BERGENFIELD ZONING BOARD OF ADJUSTMENT SPECIAL MEETING MINUTES TELECONFERENCE VIA ZOOM August 29, 2022 7:00 PM

Vice Chairman Wenger called the meeting to order at 7:02 P.M.

OPEN PUBLIC MEETING STATEMENT

In compliances with the Open Public Meetings Act, the notice requirements have been satisfied. Meeting dates are confirmed at the Annual Meeting. Notice of this meeting was provided to the Record, Star Ledger, and Cablevision, posted on two municipal public notice bulletin boards and published on the borough website. Notice of this meeting via the August 8, 2022 Sunshine Notice has been sent to the Record, Star Ledger, and Cablevision, posted on two municipal bulletin boards and the Borough website.

Any board member having a conflict of interest involving any matter to come before the board this evening is reminded they must recuse himself/herself from participating in any discussion on that matter.

Members of the public calling in to the meeting who would like to ask a question or make a comment, can press *9 to raise their hand and *6 to unmute themselves.

PLEDGE OF ALLEGIANCE

Led By Mr. Smith

ROLL CALL

Present: Sara Berger, John Smith, Amnon Wenger, Jose Morel, Jason Bergman, and Marc Friedman

Absent: Shimmy Stein and Richard Morf (recused)

Also Present: Gloria Oh, Zoning Board Attorney, Drew DiSessa, Engineer from Pennoni, Councilman Rafael Marte, and Hilda Tavitian, Zoning Board Clerk

INTRODUCTORY STATEMENT

Read by Board member Friedman.

Welcome to the Zoning Board of Adjustment. Let me briefly explain what we do. We are appointed by the Bergenfield Council to decide when a property owner should get relief from the strict application of the zoning regulations that are set forth in Bergenfield's zoning ordinance. Typically, we hear two types of variances. The first is whether an applicant can vary from land use restrictions including rules on sideline distance, height, and lot coverage. That is commonly called a bulk variance. The second type of variance is a use variance, where an applicant wants to use the property for a purpose not permitted under the zoning ordinance in that zone.

In these cases, the applicant has the burden of meeting certain criteria set forth in the Municipal Land Use Law, which is available online. We carefully listen to the testimony, including objectors, and review all relevant documents. If a majority of the Board concludes that the applicant has satisfied those criteria for a bulk variance, we must grant the requested variance. Approval of a use variance requires five affirmative votes.

APPOINTMENT

Nomination of Board Engineer: T&M Associates

Motion by: Mr. Smith

Second by: Mr. Bergman

5 ayes. 1 nay.

CORRESPONDENCE

Vice Chairman Wenger stated a petition for the Dunkin Donuts Drive Thru was received that was circulated. The petition is not admissible. Everyone has the ability to come before the board and be heard. Mr. Wenger stated they can not grant any weight to the petition circulated today.

OLD BUSINESS

 Triple J. Family, Inc. DBA Dunkin' Baskin Robbins 275 S. Washington Avenue Drive Through Carried from August 1st, 2022 Meeting

Board member Smith stated he was absent at the last meeting. He listened to the recording from the last meeting. He had a problem hearing what some people were saying and requested when someone speaks to give their name.

Matthew Ross, from Mueller Law Group, present at meeting, representing Peters' properties.

Mark Madaio, attorney for applicant, stated the traffic expert, Mr. Hughes, had testified to completion at the last meeting. The public and board had the opportunity to ask questions. Mr. Ross didn't have the opportunity to cross-examine. At the end of the last meeting, two exhibits were marked into evidence, but did not have exhibit numbers. Mr. Madaio stated Exhibit A16 is the Bergen County Planning Board approval of the project and Exhibit A17 is the applicant's traffic study.

Matthew Ross inquired if Mr. Hughes personally observed the counts in the traffic study report. He inquired which of his colleagues went to the site. He inquired if Mr. Hughes personally performed the calculations.

Mr. Hughes stated he did not not, his colleagues did. He stated it was the traffic counters. He would have to go back to the records to get the names, but can provide them after the meeting to Mr. Ross. Yes, Mr. Hughes performed the calculations throughout the course of conducting the traffic impact study, which was last revised August 18th, 2022. Those were based on data collected from June and August 2022. They also have included an analysis of the pm peak hour, conducted in August 2022. There were some concerns of making a left turn out of Magnolia Street. Mr. Hughes stated they also conducted a gap analysis at the intersection both during the weekday am and pm peak hours. They also studied the bus stop activity at the intersection of Magnolia Street and Washington Avenue.

