



TOWN OF HENRIETTA
 County of Monroe
 State of New York
 475 Calkins Road, Rochester, NY 14623
 (585) 334-7700 • www.henrietta.org

TOWN OF HENRIETTA
 APPLICATION TO TOWN BOARD
SPECIAL USE PERMIT – RESTAURANT

Appeal No. SP 2022-042
 Date 9/9/2022

Applicant: The Real McKeever LLC by Jerry A. Goldman as attorney and agent [Redacted]
Name Email

1900 Bausch & Lomb Place Rochester NY 14604 [Redacted]
No. & Street City State Zip Code Phone Number

Business Owner: Starbucks [Redacted]
Name Email

275 Grove Street Suite 1-111 Newton MA 02466 [Redacted]
No. & Street City State Zip Code Phone Number

Business Name: Starbucks

Business Address: 1000 Hylan Drive Rochester New York 14623
No. & Street City State Zip Code

Property Owner: The Real McKeever LLC [Redacted]
Name Email

1000 Hylan Drive Rochester NY [Redacted] [Redacted]
No. & Street City State Zip Code Phone Number

Architect/Engineer: Costich Engineering [Redacted]
Name Email

217 Lake Avenue Rochester NY 14608 [Redacted]
No. & Street City State Zip Code Phone Number

Hereby request from the Town Board for a Special Use Permit for the property located at:
1000 Hylan Drive Rochester NY 14623
No. & Street City State Zip Code
161.120-0001-009.100 161.12-1-9.1 Planned Commercial Development
Tax Map No. Zoning District

If property is under a purchase option, indicate date option expires: N/A

Under the Zoning Ordinance, a Special Permit is requested pursuant to:
 Article: XII Section: 295 Subsection: 20 Paragraph: 2(i) of the Zoning Ordinance.

Description of Proposal: to re-purpose the northern former portion of the Pizzeria Uno building
outparcel for a Starbucks with a drive-through.

IMPORTANT: Please check only those operational subtypes which you intend to operate now or in the very near future. The Town is required to assess each subtype for potential impacts, therefore if you select operational subtypes which are not truly intended to be utilized, you may unnecessarily subject your proposal to further mitigation which may not otherwise have been required.

- Sit Down Meal Service
- Outdoor Seating
- Take-Out Meal Service
- Bands, DJs, or Similar Loud Entertainment
- Drive-Through Service
- Alcohol to be Served

Printed Name: Jerry A. Goldman, as attorney and agent Signature: [Signature]

[Signature]
 Received By

10/12/2022 6:00pm
 Date of Meeting*(unless rescheduled) Time

*A meeting date will be assigned when applications are turned in but if the application is deemed incomplete, it will not be scheduled and the Applicant will be notified.

**Statement of Applicant and Owner with Respect to Reimbursement
of Professional and Consulting Fees**

In conjunction with an application made to the Town of Henrietta, the undersigned states, represents and warrants the following:

- 1) I/We am/are the applicant and owner with respect to an application to the Town of Henrietta.
- 2) I/We have been advised of, are aware of and agree to comply with the obligation to reimburse the Town of Henrietta for any and all professional and consulting fees incurred by the Town in conjunction with this and any other applications by me/us, including but not limited to engineering and/or legal fees, all as more fully set forth in the Henrietta Town Code.
- 3) I/We have been provided with, or have otherwise reviewed the Henrietta Town Code provisions related to the obligation to reimburse the Town with respect to professional and consulting fees, and agree to comply with the same.
- 4) I/We understand that this obligation shall not be dependent upon the approval or success of the application.
- 5) I/We further agree that in the event the Town of Henrietta is required to refer for collection an outstanding debt for such professional and/or consulting fees due to the Town of Henrietta, I/we shall be obligated to pay the reasonable attorney's fees incurred as a result of the Town's efforts to collect such fees. Reasonable attorney's fees shall also include any and all disbursements that may result from the commencement of litigation.
- 6) Each party to the application, including the applicant and the owner, shall be jointly and severally liable for all consulting and professional fees and expenses incurred in conjunction with the application.

