

**BOROUGH OF SPRING LAKE HEIGHTS LAND USE BOARD**

**Minutes**

**October 16, 2024**

**Meeting Commences at 7:00 PM**

**Announcement Made by Secretary:**

THIS MEETING IS CALLED PURSUANT TO THE PROVISIONS OF THE OPEN PUBLIC MEETINGS ACT, CHAPTER 231, PUBLIC LAW 1975. ADEQUATE NOTICE HAS BEEN PROVIDED TO THE COAST STAR AND THE ASBURY PARK PRESS POSTED ON THE BULLETIN BOARD IN THE MUNICIPAL BUILDING AND THE BOROUGH WEB-SITE. NOTICES ARE ON FILE WITH THE BOARD SECRETARY. OFFICIAL ACTION MAY BE TAKEN ON THE MATTERS LISTED.

**A. Flag Salute**

**B. Roll Call:**

**Board Members present:** Chair Eileen Eilenberger, Councilwoman King, Michael Milano, Bruce Waitzel, Dennis Pearsall, Brian Brendle, Tom Martin, Adam Anzzolin, Nancy Maclearie,

**Board Members absent:** Councilman Chris Willms, Joseph Tompey, Roy Francolino,

**Board Professionals present:** Mark Kitrick Esq. , Gerald Freda, PE, Christine Bell, PP  
Barbara Van Wagner, Secy.

**A. Minutes: Meeting of September 18, 2024**

Motion to approve: Brian Brendle      Seconded by: Nancy Maclearie

Voted in favor: Councilwoman King, Nancy Maclearie, Adam Anzollin, Brian Brendle, Dennis Pearsall, Bruce Waitzel, Michael Milano, Chair Eileen Eilenberger

Opposed: None

**B. Resolutions:**

**1. Resolution #2024-30      Application #2021-11 William & Donna Starke  
612      Sussex Avenue, block 69 lot 18**

Motion to approve: Brian Brendle      Seconded by: Bruce Waitzel

Voted in Favor: Brian Brendle, Bruce Waitzel, Adam Anzollin, Councilwoman King, Dennis Pearsall, Michael Milano, Chair Eileen Eilenberger

Opposed: None

**C. Applications:**

**1. Application #2024-08      Robert & Erin Rumsey  
1005 Park Avenue, block 25.02 lot 7, R3 Zone**

Bulk variances for a one story addition on an existing single family home

Mark – reviewed Notices and everything is in order, Board has jurisdiction

Mark Aikens, Esq. , attorney for the applicant, stated that this is a single family home in the middle of the block, want to build a balcony with stairs and a 96 square foot shed, on an undersized 8,300 square foot lot with existing 20.8% lot coverage. With addition will be 22.2%, which is a 166 square foot increase, 1.4% increase. Want a variance for the storm water system and variance for the 166 square foot building.

Mark Swears In: Jerry, Christine, Mark Nemergut – Architect for the applicant  
Engineer is not testifying but is here if need be

Exhibit A-1 – Application Packet

Nemergut- this is an 8,300 square foot undersized lot with a lot width of 83 feet and a depth of 100 feet where 120 feet is required. Comply with side setbacks, single family split 2 level home. Most of the living is done on the second floor so want to add a balcony to the second floor. Home has 4 bedrooms and 2 baths. Want to add an outdoor shower. Upper floor has an expanded kitchen, no addition in this level. Proposed balcony is over living space, small cantilever to the west, adding a new landing and stairs and it also provides a second means of egress. Stairs are compliant with sideyard setbacks.

Brian- the AC was added, will it be screened?

Nemergut – will be screened. Shed is 96 square feet and set on stone, not a solid surface and complies with 5 foot setbacks and is 10 feet high. The hardscape consists of walkway and pavers that will be removed. Create paver walkway to paver patio. Seeking a variance for building coverage, impervious coverage is at 32% now and propose 40%. building coverage - 20% is permitted, 20.8% is existing and 22.2% is proposed. The building has a substantial cantilever area and was included in the coverage but rain will go into the ground under it.

Eileen – the generator needs to be in the rear yard

Nemergut- it is an existing generator

Aikens – will screen the generator and the AC. There will be an additional 116 square feet of coverage to provide more modern living space for this 60 plus year old home.

Dennis – what part goes into the recharge?