Mr. Ross inquired how the am calculations from December 10th, 2022 vary from the August 18th, 2022 reiteration. Mr. Ross inquired if any counts were done in the number of cars parked in the applicant's lot and when. He inquired where in the report the numbers for the parking could be found. He inquired how long was the parking in the lot observed. Mr. Ross inquired if someone determined the average time a customer was parked in the applicant's parking lot. He inquired if anyone counted the percentage of electric vehicles.

Mr. Hughes stated the analysis conducted was largely the same results. For the December report, during the am peak hour, overall levels of service were C or A. For the August report, those levels of service are C during the am and A, the same level of service in the pm peak hour. Mr. Hughes stated they did during

the June 2022 counts. They did them in the original December report. The parking numbers are not provided in the report, but the numbers can be provided after the meeting. Parking in the lot was observed for the duration of the traffic counts from 7:00-9:00 am in the morning, the general peak hours of Dunkin Donuts. Mr. Hughes' response was no. Mr. Hughes' response was no.

Mr. Ross inquired if Mr. Hughes examined the proposed point of egress with one drive through lane in mind. Mr. Ross inquired what parking requirements were considered. Mr. Ross inquired this was being looked as restaurant, retail, and what else? Mr. Ross inquired what was the demand Mr. Hughes has experienced at similar sites. Mr. Ross inquired how they determined eliminating the demand for parking spots. Mr. Ross inquired where Mr. Hughes got his numbers for stacking vehicles in the drive through lane and the mobile order lane from. Mr. Ross inquired how Mr. Hughes got an average of 20-25 seconds for the time it takes at the pick up window. Mr. Ross inquired if Mr. Hughes observed the time when the order is made and until it is picked up.

Mr. Hughes stated they examined it with respect to the site plan submitted. He stated the parking requirements were based on the local ordinance requirements of Bergenfield. The ordinance was for restaurant uses that requires four parking spaces per 1,000 square feet. Mr. Hughes stated one parking space per 3 seats, which requires 16 parking spaces. No, just a restaurant. Mr. Hughes stated they have used ITE data for various research sites that were similar to this one. Mr. Hughes stated right now, it is 100% walk-in. They anticipate to have 1/3 of customers walk-in when they have the drive through. The demand for parking spots would be less. There are 26 parking spaces existing, with 16 being proposed. They would eliminate 10 spaces. Mr. Hughes stated he confirmed with Mr. Hubschman that the capacity of the cars that can be stacked in the drive through lane is 13 cars. Mr. Hughes stated the numbers are based off the use of a 19 ft. long vehicle and also based on the average length of 20 ft. from bumper to bumper which accounts for the average length of a 16 ft. car and 4 ft. in between. Mr. Hughes stated based on data that's been collected for other numerous Dunkin sites where they measured the time of service at the pick up window and averaged out to 20-25 seconds. The Dunkin Donuts sites were in Eatontown and Tinton Falls. The 20-25 seconds for pick up time being referenced is the service rate of the drive through. It will be a longer time than when you place your order and pick it up. Mr. Hughes stated the total time spent when arriving the order board and leaving the service window was an average of just under 2 minutes.

Mr. Ross inquired what other locations has Mr. Hughes worked with. He inquired if the Dunkin in Midland Park added a drive through. Mr. Ross inquired if the Little Ferry location has one lane dedicated for orders and the other for mobile orders. Mr. Ross inquired why the applicant needs two lanes. Mr. Ross questioned if the application is denied, is dislocation is going to continue.

Mr. Hughes stated he has worked on one in Midland Park, Mendham, and various other ones similar in nature. It was a closed Friendly's that was converted into a Dunkin with a two lane drive through that had a mobile order lane. Mr. Hughes stated he believed the Little Ferry location is just a standard stack lane. Mr. Hughes stated it's not a double lane drive through. It's a mobile order lane as an accessory to the drive through lane. The mobile order lane is just for pick up service so the parking spaces won't be used. The two lanes are to provide service for both regular drive through customers as well as mobile order customers, to be able to pick up their orders more conveniently, and saves parking spaces for the walk-in customers. It is to provide more efficient service to not only the existing customers but to also for new customers to come back. Mr. Hughes's response was yes.

