

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

**Minutes**

**May 14, 2025**

**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, Brian Brendle, Dennis Pearsall, Tom Martin, Roy Francolino, Joseph Layton, Anna Kuntz,

**Board Members absent:** Nancy Maclearie, Councilwoman Degnan-Spang, Councilwoman King, Adam Anzzolin, Michael Milano

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

**A. Resolutions:**

**1. Resolution #2025-11 Application #2025-02 Franklin & Monica Boenning  
605 Warren Ave, block 68 lot 3 MU2 Zone**

Use variance for new single family dwelling with detached garage and pool

Motion to approve: Brian Brendle                      Seconded by: Tom Martin

Vote in favor to approve: Tom Martin, Brian Brendle, Roy Francolino, Joseph Layton, Anna Kuntz,  
Chair Eileen Eilenberger

Opposed: None

**2. Resolution #2025-12 Application #2025-03 Richard Schroeder  
306 Old Mill Road, block 31 lot 25.02 R3 Zone**

Bulk variances for enlarging existing garage for existing single family dwelling

Motion to approve: Brian Brendle                      Seconded by: Tom Martin

Vote in favor to approve: Tom Martin, Brian Brendle, Roy Francolino, Joseph Layton, Anna Kuntz,  
Chair Eileen Eilenberger

Opposed: None

**3. Resolution #2025-13 Application #2025-04 Marcie Blanco  
506 Highway 71, block 37 lot 96 MU2**

Use & Bulk Variances for addition of detached garage/shed, inground pool and patio for  
Existing single family dwelling

Bulk variances for enlarging existing garage for existing single family dwelling

Motion to approve: Brian Brendle                      Seconded by: Tom Martin

Vote in favor to approve: Tom Martin, Brian Brendle, Roy Francolino, Joseph Layton, Anna Kuntz,  
Chair Eileen Eilenberger

Opposed: None

**B. Application:**

**Carried from March 12, 2025**

**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 – reminding everyone that this is public hearing and everything is recorded. No yelling or talking from the back. After all testimony concludes, then the public has a right to come up and make a comment. The Board makes a decision based on the evidence presented and the testimony presented in this room. Not on what is said outside of this room, not letters, or social media. Board will use their judgement and if they need guidance, have professionals to give advise.

Timothy Middleton, Esq. – representing the Citerellas – looked at Resolutions and clear that there is a substantial defect with notices and plans submitted. The notice is a jurisdictional issue. In 2009, there were two applications submitted by Dunkin. January 2009 requested an 844 square foot addition and a drive thru 31 feet from the property line. Notices were sent and there were hearings in February, March and April and was denied approval based on the Boards conclusion that a 30 foot buffer is a design standard. The Board made clear that the denial was based on the inadequacy of the buffer.

Exhibit O-1 – Resolution #2009-11 dated May 19, 2009.

In the resolution, the Board cited the buffer design standard in section 7 of Ordinance 22-505. The Board found that the drive thru will increase traffic and noise and not be properly screened and be a detriment with the proposed 10 foot buffer and not adequately screen the proposed use. Notice included the request for the 10 foot buffer where 30 feet is required.

Exhibit O-2 Plan by JKR Engineering dated 3/6/09 – 8 pages

Plan identified the design waiver and the depth of the buffer at 10 feet where 30 feet is required. Applicant noticed for the waiver for the buffer. Shortly after, the applicant came back to the Board for a 844 square foot addition without the drive thru.

Exhibit O-3 – Resolution #2009-12 dated July 28, 2009

In March, third application, part of the original drive thru which is 30 feet from the rear property line and 50 feet from the building. Question of Res Ajudicata – Board decided not barred.

Mark – the decision was already made at the first meeting

Middleton- there was clearly a violation of notice. More importantly, need to look at the application and will not realize there is a buffer issue. Major issue for the Board, not sure Board members, or Board professionals knew not on the application, not discussed. When discussing design standard, there is a difference from variance. I wasn't at the earlier meetings. The shiny penny was the traffic issue, if they knew about the buffer, might have been addressed by the public. Not in notice but should be and was in the prior resolution. In my humble opinion – it collateral estoppel. In the 2004-11, they didn't think the site was big enough for the use with the drive thru. Argument used in Monmouth County, Judge Allen McCarthy regarding Howell warehouse case. No variances but had design waivers. Attorney for the developer didn't comply and were denied. Judge needed to proceed with hardship or incompatibility. Case is 2022-WL-149-9029 Howell Township.

