

BOROUGH OF SPRING LAKE HEIGHTS LAND USE BOARD

Minutes

June 18, 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, Dennis Pearsall, Anna Kuntz, Joseph Layton, Brian Brendle, Adam Anzzolin, Michael Milano, Tom Martin, Roy Francolino,

Board Members absent: Nancy Maclearie, Councilwoman Michele Degnan-Spang,

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

A. Minutes:

Meeting of April 16, 2025

Motion to approve: Brian Brendle Seconded by: Chair Eilenberger

Voted in Favor: Joseph Layton, Adam Anzzolin, Brian Brendle, Chair Eilenberger

Opposed: None

Meeting of May 21, 2025

Motion to approve: Brian Brendle Seconded by: Councilwoman King

Voted in Favor: Adam Anzzolin, Councilwoman King, Brian Brendle, Chair Eilenberger

Opposed: None

Carried from May 14, 2025

1. 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 – certificate was signed by Mike and Adam, they listened to the meetings and are up to speed. At last meeting, the legal issues presented. Asked both attorneys to review legal arguments and give a brief summary regarding the two issues. Not summary of entire application, give a summary for the record. Will advise Board of legal determination. Mr. Middleton will be the first to go.

Henderson- is there a time limit?

Mark – reluctant to give a time limit, ask that it be a brief summary

Middleton -at the May 14, raised issues about the notices and collateral estoppel and entered documents at the end of the meeting. Submitted legal issues, researched and cited cases. Collateral estoppel- can wait for Superior Court, if we get there, it is a legal issue. Want to focus on the Notice Issue. Doesn't matter if waiver

or have the catch all phrase, the notice has to advise the public of the important issue, not caught in the catch all phrase. The Lacey Township case stated that need to have what is important for the neighbors or the public. It didn't say that Kmart was going in.

Mark – are you sure that's what it was about? Cox book, that is the Bible that everyone uses, states that it is not essential for every waiver to be in the notice unless it has an impact on the neighborhood.

Middleton- they need to provide a 30 foot buffer. In no case should the buffer be less than 20 feet and needs to be completely green to prevent lights from the cars. In 2009, there were two applications, May 2009, they came for drive thru and building addition, and the Board denied it. Primarily because the buffer was not sufficient for the drive thru. They came back one and half months later with the 10 foot buffer and no drive thru and the Board approved it. Both applications were represented by the same attorney and they noticed for the buffer, did it twice but didn't do it here.

Planning Board thought the buffer was needed, know its important and impacts the Citerellas but it wasn't noticed. Doesn't stop here, if property owners went to Borough Hall and looked at the application, not a mention of the buffer, not on the plan, which was done by a very competent engineer but not in the notice and not in the application. How would anyone know. OPRA the application on May 22, question 12 asks if there are any other applications and it said yes see attached resolution but the Board Planner didn't know about the denial. Tainted the entire application, the Board and the Planner and the public should have known about the inadequate buffer. Everyone is entitled to Due Process. Application should have had the denial. Buffer is not on the site plan, application is incomplete. Omitted a material fact. My position is that did not have Due Process, should have all known about the denial and this case would have been different. The shiny penny was the John Rea report and the traffic.

Mark – stick to legal memorandum

Middleton- Mr. Henderson was the attorney the last time and he put the approval in the application but not the denial. We found out later about the denial. Wouldn't you have wanted to know this needed a buffer?

Mark – don't put yourself in the shoes of the planner or make statements of what the Chair said

Middleton- for those reason, applicant should come back and put forth a case where the documents are accurate

Henderson - regarding the notice - did file the notice and the Board accepted jurisdiction, he wants the Board to void this and start over. He takes the scope of the notice beyond anything I have ever seen. We complied with the State Statute and Municipal Statute and Case Law. Mr. Middleton painted a picture that certain parts are more important than others. There are lots of things that don't need to notice for – buffering, landscaping – these are ancillary to the main project. The Notice is valid, there was no skullduggery. If Mr. Middleton is correct, then need to do research on what the neighborhood wants to hear. Notice was proper, complied with State Laws, Municipal Ordinances.

Mark – The Board needs to know the legal issue. Reviewed the Memorandum and laws. Regarding Collateral Estoppel, don't find Mr. Middleton is supported by law. Board determined this application has changed and this application will be heard. Cases cited in Mr. Middleton's Memo, are not Municipal Land Use cases, legal theory does not apply here. Courts have a liberal view of revised applications. As to Notice, Mr. Middleton raised interesting issues. Both attorneys did good job on the legal memorandum and did some research on my own. Don't see any notice requirements for waivers. Notice meets the legal requirements and the catch all phrase – any and all other variances or waivers. Clearly a waiver is not a variance. Does meet legal requirements of what applicant is seeking to do. I read the case cited which was for a conditional use in Hamilton Township, name of the business was not named. I don't find that it is legally required to notice for a waiver. The Statute states that a Board has the power to waiver requirements if they believe the buffer is adequate. Board has the authority to grant waivers for a buffer. I respect the arguments of Mr. Henderson

and Mr. Middleton and conclude that the notices are adequate. The deficiency in the application, while unfortunate but not fatal to the application, can proceed.