Mr. Madaio asked if there is only one driveway access point for the drive through lanes. He asked if there are two drive through lanes, one that goes to an order board and one that is an automatic pick up because it was pre-ordered. Mr. Madaio stated the two lanes merge into a single lane. Mr. Madaio stated there could be two lines of cars. Mr. Madaio questioned why there are no Saturday morning counts. Mr.

Madaio inquired whether the recounts were done as a result of people asking if the counts would be different from during COVID-19 times.

Mr. Hughes' response was yes. Mr. Hughes stated that is correct. Mr. Hughes stated correct again. He stated he was asked to do counts for the peak hours. The peak hours for this coffee shop during the morning on weekdays. At the request of the board, they also did the weekday pm analysis. The new counts were done to put to rest that the new counts were the latest and greatest data. The data is approximately the same as before and does not significantly change the levels of service. They observed the bus activity during the peak hour as requested at the last meeting. They found no quantifiable impact. It's not chronic. Mr. Hughes stated cars do get backed up but it clears up quick. The bus does not block Dunkin's driveway now or when there is a drive through.

Board member Smith inquired if Mr. Hughes looked at the bus activity during the morning hours. Mr. Smith inquired, during the observation, did the bus driver get out of the bus and stay inside the Dunkin Donuts for a period of time.

Mr. Hughes' response was no. The greater concern was during the pm hours. Mr. Hughes' response was no, not to his knowledge.

A recess was taken at 8:14 pm. The meeting resumed at 8:20 pm.

Board member Friedman stated he has concerns about the possibility of traffic backing up onto Washington Avenue. Mr. Friedman inquired how many feet does the driver have once it begins to turn into the driveway before it has to go either straight ahead to the drive through or the mobile order lane. Mr. Friedman asked Mr. Hughes using his worst case scenario, what he considers of there being instances where traffic backs up onto Washington Avenue.

Mr. Hughes stated the left lane is for going through the regular drive through and the right lane is just to pick up a mobile order. There will be signage to show which lane is for what. Both lanes are directly accessed from South Washington Avenue. Mr. Hughes stated as soon as you turn into the driveway you can choose which lane is needed to go to. Striping is proposed to designate the mobile order lane versus the regular drive through. You'll know as soon as you enter the site. Analysis indicated 95% of 4 cars. 5% of the time there would be 4 or more cars. There would be less than 1% chance of cars backing up all the way onto Washington Avenue.

Questions from resident within 200' and beyond:

Roxanne Santos, 10 Magnolia Street, stated she looked at the sites mentioned on google map and none of them appear to be within 200 feet of a residential area. She asked Mr. Hughes if he has worked with any Dunkin Donuts that was in a residential area and if he factored that experience into that report.

Mr. Hughes stated he wasn't sure if he's worked with a Dunkin location within a residential zone. It is a factor and they want to cater to and accommodate the neighbors. The Dunkin Donuts here has been a part of the community for a number of years. They are looking to enhance and provide a better service for not only existing customers but for anybody who might be more inclined to come for the use of the drive through.

Laurie Euler, 37 Magnolia Street, stated the delivery of merchandise on Thursdays blocks their whole driveway coming onto Magnolia Street. She inquired about what they are going to do now. Ms. Euler inquired what would happen with the traffic if there were 7 cars in the mobile order lane and 1 car in the regular order lane. She inquired if the lanes are filled and there is someone coming on Washington Avenue and wants to make the left turn into Dunkin Donuts, what would happen then. Ms. Euler inquired

if it was taken into account the bus that's stopped in front of Dunkin Donuts when the study was done. There have been bus drivers that park the bus and go into the Dunkin Donuts. It's dangerous when cars go around the bus, with a crosswalk there also.

