

**BOROUGH OF WATCHUNG  
BOARD OF ADJUSTMENT  
DANIEL CRONHEIM, CHAIRMAN**

Regular Meeting [Virtual]  
November 10, 2022

**OFFICIAL MINUTES  
Adopted 12/8/22**

Chairman Cronheim called the Regular Meeting to order at 7:30 p.m.

**ROLL CALL**

Mr. DJ Hunsinger (absent)  
Mr. Richard Brown  
Ms. Sondra Fechtner  
Mr. PJ Panzarella  
Mr. Mitchell Taraschi

Mr. Wanye Hanlon  
Dr. Richard Steinfeld  
Mr. Daniel Cronheim, Chairman  
David A. Stires, PE  
Steven K. Warner, Esq.  
Theresa Snyder, Board Clerk

Chairman Cronheim called the regular meeting to order. He read the statement indicating the meeting was being conducted according to Open Public Meetings Act, the Municipal Land Use Law requirements, and the recording of the Minutes as required by law. In order to comply with the Executive Orders signed by the governor, and in an effort to follow best practices recommended by the CDC and DCA for emergency meeting protocol, the meeting was held virtually for all board members, board professionals, the applicant and interested parties and members of the public.

He then led the flag salute to the American flag, and the Board members identified themselves for the record.

**MINUTES**

On motion by Ms. Fechtner, seconded by Mr. Taraschi, the regular meeting minutes of October 13, 2022, were adopted on voice vote with Dr. Steinfeld abstaining.

**APPLICATIONS**

CASE NO.: BA 22-05; Maha at Watchung LLC  
20 Stirling Road  
BLOCK: 4401 LOT: 6  
Represented By: Erwin C. Schnitzer, Esq.  
BB ZONE

Mr. Schnitzer entered his appearance on behalf of the Applicant. Mr. Warner stated that he reviewed the noticed and found the content of the notice to be sufficient and timely served giving

the Board jurisdiction to act. He then swore in the following people: Mr. Leland Titus, P.E., Applicant's Engineer, Mr. Frank Bisignano, owner and Applicant, Mr. Joseph Sordillo, Esq., Borough Attorney, and David A. Stires, P.E., Board Engineer.

Mr. Bisignano testified as the owner and applicant of the Maha Property. The Property consisted of two (2) buildings and a parking lot. He testified that if the application was approved, the Borough would convey a portion of the Watchung Library property to Mr. Bisignano. The portion of the Borough property being conveyed included a shed/garage, same was encroaching on the Maha Property. The Borough and Mr. Bisignano signed an agreement that would permit Mr. Bisignano to make improvements to the black top on his property and provide a 4 ft. sidewalk encased in a 7 ft. easement for Borough use. He testified that he already started making improvements. He donated a new roof to the Borough library and put a new roof on the shed/garage. His goal was to clean up the property.

Mr. Leland Titus, having a business address of 618 Somerset Street, North Plainfield, gave his credentials and was accepted by the Board as an expert professional engineer. He testified that a corner of the shed/garage encroached on the Maha Property. The Borough would convey a 1,092 sq. ft. triangular portion of the Borough property to the Maha Property. After the lot line adjustment, Lot 6 (Maha) would become Lot 6.01 and Lot 7 (Library) would become Lot 7.01. The Borough proposed a 10 ft. maintenance easement on their property for the repair and maintenance of the shed/garage. The Maha Property is located in the B-B Zone, and the Borough property is located in the R-R Zone. The transfer of the property would create several variances on the Maha Property. The transfer of the shed/garage required a d(1) use variance. Other bulk variances required would be an accessory building side and rear setback and a height variance for an accessory building outside of the building envelope. Mr. Titus opined that the proposed lot line adjustment would not be detrimental, since the structure pre-existed on the property for many years. The transfer of property would not impair the zone plan. The conveyance of the shed/garage from proposed Lot 7.01 to proposed Lot 6.01 would eliminate the encroachment.

