

Attorney(s): John A. Zazzali, Esq.
Attorney Id No.: 034902009
Law Firm: The Law Offices of John A. Zazzali, LLC
Address: 670 Franklin Avenue
Nutley, NJ 07110

Telephone No.: (973) 617-2626
Fax No.: (973) 617-2629
E-mail: johnazazzali@ymail.com
Attorney(s) for Plaintiff(s): Diamond Spring Real Estate Investment, Inc.

Diamond Spring Real Estate Investment, Inc.

Plaintiff(s)

vs.

Township of Nutley

Defendant(s)

RECEIVED
MUNICIPAL CLERK'S OFFICE
2011 DEC - 7 A 8:41
TOWNSHIP OF NUTLEY
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
ESSEX COUNTY

DOCKET NO.: **ESX -008547-17**

CIVIL ACTION

Summons

FROM THE STATE OF NEW JERSEY

To the Defendant(s) Named Above:

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (A directory of the addresses of each deputy clerk of the Superior Court is provided and available in the Civil Division Management Office in the county listed above and online at http://www.njcourts.gov/forms/10153_deptyclerklawref.pdf) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$ **250.00** and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live or the Legal Services of New Jersey statewide hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is provided and available in the Civil Division Management Office in the county listed above and online at http://www.njcourts.gov/forms/10153_deptyclerklawref.pdf.

Date: **December 5, 2017**


Michelle M. Smith
Clerk of the Superior Court

Name of Defendant to be Served: **Township of Nutley - Authorized Agent**

Address of Defendant to be Served: **1 Kennedy Drive Nutley, NJ 07110**

Directory of Superior Court Deputy Clerk's Offices County Lawyer Referral and Legal Services Offices

ATLANTIC COUNTY

Deputy Clerk of the Superior Court
Civil Division, Direct Filing
1201 Bacharach Blvd., First Floor
Atlantic City, NJ 08401
LAWYER REFERRAL
(609) 345-3444
LEGAL SERVICES
(609) 348-4200

BERGEN COUNTY

Deputy Clerk of the Superior Court
Civil Division, Room 115
Justice Center, 10 Main Street
Hackensack, NJ 07601
LAWYER REFERRAL
(201) 488-0044
LEGAL SERVICES
(201) 487-2166

BURLINGTON COUNTY

Deputy Clerk of the Superior Court
Central Processing Office
Attn: Judicial Intake
First Floor, Courts Facility
49 Rancocas Road
Mt. Holly, NJ 08060
LAWYER REFERRAL
(609) 261-4862
LEGAL SERVICES
(609) 261-1088

CAMDEN COUNTY

Deputy Clerk of the Superior Court
Civil Processing Office
Hall of Justice, First Floor
101 South Fifth Street, Suite 150
Camden, NJ 08103
LAWYER REFERRAL
(856) 482-0618
LEGAL SERVICES
(856) 964-2010

CAPE MAY COUNTY

Deputy Clerk of the Superior Court
9 North Main Street
Cape May Court House, NJ 08210
LAWYER REFERRAL
(609) 463-0313
LEGAL SERVICES
(609) 465-3001

CUMBERLAND COUNTY

Deputy Clerk of the Superior Court
Civil Case Management Office
60 West Broad Street, P.O. Box 10
Bridgeton, NJ 08302
LAWYER REFERRAL
(856) 696-5550
LEGAL SERVICES
(856) 691-0494

ESSEX COUNTY

Deputy Clerk of the Superior Court
Civil Customer Service
Hall of Records, Room 201
465 Dr. Martin Luther King Jr. Blvd.
Newark, NJ 07102
LAWYER REFERRAL
(973) 622-6204
LEGAL SERVICES
(973) 624-4500

GLOUCESTER COUNTY

Deputy Clerk of the Superior Court
Civil Case Management Office
Attn: Intake, First Floor, Court House
1 North Broad Street
Woodbury, NJ 08096
LAWYER REFERRAL
(856) 848-4589
LEGAL SERVICES
(856) 848-5360

HUDSON COUNTY

Deputy Clerk of the Superior Court
Superior Court, Civil Records Department
Brennan Court House, First Floor
583 Newark Avenue
Jersey City, NJ 07306
LAWYER REFERRAL
(201) 798-2727
LEGAL SERVICES
(201) 792-6363

