

**Nutley Board of Adjustment
May 5, 2008
Special Meeting Minutes**

CALL TO ORDER: Chairman Scudato called a special meeting of the Nutley Zoning Board of Adjustment to order at 7:37:00. The Pledge of Allegiance was recited.

The "Sunshine Act" notice was read and the roll was called.

PRESENT: Robert Beck, James Blanda, Suzanne Brown, Thomas DaCosta Lobo, John Halligan, Frank Graziano, Paul Scudato, Chairman

ABSENT/EXCUSED: Kirk Chagnon, Ralph Pastore, Diana Petolino

* * * * *

Dunkin Donuts Preliminary Site Plan Approval

Applicant: Dunkin Donuts, 203 Darling Avenue, Block 285, Lot 6, Zone B-2

Application: Bifurcated Application – Site Plan

Appearances: Thomas DiBiasi, Esq.; Anthony Kurus, Engineer, Neglia Engineering; Brian Intindola, Traffic Expert, Neglia Engineering; Todd Hay, Pennoni Engineering, Township Engineer; Gaetano Re, 103 Jorge Avenue; Paul Bauman, Planner; Frank Truilo, Architect; (all sworn)

Chairman Scudato refreshed the members' memories about this instant matter. A variance was approved last year by this Board. Tonight, they will be presented with site plan.

Mr. DiBiasi made note for the record the date of the memorialization - September 24, 2007. They will be referring to the plans dated March 7, 2008. Mr. DiBiasi said since last year's approval the applicant has been working on the application. Brian Intindola had a meeting with County Planning Board officials. Mr. DiBiasi said Mr. Intindola will testify as to the oral comments that he received from the preliminary county review. The county will not look at anything final unless and until this board grants site plan approval. The applicant would then go back to the county on those issues.

He reiterated some of the conditions that the Board imposed and the applicant accepted along with the neighbors, three of whom are here.

1. The applicant agreed to limit the hours of operation (6 a.m. – 10 p.m., seven days a week).
2. They agreed to the limitation of no baking on the premises.
3. The gas station that stood there for years was demolished and a substantial DEP cleanup was undertaken.
4. The building was substantially downsized.
5. A lot coverage variance is still needed; but it is a lot less than the lot coverage variance that existed with the gas station.

6. They still need a rear yard variance, but it is less than the rear yard variance that was there with the gas station.
7. It was stipulated that no tractor-trailers would make any deliveries of the foodstuff. Deliveries would be off peak hours because of traffic concerns.
8. They would like to submit to the Board a barrier, a fence between the doctor's property and the Dunkin Donuts. A white vinyl board-on-board fence is proposed. The height will be at the Board's discretion.
9. Lighting will be "shoebox."
10. The township engineer had made comments and recommendations. The applicant's engineer will testify that the applicant is accepting each recommendation.

Mr. Beck asked Mr. DiBiasi is this was an application for preliminary or preliminary and final; because if it is final, then the maps that have been submitted should be in final form. He also asked Mr. DiBiasi is he was seeking additional variances this evening. Mr. DiBiasi said tonight is the night for the "C" variances, the lot coverage and the rear yard. He said his position on this is, if the applicant is successful going through the site plan (they do have to go back to the county), if the Board would consider this preliminary and final subject to the county, then the administrative issues brought up by Mr. Beck can be taken care of this evening.

Mr. Beck said he does not think it could be decided whether it is preliminary and final until the applicant puts his case it. He is not a fan of giving final "subject to." There is also the question of the DEP cleanup. Mr. DiBiasi said they do not know when that will be accomplished; although he does get estimates on it.

The Chairman asked if the DEP has given no further action on this property. Mr. DiBiasi said not yet; there is still a clean up, there is a remedial action work plan in place. The owner of the property has the obligation to turn it over to the applicant with a "no further action" letter. That process is on-going. The Chairman responded, "Oh, boy."

Exhibit A-2 was shown to the member. Anthony Kurus's credentials were accepted by the Board. Responding to Mr. DiBiasi's questions, Mr. Kurus said he was retained in order to do an engineering analysis of the Dunkin Donuts site. He had some meetings with the township engineer, Todd Hay, and made contact with phone calls and correspondence. He had two reports from Mr. Hay - dated March 12, 2008 (1½ pages and February 8, 2008 (5 pages)).

