

Hightstown Planning Board
 Regular Meeting
 July 8, 2019, 7:30 p.m.

OPEN SESSION

Chairman, Fred Montferrat called the meeting to order at 7:31 p.m. and read the Open Public Meetings Act statement: "Adequate notice of this meeting has been given in accordance with the Open Public Meetings Act, pursuant to Public Law 1975, Chapter 231. Said notice was sent to the Trenton Times and the Windsor-Hights Herald and is posted in the Borough Clerk's Office."

Flag Salute

Roll Call

	PRESENT	ABSENT	LATE ARRIVAL
Mr. Montferrat, Chairman	X		
Mayor Quattrone	X		
Councilman Misiura		X	
Ms. Asselstine	X		
Ms. Colavecchio	X		
Ms. Jackson		X	
Mr. Rosenberg	X		
Mr. Searing	X		
Mr. Cicalese	X		
Mr. Balcewicz, Alt. #1		X	
Mr. Cabot, Alt. #2	X		

Also in attendance: Sandy Belan, Planning Board Secretary. Jolanta Maziarz, Planning Board Attorney, Carmela Roberts, Planning Board Engineer and Brian Slaugh, Planning Board Planner.

APPROVAL OF AGENDA

Mr. Montferrat asked for a motion to approve the agenda. Motion made by Mayor Quattrone and seconded by Ms. Asselstine to approve the agenda.

Roll Call Vote: Mr. Montferrat, Mayor Quattrone, Ms. Asselstine, Ms. Colavecchio, Mr. Rosenberg, Mr. Searing, Mr. Cicalese, and Mr. Cabot voted yes. Mr. Misiura, Ms. Jackson and Mr. Balcewicz were absent. Motion passed 8-0.

APPROVAL OF MINUTES

Mr. Montferrat asked if there were any corrections or comments to the minutes of the June 10, 2019, Regular Meeting.

Motion made by Mr. Cabot and seconded by Ms. Asselstine to approve the June 10, 2019, Planning Board minutes.

Roll Call Vote: Mr. Montferrat, Mayor Quattrone, Ms. Asselstine, Ms. Colavecchio, Mr. Rosenberg, Mr. Cicalese and Mr. Cabot voted yes. Mr. Searing abstained. Mr. Misiura, Ms. Jackson and Mr. Balcewicz were absent. Motion passed 7-0 and one abstention.

PUBLIC COMMENT

Mr. Montferrat opened the floor for any public comments on items not on the agenda.

Eugene Sarafin, 628 South Main St. – I have not attended a Planning Board meeting for several years. Look forward to tonight's meeting.

There being no additional comments, Mr. Montferrat closed the public comments.

OLD BUSINESS - None

HEARING - JK AMQSR, LLC – 119 Franklin Street, Block 26, Lot 22.01 – Appeal of the Zoning Officer's Decision dated April 29, 2019

George White, Attorney, Turp, Coates, Driggers & White – Presenting application for JK AMQSR, LLC, regarding an appeal of the Zoning Officers determination as to the use of property. Applicant seeking to use space at 119 Franklin Street, Block 26, Lot 22.01, CC1 Zone, as a convenience store which would also feature Dunkin' Donuts products to be sold through the same storefront. Current tenant is Krauszer's convenience store. Zoning Application was submitted on April 26, 2019. The Zoning Application was denied on April 29, 2019. At that time the determination by the Zoning Officer was that Dunkin' Donuts was considered by some to be a "fast food" establishment, which is not a permitted use in that zone. Subsequently, on May 15, 2019, a Notice of Appeal was submitted to appeal the determination of the Zoning Officer regarding the use being a permitted use.

In support of the application we have an architect and planner to testify.

Ms. Maziarz swore in the following:

Dalira Floresca, Project Manager, gk&a Architects, PC
Creigh Rahenkamp, Planner

Exhibit A – Site Plan dated June 28, 2019 prepared by gk&a Architects, PC, 36 Ames Ave. Rutherford, NJ (attached).

Dalira Floresca, Project Manager, gk&a Architects, Rutherford, NJ. Not currently a licensed architect. Testify to the operations and the plans.

Ms. Maziarz noted that since Ms. Floresca is not a licensed architect, she cannot testify regarding architectural matters, only factual testimony and what the Board already sees on the Site Plan (Exhibit A).