Exhibit O-4 – Letter

Mark – want to address a few items. You are saying that the site plans does not refer to the buffer, your May 12 letter it doesn't address, didn't make any mention of collateral estoppel. Did you cite any cases in your legal position in your letter?

Middleton-no

Mark – when did it come across and not see fit to send to the Board Secretary, Mr Henderson or me or send this morning

Middleton- no I didn't. Design waiver is inferior. There was another case with buffer issue

Exhibit O-5- Howell Case

Exhibit O-6 White Castle Case

Middleton – When applicant went to the Board before, it was denied. The second time the Board granted the buffer for just the building, Board denied that the buffer was inappropriate for a drive thru but approval for the 10 foot buffer without the drive thru. Then apply for the third time. Use variance today for the drive thru. If look through notices, applicant applied for variances for parking and was approved. On application for parking, public is aware. 10 foot buffer was denied a month earlier. Based upon the above, notice is inadequate. No one talked about the buffer. Everyone talked about the traffic, need to inform the public in general, terms for what is being asked for and proposed. Buffer should have been noticed and don't think the Board has jurisdiction.

Mark – certainly can hear about the notice argument but jurisdiction was done at the beginning of the application. Have the right to raise the jurisdictional issue but need time for Mr. Henderson has the right to respond.

Middleton- Jurisdiction can be made at any time. I reviewed this on Sunday and did what I could. I could have waited and gone to Superior Court.

Mark – One thing at a time, cannot shout from the back of the room

Henderson- two choices, can put objector and put on case or resolved the issue now. Was just told a story and have the right to respond

Mark – complicated factor. I'm being presented with two cases. Would have loved to have been aware to review these cases that were cited. Reality is now that have to review and Mr. Henderson needs time to review

Henderson- I agree. This was an effort to delay, not what the Rule of Law is intended to do

Mark – will defer on this issue. Mr. Middleton has two witnesses, will allow them to go forward – collateral estoppel issue

Henderson- Middleton's Memorandum – should have been done before meeting

Mark – for now will move on with the witnesses, this is out of the ordinary

Henderson – don't do at the next meeting, no fair the way this is being done to the applicant or to the Board Should provide the cases – McCarthy and White Castle, to the Board Secretary, cases go to design waiver, comes up in the Memo

Middleton- could have provided prior to the meeting

Eileen – we just got this

Middleton – did what I can do, I'm a one man band

Tom- is there anything else proposed?

Middleton – can bring up things at any time- doing applicant a favor, need to re-notice and re do plans. Got Mr. Henderson's letter that waiver is not substantial

Tom- have you gone through the application?

Middleton – as an attorney, look at different ways, things happen, didn't know there was a buffer issue

Anna- In the notice it says "any and all other variances", is that why it says that, doesn't that include that?

Middleton – It's a catch all, all attorneys do it, may not be significant issue. It's different here, the buffer is important

Anna- a judge could say that the catch all phrase is sufficient, this is just your opinion

Middleton – yes, not all

Joe- In 2009, the Planning Board approved the 10 foot buffer

Mark – it is relevant, but will address later

Sworn In: Lee D Klein, Professional Engineer and Traffic Engineer

Mark – Mr. Kocuiba, the Board Planner and Board Engineer were already sworn and continue to be

Mark – who do you represent?

Klein – Kerry Murray

Mark – Mr. Middleton, who do you represent? Do you represent them too?

Middleton – No

Mark – Bringing him as a witness but he is representing someone you do not represent

Middleton – only Citterella

Mark – usually the attorney represents those individuals

(Middleton takes a moment to speak to Mrs. Citerella)

Middleton- my client, the Citerellas contributed to Mr. Klein's fee

Anna – any traffic studies in this area?

Klein – yes, reviewed the Site Plan and the Rea Report. Applicant is seeking a variance for parking and site plan is too tight for a drive thru. Favored entering from Highway 71. It's a tight angle, need to see turning template for maneuvers. The western side has parking in the corner. There are three parallel spots on the southern. Could fit 12 vehicles in cue, 13 might block sidewalk, cars cuing will block the parked cars. 12 spaces not accessible during the peak time. Would like to see more width. DOT sent Letter of No Interest, no significant increase in traffic, agree with that. Don't like its within 50 feet for the parking, no minor access permit. Not safe conditions if vehicles cue during rush hour. June 2011, Institute of Traffic Engineers has a journal, different engineers. The donut shop – its based on traffic passing the site. If see Dunkin, will stop. Can't take credit for smaller size if see Dunkin Donuts

Dennis – The NJ Department of Traffic determined that the drive thru would not create a significant increase

Klein- not greater than 100 trips

Anna – what do you mean it's a bit tight?

