon wheels” on the sides, with two handles at one end to allow the cart to be pushed from location to location.*

*Kiosk: A structure, typically metal framed, with shutters or doors that enclose merchandise and are lockable. Are typically larger than RMUs, and are more permanent and building like. Kiosks are not usually movable. Salespersons make all sales from within to customers without.*

Chairman Gerver stated that Mr. Pendergast provided a letter dated March 3, 2022, addressed to the Planning Board. Some questions were raised, and the letter addressed those questions by providing some answers.

*The following are responses from the applicant to questions previously proposed:*

- *Q: Will merchandise be enclosed by shutters or doors when not in use?*  
*A: Yes shutters or locked up for access that we own. Others have some locks to prevent access. The center has 24/7 security and cameras to ensure security.*
- *Q: Are the units lockable?*  
*A: Yes, units are locked that we own. Others vary but most other products are removed daily.*
- *Q: Confirm completely free movement?*  
*A: Free Movements around and within and no restrictions for ESO.*
- *Q: Will salespeople be within the structure?*  
*A: Yes, in some instances the employee is within, but units are still on wheels and portable.*

*With answers to these questions, we recommend you consider whether the proposal is consistent with your definition as an RMU (sales outside) or if it is more like a Kiosk (note – not usually moveable), and if these are approved, consider an amendment to the definitions established. Additionally, we recommend you review the restrictions set forth in your 2001 approval for RMU's and consider what is changing as part of this proposal (i.e. food preparation, size, 0.1% of GLA).*

*2. RMU Intent – It may be helpful to consider the context of RMU's serving the Common when originally approved. The applicant previously described these structures as selling small trinkets and prepackaged food to users passing by or in areas remote from say the food court or other vending type service. It is not clear, if at that time, RMU sales were by Woodbury Common and Woodbury Common employees or if RMU's were vendor specific. You may wish to discuss this with the applicant.*

*3. Number and Size of Structures – RMU's are not included as GLA, but in 2001 the Board considered GLA in determining an appropriate number and size of these structures. They are currently limited to 50-SF, with no more than 25 operating at any one time, thus approximately 1,250-SF. The applicant should discuss compliance with this condition as part of the proposal.*

*The applicant is requesting flexibility of RMU size up to 100-SF for each. No more than 25-units will operate at any time. At the last meeting, they described the need for larger units to accommodate public health requirements (three sinks, etc.) for food preparation and sale. We note food preparation is not currently permitted within RMU's and if approved should be amended in your action.*

*For you to consider appropriateness of size, we note Kiosks are currently permitted to be a maximum 216-SF except for the information booth and double kiosk that are 350- and 400-SF respectively. This proposal is approximately half the size of a typical kiosk.*

*4. GLA –The NYS Building Code defines "Gross Leasable Area" as the "total floor area designed for tenant occupancy and exclusive use. The area of tenant occupancy is measured from the centerlines of joint partitions to the outside of tenant walls. All tenant areas, including areas used for storage, shall be included in calculating gross leasable area." You may wish to consider whether the change from the typical Common RMU to a larger, branded RMU, with sales within meets the "exclusive" "tenant occupancy" criteria in the Building Code.*

*The applicant previously described RMU's as an amenity and believes these should not count towards GLA because – they are not permanent (have no foundations or utilities other than electric and data) and are completely moveable. Furthermore, they advise they will only be in place 5-6 months of the year, generally May to October.*

Referring to the H2M memo, E. Yan questioned the math calculations regarding the GLA. Apologizing for the confusion Engineer Barber said it should be  $0.001 \times 912,676$  which will then come to 912.68.

Board members mentioned their visit(s) to the commons coming across a few RMUs. Chairman Gerver recalled T. DeLuca's comment in the previous meeting, and how he agrees that this is an attempt to add more retail space to the site. He said 100 sq. ft. is rather a large size that can eventually cut into the people's path for walking. Especially when they create lines of people waiting for service. Mr. Mistretta reminded the Board that although they are asking for it to be 100 sq. ft. it does not necessarily mean it will be up to that square footage. As an example, he mentioned the Mango Cart which measures somewhere around 80 sq. ft., and they are not looking to increase all the RMUs that are 50 sq. ft., and they are not looking to increase the GLA. Mr. Pendergast added that if approved those RMUs would be located where RMUs are already located and if in one of those locations there are two 50 sq. ft. RMUs, placing one 100 sq. ft. RMU will take up less of a footprint. They would not be able to place two 100 sq. ft. RMUs because they will take part in the ESO path. Mr. Pendergast continues to say there are 44 locations on the site plan that are approved, but only 25 carts are allowed. Chairman Gerver made a note that the applicant has a complicated approval and having to go back and make additional changes will make it even more complex. Mr. Pendergast said that as long as they stay within the GLA calculation for the RMUs it can be manageable.

Engineer Barber's question to the Board was, do they consider the RMU as kiosks or should they be subject to the GLA based on the Applicant's proposal and if so, how will it then fit within the prior approval. She continued to say that if the Board goes forward approving, then the definition may need to be modified. Mr. Pendergast said the commons have taken efforts to improve the commons and they don't want an RMU with neon flashing lights, they try to keep it within things they feel are appropriate.