As a result of the February report, Mr. Kurus responded to each comment of the report. He is able to comply and is representing that he can and will comply with the conditions that Pennoni Engineering has set forth.

The shoebox lighting plan was explained. An automatic timer would shut the lighting off at 11:00 p.m.; there is enough street lighting so there would not be safety issue when the outside lights are extinguished. Ms. Brown asked if the hours of operation aren't until 10:00 p.m. Mr. DiBiasi thought that the extra hour of lighting would be appropriate because there would be clean-up people. Even though there are no

customers after 10, the workers will still be there. If the Board was comfortable with 10:30 or 10:45, it would not be an issue to the applicant. Ms. Brown thought the parking lot lights should go off at 10:15 and the building lights later. That was agreeable.

Mr. Kurus said that the proposed fence is a good idea; especially if the applicant is agreeable and the neighbors want it.

Ms. Brown noted that the site plan does not show the location of the proposed fence. Mr. DiBiasi said Mr. Intindola will talk about that detail, but said it would be on the easterly property line. Ms. Brown said it would be a good idea if someone would highlight on an exhibit the proposed location of the fence so everyone could understand what Mr. DiBiasi is speaking of. The Chairman said the Board could at this point discuss the height of the fence; Ms. Brown thought they should wait until the fencing was marked. Mr. DiBiasi said the neighbors advised him that, if the Board would consent, they would like the fence to be six feet high. A decorative top is acceptable.

Brian Intindola's credentials were acceptable to the Board. Mr. Intindola testified that the applicant would like to propose outside the site triangle a six-foot, vinyl-type fence which is accordance with the ordinance. He noted that in some cases, a two-foot lattice top was allowed, bring the height of the fence to eight feet, which Mr. Blanda agreed with. Using his landscape plan (sheet 7 of 10), Mr. Intindola showed where the fence would be. Currently, there is a four-foot chain-link fence in the area.

The Chairman asked if there is a sidewalk on Kingsland Avenue (there is). He asked if the fence should be six feet? He thinks it should be shorter and a distance back. Mr. Intindola said they would start the fence where it is now, approximately 10 feet off the corner property line. (Exhibit A-3)

Mr. Graziano and Mr. Intindola did a question and answer about the placement of the fence. Ms. Brown said the chainlink fence is dented and broken from autos. What is to stop damage to the vinyl fence? It will be moved six inches into the applicant's property line. The bollocks will not be removed. The easement will not be reduced. In order to protect the fence, a guardrail will be put in place. Ms. Brown thinks someone should really look at this. The proposed fence does not work with the color scheme of the Dunkin Donuts. She suggested that Mr. Intindola should speak with the architect to get some input on that and let the Board know tonight if there are any other recommendations. Mr. DiBiasi stepped up. He said the white fence is the preference of the neighbors. He said the neighbors are aware that the decision is ultimately the Board's. Mr. DiBiasi agreed that the metal guard rail would not look good. He believes that an on-going obligation to repair the fence is in order.

Ms. McGovern has been researching the codes, site plan provisions, fence provisions, and the scheduling section, and announced that she has not be able to find anything in the code to allow an eight-foot fence. Mr. Blanda said he had a conversation with the code official and was told that a fence is allowed to go to eight feet. He said he agreed with Ms. McGovern. Ms. Blanda said the right foot allowance took him by surprised when he heard it, but noted that he was only repeating what he was told. The Chairman

said the fence should be five foot with a one-foot lattice. Unless the applicant can prove to the Board otherwise, that is the way it will be. The Board members and the applicant agreed.

Mr. Hay directed his comments to Mr. Intindola. He asked if the fence is too close to the road, is that what Ms. Brown is referring to. Mr. Intindola said Ms. Brown is interested in protecting the 20-foot easement. He said the issue is if the fence is moved into the easement, the easement is no longer protected. They are still going to install a fence. There is point where they can replace the chainlink fence, but that is not on their property, so they can only put a fence right on top of the applicant's property line. There will be a six-inch projection into the easement.

Mr. Hay understands that this is a very tight area. He was there tonight and said if a condition can be made to reinforce the fence because it is very close to the curb line.