Klein- need to provide a turning template, not enough room for the cue, will take spaces out of service if 8 are full, not enough storage on site for the cars, not enough room to maneuver

Middleton- is there concern for the space within the 50 feet?

Klein – mine and DOTs concern

Anna – didn't get that from DOT

Klein- wrong department, they wouldn't know

Anna – wouldn't they just send it to the right department?

Klein – DOT is not functioning well

Public Questions:

Susan Dunlevy – 815 Jersey Ave, question about traffic on 71 and cars on the sidewalk

Klein – can't predict crossings or accidents, if vehicles in cue can block the entrance, someone has to wait

Mary Quinlan –713 Jersey Ave, can someone coming north make a left in?

Klein- wide shoulder, can pass them

Betsy Cross, 1210 Tuxedo Pl - did you review what was there 15-20 years ago?

Klein – not significant, no analysis on how they enter, not warranted

Henderson- object, heresay

Mark- yes, heresay

Quinlan – can they change their mind?

Klein- WaWa has a left turn entrance, can monitor for 6 months if it's a safety issue, look at crashing if it can be mitigated by changes

Quinlan- we have two 7-11

Klein- every application stands on their own

Debra Mercora, 813 Jersey Ave, concerned with the southbound traffic.

Why did the letter go to wrong department?

Klein- Did what I would have done, requested a Letter of No Interest. Showed the trip generation. The Bureau that looks at the 50 foot setback because they didn't change the entrance.

Henderson- you said you looked at the parking, when did you look, all the parking is in use, it was approved and was existing

Klein- wasn't a drive thru

Mark- financial, not part of the analysis and not relevant to approval or whether increases income, any attorney would disagree

Sworn In: Peter Steck, Engineer and Planner (states credentials)

Eileen – accepts as a witness

Middleton- spoke to Citerella and reviewed the application

Steck – reviewed transcripts of 3 hearings, took photos and did visual inspection

Exhibit O-7 – Five page Planner Study

Steck- Satellite Photos page 1 & 2 (described photos) page 3 – Site Plan definition

Dunkin Donuts has some non-conformities, too much paving and doesn't comply with 30 foot buffer but variance granted. 1986 Resolution – Carvel to Real Estate Office. 1990- Real Estate Office to Drive in. In 2009, application for 844 square foot addition and a drive thru was denied. July 28, 2009, modified the application without a drive thru and keep the buffer and it was approved.

Significant modifications- seats going to 6, removing the outdoor seating, big change. The drive thru was proposed, no change to the buffer. 32 feet in previous application and now 31 feet to the property line. There will be an increase in business, certain amount of cars blocked from the spaces. Its located in the commercial corridor abutting single family homes. Looked at the Re-examination of Master Plan, while to upgrade corridor to Mixed Use. Motels were eliminated. Now the MU2 Zone – Mixed Use, this application was deemed complete prior to the change and will comply with the B2. In my opinion, referred variances, the stall size, signs, - plans don't talk about the waiver for the buffer and notice didn't talk about the buffer. They will have less pedestrian traffic and more motorists. They need to prove that the application advances the public welfare and its particularly suited for a drive thru. The Board in the past denied it because of the size of the property. It is substantially buffered but is 1/3 of what is required. Since the driveway didn't change, DOT didn't look at it. Right angle spaces back into cars in the stacking lane, supposed to have an 18 foot back up distance, cars backing into others. Site not sized to accommodate this facility, contorted design and unusual Dunkin Donuts design. Looked at 38 Dunkin Donuts in the area. Mr. Rea said it was typical to block spaces with the drive thru. 16 didn't have a drive thru, 15 had completely separate landscaping and found one when a car backed up into the drive thru lane. This site is too small to accommodate this. The Resolution says the buffer is inadequate for a drive thru. Speaker system is to go down when its quiet, noise from the source. Its at the residential property line. No testimony will comply with State Noise standards. The use was eliminated

as prohibited per Ordinance #2023-03. Any use not permitted is prohibited. The Governing Body eliminated it as a prohibited use. Didn't have separate category for fast food, this makes Dunkin Donuts a non-permitted use. Code recognizes drive thru use. Its clear that a drive thru is not a listed as a permitted use and fast food is prohibited. There was no testimony for the 30 foot buffer which is a fatal flaw. Use Variance D1- states the Medici Case is needed. In my opinion, the drive thru is not appropriate for this site. There are cars backing into others. In terms of the Master Plan, want pedestrian oriented businesses, but they are taking away seats and is drive thru oriented and more offensive to those in the perimeter with an increase in traffic and impacts on noise. The application is going in the wrong direction. Applicant failed to show this is particularly suited and there is no substantial benefit. Its particularly unsuited.

