

BOROUGH OF ROSELAND  
BOARD OF ADJUSTMENT

MINUTES OF JANUARY 11, 2016

Chairman Barretta called the meeting to order at 7:30 p.m.

1. SALUTE TO THE FLAG

2. ROLL CALL

Present on roll call were:

Santo Barretta	Janet Treamont
Paul Aschoff	Anthony Guerino
Josph LaRicca	Michele Stefanelli
John Matheis	Janice Falivena, Esq.
William Tedesco	

Quorum present.

3. Chairman Barretta announced that Notice of the meeting had been provided in accordance with the Open Public Meetings Act. He then read the agenda.

4. PUBLIC HEARINGS

(a) 172 Eagle Rock Ave. Corp.	Block 42, Lot 1
191 Eagle Rock Avenue	B-1 Zone District
Roseland, NJ	Application 16-01

Applicant seeks a use variance from Section 30-403.3(a)(5) of the Ordinance to permit 26.8% of the gross floor area for customer circulation and seating in a fast service restaurant when the maximum permitted is 20%. Applicant also seeks variances from Section 30-404.1(d) to permit a lot area of 13,994 sf when a minimum of 20,000 sf is required; a front yard set back on Livingston Ave. of 42 feet and on Godfrey Ave. of 10.3 feet when a minimum of 50 feet is required; and a side yard set back of 13.2 feet when a minimum of 25 feet is required. Applicant also seeks relief from Section 30-403.9(a) to permit a 13.2 foot buffer between non-residential and residential uses when the minimum permitted buffer is 20 feet and to permit building construction within the required 20 foot buffer when no building within the buffer is permitted; Section 30-403.17(c)(3) which requires a freestanding sign to be set back from the front property line 10 feet, whereas 3.3 feet is proposed; Section 30-403.17(g)(2) to permit a free standing sign to have an area of 31.98 sq. ft. when the maximum area permitted is 15 sq. ft.; Section 30-404.3(e)(2) to permit a 5 foot wide sidewalk in front of a building when the minimum permitted is 10 feet; Section 30-403.7(a)(4) to permit a dumpster in the 2 front yards of this lot, when accessory structures such as dumpsters are prohibited in front yards; Section 30-403.8 to permit an 8 foot high fence when a maximum 6 feet is permitted; Section 30-403.9(b)(4) which requires all parking areas abutting residential zones to be screened, whereas no screening is proposed. In addition, Applicant seeks waivers from Section 30-516.3 which requires planting of shade trees within the parking area and along the street entrance, whereas no trees are proposed; Section 30-520.3(b) to permit a loading area in a front yard, whereas loading areas are only permitted in side and rear yards; Section 30-520.1 to permit 15 parking spaces whereas 61 are required; and a waiver from the requirement that a Development Impact Statement be submitted. Applicant also seeks site plan approval.

Charles Rosen, Esq. and Michael Rubin, Esq., attorneys for Applicant appeared. Before making an opening statement, Applicant's attorneys indicated that each would present certain aspects of this matter to the Board, and the Board agreed to accept this procedure. The Board's attorney suggested that, before Applicant starts its presentation, the Board should decide whether the development as proposed can be considered a "retail complex" and whether *res judicata* applied. The Board and Applicant agreed to do this when Applicant's planner arrived. James Turteltaub, Esq., attorney for an objector, then came forward to urge the Board not to hear this matter again. He argued the Board heard and denied a substantially similar application, this application being even more objectionable because of the proposed enlargement of the building and decrease in the amount of parking, one area of concern on which the Board denied the previous application. Mr. Rubin argued *res judicata* is not applicable because substantial changes have been made in the plan. Now, there is different access and a different use variance is needed. Mr. Turteltaub then outlined the similarities and opined this application is simply an intensification of the first. Further, in reply to a question by Mr. LaRiccia, he further opined this proposal does not meet the intent of a fast food restaurant being confined to a "retail complex" because there is no overflow parking available. Mr. Aschoff concurred inadequate parking was an issue under the first proposal, and is more limited under this proposal.