Aikens – will submit the drainage plan to the Board Engineer for review

Jerry – can work with them. The shed doesn't come with gutters, will put on the house.

Nemergut – will pitch the roof for drainage.

Jerry - The shed is on stone and setback 5 feet. The gutter and leaders are off the house, testimony is accurate, sidewalk and curb are good.

Brian – the north arrow is wrong

Jerry – the north arrow is up but the house is not oriented that way

Public Questions – None

Christine – they agree to comply with the buffering and dry well

Eileen – applicant will work with Jerry with the water infiltration system, variance for the generator

Nancy – variances are for the 22.2% building coverage, generator in the sideyard, will screen existing generator and comply with storm water plan and review with the Board Engineer.

Dennis – improvement for the homeowner

Brian – good plan

Bruce – improvement to the home and community.

Motion to approve: Nancy Maclearie                      Seconded by: Bruce Waitzel

Voted in favor: Chair Eileen Eilenberger, Councilwoman King, Michael Milano,

Bruce Waitzel, Dennis Pearsall, Brian Brendle, Tom Martin, Adam Anzzolin, Nancy Maclearie,

Opposed: None

Application Approved

**2. Application #2023-08**

**Ronak Donut, LLC**

**7 – 11 Highway 71, block 14, lots 221, 222 & 223**

**B2 Zone**

Use Variance, Bulk Variances, Preliminary and Final Site Plan to renovate the existing Dunkin Donuts structure, reducing the size of the building and constructing a drive through Window and drive through lane.

Mark – Councilwoman King and Bruce Waitzel are recused from this application. Bruce is within 200 feet of the site and this application is a Use Variance and acts as a Zoning Board so the Councilwoman cannot participate. There will be 7 members and need 5 affirmative votes for approval.

Keith Henderson, Esq. – attorney for the applicant – Dunkin Donuts leased the property, the operator is Ronak Donuts LLC. Applying for Site Plan and Variance Relief. Was before the Zoning Board before Believe the Board has a right to hear this application, different application. Can hear some testimony First to see if it's a threshold issue.

Swear In: Baij Patel, Owner, Joe Kocuiba, Engineer for the applicant, Michael Elkin, Architect, John Rey, Traffic Engineer, Christine Bell, Jerry Freida

Henderson – this application was heard by the Zoning Board in 2009 and turned down by one vote. The application has changed and Dunkin Donuts has changed the way it operates

Kocuiba – the application is different than the 2009 application, increasing the setback and reducing the building itself and reducing the impervious coverage and building coverage. Do not believe that this is the same application. The Spring Lake Heights Ordinance changed and eliminated a drive thru as a prohibited use but did not allow as a permitted use.

Nancy- The comments of the Board in 2009 was not about the setbacks, it was about traffic and the neighborhood

Mark – this testimony is not about why it was denied but how the application has changed. The building size has been reduced and the impervious coverage has been reduced. The change in the ordinance makes the drive thru not a prohibited use. Res Judicata does not apply if the application is different

Henderson – not changed everything but there are significant changes

Mark – don't disagree, not uncommon, liberally construed for Res Judicata threshold. Agree with legal argument and Case Law. If it does not apply, then move on with the application and accept the testimony provided, can proceed and agree that Res Judicata does not apply. Applicant can then proceed with the application.

(Board votes unanimously that the application is different and Res Judicata does not apply and the application can proceed)

Christine – agree with the Board decision. Disagree with Mr. Kocuiba that the Zone change that removed Drive thru uses as prohibited now allows it to be permitted. The list of permitted uses was updated and if the use is not listed as a permitted use, then it is prohibited. The use is still not permitted.

Mark – this will need a use variance, the notice included a use variance so this was properly noticed

Henderson – want to place on the record that I don't believe this needs a use variance, it is not a prohibited use.

Christine – as the Board Planner, this application needs a D1 Variance

Eileen – if it is not permitted, then it is prohibited.

Kocuiba – it is not a permitted use, challenge why have a prohibited list

Nancy – clearly a use variance. Mayor and Council write the ordinances and our job is to uphold the ordinances.

Christine- the purpose of having different zones is to take into consideration for different uses and bulk standards, if prohibited in one zone, doesn't mean it is prohibited in another zone.

Henderson – have to prove C or D variance

Dennis – going round and round, need to go for the use variance

Kocuiba – our position is that we don't need a use variance, your planner disagrees, it is a threshold issue.