HUNTERDON COUNTY

Deputy Clerk of the Superior Court
Civil Division
65 Park Avenue
Flemington, NJ 08822
LAWYER REFERRAL
(908) 236-6109
LEGAL SERVICES
(908) 782-7979

MERCER COUNTY

Deputy Clerk of the Superior Court
Local Filing Office, Courthouse
175 South Broad Street, P.O. Box 8068
Trenton, NJ 08650
LAWYER REFERRAL
(609) 585-6200
LEGAL SERVICES
(609) 695-6249

MIDDLESEX COUNTY

Deputy Clerk of the Superior Court
Middlesex Vicinage
Second Floor - Tower
56 Paterson Street, P.O. Box 2633
New Brunswick, NJ 08903-2633
LAWYER REFERRAL
(732) 828-0053
LEGAL SERVICES
(732) 249-7600

MONMOUTH COUNTY

Deputy Clerk of the Superior Court
Court House
P.O. Box 1269
Freehold, NJ 07728-1269
LAWYER REFERRAL
(732) 431-5544
LEGAL SERVICES
(732) 866-0020

MORRIS COUNTY

Morris County Courthouse
Civil Division
Washington and Court Streets
P.O. Box 910
Morristown, NJ 07960-0910
LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 285-6911

OCEAN COUNTY

Deputy Clerk of the Superior Court
118 Washington Street, Room 121
P.O. Box 2191
Toms River, NJ 08754-2191
LAWYER REFERRAL
(732) 240-3666
LEGAL SERVICES
(732) 341-2727

PASSAIC COUNTY

Deputy Clerk of the Superior Court
Civil Division
Court House
77 Hamilton Street
Paterson, NJ 07505
LAWYER REFERRAL
(973) 278-9223
LEGAL SERVICES
(973) 523-2900

SALEM COUNTY

Deputy Clerk of the Superior Court
Attn: Civil Case Management Office
92 Market Street
Salem, NJ 08079
LAWYER REFERRAL
(856) 935-5629
LEGAL SERVICES
(856) 691-0494

SOMERSET COUNTY

Deputy Clerk of the Superior Court
Civil Division
P.O. Box 3000
40 North Bridge Street
Somerville, NJ 08876
LAWYER REFERRAL
(908) 685-2323
LEGAL SERVICES
(908) 231-0840

SUSSEX COUNTY

Deputy Clerk of the Superior Court
Sussex County Judicial Center
43-47 High Street
Newton, NJ 07860
LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 383-7400

UNION COUNTY

Deputy Clerk of the Superior Court
First Floor, Court House
2 Broad Street
Elizabeth, NJ 07207-6078
LAWYER REFERRAL
(908) 353-4715
LEGAL SERVICES
(908) 354-4340

WARREN COUNTY

Deputy Clerk of the Superior Court
Civil Division Office
Court House
413 Second Street
Belvidere, NJ 07823-1500
LAWYER REFERRAL
(908) 859-4300
LEGAL SERVICES
(908) 475-2010

Updated: 8/21/13

LAW OFFICES OF JOHN A. ZAZZALI, LLC

John A. Zazzali, Esq.

Attorney ID: 034902009

670 Franklin Avenue

Nutley, New Jersey 07110

T: 973.617.2626

F: 973.617.2629

Attorney for the Plaintiff(s),

Diamond Spring Real Estate Investment, Inc.

**DIAMOND SPRING REAL ESTATE
INVESTMENT, INC.**

Plaintiffs,

v.

**TOWNSHIP OF NUTLEY, TOWNSHIP OF
NUTLEY BOARD OF COMMISSIONERS,
TOWNSHIP OF NUTLEY PLANNING
BOARD, TOWNSHIP OF NUTLEY
ZONING BOARD, ELENI PETTAS IN HER
OFFICIAL CAPACITY AS RECORD
CUSTODIAN OF THE TOWNSHIP OF
NUTLEY, JOHN DOE AND JANE DOE
(fictitious names), XYZ CORP. (fictitious
corporation)**

Defendants.