Henderson – waive the right to cross examine testimony. Previous buffer to 22 feet to the edge of the aisle. Mr. Steck said 32 feet

Steck – want to enter an exhibit -thought it was a condition to clarify

Mark – don't cross examine and wait to enter an exhibit

Middleton – just correcting the record

Henderson- if causes a problem. what is your take on the correct distance?

Steck- site plan changes, in prior application denied drive thru, inserted parking in the rear. Shows intensification of use, more cars, showing an intent...

Mark – caution to stop using that term, cross examine, not testify

Steck – applicant shows 10 feet supposed to be 30 feet

Henderson- no questions of this witness, will wait for engineer to clarify

Middleton- prepared an exhibit O-9

Steck – copied site plan, the green color is the buffer, gray shade for the cars parking and shows speaker on previous application. Upper part is the current application, no change in the buffer and proposed the speaker closer to the buffer in residential zone. In summary, the Board had said the buffer proposed was inadequate for a drive thru. There is less seating and more automotive use. Fundamental issue is that there is a deficient buffer for the drive thru with more traffic.

Tom- did the change make it better?

Steck – not better, 5 cars intruding in the buffer

Middleton- in 2009 the application was denied, no parking near buffer, current application, adjacent to the buffer is 4 cars.

Steck- There are 5 cars in the buffer in the new application, there is an intensity in use and the 10 foot buffer doesn't work

Anna- in 2009, the application was denied and then approved

Mark- the Board already determined that there was a change in the application. Mr. Middleton made a collateral estoppel claim but don't think it applies

Roy- is the 10 foot buffer that got approved?

Mark – asking for a waiver for buffer, no question they need a buffer

Christine- use is changing, advise in need of a waiver, granted a waiver, conditions of buffer not changing but use is changing so need a waiver. They were granted a waiver, the conditions of the buffer have not changed but use is changing so need a waiver

Mark – we understand the prior approval but there have been changes to that application which allows them to come before the Board. At the beginning, the Board determined that they can proceed which defeated the Res Adjudicata.

Christine- Application was denied, we determined that their application is substantially different from 2009 and that they can proceed

Brian – what is the definition of a buffer?

Christine – the buffers are described in section 22-505 and apply to all zones that abut a residential zone, it is a strip of land between the zones and contiguous with the residential zone. Requires fencing and shrubs planted in the buffer. Buffers require a board on board fence six feet high and plantings. This site has the board on board fence and 6 foot evergreens. Question for Mr. Steck – have you been to the site?

Steck – yes

Millie Citerella sworn in

Middleton- showed Exhibit O-10 – Picture Board, two pictures. Mrs. Citerella has lived there for 5 years, what is your concern?

Citerella- we don't hear anything from the front. 11:30-2:30 am – truck delivers donuts, still noisy.

Middleton- are you concerned the Drive thru will increase traffic?

Citerella- looking at the traffic report concerned there will be 300-400 cars a season

Middleton- need the waiver for the buffer, don't think the 10 feet is sufficient

Mark – Mr. Middleton, its ok to lead a little, do you have questions?

Middleton – address your concerns

Citerella - the car noise but not continuous, early morning to 9

Middleton- concerned with the 6 am cars and the lights and glare, want to increase the buffer?

Citerella – yes, its too close

Brian- have lived there for 5 years, there are two rows of trees, when were they planted?

Citerella – a year after I moved in, had written permission to take down the trees and put new ones

Mark – how many trees?

Citerella – 15 or 16, green giants

Tom- you have a row of trees and they have a row of trees?

Jerry- the trees are most likely on her property

Anna- is there an ordinance for trucks? 11 pm – 2:00 am? They use the parking for Jose's

Jerry- 4 foot between the fence

Mark – planting 14 trees?

Citerella – 11 and 9 along the fence

Dennis – when was the picture taken?

Christine- February 25, 2025

Dennis – only one window on the side of the house?

Citerella – yes

Dennis – fairly new home?

Citerella – built in 1998

Dennis – built with one window because it is abutting a business. Aware next to business?