Ms. Floresca reviewed the Site Plan – use is basically 40% Dunkin' Donuts and 60% Convenience Store. It is currently being used 60% Convenience store/deli and 40% back of house. There will be no seating in the facility.

Questions from Board Members/Professionals

Mr. Cicalese asked if there will be any changes to the parking lot? Ms. Floresca replied there will be no changes to parking lot and no drive through.

Ms. Roberts – The percentage (40% Dunkin' Donuts/60% C-store) what is that based on? Is that the same percentage you see in sales?

Ms. Floresca – 40/60 percentage based on floor area.

Mr. Cicalese – Signage that faces Broad St.- will it have lighting?

Ms. Floresca - DD sign will be internally illuminated, and the Hightstown Runs on DD is externally illuminated.

Ms. Maziarz swore in Mr. Rashwan, Director of Operations, Alliance Management.

Ahmed Rashwan – Hours of operation 5 a.m. to 10 p.m. Revenue projections – it is too early to project.

Ms. Asselstine – Currently Krauszer's is the only store in Hightstown that sells bus tickets. Is this a service you will also offer?

Mr. Rashwan – If there is a demand by the town, we will consider it. The property will be updated – façade, landscaping and interior changes.

Mr. Cicalese – How many parking spaces do you expect for the Dunkin' Donuts operation and increase in traffic?

Mr. Rashwan – Parking lot spaces will remain the same; don't expect increase in traffic.

Mr. Slaugh noted that the question before the Board is interpretation, not reviewing the site plan.

Creigh Rahenkamp, Planner – Credentials - planner for 37 years; licensed in New Jersey for 23 years. I have appeared in over 100 matters before Superior Court; lecturer at Rowan University and consultant on the residential site improvement standards.

Mr. Rahenkamp – As a Planner in New Jersey, these interpretation issues continue because the private sector evolves to meet the consumer needs faster than planners can change the regulations. Over the years, food and convenience stores have evolved. Krauszer's offers food delivery for take away consumption which is similar to what we are proposing. Within the industry instead of offering hotdogs or tacos, they are now pairing a convenience store with a known food service delivery company, i.e., Dunkin's Donuts, Subway or others that are flexible to work within a convenience store format. They do not have to be freestanding. There are many Dunkin' Donuts that co-locate with other businesses within the same space. This gives the consumer consistent quality of food as part of the convenience store. It is not fundamentally changing what currently goes on inside, simply rebranding that the food services are not just a deli but a specific "food vendor." I would suggest that we are not really changing the use. It will remain a convenience store.

Within the Borough Ordinance 28.3.13 (a) Retailing within a completely enclosed building – There is no limit to the nature of retailing that can occur. Within the retail umbrella whatever we are selling is permitted within this district.

Under Use (h) "Restaurants and other places to eat and drink, but not including drive-through or fast food type establishments." To be determined as "fast food" type establishment, which is not permitted in CC1, you must first be a restaurant. My recommendation to the Board is that without seating, you are not a restaurant; and if not a restaurant, you cannot be fast food.

Board and Professionals Questions & Comments:

Mr. Cicalese – Did you find any comparable business within CC1?

Mr. Rahenkamp – The Krauszer's that exists today is a comparable business. There is no substantive difference between the current tenant, Krauszer's, and the proposed convenience store with a Dunkin' Donuts, a known food brand.

Ms. Asselstine – Variance required for signage?

Mr. Slaugh – Variance will be required based on the number of signs requested.

Mr. Montferrat opened the public comment on this topic:

Frank Rivera, 110 Broad Street – I am opposed to bringing Dunkin' Donuts to the corner of Broad and Franklin Streets. Happy with the current Krauszer's Store. Numerous issues with proposal. It is a de-facto fast food service. Within Borough there are numerous Dunkin' Donuts (Route 130, Shoprite). Will they also service the community – provide bus tickets, extend hours of operation to accommodate commuters going into NY? Currently parking is enough, however may need to increase it due to traffic and congestion. With a Dunkin' Donuts there and you will see congestion, parking concerns and dangerous turns. My real objection is that I will sit on my front porch and see a seven-foot illuminated sign. Conclude with this – the Borough was founded in 1721, 300 years. The proposed sign on the wall that faces my porch that reads "Hightstown Runs on Dunkin'" is not appropriate in Hightstown.