**SUPERIOR COURT OF NEW JERSEY
ESSEX COUNTY
LAW DIVISION**

DOCKET NO.: ESX L-008547-17

Civil Action

**VERIFIED COMPLAINT IN LIEU OF
PREROGATIVE WRITS**

Plaintiff, DIAMOND SPRING REAL ESTATE INVESTMENT, INC., a New Jersey Corporation, having offices located at 116 Harrison Street in the Township of Nutley, County of Essex and State of New Jersey, by way of Complaint against the defendants herein, says:

NATURE OF THE ACTION

This is an action in lieu of prerogative writ challenging the validity of the Town of Nutley, N.J. Zoning Map dated May 10, 2007 (hereafter "2007 Zoning Map") and its zoning change of Block 7400 Lot 1 (hereafter "the Property"), which is designated in the 2007 Zoning Map as a B-3A zoning district, which change of use was never approved by an ordinance, and

which should be designated as a B-3 zoning district. (Copy of the 2007 Zoning Map attached as Exhibit A).

THE PARTIES

1. The Plaintiff, DIAMOND SPRING REAL ESTATE INVESTMENT, INC., is a corporation of the State of New Jersey, organized under the laws of the State of New Jersey.

2. Plaintiff is the owner of real property that consists of the land and all the building and structures on the land in the Township of Nutley, identified as Block 7400 Lot 1. The Property's street address is 116 Harrison Street Nutley, New Jersey 07110.

3. Plaintiff is an interested party affected by the 2007 Zoning Map hindering the development of the Property designated as being within a B-3A zoning district, which was previously designated on the Town of Nutley, N.J. Zone Use maps dated August 29, 2001 (hereafter "2001 Map") and May 25, 2004 (hereafter "2004 Map") as being located in a B-3 zoning district. (Copies of the 2001 Map and 2004 Map attached as Exhibits B and C respectively). Plaintiff's rights to the use and enjoyment of the property have been denied, violated, and infringed upon by the actions of the Defendants.

4. Defendant Township of Nutley is a political sub-division, and municipality and/or public entity located in the County of Essex, State of New Jersey and is organized pursuant to the laws of the State of New Jersey.

5. Defendant Township of Nutley Board of Commissioners (hereafter "Commissioners") are the governing body of the municipality and responsible for the adoption of the land use ordinance and the issuance of the Zoning Map and or Zone Use Map. The Township is a public agency.

6. Defendant Eleni Pettas is the Municipal Clerk of the Township of Nutley and in that capacity is the Township record custodian.

7. Defendant Township of Nutley Planning Board (hereafter "Planning Board") and or Defendant Township of Nutley Zoning Board are Municipal Agencies established pursuant to The Municipal Land Use Law (MLUL) with the jurisdiction to hear applications, prepare zoning maps and/or zone use maps that designate the zones various blocks and lots fall within, and development of the uses that are or are not permitted in the Township's zoning districts.

FIRST COUNT

CHALLENGING THE VALIDITY OF THE TOWN OF NUTLEY, N.J. ZONING MAP OF MAY 10, 2007 BASED UPON THE ABSENCE OF AN ORDINANCE DESIGNATING BLOCK 7400 LOT 1 TO BE WITHIN A B-3A ZONING DISTRICT AND INCONSISTENT WITH THE LAND USE ELEMENT OF THE MASTER PLAN.

1. Plaintiff repeats and realleges the statements contained in the Parties section of this Complaint and incorporates them herein as if set forth at length.

2. N.J. Stat. § 40:55D-62(a) requires that all zoning ordinances be substantially consistent with or designed to effectuate the Land Use element of the Master Plan.

3. The Planning Board adopted the current Master Plan on December 19, 2012.

4. On or about April 27, 2017, Plaintiff's counsel sent a letter to Mr. Pasquale J. Intindola, the Township of Nutley Construction and Zoning Official and, upon information and belief, a longtime Planning Board member, seeking to confirm that the property located at Block 7400 Lot 1 is in fact located in a B-3 zoning district. In response to same, on or about May 2, 2017, Mr. Intindola sent a letter to Alan Genitempo, Esq., Township Attorney for the Township of Nutley, advising as follows:

[The] zoning map with a revision date of May 10, 2007, shows the [property at Block 7400 Lot 1] to be located in a B-3A zoning district

The zoning map prior to May 10, 2007 dated August 29, 2001 shows the property to be located in a B-3 zone.

