

RESOLUTION
PLANNING BOARD
TOWNSHIP OF LIVINGSTON, NEW JERSEY

Decided: November 1, 2016

Re: Application No.: 2011-56-PFSPV Amendment
 Applicants: (A) Sweet Basil Café & Grill, Inc.
 (B) Roosevelt Realty Associates, LLC
 Premises: (A) 498 & b504 South Livingston Avenue, Livingston, NJ
 Block: 4701; Lots: 51 & 52
 (B) 2 West Northfield Road, Livingston, N.J.
 Block: 4710; Lot 55

 Zone: B

SUMMARY OF THE CASE

1. Sweet Basil Café & Grill, Inc. (hereinafter “Applicant”) is the lessee of a restaurant at 498 South Livingston Avenue, Lot 51 in Tax Block 4710.
2. Applicant Roosevelt Realty Associates, LLC (hereinafter “Applicant Roosevelt Plaza”) is owner of an office and retail uses building at 2 West Northfield Road (hereinafter “Roosevelt Plaza”).
3. The Kutlu Living Trust is owner of Lots 51 & 52 in Tax Block 4701 (hereinafter “Site”), on which are two buildings the tenancies of which in the Applicant restaurant, a nail salon, a take-out restaurant, a bagel shop and a bank.
4. Both Applicant and Applicant Roosevelt Plaza were represented by Stephen A. Geffner, Esq.
5. Neslihan S. Montag, Esq. appeared on behalf of The Kutlu Living Trust.

6. Applicants presented documentation that all required notices of service and publication have been complied with and that all taxes have been paid.
7. Hearings were held before the Board on February 2, 2016, July 12, 2016, September 13, 2016 and October 6, 2016.
8. Witnesses on behalf of the Applicants were:
 - a. Barry Barth, owner of Premier Parking Enterprises
 - b. Michael Lanzafama, P.P. and P.E.
 - c. Anthony Lauro, an employee of Affiliated Management, the Manager of Roosevelt Plaza
 - d. Beth Lippman, Executive Director of the Livingston Business Improvement District
 - e. Neslihan S. Montag, The Kutlu Living Trust
 - f. Alan Platt, owner of the Applicant restaurant
9. Members of the public with questions for witnesses were:
 - a. Beth Adler Co-owner of bagel shop on site
 - b. Joe Callaghan 11 Concord Dr.
 - c. Ira Garelick, 6 Village Dr.
 - d. Steven Garelick 6 Village Dr.
 - e. Howard Gottlieb 9 Concord Dr.
 - f. Sue Gottlieb 9 Concord Dr.
 - g. Ron Ladell 86 Sycamore Ave
 - h. Wei Lin Owner of a take-out restaurant on site
 - i. Barbara Margolis 7 Concord Dr.
 - j. Pat Nave, 16 Concord Dr.

10. Members of the public who testified under oath:

- a. Beth Adler Co-owner of bagel shop on site
- b. Howard Gottlieb 9 Concord Dr.
- c. Wei Lin Owner of take-out restaurant on site
- e. Barbara Margolis 7 Concord Dr.
- f. Pat Nave, 16 Concord Dr.
- g. Hayden Tiger 514 South Livingston Ave.
- h. Cathy Walz 10 Village Dr.

11. In a previous decision memorialized by a Resolution (hereinafter “Resolution:”) adopted on January 17, 2012, the Board granted preliminary and final site plan approval for the Applicant to operate a restaurant with 76 seats plus a party room with a 36 seat capacity on Lot 51. There were other tenancies on the Site. 64 parking spaces on the Site were required by the Township Code if the 76 seats plus the party room seating were used simultaneously and the other tenancies were open for business. If the party room seating was not used, 52 parking spaces were required. Lots 51 and 52, both owned by The Kutlu Living Trust had shared off-street parking with 51 spaces under the proposal then before the Board.

12. The January 17, 2012 Resolution approved operation of the restaurant with 76 seats and a parking variance of 1 space for the Site. A condition of approval was that the party room, with 36 additional seats, could be used only on week-ends or after 6:00 P.M. on weekdays (periods when most other tenants on the Site would not require parking); provided that not less than 13 off-site parking spaces specified for Applicant’s use were available at those times. Under Board-approved license agreements, 10 parking spaces at 495 South Livingston Avenue (Block 2700, Lot 51) are required to be available at those times for use by Applicant’s employees, and another 12 parking spaces are required to be available at those times at 508 South Livingston Avenue (Block 4701, Lot 53) for Applicant’s customers. Those two lots, like the Site, are in the B Central Business District.