Citerella – did adjust and closed the windows at night. Did approach the owner about the trees

Public Questions:

1. Betsy Cross – don't have to give my address

Mark- address does matter. People who live in proximity to Dunkin is part of his case, the impact. The Board has to weigh where they are in relation to the property. Can live anywhere but Municipal Land Use Law gives weight to the location

Cross – don't want to give my address

Mark – you live in Wall

Cross – how many feet to the trees?

Citerella – don't know

Cross – want to see 30 feet

Mark – what is your question of this witness, later can tell how you feel

Cross – 11:30-2:30 trucks are coming?

Mark – what is your question of the witness?

Citerella – know we live next to commercial area, there's noisy trucks

2. Suzanne Dunleavy, 815 Jersey, aware 5 years ago in 2009 , it was denied?

Citerella – yes, spoke to Board members

3. Colon Chesney, 718 Snyder,

4. Betsy Cross, Wall Township – more kids can be hit?

Henderson – objection

Middleton – want to ask questions to Planner

Mark – can't cross examine, under what theory can you cross examine?

Middleton – have a right to ask a question

Mark – she is not subject to cross examination, under what right?

Middleton – Due Process, no buffer waiver in report or from the applicant, heard tonight buffer waiver is required

Mark - not a question of allowing, let the record reflect you're saying Due Process to ask the Planner a question? What supports that? What case? I don't see attorneys coming to a hearing to cross examine the Board Professionals. Phrase your question

Middleton- Christine, when I reviewed the Review Letter, no reference to the buffer. At 8:05 had a conversation with Mr. Kitrick. Is there a reason its not in the previous review letter?

Mark – don't think you are permitted to ask that question but don't object to the clarification

Christine – the Review Letter from a long time ago didn't include the waiver or the bulk variance. Here to give guidance to the Board and to listen to the case

Mark – any rebuttal witnesses?

Henderson- call the Engineer to clarify the issue

Mark – Mr. Kocuiba was previously sworn in as were all of the other professionals

Kocuiba – agree with Ms. Bell regarding the buffer interpretation. The lot is 145.05 feet deep with a 29.01 foot buffer. (referred to Exhibit A-10) the approved plan dated November 15, 2010 shows grading and drainage plan of approval. Parallel parking was on the original plan as was the dumpster. Clear on the Collateral Estoppel, not the same plan as what was denied. Everything is outside of the 29 foot buffer with two rows of trees and a fence in between

Christine- went to the site, on the Dunkin side there are two trees that died at northern and southern area. Would the applicant be willing to replace the trees?

Kocuiba – yes absolutely. At the first meeting, we discussed the buffer, we didn't ignore it. There are evergreen trees.

Mike- the size of the building was reduced to allow for the drive thru

Eileen- the 2009 application gave the waiver for the 10 foot buffer

Kocuiba – yes

Jerry- approved the plan with two parking spaces

Kouiba – strip of land needs trees. The Ordinance not specifically says entire area needs to be green. Waiver is not a variance. Not detrimental to the public good or ordinance. Referred to buffer in the first meeting.

Brian – the 29 feet is not being changed

Christine – the refuse enclosure exists

Roy- does it meet the 29 feet?

Christine- Borough definition doesn't say what should be in the buffer area, not proposing any buildings in the buffer

Mark – technically meets the buffer, not vegetated, no buildings or drive thru structure in the buffer but still seeks the waiver request

Eileen – between 11:30-2:30, is it one truck?

Brian – delivery once a week?

Jerry – garbage is once a day in the afternoon, donut trucks come at 4:00 am

Tom- what trucks come 11:30-2:30?

Eileen- is it in violation of the noise ordinance?

Henderson- donut deliveries are early morning but can move to deliver in the front

Tom- anything delivered 11:30-2:30?

Kocuiba – no, 3:30-4:30 am but can deliver to the front

Tom- what are the hours of operation

Kocuiba – 5:00 am – 9:00 pm

Christine- 10 feet of greenery and fence is what is defined as what needs to be there. Spring Lake Heights doesn't say what needs to be in the buffer.

Eileen- trees have been there all along

Joe – the three spaces from the window space and pick up window, why so close to menu board

Kocuiba – not as much stacking. Optimum to keep moving quickly, when make smaller, there is back up, no time from giving order to pick up

Dennis – how would it improve?

Kocuiba – eliminated the loading zone, loading for truck once a week

Roy – can you discuss the cuing?