Mr. Titus testified that the sidewalk easement along Valley Road would connect to the existing sidewalk along Stirling Road. The proposed sidewalk would run in an easterly direction along the edge of the existing parking lot. The Borough would be responsible for the transition of the existing sidewalk to the proposed new sidewalk.

Mr. Sordillo affirmed Mr. Titus' testimony. He explained that one of the conditions to the lot line adjustment between the Borough and Maha was the approval of the Board. After Board approval, the parties could move forward with the contract. There would be a deed filed effectuating the subdivision with easements.

Ms. Fechtner raised a concern with property being removed from the library site, reducing the size of the lot. Lots in the R-R Zone should be an acre. Mr. Stires responded that the library property would still be over 60,000 sq. ft.

Mr. Sordillo described the proposed sidewalk at first being striping with an easement in the control of the Borough. The lot line adjustment would allow the Borough to have a full sidewalk access easement. It would run along the edge of the existing pavement, and the trees and boulders would be undisturbed. The Borough would complete the sidewalk connection from the library to the new sidewalk. The final project is yet to be determined. The agreement would afford the Borough the easement. With Board approval, the parties could move forward. The future sidewalk and shed/garage would be conveyed by deed. Both properties would be valued and further negotiations would be made to ensure an equal swap.

In response to a Board member's concern about the agreement the Borough was entering, Mr. Warner advised that the Board was not entering into a policy determination. The Governing Body acted on behalf of the municipality and asked the Board to consider a minor subdivision application. The Board was to make a decision on the variance relief under the benefits of the criteria the Board is legally required to determine.

On question by Board Member Panzarella as to the agreement being complete, Mr. Titus responded that the Borough needed the Board approval to move forward. Further to Mr. Panzarella's question about the sidewalk being ADA compliant, Mr. Titus responded that the area for the proposed sidewalk was relatively flat and would meet ADA requirements. The connecting ramp would also have to be adjusted to accommodate. Further, Mr. Sordillo added that no decision was made, but at first, the proposed sidewalk would be striping.

On question by Board members as to what will happen with the shed/garage, Mr. Bisignano responded that his intention was to fix up both buildings. It was his desire before the agreement to rehabilitate the building. If the Board granted the variance relief, he could use the shed/garage for any use that is permitted in the B-B Zone. He was limited to only fixing what was currently there, and he opined that the library could not do anything with the building.

In response to Board Member Panzarella's concern that the 1 ft. space between the shed/garage and the property line did not allow for fencing, Mr. Titus responded that a fence was not an option due to the maintenance easement restrictions.

On question of Board Member Fechtner's concern as to the limited access to the shed/garage with the doors facing toward the library, Mr. Sordillo reaffirmed the aspect of the agreement that granted the Applicant a 10 ft. wide maintenance easement which was on the municipal portion of the property. Mr. Stires added that access was limited and should the Applicant desire to make changes to the use, they would have to possibly go before a board for approval.

Further to Board Member Fechtner's concern as to what the Borough would be giving up in the transfer of property, Mr. Sordillo stated that the agreement was between two (2) private land owners doing a lot line adjustment and not about what either property owner was giving up in the exchange of lands. The stipulations to the agreement were to accommodate what was being proposed, to which Mr. Warner concurred.

The benefits of the lot line adjustment would eliminate the existing encroachment of the shed/garage, the lot would be cleaned up, and the height variance on Lot 7 would be eliminated. The lot line adjustment promotes safety and public welfare, eliminates deviations, variances, encroachments, provides sidewalks, and access easements. The transfer of lands allows the Borough to construct the sidewalk as they choose. The Applicant stipulated to Mr. Stires memo dated 10/25/22 as well as to the Somerset County engineering memo. The Applicant stipulated to compliance with all contract negotiations between Maha and the Borough.

The meeting was open to the public. There were no comments from the public.

Mr. Schnizer gave his summation.