13. In this proceeding the Applicant, seeks relief from the restrictions on use of the party room so that all 112 seats can be used from 11:30 A.M. to 2:30 P.M. on week days. As originally filed, the Application now before the Board sought “relief from conditions L and 3 of the Resolution of approval of January 17, 2012” and to provide off-site valet parking on Lot 13 in Tax Block 4701 immediately to the rear of the Site. At the hearing session on February 25, 2016 Applicant’s attorney made it clear that it was Conditions 1 and 3 of that Resolution, not L and 3, from which relief was being sought. Lot 13, in the R-4 Residence District, is property that it was determined could not be used for parking for the restaurant. Thereafter, an Amended Application was filed with Applicant Roosevelt Plaza added as an applicant and requesting two other new off-site parking areas: Roosevelt Plaza and Lot 57 in Tax Block 4701. There was a deficiency of notice of the Amended Application, and a new Amended Application was filed on July 14, 2016. However, in the course of the subsequent hearing session Applicant advised that the owner of Lot 57 was no longer willing to provide parking space. Consideration of that Lot was withdrawn by Applicant.

14. Under the Application as amended, Applicant seeks:
 - a. Permission to provide valet parking, during the 11:30 A.M. to 2:30 P.M. time period, in 13 parking spaces at Roosevelt Plaza pursuant to a license agreement granted by Applicant Roosevelt Plaza.

 2. Permission to convert 8 existing parking spaces on the Site to 8 tandem spaces that would each accommodate two vehicles to be parked and removed by valets. To accomplish that conversion, the Applicant seeks a parking area setback variance and a parking area aisle width variance.

15. Applicant Roosevelt Plaza seeks a limited variance to permit it to allow use, for that valet parking, of 13 of its 140 existing parking spaces. It now has a variance of 32 spaces to permit the present 140 parking spaces where 172 are required.

FINDINGS OF FACT

1. Valet Parking

- A. Both the Site and Roosevelt Plaza are in the B Central Business District. Under Township Code § 170-94.A.(2) that is a zone in which parking is not required to be on the same lot as the building that is served by the parking.
- B. Business Improvement District Executive Director Lippman testified that she considers commercial parking to be a problem because food, beauty and other service-type uses are moving into buildings that were developed in the 1960s and 1970s with lower parking capacity than such uses need. She said that all businesses on the Site were fighting for parking spaces during lunch time, and that off-site valet parking was probably the only answer at this point to alleviate the stress on parking.
- C. The proposed valet parking would be provided during Applicant's lunch hour of 11:30 A.M. to 2:30 P.M. by the professional valet parking service Premier Parking Enterprises.
- D. Witness Lauro introduced into evidence a document captioned "License Agreement and Hold Harmless and Indemnification" under which Applicant Roosevelt Plaza would permit Applicant to use 13 parking spaces at Roosevelt Plaza. The document expressly provided that the license is limited and fully-revocable, with the right of Applicant Roosevelt Plaza to terminate it at any time and for any reason. Attorney Geffner stipulated that the variance sought for valet parking spaces at Roosevelt Plaza would, if granted, be time limited. Applicant agreed to a condition that the license would terminate automatically if Applicant creased to operate its restaurant on the Site.
- E. Mr. Lauro testified that during the time period from 11:30 A.M. to 2:30 P.M.

approximately 75% of the Roosevelt Plaza parking spaces are occupied, and that in the 10 years that he has been involved with the building never has he pulled into the parking area and seen any of the 13 spaces proposed for valet parking to be occupied. He agreed that should the proposed license ever be terminated Applicant Roosevelt Plaza would notify the Township.

- F. Michael Lanzafama, expert witness for both Applicants, identified the spaces to be licensed for valet parking as the 13 spaces along the western-most portion of the Roosevelt Plaza parking area. They would be identified by three signs indicating that they were reserved from 11:30 A.M. to 2:30 P.M. Monday through Friday. The signage would include directional arrows to include all 13 spaces. Valet attendants would use the West Northfield Road driveway to enter and leave the Roosevelt Plaza parking area. Because the building contains retail, office and medical uses it has a Township Code parking requirement of 172 spaces. There are presently 140 parking spaces under an existing variance. Utilizing the standards set by the Urban Land Institute (hereinafter “ULI”) or Institution of Transportation Engineers (hereinafter “ITE”) the parking demand would be 119 cars and the property has a current surplus of 21 parking spaces under those calculations.
- G. Based upon the ULI and ITE standards and his observation of how the parking lot works and what the actual load is, Mr. Lanzafama was of opinion that there is adequate parking capacity for 13 spaces to be allocated for Sweet Basil valet parking, and that the right of Applicant Roosevelt Plaza to terminate the license at will ensures that there will not be any detrimental effect on the zoning plan if a parking variance for that property is granted. It was his opinion that approval as a c(2) variance would further the objectives of the Township’s Master Plan and of the Business Improvement District and would have no detriments. Because the parking standards of the ULI and ITE are more recent than the Township Code requirements, they support a finding that a variance would represent a better zoning alternative than what the Code requires.