Mr. Intindola said the way this is designed, the Dunkin Donuts' traffic doesn't have a reason to of through the latter part of the fence. He said the decision to come into this site is what is in the first couple of feet where there aren't any bollards. That is how the applicant is protecting the site and it seems to be working for the fence; that is why they imposed this island on themselves - to protect the easement.

Ms. McGovern asked if the island was narrowed, would they then not have that encroachment into the easement. Mr. Intindola said he needs someway to make up for the fence posts. Whatever is consumed by the fence, about six inches, they will be sure there is an offset of 10 feet to maintain the effect of the easement.

Ms. McGovern said then if a condition was made into the resolution, "and in no event shall any encroachment be made into the easement with the fence," the applicant will be able to accommodate? Yes.

Mr. Graziano wanted to be clear - is the chain link fence coming out? Mr. Intindola said if they get permission of the other parcels from the owners, he would have no problem accommodating that concern. What if they were not granted permission? Mr. Intindola said he cannot take it beyond asking and getting permission. Mr. Graziano asked if permission was not granted, would the new fence still go up? Absolutely. He asked who would maintain the space between the spaces. The applicant.

Ms. Brown asked me DiBiasi to elaborate as to why the neighbors would prefer a very tall board-on-board fence. What is their goal? What are they trying to block? Mr. DiBiasi said they would like as much privacy as possible. They are concerned about the lighting. The Lighting issue was solved, but he thinks the neighbors would like a separation from the commercial uses. Ms. Brown said if the lights are at 12 feet and the fence is only at six, that is not going to do anything for the light. Mr. DiBiasi said the lighting was solved by doing shoebox lighting. The fence is a physical barrier - residential uses on one side, commercial on the other. Ms. Brown said she has a problem with the height of this fence. She thinks it is excessive; it does not need to be six feet. Ms. Brown said four feet, board-on-board would accomplish the same thing. Is

this something that would be considered? Mr. DiBiasi said that would be a Board decision. He is passing to the Board what the neighbors' preference is. The Chairman asked if any member had a negative feeling about a four-foot fence. Mr. Halligan said if the objective is to create a physical barrier, the four-foot fence will not do it. He asked if a six-foot fence with a decorative top foot, would that satisfy the neighbors. He suspects it might not.

The Chairman said that might be shortsighted. He said Ms. Brown make a good point. It might be shortsighted in the long run. He asked that the neighbors come forward and give their opinion and reasons regarding the fence.

Mr. Re said his back yard is at an angle of where the proposed drive-thru will be. He said he wants a buffer there and a fence would do that. He does not want to sit on his deck and watch cars go in and out of there all day long. The traffic was a concern, but he realizes the traffic will be there; but, if the project is approved, they want something there to block the customers. He was shown a picture of the fence that he thought would do the job of separating the properties and affording him the privacy he is looking for.

Mr. Graziano asked Mr. Re if he felt four feet would not be high enough. His response was that he does not think that will block anything. The Chairman said a six-foot height is allowed. Ms. McGovern said the applicant has the consent of the rear neighbors for the six-foot fence.

Ms. Brown said it is unfortunate that there is no room to get some landscaping because that would also provide a nice buffer. She asked if someone could confirm that she is correct. Mr. DiBiasi said what they can do is to soften the board-on-board look by doing evergreens on the neighbors' side where there is plenty of land, if they would allow them to do that. He would discuss this with his client; this is the neighborly thing to do. He thinks there is a difference between the Board's idea of four feet; the neighbor would like that extra two feet. Ms. Brown said if the applicant is able to provide evergreens, they will grow taller than four feet, and taller than six feet. Mr. DiBiasi said white pines grow about a foot a year, but he does not have quite a large budget with this project, but something can be done.

Ms. Brown is still in favor of a four-foot fence with landscaping. Mr. Graziano said the landscaping would have to go on the neighbors' side of the fence. Ms. McGovern said they also need the permission of the neighbors. Mr. Graziano said someone is going to have to maintain them. Mr. DiBiasi said if the bushes are on the neighbors' side then it would become their own responsibility.

