

BOROUGH OF SPRING LAKE HEIGHTS LAND USE BOARD

Minutes

July 9, 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, Joseph Layton, Brian Brendle, Adam Anzzolin, Michael Milano, Tom Martin, Roy Francolino,

Board Members absent: Nancy Maclearie, Councilwoman Michele Degnan-Spang, Councilwoman Sara King, Anna Kuntz

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

Carried from June 18, 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 – there will be a summation from both attorneys and comments from the Board professionals and Board Members. We completed the public comments and submission of any evidence.

Mr. Middleton will be the first to go.

Middleton- Mr. Stetz report?

Mark – already submitted

Middleton- thank the Board members who volunteered for the 6 meetings, came in at the fourth Meeting, March 12, April, May and June. Want to summarize and make as short as possible without Cutting out what I want to say. Want to talk about three things: Traffic, the Buffer/Waiver and the Use variance request, because a drive thru is not a permitted use, appreciate your patience.

John Rea submitted a report – September 17 and December 5. He believed the traffic would increase 10-20%, I'll use 15%, which is right in the middle. Applicant said 75% of people buy coffee. Sept 17, 2024 Rea report, stated the DOT said they are exempt. The report was on a Tuesday after Labor Day, between 7:30-9:00 am for 90 min, not in afternoon or before or after that day, all work done in 8 hours. Why take the 15 days after Labor Day, if doing a report, do a day or two in the summer. He did a second study per the Board request, November 7, 13 & 19. He tried to replace the summer traffic with transactions during July 15-24, and August 12-18, looked at two weeks. Broke down per hour. 50% of transactions were between 6 am-10 am and 30% of transactions between 10 am- 2 pm. Average was 400, increase of 15%- is 460 transactions. Multiply by 75% that use the drive thru. This is 30 feet from my client's property. 90-120 seconds is the average time. Everyone will use the microphone, evidence was on the cut sheet, no other evidence on sound. The cut sheet came from the

manufacturer. No underlying testimony, don't know who produced it, should have had a sound expert. With the traffic and the number of vehicles circulating around my client's property, its going to be noisy and impactful. The buffer is an intriguing issue, its not in the notice, not in the application, 2009 Resolution was not attached, no testimony as to why approved the buffer
Henderson- objection, this has been decided, this is not on facts

Middleton- arguing the fact of law

Mark – keep it tight, the legal issue was decided

Middleton-they need to meet the burden of proof. No testimony of the record for the buffer. Mr. Kocuiba at the June 18 meeting said he was not aware of the buffer waiver. He wasn't aware, how was the Board and the public and your professionals aware. Due Process, applicant has the right to have a fair hearing. Based on the Kocuiba testimony, biggest issue of the denial was the buffer issue in 2009, wasn't discussed. June 18, at 8:05 pm, the planner admitted that it needed a buffer. Can be less than 20 feet if there is plantings and fencing. Plan shows the fence and the 12 arborvites. Any waiver, any variance, standard is required. Buffer Ordinance – 40:55D-51A, Board can grant but must prove hardship but Kocuiba didn't know. Standard for the buffer variance – cited criteria for variances. Two times said to Kocuiba – why doesn't the client take 13 feet from the front. Why not take off more from the back? Answer was no. Client doesn't want the menu board further to the north- less car stacking. The inside is a complete gut job, business model changed, drive thru not as much walk ins, 15 to 6 chairs. Didn't prove hardship, didn't talk about it, had the wrong standard. In 2009 there was a different Board but there was an inadequate buffer, self created hardship. Board had maintained that the buffer proposal doesn't adequately screen proposal. Board had determined that the 10 foot buffer was inadequate. No one knew until June 18 about the buffer. The 2009 Resolution wasn't attached to the application. Didn't put forth any evidence for a use variance which is the most difficult variance to obtain, standard is rigorous, unlike an inherently beneficial use like for handicap children, which is a slam dunk.

Mark- taking a lot of liberties

Middleton- the use must promote the purpose of zoning and be particularly suited for this site, want to discuss items A-Q. "A" promotes the general welfare. Enough on the record for argument either way. Applicant must prove the use is particularly suited for this site. Why is a drive thru more appropriate than a permitted use? Property abuts commercial to the north and south, 71 corridor is a commercial zone, rear to the west is a residential zone. If surrounded by commercial, it would be hard to argue, unfortunately, it abuts a house. The bought is 5 years ago and has a right to protect their property rights. Kocuiba said the buffer is substantial, the Board in 2009 criticized the buffer. The lot is oversized but its 150 feet deep which is existing. If it was 180 feet then there would be a buffer for both parties. Kocuiba did the best he could, need to circle around the building like a car wash. Bulk of the business will be the drive thru and the menu board is 30 feet from the property line. Don't want to beat up the 2009 resolution, need buffer to screen the lights and human activity and noise. Looking at evidence – didn't prove buffer and use variance – there are high standards, high bar. It is a difficult location, not deep and adjacent to residential. Appreciate allowing me to speak, Thank you for your time. Respectfully, request that you deny the application.

Mark- Thank you Mr. Middleton

Henderson- Madam Chair and Board, grateful for the time to review this project. Recognize that you are volunteers, so will keep it brief. When we talk about traffic, the objector had a traffic expert and they didn't have anything to say about the traffic, didn't question traffic. Your own police didn't have a problem with it. The traffic could actually be reduced, detouring the traffic from the roads. The buffer

issue was whether can proceed with technical issues. Sound level- NJ has a sound level ordinance. Bound by it and will accept . Use Variance- had extensive discussion, we contested but lost. Submitted testimony for the use variance by Mr. Kocuiba. You have been listening to this for months and have paid careful attention and studied this to death. Appreciate your time

Mark – thank you Mr. Henderson

Eileen – ask Board professionals to make final statements and summarize.