Applicant: The Real McKeever, LLC

By: Gregory Kimber

Title: Chief Administrator

Dated: 9-19-2022

Signed: _____


Owner: The Real McKeever, LLC

By: Gregory Kimber

Title: Chief Administrator

Dated: 9-19-2022

Signed: _____


1900 Bausch & Lomb Place
Rochester, New York 14604

P 585.987.2800 F 585.454.3968



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woodsoviatt.com

1900 Main Place Tower
Buffalo, New York 14202

P 716.248.3200 F 716.854.5100

*Writer's Direct Dial Number: 585.987.2901
Writer's Direct Fax Number: 585.362.4602
Email: jgoldman@woodsoviatt.com
Admitted to practice in New York and Florida*

September 19, 2022

Town Board of the Town of Henrietta
475 Calkins Road
Henrietta, NY 14467

**Re: Repurposing of former Pizzeria Uno building
Jay Scutti Plaza South – 100 Hylan Drive
Restaurant Special Permit
LETTER OF INTENT**

Dear Board Members:

This office has been retained by The Real McKeever, LLC, and affiliate of Scutti Enterprises, the owner of Jay Scutti Plaza South, to obtain municipal approvals to repurpose the former Pizzeria Uno outparcel building along the Hylan Drive frontage ("subject building") for restaurant use. The property is zoned Planned Commercial District (PCD). Inasmuch as Pizzeria Uno pre-dated the need for restaurant special permits in the PCD, under the newly adopted Code § 295-54.1(A), a new special permit is required for a restaurant with a drive-through.

The subject building is one story and contains 6,507 square feet. Starbucks is proposing to lease the northerly 2,671 square feet of the building with sit-down and take-out service, as well as a drive-through and outdoor seating. Not knowing the future, we are requesting that our special permit cover music and potential alcohol sales. The southerly 3,836 square feet are currently being marketed, with interest for a restaurant (without drive-through service.)

We understand that the impetus for the comprehensive revision for restaurant special permits was to protect the potential impact of restaurants on adjacent residential uses, as some of our commercial districts are in close proximity to residential areas (such as Hylan Drive south of the 390 expressway). The subject property is in the heart of the commercial area in town, across from the Marketplace Mall property and within Jay Scutti Plaza South. There are no residential homes or apartments anywhere near this building.

Inasmuch as this use is a replacement in kind (restaurant to restaurant), this proposal is deemed a Type II action under the State Environmental Quality Review Act (SEQR) regulations (6

NYCRR §671.5(c)(2)) and thus are precluded from environmental review; no Environmental Assessment form is required.

Submitted with this letter of intent are:

1. The Town's new special permit application form for restaurants.
2. Our site plan depicting the building, drive-thru, outdoor seating area and parking.
3. Building elevations for Starbucks.
4. The Town's application fee.

Special permits are administered under Article XII of the Henrietta Town Code. In particular, the standards for consideration by the Town Board are set forth in §295-54 (and as applicable to restaurants, §295.54.1(4)) of the Code as follows:

- A. **Whether the proposed use is substantially consistent in its scale and character with those uses permitted and the existing built permitted uses in the subject zoning district and neighborhood or will otherwise impair such uses due to inconsistency.**
The proposed use is to be located in an existing restaurant building and, as such, is consistent in scale and character with other uses and buildings in the vicinity. There are a substantial number of restaurant and commercial outparcels, many with drive-through and outdoor seating on Hylan Drive and Jefferson Road and this use will enhance the Plaza by eliminating a vacancy.
- B. **Whether the proposed use aligns with the vision, goals and recommendations of the Comprehensive Plan and other applicable plans and studies conducted by or on behalf of the Town.** The establishment of the commercial district core in the Town, including restaurants of all types and varieties, is aligned with all development plans in the Town over the years.
- C. **Whether the proposed use aligns with the purpose, intent, and applicable design and development standards of the zoning district(s) in which the use is proposed to be located.** The PCD was designed to be inclusive of all uses, especially restaurants, which were a permitted use until the most recent Code amendment to protect residential neighborhoods.
- D. **Whether the proposed use will be a nuisance in law or in fact due to its being materially noxious, offensive or injurious by reason of the production of or emission of dust, smoke, refuse, poisonous substances, odors, fumes, noise, radiation, vibration, unsightliness or similar conditions, or will contaminate waters.** This use will not be

nuisance in law or fact. Restaurants, particularly those like Starbucks, are tightly controlled in their operations and thus will not implicate any nuisance factors.