Regarding the ARB, M. Pastel asked if the RMU can match what they are selling or do they have to follow the prior approval. Engineer Barber said the Applicant is requesting flexibility for branding and that is an amendment the Board will need to address. Chairman Gerver asked the Board if the RMUs should be counted with the GLA, and the Board agreed that it should be. There was further discussion as to what is included and or excluded in the tally of the GLA.

Mr. Mistretta expressed his concerns with prior approved RMU going as long as he's been with Woodbury Commons Premium Outlet 16 years or so that they will have to be terminated because adding them to the GLA will go over the cap amount. Attorney Golden explained that prior RMUs that weren't counted would be counted towards the GLA. Those RMUs have property rights under those approvals. Anything new that the Applicant is asking for will be counted towards the GLA. There was further discussion on the GLA, not triggering SEQRA if possible, that are to be continued. There will be discussing this further and agreed that having a public hearing may help provide information that can potentially help the Board in their decision making.

A motion was offered by Chairman Gerver, seconded by **M. Pastel**, to schedule a public hearing on May 4, 2022, for Woodbury Commons/RMU. Chairman Gerver conducted a roll call of the Board which resulted in the motion being:

**ADOPTED**

AYES	5	Chairman Gerver, R. Cataggio, T. DeLuca, M. Pastel, E. Yan
NOES	0	

- D. **Popeyes** - Review and discuss site plan, special permit, and ARB for the demolition of the existing Pizzeria Uno building and proposed construction of a 2,454 square foot Popeye's Restaurant with drive-thru. Said property is located at 20 Centre Drive in Central Valley and is known on the Village of Woodbury Tax Maps as Section 225 Block 2 Lot 1.12

Present Attorney Drew Gamils, Engineer Mathew Bersh, and Engineer Connor Hughes.

Attorney Gamils gave a summary of this application as well as steps that have been taken since their last appearance before the Board in December 2021. The Board had referred this application to the Zoning Board of Appeals (ZBA) to render a decision on variances involving the construction of the Popeyes restaurant. She said on March 9, 2022, the ZBA granted the Applicant a variance to install a landscaping area, the installation of four signs on one wall, and Popeyes Louisiana Kitchen channel letters. She continued to say they have submitted a request for a hardship waiver from the moratorium. The Village Board of Trustees set the public hearing to review their petition on May 12, 2022.

Engineer Bersch continued by sharing his screen showing the site plan along with renderings with a landscaping design. He noted that there will be sidewalks providing access and egress to the entrance of the building. Nine new parking stalls will be adjacent to Popeyes, along with other features noted on the site plan. The existing light fixtures will stay along with the wall fixture lights the Applicant is proposing. The parking calculations were updated per Engineer Barber's comments. Engineer Bersch mentioned not receiving the ESO review letter, though there have been previous meetings discussing water sprinklers and he clarified they will not be proposing water sprinklers. They also do not expect a significant amount of people to walk from other shops in the shopping center to the restaurant, though they are willing to add pedestrian signage per the Board's request. He continued addressing comments from the traffic engineer as well as noting the suggested materials and colors.

Chairman Gerver asked if for some reason the staff cannot manage the number of orders coming in, how will they manage it. Engineer Bersch said the employees will instruct vehicle(s) to the station in the parking stalls surrounding the building. If the Board chooses for the Applicant to add signage, they would be amenable to provide it.

As per questions from the Board members, Engineer Bersch said the intended hours of operation are 10:30 am to midnight seven days a week. There will be two types of deliveries, delivery except for chicken will be delivered once a week during overnight hours. Deliveries of chicken will be made 2-3 times a week during morning and non-business hours. Engineer Bersch mentioned the location of the downspouts, which are the front of the building and the rear.

Traffic Consultant Phillip Grealy referred to Collier's Engineering and Designed letter dated April 14, 2022. Amongst other things he also spoke of Kimley-Horn analysis between Woodbury Fresh, Woodbury Shops, and Popeyes. He expressed his concerns with the intersection exiting Popeyes onto Center Drive.

*Collier's letter:*

*In general, our comments have been addressed; however, we note the following relative to each of the items:*

*1. The Applicant has updated the trip generation estimates using the latest ITE Handbook, 11th Edition. Based upon a review of the information in Tables 1 and 2 of their letter, the trip calculations are consistent with the ITE data and we are in agreement with the projected new peak hour traffic generated for the project. While this "new" trip increase will not significantly impact the external highway system, as noted in the response, in terms of total trips, i.e., pass-by and primary trips, the site will result in a maximum increase of 73 peak hour trips. This full loading will be experienced at the internal intersections (see other comments regarding site plan and analysis below).*

*2. As contained in the previously submitted Kimley-Horn traffic evaluation dated December 29, 2021, a detailed analysis of the internal intersections was provided, which accounted for the traffic associated with other site modifications, including the Woodbury Fresh Supermarket and Woodbury Shops at Woodbury Centre traffic. Based upon our review of the information and the additional responses, the intersection of Centre Drive and Dunkin Donuts has been adequately evaluated. We still believe that the intersection of the Popeye's connection at Centre Drive should be evaluated in more detail since this intersection will experience the full loading of entering and exiting traffic. The additional traffic movements will primarily be left turns in and right turns out and an evaluation of this should be provided to ensure that there is no significant change compared to current conditions.*