Dennis – will you proceed either way?

Mark – your Board says you need a Use Variance

Motion that Application needs a Use Variance: Tom Martin                      Seconded: Brian Brendle

Vote in favor for Use Variance requirement: Brian Brendle, Bruce Waitzel, Adam Anzollin,

Dennis Pearsall, Michael Milano, Chair Eileen Eilenberger

(Board Votes that the application requires a Use Variance and that Drive Thru is not a permitted use)

Patel – family started the Dunkin business in 1996, we have the best in time for serving customers faster than others. The equipment is designed to serve customers faster

Henderson – if this was a brand new franchise, would you be able to not have a drive thru?

Patel – only under certain circumstances, like at a train station

Henderson – how much time are they giving you to comply

Patel – our franchise expires in 2027, will need a drive thru

Henderson- Is it a franchise requirement, how much to get drive thru

Patel – eventually, yes

Henderson – can you maintain the store if don't have the drive thru?

Patel – not feasible

Henderson – what are new products

Patel – sell 75% of business for coffee and 25% for sandwiches and food. Per Dunkin requirements, need to server customer in 120 seconds or less

Christine – from drive thru to pick up

Tom- the franchise is through Dunkin?

Patel – we are independent owners

Christine – what is the standard time at other Dunkins?

Patel – in Sea Girt it is under 90 seconds

Tom – great produce, great job, walk ins are 3 -4 minutes, less congested at drive thru

Christine – is there a standard for walk ins?

Patel – not for walk ins, just for the drive thru with the sensors.

Tom – no problem with the business, concern is with the drive thru

Mike – if don't have the drive thru, then won't keep this location, lose the store?

Patel – due to decrease in business, without the drive thru, will not renew another 20 year lease

Tom – sales dip if no drive thru, who owns the property?

Patel – we don't own it, we lease the property, the owners don't object to this

Public questions for this witness:

Deb Reclora – 913 Jersey Ave - when does lease end?

Patel – stated lease in 2005 and ends 2027

Reclora – do you have a business plan on what is anticipated?

Patel – yes in 2005, it was fine with no drive thru, but there were changes in the past 2 years so now need the drive thru

Christine – Economic and financial issues are not something that is considered for a variance

Ralph Citerella – 707 Jersey Avenue – will there be an increase in the traffic with the drive thru?

Patel – business is going down without it

Citerella – there will be a lot more cars, it's a busy street

John Rea, Traffic Engineer for 50 years, business is in Manasquan. Have done dozens of traffic studies for Dunkin Donuts

Eileen accepts credentials

Rea – did participate in the Sea Girt Mall design. The numbers for the Sea Girt store are nearly double, it is on Route 35 which is busier. Did the traffic count from 7:30 -8:30 am which is the peak hour for customers, 60 customers walk in, with a drive thru, there would be a 10-20% increase in value. Should bump up to 70, 75% of take out for drive thru. In Sea Girt it is 120 customers in one hour. Place the order and pick up in 2 minutes, usually 90 seconds.

Christine – what is the average industry time with other restaurants.

Rea – two minutes is average for Dunkin stores. Starbucks is longer because they have more products, longer cues. Don't know about McDonalds. In Middlesex County it is more urban, so much busier. Sea Girt is a busy store and is about 120 an hour. Spring Lake Heights is half of Sea Girt in business.

Looking at the site plan, there is adequate cuing. Sea Girt has 8-9 cars in the cue, usually about 6-8.

During Covid it was a different situation. Back to Pre-Covid numbers, it was 10 cars stacking. This site can have 13 cars in the cue. Based on efficiency, these numbers, won't have traffic back out onto 71.

Familiar with the area, lived here for 40 years. Think this site can operate safely with 20% more. There will be an increase in inclement weather, decrease in pedestrian and vehicle conflicts. Drive thru, the people stay in the car, decrease in the parking in the lot. Saw 10 cars, have 18 spaces, more than enough parking.

Brian – when did you do the study?

Rea – September 17, there was the same cue in the summer

Nancy – Tuesday, September 17 is not the high time as in the summer. Not the same as summer

Rea- have a letter from DOT, of No Interest, it uses ITE and DOT numbers, say will be a decrease but think it will be a 10-20% increase.