Mr. Hay said that it could be physically impossible to do landscaping. The property line adjacent to the drive thru there is a five-foot wide concrete wall. The other problem is opposite that because this is a corner lot; there is a sanitary sewer easement and a number of underground easement that the applicant will not be able to get approval for landscaping. That will be an issue. He asked that Board to keep that in mind. Looking at the landscaping plan, Mr. Hay said that it appears that the fence option is really the

only solution they have. There is no option for landscaping. The easement he referred to a few moments ago is the Nutley trunk sewer and there happens to be another easement – the joint sewer. He said that is going to be a very difficult proposition to put any type of landscaping adjacent to that. They would have to seek approvals as well for putting any new fencing in, as well, over the top of that easement and perpendicular to that type of easement.

Mr. Hay said he understands that based on his March 12 letter, Mr. DiBiasi and his applicant is willing to go ahead and agree to all the conditions set forth. He pointed out that he did have a concern about item 3 – the loading space. He said it is not common for a loading space not to be adjacent to the building. He would like to hear that testimony and hopes the Board is interested too. The second item, #4, additional landscaping on the interior adjacent to the building and the islands. He made recommendations of as much landscaping as possible in keeping with the recently adopted storm-water management ordinance.

Mr. DiBiasi said the town forester always weighs in on issues such as this and he will confer with him. What he recommends and is acceptable with the Board the applicant will abide by it.

The Chairman suggested the get off the fence for a while and asked Mr. DiBiasi to continue his presentation. Mr. DiBiasi asked Mr. Intindola what he accomplished at the county planning board.

Mr. Intindola said he and Mr. Antonio of the planning board the discussed the signal timings at the corner and if the county wanted to reserve any future easements for improvements. Mr. Antonio informed Mr. Intindola that he did not have any easements in mind that would have to be worried about in the future. The signal was done as recently as six or seven years ago. That question was put to rest with respect to county review. A specific issue that Mr. Antonio had was the practicality of left turns on Darling Avenue to get into the site. Essentially, the Darling Avenue driveway would be restricted to right-hand turns during specific times. He believes that was ultimately part of the resolution.

Mr. Intindola and Mr. Antonio also had dialog about protecting the 20-foot easement. Mr. Antonio questioned Mr. Intindola's plan to put landscaping lawn area with the curbing. The reason was because there would be more freedom on the site, He didn't want the Dunkin Donuts traffic to impede upon the easement, while at the same time imposing on the county roadway, county intersection, as little as possible by placing the driveways as far away from the intersection as possible. Mr. Intindola said Mr. Antonio was happy with the plan.

Mr. DiBiasi noted that they have no official approval from the county, nor will they have official approval from the county unless and until the applicant is successful here before this Board. Mr. Intindola said, in past practice, it would go through the municipal process, which is usually a more intense process in terms of making a better site plan, and the county will look at how the applicant is attaching to the drain system and

access. Access has already been addressed, but will go back to the county for formal approval.

The Chairman asked Mr. Intindola about the right-turn-only on Darling Avenue – at certain times or all times? Mr. Intindola said there are times when that intersection will prevent anyone from making a left. He said they would like to go with a time constraint that they would offer to the county for fine-tuning. The restriction would be what the county would want. He believes they should start with restricting the morning peak hour (60%-80% of business) from 7 a.m. to 10 a.m. If the county feels there should be a more limited time period, then they will. The Chairman asked how that can be enforced. Mr. Intindola said enforceability is the county level as well as the municipal level. It is the same situation at other intersections with left turn restrictions and are subject to the enforcement of both the county and the municipal department of public safety. The Chairman said he could see someone making a left turn and saying, “well, I made it within the timeframe.” It would be a nightmare to make a left turn on Darling Avenue. There is blind spot; there should be a right turn only. Mr. DiBiasi agreed with the Chairman and said to Mr. Intindola that the left hand turn is no good. He said to the Chairman that they have had this discussion before and he thinks it would be impossible to enforce if it is between certain hours and he could just hear people saying they didn’t see the times. He agrees that it should be a straight prohibition.