H. Mr. Lanzafama explained that, at the Site, arriving Sweet Basil customer cars would enter from South Livingston Avenue and those customers using the valet service would stop at the valet stand in front of the restaurant entrance. The valeted cars would leave from, and return to, the Site via its southerly South Livingston Avenue driveway. Both those vehicles and customer-driven vehicles would utilize the two-way aisle. Members of the public expressed concern that cars of customers arriving and seeking valet service would queue out onto South Livingston Avenue at the northerly driveway. Applicant, and Attorney Montag on behalf of The Kutlow Living Trust, agreed that the valet station shall be located further back; at the very least at the westernmost corner of Unit 4 in the building on Lot 51.

2. Tandem Parking

A. Witness Lanzafama explained that the perpendicular parking spaces along the rear of the parking area on the Site are presently 9 feet wide and 18 feet deep, plus an approved 2-foot overhang at the westerly end. Township Code requires a minimum length of 20 feet; providing that the Board can approve 18 feet with 2 feet of vehicle overhang added. What Applicant proposes is to extend each of 8 of those spaces to a length of 32 feet. They would also have the 2-foot overhang added; for over-all length of 34 feet. The longer spaces would be used for tandem parking by the professional valets. That type of parking is sometimes called stacked parking. It entails parking two vehicles, one directly in front of the other, in a single space. Creating tandem parking would bring the number of on-site parking spaces from the present 51 to 59.

B. The Township does not have any standards regarding tandem parking. If the 20 feet per space, or 18 feet plus overhang, are used to determine tandem parking space length, the result require a space a space 40 feet long, or 38 feet long plus a

2-foot overhang. Here, the 2-foot overhang have sufficient room to enable it to would further encroach into the required parking setback area.

- C. Mr. Lanzafama testified that the largest vehicles on the road are about 16.4 feet in length, and that that the proposed spaces would each accommodate two such vehicles tandem parked by valets, but that tandem parking would require a variance. Assuming a vehicle length of 17.64 feet, he was of opinion that one such vehicle could be valet-parked using the 2-foot overhang and a 16-foot vehicle could be valet-parked in the remaining space.

- D. He explained that in order to accommodate such parking spaces, the distance from the parking area to the R-4 Residence District line would be reduced to only 2 feet. That 2 feet would be the vehicle overhang area. Mr. Lanzafama testified that 25 feet is required by the Township Code, necessitating a variance of 23 feet. He also explained that the two-way vehicle aisle serving those parking spaces is required to be 24 feet wide under the Township Code but would have to be reduced to 20.06 feet; requiring a variance of 4 feet. The aisle is presently 21 feet wide under an existing variance. He testified that the Township Code requires a width of 20 feet for a two-way driveway, while a two-way aisle is required to be 24 feet wide to allow a car parked perpendicularly to have sufficient room to enable it to quickly back out.

- E. Valets would use the Roosevelt Plaza spaces as their primary parking location, the tandem spaces next, and then other spaces on the Site not reserved for other tenants. Of the 51 spaces on site, 13 are presently reserved for customers of other tenants. Ms. Montag testified that these designated spaces were implemented after the opening of Applicant's restaurant to address concerns of the other tenants that their customers could not find available parking during the peak hours of Applicant's restaurant.

- F. A member of the public testified that the 2-foot overhang would place a vehicle at the fence on the property line, and that there was nothing to prevent a vehicle from accidentally piercing the fence and entering the children's playing field on the adjacent property.