On motion by Chairman Cronheim, seconded by Mr. Brown, the Board approved the application with conditions based on the following roll call vote:

Roll Call:

Ayes:	Mr. Brown, Ms. Fechtner, Mr. Panzarella, Mr. Taraschi, Mr. Hanlon, Dr. Steinfeld, and Chairman Cronheim
Nays:	
Not Eligible:	
Abstain:	
Absent:	Mr. Hunsinger

CASE NO.: BA 22-04; Starbucks  
1666 Rt. 22

BLOCK: 6101 LOT: 5

Represented By: Patrick K. McNamara, Esq.

HD ZONE

Expiration Date: 12/22/22

Mr. Warner stated that he reviewed the noticed and found the content of the notice to be sufficient and timely served giving the Board jurisdiction to act.

Mr. McNamara entered his appearance on behalf of the Applicant. He described the application as the “last piece of the puzzle” on the Site. He had four (4) witnesses.

Mr. James Henry, P.E., P.P, having a business address of 245 Main Street, Suite #110, Chester, NJ, was sworn in to give testimony. He gave his qualifications; his licenses were in good standing, and he was accepted by the Board as an expert in the field of engineering. He entered Exhibit A-1, Ariel View, dated 10/13/22 and Exhibit A-2, Colorized Site Plan, dated 10/21/22 into the record. The Property was located at 1640 Rt. 22 at the intersection of Terrill Road consisting of 12 acres in the HD Zone. The original use was a former Sears retail space which received approval in 2017 for the existing shopping center. The approval included four (4) pad sites. The other three (3) pad sites contained Chick-Fil-A, Miller’s Ale House, and City MD.

Mr. Henry testified that the Applicant was proposing a 2,365 sq. ft. Starbucks on the last undeveloped pad site on the Property. Using Exhibit A-1, he oriented the Board to the location of the proposed Starbucks. The project would be constructed on the northwest corner of the Property. The majority of the Site had been redeveloped. The exhibit showed a dash line outlining the 200 foot buffer around the proposed Starbucks location. To the west and east of the proposed Starbucks location were commercial uses. To the north was Mt. Saint Mary's, a private school located in a residential zone. The proximity of the proposed drive thru to the residential zone triggered a d(3) conditional use variance. The Applicant also needed a d(1) use variance for the proposed outdoor seating. The existing access from both Rt. 22 and Terrill Rd. to the overall site would remain the same.

Mr. Henry used Exhibit A-2 to show the proposed conditions. The Applicant proposed outdoor seating as well as a drive thru. The approval size of the building on the pad site was 4,225 sq. ft. He testified that this particular pad site complied with the parking requirements. The Applicant proposed four (4) spaces for curb side pick-up and two (2) ADA complaint spaces. There would be no change to access onto the Property. The Applicant was pursuing an NJDOT permit. There would be a 24 ft. drive isle in the center of the Site. The menu board would be located on the Rt. 22 side of the building with a clearance bar. The hours of operation were 5:30 am – 10 pm Mondays through Saturdays and 6 am – 9 pm on Sundays. There would typically be eight (8) employees on a shift with a total of twenty-five (25) employees. The waste was removed 2-3 times a week during off-peak hours. Mr. Henry testified that generally, 7 am – 9 am were the peak hours of operation. Testifying to the deliveries made to the Property, Mr. Henry testified that the daily deliveries consisted of one (1) box truck delivering during off-peak hours. The proposed seating would include a total of 60 seats. The interior seating would provide thirty-four (34) seats, and the exterior seating would provide twenty-six (26) seats. The Applicant was also proposing an optional walk-up pick-up window. All food was heated on site not cooked on site.

Mr. Henry testified that Starbucks would be reducing the amount of impervious coverage on the Property. The Applicant proposed six (6) wall mounted lights. They would use LED lighting with green technology and 0.5 footcandles. As to the landscaping, the Applicant would provide five (5) shade trees, 243 evergreen shrubs, and 82 ground coverings along with ornamental grasses. They would create a buffer around the pad site using low landscaping along Rt. 22.