Mr. Hughes stated the deliveries are flexible and will have them delivered at off peak times. They will have a smaller delivery truck than what is currently being utilized. Mr. Hughes stated the mobile order lane merges with the drive through lane. If there are more customers there, they can pull forward before the pick up window to utilize the additional capacity. Mr. Hughes stated based on the analyses, he doesn't anticipate there being an issue of cars being stacked that far back. The southbound lane is wide and there would be room to pass them so it doesn't hold up any traffic flow. Mr. Hughes stated he personally didn't observe the bus driver parking the bus, getting out of the bus, and go into Dunkin Donuts. The activity of the bus stop was of the analysis and the traffic count.

Joseph Trybala, 15 Magnolia Street, inquired if Mr. Hughes has given any thought to and studied when customers pick up their order and consume it on the property. He inquired if Magnolia Street is going to become the auxiliary parking lot along with the trash and debris thrown on the street. Mr. Trybala stated exiting onto Magnolia Street and making a left would cause more congestion. The other drive through areas in town have an area after the pick up window that you can pull over and do whatever you want to do.

Mr. Hughes stated he doesn't anticipate that being an issue. Most of the customers are already driving along Washington Avenue going to their destinations.

Roxanne Santos, 10 Magnolia Street, stated she had done an OPRA request for a list of all reported traffic accidents that occurred within 200 feet from 275 S. Washington Avenue dating back from 2017-2022. It showed an average of 9 reported traffic accidents per year, with the exception of 2020. She asked Mr. Hughes if he considers traffic accidents and the impact of potential traffic accidents, motor vehicle or pedestrian.

Mr. Hughes stated that it is taken into consideration and if the site is going to operate the same as it is today. The threshold he is aware of is 10 recorded accidents per year warrants modifications. Based on the anticipated traffic, it is not a significant account.

Cecilia Wahl, 33 Magnolia Street, asked if there is an error with the order, how are they going back in to have it corrected. There is no space allotted for someone to go off to the side or go around the back as other drive throughs in Bergenfield do.

Mr. Hughes stated they can circle around by making a left onto S. Washington Avenue and park in the lot or stay at the pick up window to get it fixed there.

Mr. Madaio stated bus drivers have been pulling over in front of Dunkin Donuts since there were busses. It is an existing condition that's likely to continue. It is a B-2 zone and its commercial use on at least three sides. The big delivery can be controlled as to the time of the delivery and the size of the truck used. The mobile lane moves faster.

Kathryn Gregory, planner, 96 Linwood Plaza #350, Fort Lee, NJ, stated the site is in a B-2 zone and it is a permitted, conditional use. The condition that is not met is that 200 feet of frontage is needed on one street. Ms. Gregory stated there isn't 200 feet of frontage one street, but 245 feet of frontage on two streets because it is on a corner lot.

Board member Friedman requested Ms. Gregory state what the existing frontage is now on S. Washington Avenue.

Mr. Madaio presented Mr. Spatz's report dated 3/29/22 and updated 12/2021 as Exhibit A18.

Ms. Gregory stated it's 152.5 ft. Ms. Gregory presented on the screen an aerial view from Google Earth of the site. It gives a good idea of the land uses of the surrounding area. There is a combination of different types of uses. The next exhibit presented on the screen was of a few photos showing the site from different angles and sides of the site. The last exhibit showed all of the existing drive through locations in Bergenfield. Ms. Gregory stated there are three variances associated with the application. The only, specific conditional use requirement for a restaurant with a drive through is that there is 200 feet of frontage on one street. The other regulations are the bulk regulations, true for any property located in the B-2 zone. Ms. Gregory stated this is a permitted use and the site has 245 feet of frontage. The site is unique as it is a corner lot and there is frontage on two sides of the property. There is sufficient space to allow a drive through with no impact on S. Washington Avenue. There are two existing non-conformities they are improving. 89.77% is the lot coverage existing and will be reducing it by 1,538 sq. ft. to 80.14%, where 70% is permitted. They are proposing a 2 ft. of buffer area, where 6 ft. is required. Nothing exists on the site today. They promote a couple of the purposes of the land use law, including purposes A and I. Ms. Gregory stated the proposal applies to efficient use of land, also by utilizing the existing building. There isn't any substantial detriment to the public. The public is already accustomed to some of the bulk regulations, such as the buffer and the increased lot coverage. They are improving these conditions. It is a betterment to the public as they are improving circulation and the capacity of the site. The application meets both the positive and negative criteria.