Applicant then called as a witness its planner, Paul Phillips, PP. He presented his qualifications to the Board and the Board accepted him as an expert witness in planning. He read into the record the Ordinance definition of a "retail complex" and opined the "key word is group." He opined "group" means 2 or more, and here 3 stores are proposed. Mr. Tedesco challenged this, asserting the common bathroom facilities, giving entry to any one of the three spaces, constitutes one unit. Mr. Turteltaub then cross examined the planner. After some discussion, Mr. Aschoff made a motion to deem the development as proposed a "retail complex." Mr. Matheis seconded the motion. All members voted in favor. Mr. Guerino, sitting for absent Board member Ms. Comito, made a motion to find *res judicata* inapplicable and allow Applicant to proceed with this second application, and the motion received a second. All voted yes, except Mr. Aschoff and Mr. Tedesco voted no.

Applicant then called its first witness, Cynthia Falls, RA from GK&A Architects (Falls). She then presented her credentials to the Board and the Board accepted her as an expert witness in architecture. Falls testified she prepared the architectural drawings for this project and she marked as A-1 Sheet A-1 of that drawing, last revised Dec. 16, 2015. Falls then discussed changes propose to the existing building which, when completed will result in a 2166 sq. ft. building, including a cooler/freezer area. There will be 2 entrances, one for the proposed convenience store and the other for the proposed Dunkin Donuts/ Baskin Robbins store and two delivery entrances. No odor control device is proposed because, she testified, no frying will be done on the premises. Frozen donuts will be heated in an oven by Dunkin Donut employees.

Falls then marked as A-2 a color rendering of the building elevations. The building height will be raised and the sloped roof will be changed to a flat roof. A 3'6" parapet will surround the building to screen the equipment that will be roof mounted. The front will be masonry with "precast features" in an attempt to make it aesthetically pleasing and in keeping with the commercial style in the center of town. She testified there will be an awning over the 2 entrances. No signage is proposed for the awnings. She then described the proposed lighting and signage.

Falls further testified that, of the 2166 sq. ft., about 1400 sq. ft. is dedicated to Dunkin Donuts. Of that, about 387 sq. ft. is for seating and customer circulation. It will have 11 seats. Dunkin Donuts proposes to operate from 6am to 11pm, 7 days a week. It will have 7 employees who, for the most part will take a bus or car pool she opined. Falls then concluded her testimony and the Board opened the floor to the public to question Falls on the issues to which she testified. One individual pointed out that the area proposed to be occupied by Dunkin Donuts exceeded the amount permitted under the Ordinance by 34%. Others raised questions about the proposed Godfrey Ave. access, noise levels for nearby residents, water runoff when the

roof line is changed. Many of these concerns Applicant suggested will be addressed by its other experts as the case proceeds. Mr. Turteltaub then cross examined Falls. He questioned whether she studied how employees will get to work or whether it was simply her net opinion they would take public transportation or car pool. She said she formed her opinion from other Dunkin Donuts she designed.

After Mr. Turteltaub concluded his cross, the Board asked for certain additions and corrections in the drawing. Mr. Tedesco urged Applicant to consider separate bathroom facilities since 1 for all 3 units essentially creates an open floor plan. Mr. Aschoff asked for at least a slop sink for the convenience store. The Board then announced the matter will be carried to its March 14 meeting.

## 5. RESOLUTIONS

- (a) Costantino - as amended, C variance relief granted to permit a 6' high 50% open fence in a front yard when the maximum permitted height for a fence in a front yard is 3 feet. Mr. Aschoff made a motion to approve the resolution, seconded by Ms. Treamont. All members present voted in favor of the resolution, except Mr. Guerino and Ms. Stefanelli abstained.

## 6. APPROVAL OF MINUTES

December 14, 2015

Mr. Tedesco made a motion to approve the minutes, seconded by Ms. Treamont. All members present voted in favor, except Mr. Guerino and Ms. Stefanelli abstained.