Nancy – If done in the summer, it would be higher

Rea – there were 60 customers in that hour. Got a Letter of No Interest because it will generate less than the 100 count threshold. Most of the traffic will be from 71 and 20% from Jersey Ave.

Brian – 13 cars to stack? 10 from pick up window, count from the pick up window?

Christine- from Jersey to pick up window, if parked by the building, the car will be stuck there

Rea – 10 cars before get to Jersey Ave

Jerry – leaving a box area so traffic can get in and out. When pull in from 71 from Jersey, may have to go to 71.

Nancy – another reason to use it, an invitation to use a residential street

Jerry – if eliminate one space, don't think people will enter into Jersey from 71

Rea- DOT Can't eliminate Jersey Avenue access, maybe can limit the turns

Jerry – can include in the application

Eileen – 60-70 cars, 25% from Jersey Ave, 15 from Jersey in over an hour?

Mike – the signage shows the route

Rea – can provide appropriate signage. Can eliminate drive thru access from Jersey and then they go to 71. Have stalls impacted by aisles.

Nancy – there is no shoulder on 71 going south, too narrow

Discussed Exhibit A-1 Aerials

Kocuiba- Can serve 5 customers in 2 minutes. Two minutes to get to the window. The 10<sup>th</sup> car will clear in 4 minutes.

Nancy- could take 4 minutes to get out, 60 cars in one hour or 70 cars

Kocuiba – disagree, I do the counts

Tom – if takes an hour to get out, I won't go in. I wouldn't wait on line, I would go somewhere else.

How many are stacked in Sea Girt?

Rea – 8-9 Cars to Meeting House Road. 11 here in Spring Lake Heights, showing 12-13 without the box.

Jerry – what if they ask for a Box of Joe?

Patel – then they pull over to the side for large orders

Jerry – Important to designate spaces for pick up

Tom- maybe need a traffic study for more than one day

Christine – maybe a weekend

Eileen – and a longer period of time

Tom – need more data to look at and to process

Christine – are there any employee only spots? Where do large orders park? What are the hours?

Patel – open at 5 am

Henderson – what data do you want?

Mark – need the plans corrected and a weekend study

Nancy – is there a speaker near the residents. This is next to a residential neighborhood

Henderson – we didn't get that far yet – (with the speaker)

Mike – now only have foot traffic

Christine – can provide data for sales in the summer

Tom- also, other times in other locations

Mike –they do Pre-Order on Apple

Mark – can use data from Sea Girt and rely on both data

Tom – data in summer from Sea Girt

Kocuiba – can study both locations on weekday and weekend

Eileen – maybe different times of the day

Jerry – do exit only on Jersey

Kocuiba- According to DOT - cannot do any changes and push more traffic to Route 71, then will loose the Letter of No Interest

Nancy – can you consider curb side delivery?

Kocuiba – the window is more efficient

Henderson – can't continue the testimony now

Tom- asking for more data

Eileen – can hear questions from the public

Mark – Audience can ask questions but know there will be additional data submitted

Rea- will lose the Letter of No Interest if change any access. DOT could even eliminate the access from Route 71. DOT in 1987 adopted an access code, the curb cut here is too close to the intersection and also the location of the building. It is grandfathered now, if change, then be forced to bring up to code and lose grandfather status.

Nancy – how do we protect the neighborhood

Rea- with the drive thru traffic goes out to 71 which is an improvement

Nancy – want to protect the community

Public Questions:

Andrea Paterson

Karen Burke – 606 Shore Road –signal question

Rea – not enough traffic to warrant a signal

Mark – applicant can come back with revised plans. Between now and the next meeting can meet with the public, have revised traffic study at next meeting. Will have an opportunity to present it. Board will hear everything and determine if use variance will be granted. Public ask questions and comments now

Dave Peterson- what is traffic study going to do?

Mark – they have not completed their case and presenting their application.

Tom- what about the current traffic conditions with the neighborhood?

Mark – Residents can go to a Council meeting for current traffic conditions

Nancy – If this application affects traffic, there will be an opportunity to present the case and discuss

Tom – concerned with traffic issue in the neighborhood

Mark – if there is an issue, can make yourself available to the applicant

Application carried to meeting of December 18, 2024 with no further notice.

Motion to adjourn: Tom Martin

Seconded by: Brian Brendle

Meeting adjourned: 9:15 PM