The Chairman asked Mr. Hay for his thoughts. Mr. Hay said he thinks one of the things that could be looked at would be the apron. They have asked the applicant to make improvements to the apron and the sidewalk. The apron could be shifted physically to limit movements in making a left turn, as well as the signage. This will create more a skew onto Darling Avenue than the existing. The angle could be increased. Mr. Blanda said no right turns at a certain time are difficult to enforce. It does not work. Mr. DiBiasi agreed and said it weakens the application and he will not have it as part of this application. Mr. Bauman was asked to testify about the needed variances. The restriction is a permanent restriction; it was said the last time and they are not changing it now. Mr. Hay totally agreed with Mr. Intindola’s characterization that it is an enforcement issue and there is no way of enforcing that other than making a physical improvement. As long as the applicant is accepting of his prior suggestion, he thinks that would be the best thing for all. The Chairman said he can see this having to go in front of the Township of Bloomfield, too.

Paul Bauman was asked to discuss the flexible C variances in five minutes. There are four variances that were not addressed and approved under the original application, which was bi-furcated in anticipation that this stage would resolve some of those variances. They are not coming before the Board with new material that is of substance from what the Board saw in the first application for the use variance. He believes what they have presented to the Board as to the internal traffic flow, the best escapes and ingresses to the property is the best they can offer, balancing the viability of the site for its intended use as well as protecting public safety. They have now is a maximum lot coverage variance, a rear yard setback variance, a parking setback variance and a parking space size variance.

The Board has to look at these in totality and ask what does this do if the variances are granted and what does it do if they are denied.

As to lot coverage - 50% is permitted as per code. The site is developed is developed to 93.9%. The applicant is proposing a reduction to 83.5% (10%+ reduction); this is a substantial benefit to be accrued to the public good.

The rear yard set back requirement is 20 feet in the zone. Currently, it is 14.4 feet. He is proposing a minimal variance of 19.35 feet, which is roughly 7¾ inches, which is not discernable to the public eye vs. 20 feet. Because of the modularity of the layout of the building and how it has to fit component by component, they are asking the Board to approve that, which is just about the thickness of one of the block walls to the building.

The parking setback variance needed has to do with how much of a distance parking spaces can be located to a public right of way. Ten feet is required by code; one foot exists on the site. The applicant is proposing a slight improvement of two feet.

Parking space size code requirement is 9'x19'; the applicant is proposing 9'x18'. This fits based on the geometrics of the property. The required size proposes a problem because it would create an insufficient aisle on the main travel route.

He believe the Board can consider all of the above favorably on a C-2 basis where the benefits in balance with the detriments (which he sees as insubstantial to the zone plan and certainly not to the public good), the positive outweighs the negative.

Mr. Graziano asked Mr. Bauman if he feels 9'x18' is large enough for a parking space. Mr. Bauman said in his experience, statewide, most towns have adopted the RSIS standard regardless of whether it is residential or commercial or industrial - except in certain cases where they know there are large trucks accessing a site, where they do want the adequacy of a larger area to negotiate the aisle width. In this case, a condition has already been agreed to, that is not providing any on-site trucks of substantial size.

Mr. Hay said that 9'x18' is an acceptable standard. It is used for a lot of compact cars and sub-compact cars, typical to many vehicles. He has no objection.

Ms. Brown asked what the required size of a barrier-free parking space. Mr. Bauman said the standard is 8'x18' with a five-foot aisle if there is another space next to it. Otherwise, it would just be the standard 13'x18'. Ms. Brown said she has a concern with the five spaces up against the building, with bollards in front of them and no walk aisle for the patrons. They have to walk behind the other cars. It seems like they are creating an accident waiting to happen by allowing this. Mr. Bauman said he would rather the engineer respond to that.

Mr. Kurus said they located the accessible space closest to the building with a striped aisle adjacent to it so that the patrons would have a clear path down the striped area to a depressed curb and accessible ramp which accesses the sidewalk to the entrance of the store. As far as the other spaces, Ms. Brown is correct; they are against the front wall of

the building which is protected by bollards. Mr. Kurus could not provide Ms. Brown with an answer about the safety issue.

Mr. Hay understood what Ms. Brown was talking about. There are five spaces adjacent to the building. It appears that the front door entrance is on the far corner of the building. The question is where the five spaces are denoted on the site plan, in particular the two spaces that are adjacent to the lawn strip that separates the queuing area and those parking spaces – how would a person be able to get there and is there a way of delineating some sort of sidewalk to the front door entrance.