- E. **Whether the proposed use will create material hazards or dangers to the public or to persons in the vicinity from fire, explosion, electricity, radiation, traffic congestion, crowds, parking of vehicles, or other causes.** No danger to the public will result from the restaurant use. There is sufficient control of hazard elements. The drive-through design and parking meets Starbucks stringent standards.
- F. **Whether the proposed use will create materially adverse impacts that cannot be adequately mitigated, such as to adversely impact natural resources or the environment, agriculture, community services or other areas required to be addressed by the State Environmental Quality Review Act (SEQRA).** There is no SEQR mitigation required; in fact, this is a Type II action under SEQR, which is a finding that, by definition, the use will not have an adverse environmental impact.
- G. **Whether the physical conditions and characteristics of the site are suitable for the proposed use considering site size, configuration, location, access, topography, vegetation, soils, and hydrology for effective stormwater management and, if necessary, the ability to be screened from neighboring properties and public roads.** All of the physical conditions related to the site are sufficient to address this restaurant use. As a fully developed site, this is essentially "plug and play." There is no need to screen this use from the Hylan Drive frontage.
- H. **Whether there are adequate public infrastructure, utilities, community facilities and emergency services, either existing or to be provided by the applicant or others, to effectively serve the proposed use. A proposed use shall not create or contribute to an existing inadequacy.** The public infrastructure is in place to accommodate the proposed use. No current inadequacies have been identified.
- I. **Whether the proposed use will provide, maintain, or enhance, as necessary, safe and efficient vehicular traffic patterns, non-motorized travel, and pedestrian circulation as well as, where feasible, access to public spaces, parks, recreation, and open space resources.** Traffic patterns, especially as it relates to the drive-through have been exhaustively analyzed and is satisfactory based on Starbucks experience. Pedestrian access is addressed by crosswalks within the parking field.

September 19, 2022

Page 4

We look forward to presenting this application at your October 12, 2022 meeting. If any Board Member has any questions in the interim, please do not hesitate to contact me.

Very Truly Yours,

WOODS OVIATT GILMAN LLP



Jerry A. Goldman

Please direct responses to Rochester Office

JAG/cjv

Cc: Scutti Enterprises
Costich Engineers
Via email

Jennifer Miranda

From: Goldman, Jerry A. [REDACTED]
Sent: Thursday, September 22, 2022 4:21 PM
To: Jennifer Miranda
Cc: [REDACTED]; Starbucks- Dave Shipe [REDACTED]
Subject: RE: Starbucks SUP Application

Jenny-

Given the uncertainty of the operational hours of the Orthopedic Center (and potentially other extended hour uses at Marketplace Mall) and the property's location in the center core of the Town business districts (with no residential in the vicinity), Starbucks is requesting approval for 24 hour operations at this location.

Thanks and stay safe,
Jerry A. Goldman, Esq.

Partner

Direct Dial: [REDACTED]

Direct Fax: [REDACTED]



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From: Jennifer Miranda <jmiranda@henrietta.org>

Sent: Thursday, September 22, 2022 12:09 PM

To: Goldman, Jerry A. <j[REDACTED]>

Subject: Starbucks SUP Application

EXTERNAL EMAIL

Jerry,

I apologize, but there is one more questions I need answered, and your response to this email will be sufficient. What are the intended hours of operation for the Starbucks?

Thanks!

Jennifer L. Miranda
Deputy Town Clerk and Receiver of Taxes

Town of Henrietta
475 Calkins Road
Rochester, NY 14623
jmiranda@henrietta.org
585-359-7039

Help the Town of Henrietta be environmentally conscious. Think twice before printing this email.

