

*approved
7/24/2020*

NUTLEY ZONING BOARD OF ADJUSTMENT

Special Meeting Minutes

June 29, 2020

CALL TO ORDER: A meeting of the Nutley Zoning Board of Adjustment was called to order at approximately 7:30 p.m. by Chairman Graziano. Roll was called and the Sunshine Notice was read. The meeting was conducted via Zoom due to the COVID 19 Pandemic.

PRESENT: Tammy Rossi, Patricia Doherty, Peter Scirica, Daniel Tolve, Theresa Sullivan Duva, Joseph Battaglia, John Cafone, Gregory Tolve, Suzanne Brown-Vice Chairwoman, Frank Graziano-Chairman, Diana Powell McGovern, Esq.

EXCUSED: Theresa Sullivan Duva

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No. 1: 371 Franklin Avenue – Denied 4-3

Applicant: Franklin Realty LLC

Application: for a construction permit, at the above referenced premises, to alter the existing ground floor area, and construct a 2,530 square foot restaurant with a drive-thru, and to make site improvement to the existing site, as shown on the plans prepared by Stonefield Engineering and Design, dated November 4, 2019, and building signage plan along with architectural plans, dated October 22, 2019, prepared by Kimmerle Newman Architects

Appearances: Applicants Attorney-Robert Gaccione, Esq, Co-Counsel-Michael Piroalli, Esq, Applicant-Sam Kupferstein (Franklin Ave Realty Group, LLC), Starbucks Representative-Lizanne Kile, Site Engineer-Jonathan Istranyi, Traffic Engineer-John Corak, Architect-Paul Newman, Planner-John Grygiel, Todd Hay, Paul Ricci- Nutley Planner Emma Cortese-audience member, Robert Garber-audience member, Mary Ann LaFountain

Letter of Denial (Previously read):

This property is located in a B-3 district and the rear parking lot in an R-3 district as shown on the Nutley Zoning Map

Chapter 700, Article VII, Section 700-39 F of the Codes of Nutley prohibits drive-in restaurants in a B-3 zoning district.

Chapter 700, Article XVI, Section 700-67 B (1) of the Codes of Nutley states no detached accessory building or accessory use shall be located nearer than three feet or 1/2 the

height of such building up to a distance of six feet, whichever is greater, to a side or rear lot line. ***The proposed trash enclosure is constructed in the rear yard on the property line.***

Chapter 700, Article XIII, Section 700-102 A of the Codes of Nutley permits one (1) loading space per building of 2,000 square feet of floor area or more.

Chapter 700, Article XII, Section 700-84 B of the Codes of Nutley states the permitted surface display area is the building width 82' X 1.5 = 123 square feet is the total permitted surface area. ***Total proposed signage is 194 square feet as indicated on the building signage plan dated October 22, 2019 prepared by Kimmerle Newman Architects.***

Chapter 700, Article XII, Section 700-84 A (2) of the Codes of Nutley states ground signs not exceeding five feet in height, which shall not be erected within five feet of any property line and which shall have a maximum display area not exceeding 25 square feet in a B-3 zoning district. ***The proposed ground sign will have a surface display of 25 square feet for both sides for a total of 50 square feet on the ground sign.***

Chapter 700, Article VIII, Section 700-46 A of the Codes of Nutley entitled "Schedule of Regulations as to Bulk, Height and Other Requirements" requires impervious coverage not to exceed 90% in an B-3 zoning district. ***The proposed will be 96.4%. This is a pre-existing non-conforming condition.***

Chapter 700, Article VIII, Section 700-46 A of the Codes of Nutley entitled "Schedule of Regulations as to Bulk, Height and Other Requirements" requires impervious coverage not to exceed 70% in an R-3 zoning district. ***The proposed is 78%. This is a pre-existing non-conforming condition.***

Chapter 700, Article XIII, Section 700-98 of the Codes of Nutley states where any parking or loading area adjoins a lot in any R District, a landscaped buffer strip at least six feet in width containing plantings at least six feet high shall be provided. ***This is a pre-existing non-conforming condition.***

Chapter 700, Article VII, Section 700-39 H of the Codes of Nutley prohibits advertising signs, roof signs and pylon signs in a B-3 zoning district. ***This is a pre-existing non-conforming condition***

Chapter 600-1 of the Codes of Nutley requires a site plan application to be approved by the board. A copy of the site plan checklist and application is attached. A preliminary review of the site plan prepared by Stonefield Engineering and Design, dated November 4, 2019, indicates the following items are missing from the site plan checklist:

- F (6) The zone district and the zone districts of adjoining properties within 400 feet.
- F (7) All entrances and exits to public streets on site and within 400 feet thereof.
- F (8) All property lines, streets, roads, retaining walls, rock outcrops, marsh areas, ponds and streams within 400 feet.

F (26) All existing easements, deed restrictions, other covenants and previous variances granted for the property.

F (30) Applications filed with the county.

F (31) Construction Official may require building elevation views of adjacent properties.

Waivers may be requested and approved by the board.

Once the revised plans are complete and approved, 22 copies of the application, revised plans, site plan checklist and fees will be required.

Continuation of the June 1 special meeting.

The first witness called is Architect Paul Newman. Paul Newman explains the updated plans for the site. Mr. Newman explains the updated site plans and shows how he removed all three signs from the front canopy drive thru. He also stated that the sign on top for the tenant would be shrunk 8' x 2'6" and the bank sign would also be reduced to 8' x 2'. The address on the side of the building will also be changed to '371' instead of spelled out as previously proposed. He also states there will be a small seating area outside in front of the site.