Eugene Sarafin – 628 South Main Street – Interesting that mistakes we made in the past keep haunting us. This strip mall should never have been built the way it is. Traffic will be a problem – dangerous intersection. No traffic study has been done. Large illuminated sign is a distraction. I think you are making a mistake by not requiring traffic study and remove the sign which violates the sign ordinance. Object to franchises.

Bob Raymond – 32 Norton Ave. and 120 Broad St. – Applicant seems willing to work on the signage issue. We are here tonight for an interpretation of the zoning officer. There is plenty of parking. This will be a good for Hightstown. Dunkin' Donuts is a well-known business.

Eugene Sarafin – There has been extensive turnover at this site –rent increases and business can't keep up. Do not believe parking lot can handle the volume of DD traffic.

There being no further comments, Mr. Montferrat closed the public comment portion of the meeting.

Mr. Rahenkamp – The issue of parking and traffic – obviously we are re-tenanting an existing space. Those issues would have been discussed when the space was first approved. This is a similar use. A free-standing Dunkin' on the highway with a drive through, will have significantly more volume than a co-branded Dunkin inside a convenience store in a walkable community. It is a different business model, even though it has the same brand name. I urge you not to hear the word Dunkin' Donuts and immediately think of the larger freestanding franchises as opposed to places where the Dunkin' Donuts is imbedded into an existing use in the fabric of the community. Two very different situations. The ShopRite is a wonderful example – just because Dunkin' is in ShopRite, doesn't mean ShopRite is fast food. You can imbed these things in another use, and it does not change the nature of that other use.

BOARD & PROFESSIONAL COMMENTS

Ms. Roberts – My focus is on the improvements to the façade, signs, adequate parking. I think there should be some type of traffic study to determine if the current parking is adequate for the new tenant. Right now, there is no change to impervious cover, so there are no stormwater improvements. Anticipated volume of customers is an important consideration if it gets to that stage. I would think the business owners would have some idea of what they are hoping to obtain from the usage of this facility. That all will drive the traffic and parking uses.

Mr. Montferrat – Asked Mr. Slauch if he could predict what the changes may be for a business such as a Dunkin' Donuts or Wawa or similar business?

Mr. Slauch responded that convenience stores have high customer turnover - typically 5-10 minutes. The volume of "pass by" traffic - typically motorists going down the street. They are not on the street to go to a convenience store/Dunkin' Donuts. The concern here is peak hour – morning. High percentage of traffic already on the road plus additional stopping for convenience items.

Convenience stores usually have high ratio of parking demand, which would be similar since more than half is convenience store oriented and the other half is bakery. Do not think there is much distinction between the existing Krauszer's as a convenience store and what the applicant is proposing. They may be more successful or less successful than Krauszer's, and we really won't know that until they are in. In my view, the parking lot works adequately now, and it should work adequately in

the future. What triggers a "change in use" requirement, is if the category is changing from one use to the another, which is really the issue before the Board. Is this basically a category change? The applicant's Planner has testified that it is not a restaurant (no seating), and in general, I support that idea. What distinguishes a restaurant from take out, is the seating. When seating is involved, people are there for a considerably longer period, so you have a lower volume of turnover which means the cars are in the parking lot longer. This is a high turnover parking arrangement both on the convenience side and take away good businesses. The other aspect is they (Dunkin' Donuts) are not preparing food to order. Some may require sandwich construction, which is no different than what is occurring at the Krauszer's deli. I do not think there is a fundamental change in the activity that will take place there.

Mr. Cabot – Intent of the ordinance – distinction using "fast food" pertains more to franchise restaurants?

Mr. Slauch – The distinction between table restaurant and fast food is the high volume of people at the fast food. One of the major changes to the fast food industry is the drive through, which has become a very important part of their business – up to 70% of volume is due to drive through, seating is more of an afterthought. The reason for the drive through prohibition is due to the car traffic that is crossing pedestrian paths and going out onto the street. In a "walkable community" such as Hightstown, you want to restrict driveway cut throughs that interrupt that pattern as much as possible.

Ms. Maziarz – The only time the Board should consider traffic and parking would be at site plan review. Tonight, the Board is to determine if this is the same use or a change of use or a type of use that is prohibited by the zoning ordinance. Since this is an appeal of the Zoning Officer's determination, the Mayor and Councilman Misiura (who is not present) will not be able to deliberate or vote on this application.

Ms. Maziarz – The Board is looking at the proposed use compared to the current tenant's use. Is it something that you believe is not permitted by the ordinance based on the testimony and comments from the applicant Planner and the Board Planner?