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Authorization

We hereby authorize The Real McKeever, LLC, Scutti Enterprises, LLC, and their attorneys Woods Oviatt Gilman, LLP and engineers Costich Engineering to file applications for governmental approvals for a Starbucks store at Jay Scutti Plaza South per the attached concept plan.

Starbucks Coffee Company

By:  _____

David Shipe, Store Development Manager

Date: 10/18/22



THE REAL MCKEEVER, LLC
c/o Scutti Enterprises
1000 Hylan Drive
Rochester, New York 14623
(585) 424-1000
(585) 424-2600 fax

September 9, 2022

Re: Legal Representation

To Whom It May Concern:

By signing below, the undersigned acknowledges that they are the record Member of The Real McKeever LLC, and authorizes Jerry A. Goldman, Esq. of Woods Oviatt Gilman as designated representative to apply for and secure all necessary applications, permits and signs relating to Starbuck's and their installation for the Leased Premises located at 1000 Hylan Drive.

THE REAL MCKEEVER LLC

By: *Kimberlie L. Glaser*
Kimberlie L. Glaser
Member

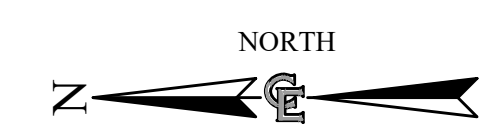








NF
THE REAL MCKEEVER LLC
T.A.# 161.120-01-009.1
1000 HYLAN DRIVE
14.061 ACRES
LIBER 10236 PAGE 478



SITE LINE LEGEND

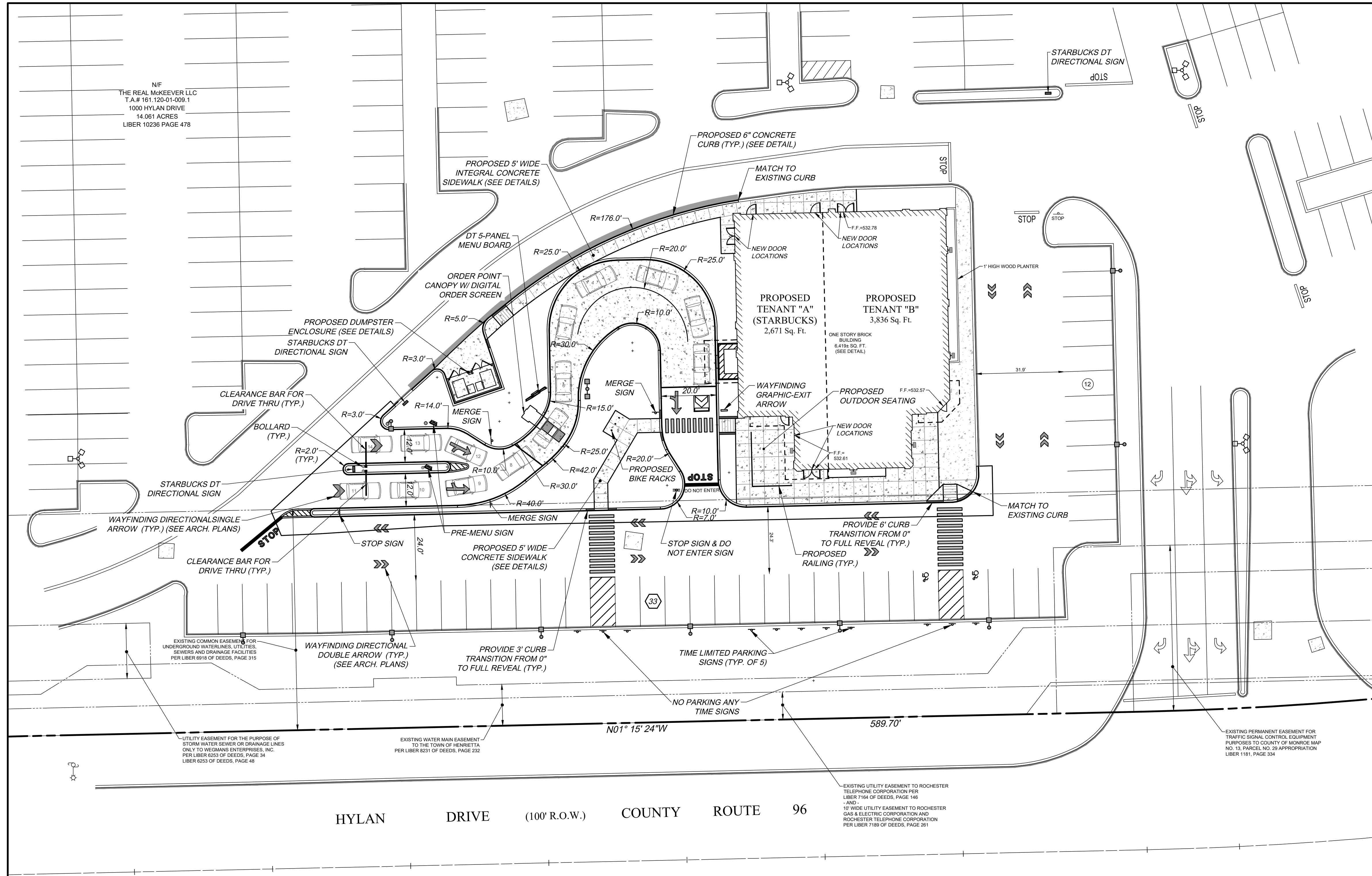
- PARCEL BOUNDARY
- EXISTING RIGHT-OF-WAY LINE
- EXISTING ADJACENT PROPERTY LINE
- MIN. BUILDING SETBACK
- CENTER LINE
- EXISTING EASEMENT LINE
- EXISTING BUILDING
- EXISTING CONCRETE CURB
- EXISTING EDGE OF PAVEMENT
- EXISTING EDGE OF GRAVEL
- EXISTING CONC. PAD/ CONC. SIDEWALK
- EXISTING GUARD RAIL
- EXISTING TREES, HEDGE, EDGE OF WOODS
- EXISTING STOCKADE & CHAIN LINK FENCE
- EXISTING UTILITY POLE, GUY ANCHOR & UTILITY POLE WITH LIGHT
- PROPOSED EDGE OF PAVEMENT
- PROPOSED CONCRETE CURB
- PROPOSED BUILDING
- PROPOSED SIDEWALK