Vice Chairman Wenger inquired in terms of evaluating the detriments for use variance, is it limited to the actual use variance sought. It is a technicality because it is a corner lot or is that for the entire plan and the negative impact the entire new composed structure may contain.

Ms. Gregory stated the focus is on the variances. Variances cause substantial detriment to the public good and zoning ordinances. Today is worse than what they are proposing.

Mr. Madaio read the introduction from the coventry case law into the record. Mr. Madaio stated you have to compare whether the deviation on two streets is warranted and/or is a detriment to the zoning ordinance or the master plan. The issue is the impact of the deviation. Magnolia Street would still exist. If they focus on the deviation, which is two streets instead of one, that is the purpose here today.

Mr. Ross inquired if it is the requirement of the 200 ft. of frontage also a method of providing adequate stacking and buffering for a drive through. Mr. Ross inquired if Ms. Gregory stated that 200 ft. of frontage is unrelated to stacking for the driveway. Mr. Ross inquired if it provides a method. Mr. Ross asked if it's one of the purposes of acquiring 200 ft. of frontage when discussing a restaurant with a drive through. Mr. Ross asked if this property would not have 200 ft. of frontage, unless you factored in the side and it has two fronts because it is a corner property. Mr. Ross inquired if there is any reason frontage is needed on Magnolia Street to address stacking or buffering for the drive through. Mr. Ross asked why would cars stack after they have received their order. Mr. Ross inquired what would be the difference between buffering and creating enough room.

Ms. Gregory stated she would not say that would be a measure. It's not unrelated, but it's not the absolute metric because different properties are different shapes and sizes. She agreed it's a method. Ms. Gregory's response was yes. Ms. Gregory responded yes. Yes, obviously it's needed due to the location of the building. Ms. Gregory explained in order to have enough cars for stacking, you wrap it around the existing building. Both sides of the building would be needed. Stacking would only occur if somebody

decided to stop and take something out of the bag. Ms. Gregory stated a buffer is a landscaping buffer, Mr. Ross is talking about cars. Those are two separate things.

Mr. Ross inquired that by saying there is 200 ft. of frontage, it will create more space that cars can stack in the drive through lane. Mr. Ross stated there is no need for cars to stack on Magnolia Street when exiting. Mr. Ross stated that frontage doesn't do anything for allocating more space for the cars. He inquired if there isn't going to be a separate access point to reach the parking lot. Mr. Ross stated the frontage on Magnolia Street doesn't provide access nor does it create more room for cars to stack. The frontage on Magnolia Street doesn't serve any of the purposes Ms. Gregory has identified for being the reason that this requirement exists. Mr. Ross inquired if Ms. Gregory read the master reexamination report from 2017. Mr. Ross inquired if she looked at the part where it said one of the objectives is to channel traffic to major streets and discourage it on residential streets. The traffic expert's point was to include an increase in potentially 64 cars traveling on Magnolia Street if the drive through is granted. Magnolia Street is primarily a residential street.

Ms. Gregory stated that's assumed. Every site is different. Ms. Gregory stated that's true. She explained there still is frontage on Magnolia Street that goes along the rear of the site and part of that is still stacking. Yes, it does. It provides access. Ms. Gregory stated that is correct. Ms. Gregory stated no, that's wrong. If there was another 50 ft., they could have the wrap around the building. She explained they don't need it because there is a second egress. It does provide stacking along the back of the property. The frontage requirement goes to the actual width of the lot. There are two widths they are working with. The cars stack both along Magnolia Street and along Washington Avenue. Ms. Gregory stated she has looked at it, but has not read the entire report. Yes, that is correct.

Mr. Madaio stated the argument is that 200 feet of frontage provides a way for ingress and egress on one street and because there are two streets, Magnolia Street is not helpful for ingress/egress and circulation making the drive through work. Mr. Madaio stated Ms. Gregory had said the site works precisely because Magnolia Street is there and vehicles can come in from the far end of the site, travel along the east end of the site, and exit out onto Magnolia Street. The borough ordinance is saying there are two fronts. The frontage on Magnolia Street doesn't allow stacking, but allows movement in a circular pattern because egress is on Magnolia Street. Mr. Madaio stated this is not a D use variance. It is a variance where they have to measure if the deviation undermines the purpose of the conditional use requirement.