Whereas my research hasn't shown any ordinance change nor any recommendation in the Nutley Master Plan to change [Block 7400 Lot 1] to a B-3A. I believe a mistake has been made and must be corrected. I had also contacted our Township Engineer, and Township Clerk, who also cannot verify why the map was changed from B-3 to B-3A. I would like the authorization to change the zoning map on this property from B-3A to B-3.

(Attached hereto as Exhibit D)

Copied on Mr. Intindola's letter of May 2, 2017 are the Commissioners, the Municipal Clerk of the Township of Nutley, and the attorney for the Plaintiff, John A. Zazzali, Esq.

5. On or about May 9, 2017, Mr. Genitempo, the Township Attorney, sent a letter to the Plaintiff's attorney advising that "now that [he has] been officially advised [of the Plaintiff's] position, [he is] conducting an investigation to determine what the correct zoning designation is of this property, either B3 or B3A."

6. On or about June 26, 2017, The Township retained the law firm of Cleary, Giacobbe, Alfieri, Jacobs LLC to review and research the relevant zoning issues relating to this matter.

(Copy of the Board of Commissioners of the Township of Nutley Resolution 147-17 attached hereto as Exhibit E).

7. On or about August 3, 2017, in response to a status inquiry on behalf of the Plaintiff regarding the zoning of the Property, Mr. Genitempo replied via email that "The Commissioners have not taken any action other than hiring an attorney to study our zoning issues. He has not concluded his review."

8. On or about August 21, 2007, in response to additional inquiry regarding the zoning of the Property, Mr. Genitempo replied via email that "At this time the matter is still under review.

No final determination has been made. I am not at liberty to comment further."

9. On or about September 26, 2017, in response to further inquiry regarding the zoning of the Property, Mr. Genitempo replied via email that: "It is my understanding that the research has ended and to my knowledge the Township is not taking any action at this time. That is all I am able to report at this time."

10. On or about October 30, 2017, Plaintiff's counsel submitted a request to Mr. Genitempo for copy of the documents regarding the findings of Matthew Giacobbe, Esq. of Cleary, Giacobbe, Alfieri, Jacobs, LLC. In response to said request Mr. Genitempo replied via email that:

The documents requested in your email are subject to attorney client privilege, are attorney work product and are in draft form. We cannot therefore produce them to anyone. They are also not "public documents" subject to disclosure under OPRA. For those reasons I cannot produce them to you.

11. To date the Defendants have refused the Plaintiff's requests to correct the 2007 Zoning Map.

12. The 2007 Zoning Map as it applies to the Property violates the MLUL, is facially and presumptively invalid, and Township of Nutley's continued refusal to correct the 2007 Zoning Map is arbitrary, capricious, and unreasonable.

WHEREFORE the Plaintiff, Diamond Spring Real Estate Investment, Inc., demands Judgment against the Defendants, Township of Nutley, Township of Nutley Board of Commissioners, Township of Nutley Planning Board, Township of Nutley Zoning Board and Eleni Pettas in Official Capacity as record custodian of the Township of Nutley as follows:

a. For a declaration that the Town of Nutley, N.J. Zoning Map dated May 10, 2007 is void and of no effect as it designates Plaintiff's property at Block 7400 Lot 1 to be in a B-3A zoning

district, the Township of Nutley shall return the Plaintiff's property at Block 7400 Lot 1 to a B-3 zoning district and requires the Town of Nutley, N.J. Zoning Map dated May 10, 2007 shall be redrawn accordingly;

- b. Awarding attorneys' fees and costs of suit;
- c. Granting such other relief as the Court shall find equitable and just.