SITE DATA

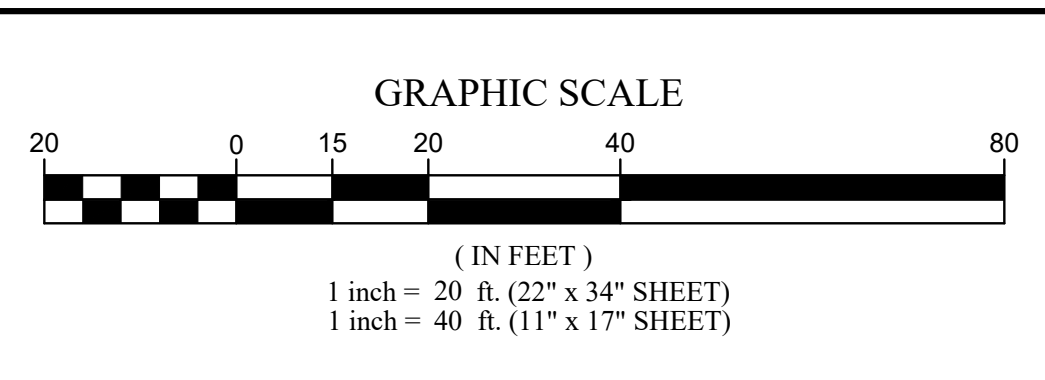
1. ADDRESS: 1000 HYLAN DRIVE
2. TAX ACCOUNT NO. 161.120-01-009.1 (14.06 ACRES)
3. EXISTING ZONING DISTRICT-PCD (PLANNED COMMERCIAL DEVELOPMENT).
4. PARKING REQUIRED:
RESTAURANT WITH DRIVE-THROUGH: 1 SPACE PER 120 SQ.FT. GFA = 2,671 / 120 = 23 SPACES.
RESTAURANT: 1 SPACE PER 3 SEATS PLUS 1 FOR 2 EMPLOYEES= 3,836/ NA
TOTAL NUMBER OF PARKING SPOTS PROVIDED= 45 SPACES