The next witness was Site Engineer, Jonathan Istranyi. Mr. Istranyi states that there will be two stop signs on each side of the exit as well as a stop for pedestrian in the middle splitting the two lanes. The sidewalk in front of the driveway would also be stamped to alert pedestrians of the drive thru exit. He also goes on to explain that the tree that will be planted in front will be suitable for the street and will provide ample visions for drivers pulling out of the drive thru. He also states that they went to the fire department and got approval from the fire chief that there is plenty of room for them to pull into the site through the exit in case of emergency but Applicant agreed to remove a parking space on the side to create more room for a fire truck. Chairman Graziano inquired as to whether a speed bump to slow motorists coming out of the drive through would help to prevent cars from entering the sidewalk slower. Dan Tolve suggested maybe a warning sound. Neither suggestion was accepted by the engineer.

Zoom participant Rory Moore suggested that a dry run with a real fire truck be done to see if the fire truck could make the turn.

A question was received from audience member Emma Cortese. Ms. Cortese was questioning when the peak hour of traffic was and felt it should be more centered around when students are released from school.

The next witness was Traffic Expert, John Corak. Mr. Corak states that he had a meeting with Essex County. He stated that the county would look at the safety of the left hand turn out of the site. He states that they reviewed the parking in the front of the property and feel that there is enough visibility for cars pulling out of the drive thru. Mr. Corak stated that a speed bump would not help because the cars are going at low speeds

anyway and there was a concern that people had hot coffee would spill it if they went over a bump.

Board member Dan Tolve indicated that he thought a left turn from the drive thru would present a problem and he noted that the TD Bank which is across the street from the High School has a no left turn. Mr. Tolve also expressed concern that if a customer from the Starbucks and a customer from the bank both wanted to make a left turn there would be difficulties.

Mr. Corak testified that the Star Bucks was expected to have 90 cars an hour which is a car every 3 minutes and 60% of those patrons will use the drive thru. He also estimated there would be a car exiting every 45 seconds from the drive thru at peak hours. Mr. Graziano and Mr. Scirica expressed concerns that the drive thru will be a "night mare" in light of the children crossing the sidewalk there to go to the Middle School and the High School. The expert stated that the reason for the different color concrete is that if children are looking down at their phones while they are walking they will see the different pattern.

Member of the public, Rob Garber inquired as to what would happen if someone was coming North on Franklin Avenue and wanted to make a left into the Starbucks—would that create a back up on Franklin Avenue. The expert acknowledged that there may be times when traffic ques up and blocks the driveway but this would be only a temporary condition.

Lizanne Kile, Starbucks representative, is then called to clarify that 47 cars are expected at the drive thru an hour during peak hours and that there are 800 customers per day at the current Nutley Star Bucks with 65% of those customers arriving at the store between the peak hours of 7AM to 11AM Dan Tolve commented that he has never seen a drive thru of this nature empty out onto a main avenue in any town. Mary Ann LaFountain, an audience member, asks if the Starbucks was considered anywhere else in town. Ms. Kile said that this was best location they found. Ms. Kile also stated that the drive thru made the site attractive. Mr. Graziano's response was "Too bad it's not on another part of Franklin Avenue where it's not as busy."

Board member Cafone expressed concern that the traffic expert's calculations were different than the numbers put forth by the Star Bucks representative and he wondered who was more accurate. The traffic expert then responded and said that Ms. Kile's testimony was what she expected specific to the site and his testimony was based on ITE Manual guidelines. Mr. Cafone suggested that they should expect an increase in new customers due to the drive thru.

The next witness is John Grygiel, Professional Planner. Mr. Grygiel explains the plans, he states that they are taking a three-lane driveway and turning it into a two-lane driveway. He states that the site is suited for the variance and it is not creating a new drive thru but just repurposing an existing one. He also states that the new site would be more aesthetically appealing. The next witness called was licensed planner for the town of Nutley, Paul Ricci. He states that this is a D1 variance and that the code prohibits fast

food drive thrus. The only drive-thrus permitted in the downtown business district have been bank drive-thrus. Todd Hay, Nutley Engineer, also states that the County will review the left turn and feels that the stack in the drive thru is satisfactory for the number of cars that are expected and the sight lines are all fine.

Rory Moore and Emma Cortese are members of the audience who voice their concerns about the safety of the drive thru. They feel that the drive thru will put children in danger and should not be at this location.

With no further questions or concerns a motion to pass this variance was made by Joseph Battaglia to grant and we seconded by Suzanne Brown. Chairman Graziano expressed serious concerns about the location of the drive-thru in light of the close proximity to the Middle School and High School and his observations of the way there are many children who, at those ages, do not pay attention as they go to and from school. With a vote of 4-3 the motion was denied. Members voting to deny the application were: Chairman Graziano, Members Peter Scirica, John Cafone and Daniel Tolve. Members voting in favor of the application were: Vice Chairperson Suzanne Brown, Joseph Battaglia and Gregory Tolve.

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Invoices: Secretary pay of \$150.

Public Comment: None

**NOTE: THE PROCEEDINGS IN THIS MATTER WERE VOICE RECORDED.
THE RECITAL OF FACTS IN THE MINUTES IS NOT INTENDED TO BE ALL-
INCLUSIVE, BUT IS A SUMMARY AND HIGHLIGHT OF THE COMPLETE
RECORD MADE BEFORE THE ZONING BOARD.**

Respectfully Submitted,



Paul Marrantino

Board Secretary