SECOND COUNT

CONSTITUTIONAL CLAIM

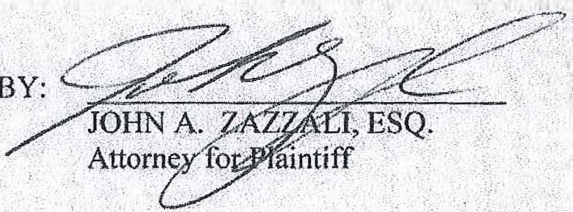
1. Plaintiff repeats and reiterates the allegations of the First Count of this Complaint and incorporates them herein as if set forth at length.
2. The actions of the Defendants in connection with the Plaintiff's request to correct the 2007 Zoning Map constitutes a non-trespassory partial taking, inverse condemnation and deprives the plaintiff of all or substantially all of the beneficial use of its property. This conduct is a violation of the *Just Compensation Clause of the Fifth Amendment of the United States Constitution*, as applied to the States through the *Fourteenth Amendment* and Article I, Paragraph 20, of the New Jersey Constitution.
3. The Defendants' violation of the constitutional rights of the Plaintiff by way of its taking of its property without just compensation entitles the plaintiff to full and complete compensation for its property.

WHEREFORE, the Plaintiff, Diamond Spring Real Estate Investment, Inc., demands Judgment against the Defendants, Township of Nutley, Township of Nutley Board of Commissioners,

Township of Nutley Planning Board, Township of Nutley Zoning Board, and Eleni Pettas in
Official Capacity as record custodian of the Township of Nutley as follows:

- a. For damages;
- b. Awarding attorneys' fees and costs of suit; and
- c. Granting such other relief as the Court shall find equitable and just.

BY:


JOHN A. ZAZZALI, ESQ.
Attorney for Plaintiff

CERTIFICATION IN ACCORDANCE WITH RULE 4:5-1

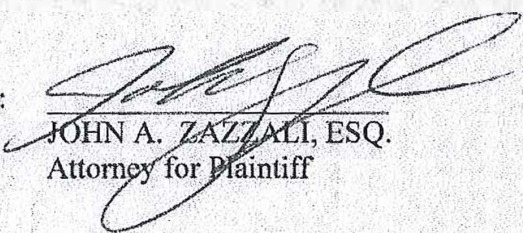
The undersigned certifies on information and belief as follows:

- 1. The matter in controversy is not the subject of any other action pending in a court or of a pending arbitration proceeding.
- 2. No other action or arbitration proceeding is contemplated. No other party should be joined.

I certify that the foregoing statements made by me are true to the best of my knowledge, information and belief. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DATE: 12/1/17

BY:


JOHN A. ZAZZALI, ESQ.
Attorney for Plaintiff

CERTIFICATION

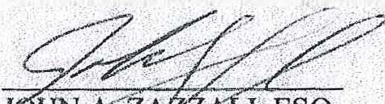
I, John A. Zazzali, Esq., do hereby certify that:

On June 28, 2017, I requested of the Township of Nutley a copy of any and all public records that relate to all changes made in the township zoning map dated 2001 as compared to the township zoning map dated 2007.

I hereby certify that the foregoing statements made by me are true. I am aware that, if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DATED: 12/1/17

By:


JOHN A. ZAZZALI, ESQ.
Attorney for the Plaintiff

VERIFICATION OF COMPLAINT

STATE OF NEW JERSEY)

COUNTY OF ESSEX)

GEORGE P. ZAZZALI, President of Diamond Spring Real Estate Investment, Inc. of full age, being duly sworn according to law upon my oath deposes and says:

1. I have read the Verified Complaint and, have personal knowledge regarding the matters stated herein. I hereby incorporate its contents as if set forth herein at length.

2. I certify that the foregoing statements made by me are true. I am/are aware that if any of the foregoing statements made by me are willfully false, I am/are subject to punishment.

BY:

George P. Zazzali
GEORGE P. ZAZZALI -President
Diamond Spring Real Estate Investment, Inc.

DATE: 12/1/17

Sworn and subscribed to before me this 1st day of December, 2017.

By:

Philip Sainz Jr.

, Notary

Notary Public of NJ

Commission Expires

PHILIP SAINZ, JR.