SIGN LEGEND

SIGN NO.	TEXT	MUTCD NUMBER	DESCRIPTION	TYPE OR MOUNT	HEIGHT	QNT.
1		NY R7-8	12"x18" BLUE AND GREEN ON WHITE	"C"	7'-0"	2
2		R7-1	12"x18" RED ON WHITE	"C"	7'-0"	1
3		R7-8B	12"x8" WHITE ON BLUE	"C"	7'-0"	2
4		R1-C	30"x30" OCTAGONAL WHITE ON RED	"A"	7'-0"	2
5		R5-1	30"x30" RED ON WHITE	"C"	7'-0"	3



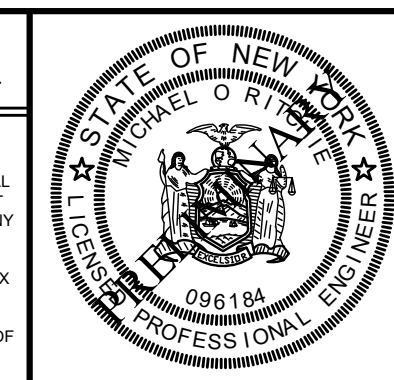
EXISTING UTILITIES (LOCATION, SIZES AND INVERTS) SHOWN ON THE PLANS ARE APPROXIMATE AND ARE NOT CERTIFIED AS TO THE ACCURACY OF THEIR LOCATION OR COMPLETENESS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR DETERMINING THE EXACT LOCATIONS AND DEPTHS OF ALL UTILITIES AND STRUCTURES IN THE PATH OF, OR CLOSELY PARALLEL TO, OR UNDER, THE PROPOSED CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY DELAYS OR DAMAGES OCCURRING AS A RESULT OF INCORRECTLY LOCATED UTILITIES. IT IS THE CONTRACTOR'S RESPONSIBILITY TO NOTIFY THE VARIOUS UTILITY OWNERS IN AMPLI TIME FOR THEM TO LOCATE AND MARK THEIR FACILITIES. THE CONTRACTOR SHALL ALSO NOTIFY UNDERGROUND UTILITY LOCATION SERVICE AT LEAST 48 HOURS IN ADVANCE OF COMMENCING ANY WORK.



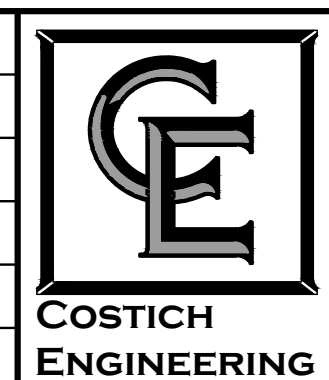
NO.	DATE	REVISION	BY	CHKD.	APVLS.

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PROJECT MANAGER
E.R.G.
DRAWN BY
D.J.L./E.L.O.
BOUNDARY
J.S.F.
TOPOBASE
K.E.L.
DATE
10/13/2022
SCALE
1"=20'



- CIVIL ENGINEERING
 - LAND SURVEYING
 - LANDSCAPE ARCHITECTURE
- 217 LAKE AVENUE
ROCHESTER, NY 14608
(585) 458-3020

TITLE OF PROJECT
STARBUCKS JAY SCUTTI PLAZA - SOUTH

TITLE OF DRAWING
SITE PLAN

LOCATION OF PROJECT TAX PARCEL NO. 161.120-01-009.1
TOWN LOT 8, TOWNSHIP 12, RANGE 7, TOWN OF HENRIETTA
COUNTY OF MONROE, STATE OF NEW YORK

CLIENT
THE REAL MCKEEVER LLC
1000 HYLAN DRIVE
ROCHESTER, NEW YORK 14623

DWG # 188.96
CA100
SHEET 03 OF 11