*3. This comment was partially addressed, and we agree with the pedestrian movements to and from the Kohl's portion of the center. However, the Applicant should look at some additional signing, possible striping, or other measures to accommodate pedestrian traffic (employees or patrons) traffic coming to and from the northerly buildings since they would have to cross the main east/west roadway connection that may be walking to Popeye's. Signing and striping recommendations should be considered. Similarly, any of the pedestrian traffic from the Kohl's side of the center, which would be walking to and from the west, should be reviewed relative to potential signing and striping modifications to advise motorists of pedestrian activity. As noted, the Applicant has added crosswalks in the immediate vicinity of the drive-thru lane as requested.*

*4. Comment addressed.*

*5. Comment addressed. Also note that if the queuing did extend further than indicated, based on their observations at other existing Popeye's, it would occur in the isolated portion of the Popeye's parcel and not impact other traffic flow in the center.*

6. The aisle width is noted. However, movements to and from the parking spaces should be demonstrated by a simple turning track diagram. This will ensure that the movements can be accommodated without any impacts on the drive-thru lane. This would especially apply to the entrance to and from the most westerly parking space in that area.

7. Comment addressed. All pedestrian ramps in the vicinity of the crosswalks provided will have to be ADA compliant and should be noted on the final plan.

8. Comment addressed.

9. While the sight distance constraint at this location is noted in the response, a sight line diagram should be provided to identify the extent of the vegetative clearance and to ensure that the sight distance provided at this intersection of the Popeye's access drive with Centre Drive is adequate to meet current design standards.

Chairman Gerver suggests for the next submission the applicant provide photos of the intersection from the left and right so the Board can get a better understanding of the sight distance. As per E. Yan's question, there was further discussion on the number of parking spots. Employees will be instructed to use parking spots that are away from the building but not too far, rather than the ones directly within the site.

Engineer Barber stated that this application is subject to the moratorium and confirmed the Applicant has submitted a hardship waiver request to the Village Board of Trustees. As stated, a waiver for parking will be required, something the Board will consider at the appropriate time. Referencing her H2M memo she continued saying the Village of Harriman had questions and comments on water and expects those comments to be addressed in future submission(s). In her memo, she recommended certain conditions based on the action of the Board associated with water and sewer, compliance with Village of Harriman, and Orange County Sewer District requirements. She also asked that the Board give the Applicant direction associated with the ARB. Chairman Gerver asked if the color scheme is consistent with the franchise. Mr. Bersch said the scheme is newer and agreed it is the corporate look as of now.

There was a discrepancy on what date the GML 239 was sent, but Engineer Barber said she will clear it up with the Building Department.

A motion was offered by Chairman Gerver, seconded by E. Yan, to schedule a public hearing on May 4, 2022, for Popeyes. Chairman Gerver conducted a roll call of the Board which resulted in the motion being:

**ADOPTED**

AYES	5	Chairman Gerver, R. Cataggio, T. DeLuca, M. Pastel, E. Yan
NOES	0	

- E. **Wercberger 2 Corporate Sign ARB** – Review documents submitted for proposed replacement of free-standing sign located on the front lawn of 2 Corporate Drive in Central Valley, Said property is known on the Village of Woodbury Tax Maps as Section 226 Block 1 Lot 81.1.

Present the Applicant, Wolf Wercberger.

Mr. Wercberger wishes to remove an existing sign and replace it with a new one.

Engineer Barber noted that as per code a free-standing sign permits 32 sq. ft. with an individual tenant panel, the Applicant is proposing 58 sq. ft. which is larger than what is permitted. The renderings submitted also indicated that the sign was larger than permitted by code. She said there were decisions on variances in past and none seem applicable to what's being requested currently. She recommends that this application be referred to the ZBA for the sign area.

Attorney Golden mentioned options the Applicant has to move forward. One is proof that the Applicant has vested right on the size of the sign, two, they can adjust the sign to be code compliant or go to the ZBA. The Applicant said he would have to go back and review previous records of approvals.

Per the Applicant's decision, this application was prevented from going any further. Therefore, Chairman Gerver referred the Applicant to appear before the ZBA. A referral will be sent to the ZBA.

A motion was offered by E. Yan, seconded by T. DeLuca, to make a referral for Wercberger 2 Corporate Sign to appear before the Zoning Board Of Appeals. Chairman Gerver conducted a roll call of the Board which resulted in the motion being:

**ADOPTED**

AYES 5 Chairman Gerver, R. Cataggio, T. DeLuca, M. Pastel, E. Yan  
NOES 0

**Adjournment:**

With no further business to discuss, a motion was offered by Chairman Gerver, seconded by E. Yan, to adjourn the meeting at 9:24 PM.

**ADOPTED**

AYES 5 Chairman Gerver, R. Cataggio, T. DeLuca, M. Pastel, E. Yan  
NOES 0

Claudia Valoy-Romanisin, Planning Board Secretary