Addressing the stormwater management, Mr. Henry testified that the Applicant was proposing a significant reduction of impervious coverage and would connect to the existing system. The Applicant approached the DEP and was not required to meet the new stormwater management requirements. The Applicant would get confirmation from the DEP.

Mr. Warner concurred from a legal perspective that the application would be exempt from the new stormwater management requirements because the center itself had received preliminary and final site plan approval prior to March when the changes to the requirements were implemented. He advised that confirmation should be sought if not already obtained.

Mr. Stires stated that there were a couple of points that may be gray areas, and he wanted the Applicant to receive confirmation from DEP.

The Applicant stipulated to contact DEP to confirm the exemption and to work in good faith with the Board engineer.

Mr. Henry continued his testimony stating that the Applicant would provide a bike rack on the south side of the building. The drive thru would allow eleven (11) stacking positions which he opined would not impact the circulations on site. As to the signage, there would be a five (5) ft. monument sign, five directional signs consisting of three (3) drive thru signs, one (1) exit sign, and one (1) thank you sign. The seven (7) proposed wall signs would be compliant in sq. footage. The Applicant stipulated to comply with outside agencies. Mr. Henry opined that the proposed use fit in with the other uses and would complement the overall shopping center.

Chairman Cronheim opined that he had no problem approving outdoor dining on Rt. 22. As to the distance requirement for the drive thru from residential properties, he stated that the intent of the Ordinance was the distance from residents' homes not residential zoning.

In response to Board Member Brown's question about the hours the lighting would be on, Mr. McNamara responded that the lights would be placed on a timer which would turn off approximately an hour after employees left for the night.

Board Member Panzarella suggested that the Applicant extend the bollards four more spaces to protect the outdoor seating area. He also raised a concern with the vehicular plan for the garage truck which would have to go the opposite flow of traffic. The Applicant stipulated to placing additional bollards onsite and to overnight garbage pick-up.

Frank Russo, A.I.A., having a business address of 280 E. Broad Street, Suite 200, Rochester, NY, was sworn in to give testimony. He gave his qualifications; his license was in good standing, and he was accepted by the Board as an expert architect. He showed the plans with a last revised date of 2/26/21. Entrance to the project is from Rt. 22 on to its own pad site. The drive thru lane wraps around from the right to the left. The dumpster is to the left hand side. Entering the building, there would be a café seating area of 34 seats. He showed the "engine" where the food and drinks were prepared. The interior of the building would have two (2) ADA compliant restrooms. There would be a door leading out to the exterior seating area. At the bottom end of the "engine," there would be a pick-up window. The exterior of the building would be a blend of materials. The outdoor seating would have a wrap around canopy with wood siding and black metal railing with a bike rack. The design and materials are part of the brand standards for multiple stores of this size and configuration. He showed the pre-order and menu boards for the drive thru. The pick-up window would have the same metal roof. There would be ceramic tile brick in the corner. The facade seen from Rt. 22 would be wood siding and Starbucks signage to the top of the building. The order point with the menu board would be covered with a canopy. The building was proposed at a height of 16 ft. with a parapet height of 21 ft. to hide mechanicals. The signage would be 60 inches in diameter with Starbuck branding.



On question of Board Member Brown concerning the number of ADA spaces that would be provided according to the plans, there would be two (2) ADA compliant spaces as per Sheet 5 of the Site Plan.

In response to Mr. Warner's question as to whether the proposed rendering for the façade facing Rt. 22 with no windows and little fenestration was a standard rear of the building, Mr. Russo responded that the Applicant was proposing extra materials in the back which would include wall sconces and arch articulation. The additional thought and expense was added because the back of the building would face Rt. 22.