Mr. Kurus said there was no room to provide a walk in front of the building. There could be striping within the parking area itself to delineate almost a path of some sort. It functions similar to a regular parking lot, walk to the back of one's car, and proceed to the front door. He said there is a provision for the accessible space being located directly adjacent to a striped island, where one would not have to traverse through the parking lot. This is not a residential site, so a sidewalk is not required in front of the building. Mr. Kurus believes it will function adequately and safely.

Mr. Hay addressed Ms. Brown and said the Dunkin Donuts on Washington Avenue has the same problem. The asphalt goes right up to the building. It is the Board's decision whether or not it wants clear delineation. There is only two feet between the parking wheels stops are and the building. The length of the spaces cannot be reduced to below 18 feet – that is the minimum allowed. If they were able to shift over the ingress/egress into the parking area, that could be done as well. However, that might cause some kind of a hardship. That might be a waiver the applicant might want to seek. That is what he gets from looking at the site plan in terms of how they might accommodate a walk. They would have to literally, shift all the parking closer to the right-of-way line on Kingsland Street.

Mr. DiBiasi said he was done with the application. He suggested that since there were three new members on the Board since the last hearing on this application, perhaps they would like to see the color renderings.

Ms. McGovern asked Mr. Intindola for a soft copy of his diagrams to be entered into the record as exhibits.

Mr. Hay approached again to have the issue of the loading space put on the record. He believes this is critical. He addressed Mr. DiBiasi saying that he assumed the interior landscape islands will be taken care of. Mr. DiBiasi said he did. He advised that the applicant will follow the forester's recommendations. Mr. Hay asked for clarification about making the loading work; but, if Mr. DiBiasi wanted to wait until afterwards . . . Mr. DiBiasi said that will be the last thing and he will let Mr. Intindola do that.

Mr. Truilo went through the color scheme and materials that the Dunkin Donuts franchises are now using. He said the Dunkin Donuts finalized, about a year ago, a new design, the "2015." This design will last until 2015 when, at that time, they will be redesigned again. Coffee, because it is a major part of the business, is emphasized,

which brings the new color scheme into effect. They are speaking “coffee” to the customers. He described the elevations, the sloped roof, and the imitation wood siding. Concrete block and glass will also make up the structure. The Chairman asked Mr. Truilo to point out the signage on the building. There is signage on the Darling Avenue elevation and the same sign will be on the Kingsland Street side, all within the existing code.

Ms. Brown had some comments on the elevation. She said the color rendering shows earth tones – browns oranges – yet on the drawings the split face block is described as champagne cream. Mr. Truilo said the split face block is a lighter shade than what is shown. Ms. Brown directed her comments to the giant coffee cup on the front of the building. Mr. Truilo said Dunkin Donuts calls that a graphic; it’s an outline of a coffee cup. Ms. Brown asked if she was correct that this would be called a sign. Mr. Truilo said that is a gray area. The Chairman said that it wasn’t for this Board – it’s a sign. Mr. Truilo said, “I guess we lost the coffee cup.” If it is the Board’s pleasure, that can be eliminated. Ms. Brown said she believes that would be in the best interest of the project. She believes it would be much more tasteful. (this was marked as Exhibit A-5)

Mr. Hay asked how big is the coffee cup in terms of width and height? It would constitute a sign based on the ordinance. It is about 3.5’x5’.

Mr. Intindola returned to the podium to speak about the loading space. This Dunkin Donuts is a satellite Dunkin Donuts. He noted that it was previously testified to that the business would be serviced by a Ford 150 van or an occasional box truck. He said that they have gone through great pains with regard to the drive-thru and pass thru lanes for deliveries. It was previously testified that deliveries would be made in the off peak hours – the a.m. start up delivery and then one again at 2:00 for shapeup. There will be two panel vans servicing the site and occasional incidental deliveries. The applicant controls the deliveries because there is no kitchen on the site. Mr. Intindola said based on this, he believes they do not need a specific loading space for the anticipated trucks. He said he believes this was made a part of the prior resolution. Mr. DiBiasi agreed with Mr. Intindola and noted that this condition can be found at paragraph 3 of the resolution, memorialized in September 2007. It was determined by the Board at the last hearing that peak hours would be 7 a.m. to 10 a.m. and 4 p.m. to 6 p.m.