3. Seating Capacity Utilization.

- A. Applicant seeks relief from the following two Conditions contained in the Board's Memorializing Resolution of January 17, 2012:

"1. The Parking License Agreements between the Applicant(s) and the owner of the property at 508 South Livingston Avenue (Lot 53) for the use of 12 parking spaces, and the Applicant(s) and the West Essex Tribune for the use of 10 parking spaces at 495 South Livingston Avenue, shall be in such terms and conditions, including signage, as shall have been approved by the Board Attorney and shall then be filed and recorded in the Office of the Essex County Register within 60 days of the date of memorialization of this decision of the Board. Sweet Basil shall submit one certified copy of each recorded License Agreement to the Board Secretary and another to the Zoning Officer. Upon expiration of a License Agreement, a copy of any extension or renewal of such shall be promptly provided to both such officials. Should any off-site parking become unavailable due to any termination of any such Agreement or due to failure to extend or renew any term of such Agreement, both the parking variance granted by this Resolution and use of the party room shall terminate immediately. Sweet Basil shall notify the Board Secretary and the Zoning Officer of such unavailability without delay."

"3. The party room shall be used only on week-ends or after 6:00 P.M. on evenings, and shall not be used at any time when fewer than 13 off-site parking spaces are provided under approved license agreements filed and recorded in the Office of the Essex County Register."

- B. Mr. Platt testified that the original intent was to use the party room only after 6:00 P.M. and on weekends, but that business has grown beyond the owner's wildest

dreams, and the main restaurant is not sufficient in size to accommodate the demand. He requested that use of the entire 112 seating capacity be permitted for the lunch hours.

- C. A member of the public offering testimony referred to the transcript of 6 December 2011 in which Mr. Lanzafama testified that that the restaurant peak demand is when the bank, the dry cleaner and the nail salon would be closed.
- D. The owners of the bagel store and of the take-out restaurant located on the Site raised problems with parking for their customers because of the number of parking spaces utilized by Sweet Basil customers. Ms. Montag also identified issues as to adequacy of parking for all tenants on the Site.

CONCLUSIONS AND DETERMINATIONS OF THE BOARD

1. Valet Parking

- A. Both the Site and Roosevelt Plaza are in the B Central Business District, in which restaurants are permitted and in which parking for a restaurant is not required to be on the same lot as the restaurant.
- B. Shared parking arrangements may be permitted under agreements approved by the Board.
- C. No evidence has been presented that unusual or exceptional traffic safety hazards would be created on either South Livingston Avenue or West Northfield Road by the proposed valet parking arrangement.
- D. The dedication of 13 specific parking spaces on Lot 55 for Sweet Basil valet parking will not reduce the number of parking spaces presently required to meet

the traffic volume for Roosevelt Plaza tenancies, and the proposed shared parking license for the valet service would be revocable at will by Applicant Roosevelt Plaza should need for those spaces arise.

- E. In addition, the license would terminate automatically if Applicant Sweet Basil ceases to conduct its restaurant business on the Site.

2. Tandem Parking

- A. The Board determines that the proposed tandem space length of 32 feet plus a 2-foot overhang is inadequate when compared to the Township requirement that a parking space must be 20 feet long, or 18 feet plus an overhang of 2 feet. In the absence of a Township standard on tandem parking, and the absence of introduction by the Applicant of an authoritative standard to be considered by the Board, the Board takes judicial notice of the San Diego California Municipal Code Chapter 14, Table 142-05L that, like the Township, requires that 90°-angle retail and restaurant parking have an aisle width of 24 feet, and of Table 142-05K of that Municipal Code that requires a single space to have a length of 18 feet and a tandem space to have a length of no less than 36 feet with the same aisle width as for standard spaces. The Board finds them supportive of the conclusion reached that a parking space length of 32 feet is insufficient for tandem parking even if an overhang of two feet were approved.
- B. Creation of the tandem parking spaces to accommodate 8 more cars on the Site is not sufficient to justify a further reduction in the required aisle width or reducing the rear yard setback to 2 feet where 25 feet is required by Code.
- C. Applicant has failed to provide adequate testimony that the tandem parking arrangement would provide adequate space to safely operate vehicles on site with two-way traffic in the aisle with both valets driving and customers driving their own vehicles.

D. The testimony that valets would also park cars in on-site spaces not reserved for other tenants demonstrates that allowing tandem parking would not ease the concerns of other tenants as to the present inadequacy of parking for their customers.

3. Elimination of Conditions re Use of the Party Room Space

A. Conditions Nos. 1 and 3 in the Board's January 17, 2012 permitted the use of the 36 party room seats only at times when most other tenants of the Site were not open for business. Most, if not all, of the 51 on-site parking spaces would then be available to Applicant. All other present tenants are open for business during Applicant's 11:30 to 2:30 lunch hour. Allowing the 13 new off-site parking spaces, the same number of spaces as required by existing Condition 3, to permit use of the additional 36 seats during the lunch hour would create an unjustifiable parking challenge for the other tenants.