Middleton – when you look at the 2009 application, do you think the approach to the buffer in that application applies to this application.

Stack- no, with the D1 Variance, need to show that the use is particularly suited, its different with the drive thru component.

Middleton- The Medici Case is a Supreme Court case

Steck – it is the hardest proof, look at land use and this case is flipped, dominate use is from the drive thru component. Its not an accessory use, already a restaurant use. Must meet negative burden of proof, its anti-pedestrian and more automotive use.

Anna- are you a traffic expert?

Steck – no

Anna- where were the Dunkins without a drive thru?

Steck – gave that on the report

Exhibit O-8 – Layout of other Dunkins

Anna – some of these do have drive thrus

Steck – used aerials, not 100% accurate

Anna- when did you know about the buffer issue?

Steck- a week and a half ago

Anna – what time did you go?

Steck – Saturday night

Brian – why do you think the buffer is inadequate?

Steck – no comparison when you have a drive thru

Brian – the vegetation is useless?

Steck – it looks nice, but doesn't stop the noise or from the second floor

Brian – did they add the second floor or was it there?

Steck – don't know, probably been there

Brian – is there a fence in the buffer?

Steck – a PVC fence and landscaping on their side

Brian – on their side?

Tom- there are shrubs, then a fence, and then more shrubs. That doesn't reduce sound?

Eileen – the fence is the buffer

Anna – looking at the list, some are small Dunkins

Steck – did the report from looking at aerials

Middleton – we talked about the buffer, what is the purpose of the buffer?

Henderson – I object, he is not a sound expert

Klein- need 100 feet of forest to attenuate the sound

Mark – are you saying this needs 100 feet of woods?

Klein – I'm no sound expert. Applicant hasn't met the Burden of Proof

Mark – your testimony was that it needs 100 feet of woods. Do you have any documentation to support that statement?

Klein – no but there is a source of noise

Middleton – Don't suggest 100 feet of buffer, need 30 feet?

Klein – yes, prohibited use, need 30 feet of buffer, 10 feet was approved in past but it is irrelevant

Mark – the Board determined it needed a use variance. Have you been to the site, what would be permitted?

Klein – continue to do what it's been doing

Mark – what else is permitted?

Klein – whatever is permitted in the MU2 Zone – can have restaurants, bar, retail use, but need a 30 foot buffer. This is a non-permitted use and could need more

Brian – housing is permitted

Klein – 10 residential units and two need to be affordable – above the commercial use

Brian – did you notice the adjacent property, do you know what would be permitted with both?

Eileen – buffer needs fencing and plantings, what is there now is what the ordinance says what is required.

Middleton- it's the existing buffer approved by the Board

Eileen – not this Board, this is the Land Use Board

Klein – for light, noise and sound, need 30 feet. The Board in May 2009 denied the drive thru and then later approved the buffer for the building and no drive thru.

Anna – it's a B2 Zone for this application

Klein – the Governing Body makes the distinction

Anna – a bar, restaurant or motel can go there

Klein – yes, but need a buffer

Eileen – there is a buffer

Henderson- well it looks like my time is up, the application will need to be carried. Want the planner to return for cross examination

Mark – we will address the jurisdictional estoppel

Middleton – will do a legal memorandum

Mark – fair enough

Henderson – would like a copy of all source

Mark – in the memorandum?

Henderson – yes

Mark – this application will be carried to the meeting of June 18 with no further notice

Mark – memorandum should be submitted by May 28 by Mr. Middleton

Middleton – need more time

Mark – by June 2, Mr. Henderson to respond by June 12

Motion to carry to the June 18, 2025 meeting: Tom Martin

Seconded by: Anna Kuntz

All members vote to carry this application

**Application Carried to June 18, 2025 with no further notice**

Motion to adjourn: Tom Martin

Seconded by: Brian Brendle

All Members voted in favor to adjourn

Meeting adjourned: 9:47 PM