Ms. Gregory stated that is correct. It does provide stacking. She stated both of the frontage provides some sort of stacking. The Magnolia Street exit provides room for stacking and egress.

Board member Smith asked Mr. Ross to explain what he meant by the property having three residential areas are and identify where they are.

Mr. Ross stated immediately south, there's the first floor apartment on Peters' property, Caddy Corner in the southeast, and to the immediate east, there's residential. Mr. Ross stated Mr. Smith is right. Mr. Ross stated that is contradictory to the 2017 reexamination of the master plan.

Mr. Smith stated it's a B-2 zone, not R5. Mr. Peters has business downstairs and residential upstairs. There aren't three R5 zones. The borough has said in the past year, there are no left hand turns into the B-2 zones and right hand turns only into a R5 zone. Mr. Smith inquired if Mr. Ross was aware of this. The police were looking at the traffic flow. Mr. Smith asked Ms. Gregory if anything she has testified for or against has been approved, in regards to drive throughs. He inquired how many have been approved.

Ms. Gregory stated she has testified or reviewed hundreds of drive through applications in the last 22 years. She can't tell the number of applications that were approved and not approved. There was an

application in Clifton a year ago that was rejected. It wasn't just for a drive through but were trying to put two different uses on the site. Many drive through applications get massaged through the process.

Board member Friedman read the bottom of page 298 from the Coventry case. He inquired if this site would continue to be an appropriate site for the conditional use that is proposed not withstanding that it will deviate from the requirement that 200 feet of frontage be along one street. Mr. Friedman requested Ms. Gregory summarize why she has reached that conclusion.

Ms. Gregory's response was yes. They meet the intent of the ordinance with having 245 feet of frontage, access of egress needed, and the number of queuing spaces for this particular site. There is sufficient space and the appropriate number of parking spaces. Ms. Gregory stated the property is well suited despite the deviation of not having 200 feet on one frontage.

Questions from residents with 200' and beyond:

Jeff Wahl, 33 Magnolia Street, stated there seems to be a disagreement about the 200 feet single street access. There isn't as much space on Washington Avenue since the first 50 feet by the door is concrete sidewalk. It's not an access point for cars. He inquired if they considered implementing orders for Baskin Robbins at the drive through.

Vice Chairman Wenger asked given that the first 50 feet is not actual access, would that change Ms. Gregory's opinion on the viability and benefit in granting this variance.

Ms. Gregory stated no, it would not change.

Mr. Madaio stated Dunkin Donuts and Baskin Robbins are two product lines. Almost every Dunkin has a Baskin that is part of the same company. Both of their products are going to be sold at the drive through.

Roxanne Santos, 10 Magnolia Street, requested Ms. Gregory explain the detriments of public good and how knocking down the current Dunkin Donuts and rebuilding it is not feasible.

Ms. Gregory stated by preserving the building, working within the existing site confines, promotes the public good as the building is not being knocked down and discarding resources. They are reconfiguring the site around the building. There is going to be potential increase in traffic at the site, but the traffic is already existing.

Vice chairman Wenger stated the next scheduled regular meeting is September 12, 2022 and will have a significant number of residential applications that are heard first.

Mr. Madaio suggested adjourning the hearing for the Dunkin Donuts until the October 3rd meeting or have an alternate special meeting in September. The statute is not whether something is detrimental. The phrase in the statute is "whether something is substantially detrimental".

Board member Friedman stated they should not schedule a special meeting without consulting with the board chairman first.

Vice Chairman Wenger stated in the absence of scheduling a special meeting, he suggested they might be able to move forward at the September 12th, 2022 meeting if a date for a special meeting is agreed upon by then. This application is being carried without further notice until October 3rd, 2022 unless all parties mutually agree to an earlier special meeting date that would be memorialized at the September 12th, 2022 meeting.

Mr. Madaio stated the aerial view of Dunkin Donuts from Google Earth should be marked as Exhibit A19, the photographs of the site from different angles marked as Exhibit A20, and the diagram showing all drive through locations in Bergenfield be marked as Exhibit A21.

MOTION TO ADJOURN MEETING

Motion By: Mr. Smith Second By: Mr. Bergman All ayes. None opposed.

Meeting was adjourned at 10:01 p.m.

Respectfully Submitted,

Hilda Tavitian, Clerk

Zoning Board of Adjustment