4. On the Findings and Conclusions above the Board now makes the following determinations subject to the Conditions set forth hereinafter:

A. The Applicant has failed to provide adequate evidence to justify the on-site variances requested or relief from Conditions 1 and 3 of the July 17, 2012 Memorializing Resolution.

- (1) The undisputed testimony has established that Applicant's need for additional parking during lunch hours is unrelated to use of the party room.
- (2) Applicant has failed to provide adequate testimony that the tandem parking arrangement would provide adequate space for safe vehicle traffic operation on the Site.

- (3) Applicant has failed to provide adequate procedures or plans to demonstrate how control of use of the tandem spaces when valets are not on duty.
- B. The proposed license agreement for the off-site valet parking would be revocable at will by Applicant Roosevelt Plaza, and therefore is of unknown duration, yet the Board finds that authorization of such parking is appropriate. Pursuant to the c(2) justifications established on the record, Applicant Roosevelt Plaza is granted a limited time variance of 13 parking spaces for the sole purpose of making those spaces available for valet parking of passenger vehicles on week-days for the time period 11:30 A.M. to 2:30 P.M. under a shared parking license agreement between Applicant Roosevelt Plaza and Applicant; which agreement shall be subject to approval by the Board's Attorney as to conformity with this Resolution. Such variance shall terminate as provided in Condition (2) below. The Board takes no position as to the Roosevelt Plaza driveway or driveways to be used by the valets.
- C. The 23-foot parking setback variance from the required 25 feet, and the 3.94-foot variance from the required 24-foot aisle width; both required by Township Code 170-94 are denied.
- D. The request for approval of tandem parking spaces is unsupported by persuasive evidence as to the proposed length of such spaces and is denied.
- E. Applicant's request for relief from Conditions Nos. 1 and 3 of the Board's January 17, 2012 Memorializing Resolution is denied and those Conditions remain in full force and effect. Other than as permitted by those Conditions, no more than 76 seats may be used by Applicant.
- F. Variances granted or continued under the January 17, 2012 Memorializing Resolution, and the Conditions contained therein, continue in effect.

G. Conditions of this Approval:

- (1) A shared parking and license agreement for the valet parking at Roosevelt Plaza terminable at will by Applicant Roosevelt Plaza and consistent with this Resolution shall be submitted to the Board Attorney for approval prior to signing. When such approval has been received, Applicant Roosevelt Plaza shall cause two copies of the signed agreement to be submitted to the Board Secretary.
- (2) A variance of limited duration of 13 parking spaces is granted for 13 valet parking spaces at Roosevelt Plaza and shall expire automatically upon either termination of the shared parking and license agreement by Applicant Roosevelt Plaza for any reason or upon Applicant ceasing to operate its restaurant at the Site or to provide valet service. In the event of termination or suspension of such agreement, Applicant Roosevelt Plaza shall give prompt notification of such termination or suspension to the Township Zoning Officer and the Board Secretary.
- (3) The full text of all conditions of this approval, and all plan changes agreed to in the course of the hearing, shall be set forth on Final Plans to be reviewed by the Board Secretary and the Township Planner before signing of such plans by the Board Chairman, Township Engineer and Board Secretary.
- (4) Applicant shall comply with all applicable Federal, State and local laws and regulations and obtain any other governmental approvals required for implementation of this application as approved. If any other governmental agency or authority grants a waiver of or variance from any law, rule or regulation, or imposes any condition or requirement, which affects this approval or any of the conditions contained herein, then this Board shall

have the right to review such action as it relates to this Board's approval or conditions and to modify, amend or revoke its approval and/or conditions.

NOW, THEREFORE, for the reasons set forth herein and as stated on the record by the members of the Planning Board of the Township of Livingston, and consistent with the proofs and testimony presented at the hearing, it is resolved that the Board does hereby approve in part and disapprove in part the Application for Preliminary and Final modification of the approval previously granted on January 17, 2012, as set forth herein and subject to the terms and Conditions of this Resolution.



Peter M. Klein, Chairman

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Planning Board of the Township of Livingston on November 1, 2016 wherein Board Members Dinar, Kalishman, Klein, Ratner and Alternate No. 2 Wishnew (in place and stead of Member Santola) voted for the Resolution. Member Leopold dissented in part by voting against granting a variance for valet parking spaces at Roosevelt Plaza while voting in favor of the remaining actions of the Board. No other Members were present and qualified to vote.



Jackie Coombs-Hollis, Secretary