On question of Board Member Hanlon concerning the height of the plantings at maturity, Mr. Russo responded that the Applicant would provide a more mature bush when planted. The Applicant stipulated to the height of the plantings to shield vehicle light subject to the review and approval of the Board engineer with the intent of blocking vehicle light without blocking sight lines.

John Harter, P.E., having a business address of 30 Independence Blvd., Suite 110, Warren, NJ, was sworn in to give testimony. He gave his qualifications; his license was in good standing, and he was accepted by the Board as an expert traffic engineer. He testified that he had worked with Seritage for a number of years. There was a re-designed traffic signal which was under county jurisdiction. He worked on the Chick-Fil-A and Miller's Ale House applications. He worked on the prior traffic studies and dealt with DOT for prior approvals. The DOT provided a letter of no interest for the Starbucks pad site. Mr. Harter prepared a traffic study in 2016. Since covid, the counts have been adjusted. The DOT has annual growth rates. Starbucks would be a very busy intersection but it would be a very small component of the traffic generated. There would be a lot of pass-by volumes. There would need to be minor adjustments to signal timing. The Applicant was still waiting to hear back from the County. He opined that the Site was well designed allowing for 21 max parked vehicles. There would be room for eleven (11) stacked spaces in the drive thru. The twelfth car in the que would start to be in the parking field. He based the calculations on the Starbucks located in Green Brook. He opined that the overall parking was sufficient whereas, the Chick-Fil-A was a very active user within the Heritage Square, other users were not as active.

Justin Auciello, P.P., A.I.C.P., having a business address of 125 Half Mile Road, Suite 200, Red Bank, NJ, was sworn in to give testimony. He gave his qualifications; his licenses were in good standing, and he was accepted by the Board as an expert in professional planning. He testified that the use itself is permitted; however, the outdoor dining was not permitted which triggered the need for a d(1) use variance. The application also needed a d(3) variance for a drive thru within 500 ft. of a residential zone as well as a variety of bulk variances which he opined were subsumed into the request of the d(1). The bulk variances were related to the site itself. Outdoor dining has become common in restaurant areas. He opined that people are still choosing to be safe. He testified that the Site could accommodate the outdoor dining safely, and the proposed Starbucks had more than sufficient space. The Board granted Chick-Fil-A outdoor seating. The Applicant was not creating a new use on the Property. There were benefits to the public by providing them with options. The peak hours of operations were different than the peak hours of

operations for other uses on the Property. As to the negative criteria, the use would not create a detriment. It is a site within the shopping center. He opined that if there were no enhanced quality of proofs needed, there is no impairment to the zone plan. The outdoor dining was appropriate in context to the Starbucks.

As to the d(3) conditional use variance, Mr. Auciello testified that the Board interpreted the Ordinance for the location of the drive thru within 500 ft. of a residential zone was related to the distance from housing. He opined that there would be no consequence for the granting of the d(3) variance. There would be no substantial detriment to the public good or zone plan. The bulk variances would be subsumed in the d(1) variance. He opined that the site did not stand alone. The positives outweigh the detriments. The application advances the Master Plan for commercial vitality, strong economy, and creates a balanced tax base. He opined that the benefits of the granting of these variances outweighed the detriments.

The meeting was opened to the public. There were no comments from the public.

Mr. Warner outlined the various variances being requested.

Mr. McNamara gave his summation.

On motion by Mr. Brown, seconded by Mr. Panzarella, the Board approved the application with conditions based on the following roll call vote:

Roll Call:

Ayes:	Mr. Brown, Ms. Fechtner, Mr. Panzarella, Mr. Taraschi, Mr. Hanlon, Dr. Steinfeld, and Chairman Cronheim
Nays:	
Not Eligible:	
Abstain:	
Absent:	Mr. Hunsinger

OPEN TO THE PUBLIC

There were no other comments from the public.

ADJOURN

The Board unanimously voted to adjourn the meeting.

Respectfully Submitted,



Theresa Snyder  
Board Clerk