Mr. Slauch informed the Board that Mr. Chin made the right decision to deny the original Zoning Permit. If there is a matter that is unclear, he should deny the Zoning Permit because you are supposed to be conservative in what you allow in terms of uses. His actions were correct and proper to bring it to the Planning Board for deliberation.

PLANNING BOARD COMMENTS

Mr. Cicalese asked if we could hear testimony from Mr. Chin.

Ms. Maziarz – Mr. Chin has already issued his determination, and this is an appeal from a final decision. It would not be appropriate to have Mr. Chin testify at this time.

Board discussed the question of fast food and whether this is a change of use or permitted use. Noted there will be no drive through.

Board members agreed that this application is not a change of use, (similar to the current tenant Krauszer's), and therefore is a permitted use in this zone.

Planning Board members thought it was important to take into consideration the resident's concerns regarding signage. Board also expressed the importance of having a convenience store in this location, which is a vital of the downtown area.

Ms. Maziarz – When the Zoning Board makes a decision, those decisions are not precedential, generally every application stands on its own. However, we should be clear so the Board and Mr. Chin, Zoning Officer, knows what the interpretation is if there is another application before him for a Zoning Permit.

Ms. Maziarz reviewed the Ordinance: Subsection T28-3-13T CC-1 Central Commercial District.

a. Permitted Uses. In the CC-1 Central Commercial District, the following uses, and no others, shall be permitted:

1. Principal Uses:

- (a) Retailing within a completely enclosed building.
- (g) Bars and taverns.
- (h) Restaurants and other places to eat and drink, but not including drive-through or fast food type establishments.

After much discussion, the Board has determined that this the same use as Krauszer's and that the Krauszer's is a permitted use that fits under the following Zoning Ordinance:

Subsection T28-3-13T CC-1 Central Commercial District. a. Permitted Uses. In the CC-1 Central Commercial District, the following uses, and no others, shall be permitted:

1. Principal Uses: (a) Retailing within a completely enclosed building.

Motion made by Mr. Rosenberg and seconded by Mr. Cabot to reverse the Zoning Officer's decision dated April 29, 2019, regarding Block 26, Lot 22.01, 119 Franklin Street, Hightstown, Ordinance 28-3-13(h) which excludes fast food type establishments as a permitted use. The Planning Board's interpretation is that this is the same use, pre-existing with the Krauszer's, which is an approved use in this zone. Ordinance 28-3-13(a) Retailing within a completely enclosed building.

Roll Call Vote: Mr. Montferrat, Ms. Asselstine, Ms. Colavecchio, Mr. Rosenberg, Mr. Searing, and Mr. Cabot voted yes, Mr. Cicalese voted no and Mayor Quattrone recused himself. Mr. Misiura, Ms. Jackson and Mr. Balcewicz were absent. Motion passed 6-1.

Board noted there are certain site considerations that may be changed – lighting, signage, landscaping.

Ms. Maziarz advised the Board that if the applicant is amending anything from the original site plan, they will be required to come to the Planning Board at least for an amendment to the original approval, not a full site plan.

The original site plan is part of the Borough's public record. If you are going to change something that was approved, you need to come back and show the Board what is being changed from the original approval because you are no longer complying with your approval. If they are staying within the same parameter and are not changing anything about it, then more than likely it probably complies with the original approval. It may have changed over time. When we get an opportunity and you get another site plan filed with the Borough on the public record that is good. This would not be a full site plan. It would be an amendment to the approval – what about that approval has changed. Also recommend the Architectural Review Committee review design.

Mr. Slauch – It would be very limited, only need to look at a few key things.

Ms. Roberts – Per Borough Ordinance site plan approval is required when there is a change in parking (need 4 new parking spaces) to move something into a site plan review.

Mr. Slauch – The current plan would require a variance for signage.

Mr. Cicalese – At this time, should we consider changing/reviewing the definition of “fast food?”

Mr. Slauch – This type of interpretation would be on a case by case basis. Interpretations are not that common.

Ms. Maziarz – The resolution that will memorialize the Board's decision will be instructive in the event the Board is presented with a case that is substantially similar. The Planning Board may want to recommend that the definitions in the ordinance be amended to add more specific definitions since zoning is always evolving.