Jerry – we heard the whole process – it takes 90-120 seconds for cue, can serve customers and handle traffic. They agreed to provide that parking space. Dunkin has a formula on how to serve and operate and keep traffic off of Route 71. On the engineering side, there are a lot of conditions, will go over them, if approved, there are 10-12 conditions.

(Jerry and Christine and Eileen – review the conditions)

Conditions

1. Applicant agrees to consolidate the lots from three to one lot
2. Dry well – to catch front roof water
3. Bike Rack – 4 – 6 bikes by the front door
4. Title 39 Enforcement on property – DOT standard allows local police to police on private property
5. Sidewalk – is old, not in bad shape but not ADA compliant, back to the front – meet ADA
6. Back property line – slope goes up-need to fix. No sidewalk on either side going west
7. Work with Mayor and Council regarding speed bumps on Jersey Ave. (not always the answer. Mayor and Council decide and the police make the ruling
8. Sign on Jersey Ave to enter on Highway 71 for the drive thru
9. Donut delivery – everyday 3:30-4:30, will be in the front not the back of the building
10. Trash/Recycling- once a week in the afternoon – set at a certain time in the afternoon
11. Crosswalk
12. All deliveries from the front – once a week
13. Comply with ED – Electric Vehicles Ordinance
14. Replace dead trees in the buffer
15. Employee parking spaces to be designated
16. Comply with noise ordinance

Variations and Waivers

1. Bulk for lot coverage 75% permitted – 83.2% existing – 78.9% is proposed – still over
2. Parking stall size– 20 feet required – 18 feet proposed – 9 feet by 18 feet is the standard
3. Loading size
4. Parking spaces – 28 required – 21 proposed
(testimony was that people using the drive thru and less using inside)
5. Signage – Total number of signs
 - Area of front sign
 - Directional signs around the building
 - Setback for free standing sign
6. Buffer Waiver – buffer not changing but use is changing. Buffer was approved in previous application but the applicant has a different use
7. D1 Use Variance – different use so need variance. provided testimony for suitability for the use in the B2 Zone-business zone, larger lot than required. Met minimum site requirements.

Christine - Kocuiba provided testimony and met the 4 prongs to meet the D1 Use Variance. Traffic study provided for suitability of use. Applicant's Engineer and Traffic Engineer provided testimony for D1. Lot is larger than required and meets minimum site requirements. Rely on traffic study for suitability. Engineer and Traffic Engineer proved the location provide the lowest cueing. Kocuiba provided testimony for meeting the positive criteria from the MLUL. Promotes visual enhancement and agree will upgrade the site. They agreed to replace the dead trees in the buffer. Regarding the negative criteria, they provided testimony that it is not a substantial deterrent to Zoning and the proposed use improves the site circulation. Had concerns with the parking near the building but they will remove. Agree that the smaller building will improve the air, light and open space. Removed front setback variance- 30 feet is permitted – 29 feet is existing- 39.84 feet proposed

Eileen- employee spaces should be designated. They must abide by the noise ordinance
Christine – concern with vehicles not associated with Dunkin and deliveries in the rear. If approved, then will be a code enforcement issue. Regarding the buffer waiver, Mr. Kocuiba provided additional testimony for the width and what's planted. Neighbor has plantings on her side also. Buffer not changing but use is changing.

Mark- members of the Board – to say this has been lengthy and time consuming is an understatement. Commend the Board for their service and civic commitment. Proud to serve as your Board Attorney. Since this is a D1 variance, 5 affirmative votes are required for approval, 7 people can vote. When you cast your vote, please give a reason why you are voting in that way. Base your decisions on expert testimony. Your charge is to decide the credibility of the witnesses' testimony. Take in the Board Engineer and Board Planner comments for an ultimate decision. Both parties are represented by skilled attorneys representing their clients. Decision is based on many hearings.

Eileen – Does Board want to discuss anything before making a motion?

Joe- there are certain prongs to a variance, must be particularly suited for this site. The police report was misrepresented.

Eileen -Sgt Willms is the traffic police officer who wrote it and didn't have objections

Tom- If they don't object, then they support the project

Eileen – most of 71 is commercial and all of the commercial property abuts residential property. Special consideration for all properties like the size- there are all different sizes and different depths. Each situation is unique, not the same for each particular lot. Need to give consideration that all commercial uses abut residential.

Dennis – Joses, the laundromat, Bennett garage – all are adjacent, agree that each lot is a separate entity and unique

Eileen- always review ordinances when issues come up, will be looking at the buffering, any application with commercial involves buffers. All have residential to the rear, some to the side as well.

Brian- This has been a long process, lots of testimony and lots of comments

Eileen- there are a lot of condition, that will be helpful to the application

When you vote, state your reason for your decision

Eileen – motion to approve with the conditions discussed

Tom- second the motion- the traffic study showed that the traffic will be redirected off of side streets and keep on 71

Brian – it is a difficult decision but agree with Tom, the traffic will be reduced to just access from 71- so I vote yes

Adam – no, find no issue with the buffer, but not enough testimony for use variance

Dennis – vote yes, its a different world – with cell phones, easier access for handicap and physically disabled, in inclement weather and people with children who don't want to get out of the car. It will safer on the property with less people getting out of their cars. Can't find a full buffer for any commercial uses on 71, the buffer is not perfect but its sufficient

Eileen – yes, alleviate traffic off of the local roads and not park on surrounding streets.

Acceptable business in that area, good business for our community.

Roy – no, not enough buffer, not a hardship

Mike – yes, changes are an asset to the community. Depended on the testimony of the experts

Application approved

Motion to adjourn: Dennis Pearsall

Seconded by: Brian Brendle

All members vote to adjourn

Meeting Adjourned: 8:25 PM