Ms. McGovern said this was already the subject of the variance that was given because it was cited by the code official; it was approved and then added that condition. Mr. Hay said the problem is that was a variance plan and this tonight is the site plan. (Mr. Hay was not at the podium and his comments were difficult to hear.) Ms. McGovern said this is consistent with the variance that was already granted.

Mr. DiBiasi said it was clear that this evening he will be asking for preliminary site plan approval. He believes it is appropriate, if the Board gets them past then, the applicant will then have standing to go to the county, tighten that up and then come back before the Board for final approval.

The Chairman said the last item to discuss is the height of the fence. He asked if everyone was comfortable with a six-foot fence. Mr. Graziano thinks this is appropriate especially since landscaping cannot be put on the neighbors' side nor can it be added to the Dunkin Donuts side because it will take away from the easement.

Ms. Brown thinks the fence should be an almond or beige color, not the stark white. Mr. DiBiasi said the neighbors would be agreeable to the off-white, now that they have seen the color scheme of the business. Ms. Brown wanted to clarify that there is no dumpster on the site (everything is internal compaction). She noted that most of the landscaping is not of evergreen quality. This would mean that the foliage would be barren in the winter. Is there anyway they can get more evergreen-type plantings. Mr. DiBiasi said that is going to change because they are going to follow the plan of the town forester. That will all be in order when the applicant comes back for final plan approval. Ms. Brown said the plantings are very nice, but thinks they can be accented by more evergreens.

Mr. DiBiasi concluded his presentation and submitted to the Board.

Chairman Scudato asked if there was anyone in the audience to speak either in favor of or against this application. Hearing none, he asked the Board if they have reached a decision and asked for a motion. Before a motion could be made, Mr. Beck aid he would be in favor of this application, but he said he thought the following items should be addressed:

- Any resolution should be subject to county approval;
- No left turns from Darling Avenue exit;
- Subject to DEP approval (this is preliminary site plan approval, only);
- Lighting to be turned off at 10:15 p.m. in parking areas;
- The fence, either beige or almond color, to be a five-foot solid with an additional one foot lattice;
- The applicant would be responsible for maintaining the fence in good condition;
- The easement shall remain at 20 feet, so there is no imposition on the easement;
- Landscaping should be placed on the property in accord with the recommendations of the town forester;
- Parking spaces could be 19'x8', permitted under the RASA standards, (instead of 19'x9') partially for safety purposes on site (the site cannot support 19 foot parking spaces);
- As to other variances, the lot coverage will be reduced from 93% to 83%;
- The rear yard setback, 14 feet now, will be increased to 19 feet;
- Parking setbacks will be from one foot to two feet (decreases the amount of the existing violations);
- All signage must conform to municipal codes; and
- The coffee cup will be removed.

Mr. Graziano added the Pennoni conditions and recommendations. Mr. Beck also noted that they should be in compliance with the draining calculations and with the plans prepared by Neglia Engineering.

Mr. Halligan asked if the lighting going out at 10:15 allows time for the employees to leave safely. How much ancillary light is in the parking lot? The Chairman said that is a well-lit corner. Mr. Blanda seconded Mr. Beck's motion to approve the application. The application was approved 7-0.

* * * * *

BUSINESS: The Chairman announced that this is Mr. Blanda's last meeting on the Board of Adjustment. The Chairman said Mr. Blanda worked on this Board for many years. The Chairman had no pre-warning of this, but the town should be lucky they had him. He is moving out of town. He thanked Mr. Blanda for his dedication, The members applauded Mr. Blanda.

Mr. Blanda wished the Board a lot of luck. He said the past 15 years that he's been associated with the Board, they have gone through thousands of challenging applications and from what he sees, it's getting better. He wished Chairman Scudato and the Board luck.

MEMORIALIZATIONS/MINUTES: There were no minutes to be approved. Ms. McGovern read the memorializations from the previous meeting: Mundy, Van Leuvan, Williamson, Escalona, Agresta, Troisi, Cruz. Approved appropriately by all.

The Chairman said two applicants asked for an extension of time. 65 Oakley Terrace for and 26 Carrie Court were both granted extensions.

* * * * *

LITIGATION: There was no litigation to be discussed.

* * * * *

ADJOURNMENT: 9:24:20

* * * * *

Respectfully submitted,

Marie L. Goworek
Recording Secretary