Kocuiba – 8-9 vehicles cue length, for a few minutes may occur to have 12-13 vehicles, not substantially hampered. Design for what's appropriate 90% of the time

Jerry- traffic engineers both agree will cause more vehicles to stack up, 6 cars from order window to pick up should work, each operation is different- should take 60-90 seconds. 90-120 seconds from menu board and pick up – all part of the process

Mark- want to say need to rely on expert testimony, traffic engineer and another traffic engineer were both at the last meeting

Joe- Sea Girt has 5 cars

Christine- Sea Girt location backs up to the street

Jerry- if someone orders a box of Joe, its not 120 seconds, parking space on the side so line keeps moving

Mark – decision based on testimony

Middleton- in terms of buffer, typically the buffer is green

Kocuiba- most ordinances say green throughout-Board can approve a reduced buffer

Middleton-Buffer doesn't have to be green

Kocuiba- Ordinance doesn't prohibit paving or items in the buffer, uniqueness of ordinance. Not doing the drive thru in the buffer.

Middleton-continues landscape green to camouflage the building (Reviewed Exhibit A-10)

Middleton- where is the drive thru?

Kocuiba- drive thru not on this plan, its on 0-9

Middleton- page 3 – 5A, reduced the buffer where 30 feet is required and 10 feet is proposed, Board identified the 10 feet of green as the buffer. Any analysis that proposed buffer screens from bedroom window?

Kocuiba -Vehicle lights are lower, head lights are low. specific analysis?

Middleton- want continuing landscaping to camo the building

Kocuiba- that exists with the fence and the arborvitaes

Middleton- in notice argument, don't see buffer on the plan , were you aware you need a buffer?

Kocuiba – not on the plan, was aware three meetings ago

Middleton- did you amend the plans

Kocuiba-existing buffer plan in review letter and had substantially testimony
Middleton- were you aware in 2009 there was concern for the 10 foot buffer?

Kocuiba- item was identified. First thing we talked about was Res Adjudicata

Middleton- Board denied, did you have the resolution?

Kocuiba – was brought to our attention at the meeting

Middleton – can you have parking in the buffer?

Kocuiba – this ordinance doesn't prohibit it, rely on definition in the ordinance. Municipalities differ

Middleton- allows passive business activity in the buffer

Kocuiba – definition of buffer is the distance, not landscaping

Christine- need a waiver for the buffer, not meeting the full 29 feet

Kocuiba- buffer is a distance, no specific structures, this ordinance doesn't say landscaping, not proposing changes in the existing buffer

Middleton- when designed the Site Plan did you make any attempt to meet the 29 foot buffer? 20 foot buffer?

Kocuiba – didn't show changes to the setback, thought it was appropriate

Middleton – could comply with the buffer if move the building forward. Are there substantial improvements?

Kocuiba- working with the existing building and existing parking. Up to the Board what's substantial

Middleton- Section 22-502- Location of the parking, no loading in the parking. Did you make any attempt to eliminate rear parking?

Kocuiba – didn't fit with the design

Mark- monetary consideration is not consideration of Board

Public Questions:

Kerry Murray, 710 Shore Road – is this a hardship?

Betsy Cross, live in Wall – 2009 Denial?

Christine- proposing existing buffer, needs relief

Public Comments:

Mary Quinlan, 713 Jersey Ave-live within 200 feet, do not want this change

Betsy Cross, Wall Township-against this, can hear coffee orders, like the people who own it, don't think should pass, lot is too small, not safe

Mary Quinlan, 713 Jersey Ave-speaker will affect 10 backyards, no one mentioned noise ordinance

Mike Steppe, 812 Shore Road – will turn into Route 35 and effect property values, concerned with pedestrian accidents, taking a left on 71 takes 5 minutes

Kerry Murray, 710 Shore Road- have arborvitaes by still hear things, variances need to be justified

Suzanne Dunleavy, 815 Jersey Ave- know traffic will get worse, don't want anything bad to happen

Margaret Julian, 804 Jersey- concerned with prior denial, buffer is insufficient, poses risk to pedestrians

Betsy Cross, Wall Township-have three drive thru in one mile, don't think should pass

Motion to close public comments: Tom Martin

Seconded by: Dennis Pearsall

All vote in favor to close public comments

Mark – Attorneys want closing statements.

Tom- want to go over what people said tonight, Board never sets a precedent.

Mark-There was a waiver of time through tonight by Mr. Henderson

Need waiver of time to continue

Henderson – spoke to client and will grant another waiver of time

(Middleton – did not object)

Mark – if didn't grant the extension of time, would be an automatic approval. Mr. Henderson agreed to extend the time to the next meeting.

Mark -the evidence is in, no more witnesses. Public comments and questions are closed. The attorneys will give a summation and the board will deliberate and vote at the next meeting.

Motion to carry to July 9: Tom Martin Seconded by: Dennis Pearsall
All members vote to carry to July 9, 2025

Motion to adjourn: Brian Brendle Seconded by: Adam Anzzolin
All members vote to adjourn

Meeting Adjourned: 10:20 PM