NOTARY PUBLIC OF NEW JERSEY

Commission Expires 2/16/2019

EXHIBIT A

TOWN OF NUTLEY, N.J. ZONING MAP

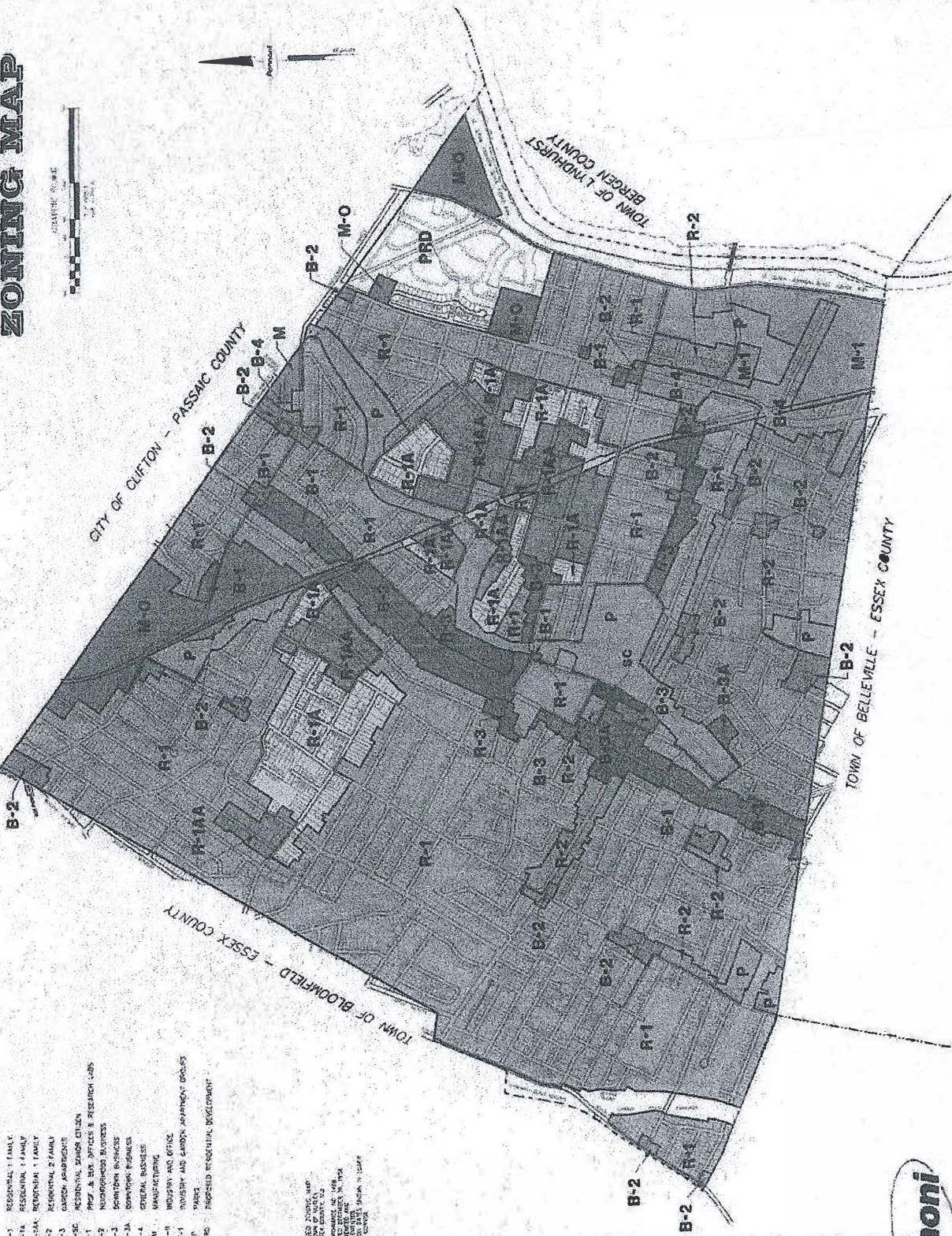


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ZONING DISTRICTS

R-1	RESIDENTIAL 1 FAMILY
R-1A	RESIDENTIAL 1 FAMILY
R-2	RESIDENTIAL 2 FAMILY
R-2A	RESIDENTIAL 2 FAMILY
R-3	GARDEN APARTMENTS
R-3C	APARTMENTS, SENIOR CITIZEN
R-4	PROF. & BUS. OFFICES & RESEARCH LABS
R-5	NUCLEAR BUSINESS
R-6	COMMERCIAL BUSINESS
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R-97	COMMERCIAL BUSINESS
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R-100	COMMERCIAL BUSINESS

PROPOSED ZONING MAP
TOWN OF NUTLEY
JULY 1, 1988
APPROVED BY THE
TOWNSHIP ENGINEER
DATE: 7/1/88
BY: [Signature]