NEW BUSINESS

- 1) Borough Council Resolution 2019-122 – Resolution of the Borough of Hightstown, in the County of Mercer, Authorizing and Directing the Borough Planning Board to Determine Whether Certain Property Constitutes an Area in Need of Redevelopment

Mr. Slaugh – There is a new developer for the Rug Mill property (PRC). They are acquiring additional land – house on Academy & Bank St. (yellow house – use amenity facility for leasing), First Aid Building, historical house and lake front properties (commercial property downstairs and residential upstairs overlooking the lake). This resolution identifies additional properties to be added to the area in need of redevelopment.

Ms. Maziarz – reviewed the procedures for condemnation area in need of redevelopment.

Planning Board Resolution #2019-07 - Directing the Firm of Clarke Caton Hintz to Investigate and Conduct a Study to Determine Whether the Property Identified as Block 8, Lots 12-14, Block 28, Lots 48-55 and Block 30, Lot 14 should be Designated as a Condemnation Area in Need of Redevelopment

This resolution directs Brian Slaugh, Clark Caton Hintz, to prepare the map and preliminary investigation. Once this is completed, there will be a public hearing before the Planning Board (notice twice – everyone within the redevelopment area – property owner or legal title). Once the hearing is completed, the Planning Board will hear testimony from the Planner and will determine if this meets the statutory criteria in the redevelopment law to make this an area in need of redevelopment. **Once the Board finds that it satisfies the criteria for an area in need of redevelopment**, the Board will send a resolution to the Borough Council and Council will pass a resolution designating it as a condemnation area in need of redevelopment.

Motion made by Mayor Quattrone and seconded by Mr. Cicalese to approve Resolution #2019-07 - Directing the Firm of Clarke Caton Hintz to Investigate and Conduct a Study to Determine Whether the Property Identified as Block 8, Lots 12-14, Block 28, Lots 48-55 and Block 30, Lot 14 should be Designated as a Condemnation Area in Need of Redevelopment

Roll Call Vote: Mr. Montferrat, Mayor Quattrone, Ms. Asselstine, Ms. Colavecchio, Mr. Rosenberg, Mr. Searing, Mr. Cicalese, and Mr. Cabot voted yes. Mr. Misiura, Ms. Jackson and Mr. Balcewicz were absent. Motion passed 8-0.

COMMITTEE/PROFESSIONAL /REPORTS

Mr. Cicalese – Environmental Commission did not meet last month.

Ms. Asselstine reported that the Borough has been given Technical Assistance from the NJ Department of Transportation to create a Mobility Plan, waiting for funding from the State.

Mr. Slaugh distributed revised copies of the proposed DTC Downtown Core and DTG Downtown Gateway Zoning amendments for the Board's review. The proposed revised zoning for the DTC Downtown Core and DTG Downtown Gateway be forward to the Borough Council for their approval.

Ms. Maziarz informed the Board that the Americana Diner obtained Planning Board approval from East Windsor. A portion of the site is in Hightstown. Property owner has lease with Hightstown for the use of the property. One of the conditions of the East Windsor Planning Board Resolution was that the applicant must maintain the lease with Hightstown Borough. If Hightstown Borough refuses to renew the lease or there are any issues, the applicant will have to come back to the East Windsor Planning Board. They are making changes to the section in Hightstown. The attorney wanted to take the position that the changes were "de-minimums" and does not require Hightstown Planning Board review and sited the ordinance that they are not triggering any site plan considerations under Borough's ordinance. The Borough engineer and planner would make that determination. They are making changes that may impact stormwater management and landscaping. I believe they do have to come to the Planning Board. The Board will be reviewing site plan approval for the portion in Hightstown. The applicant can provide information on

the portion that is within East Windsor (site plan received contains both municipalities). All taxes and water and sewer must current and paid.

Mayor Quattrone informed the Board there were will be several upcoming projects for review - Meadow Lakes Redevelopment and East Ward Street – Brewery.

Mr. Montferrat raised the question of possible conflict regarding redevelopment plan. Ms. Maziarz – not a conflict. Will discuss further once application is received.

Ms. Maziarz – comment on DTG – “other restrictions” design/bulk standards – need to clarify for applicants to determine what relief is needed when filing an application.

There being no further business Mr. Montferrat asked for a motion to adjourn. Motion made by Ms. Colavecchio and seconded by Ms. Asselstine. All ayes. Meeting adjourned at 9:15 p.m.

Respectfully submitted,



Sandra Belan
Planning Board Secretary