SIGNED: _____ TOWNSHIP ENGINEER

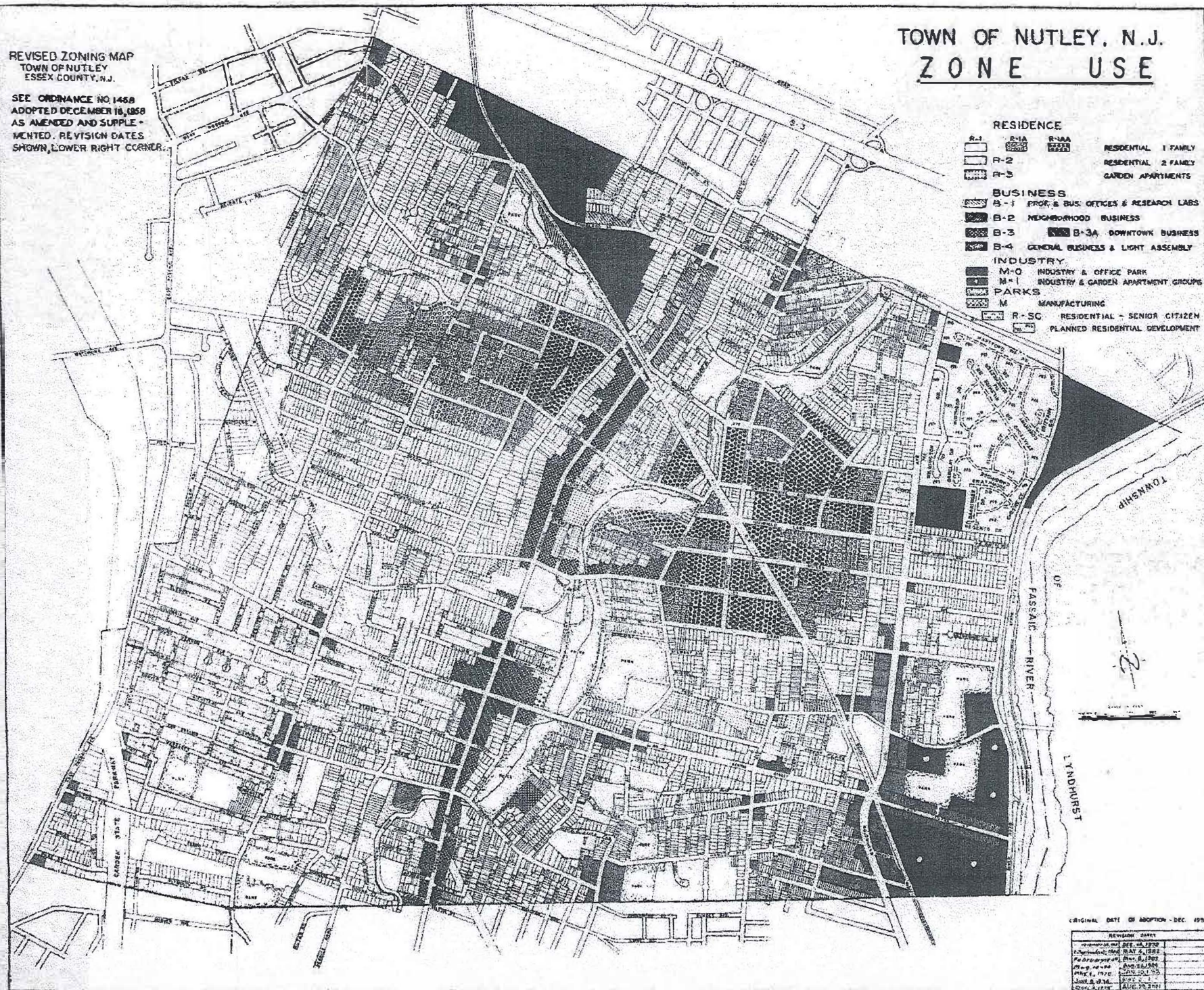
EXHIBIT B

REVISED ZONING MAP
TOWN OF NUTLEY
ESSEX COUNTY, N.J.

SEE ORDINANCE NO. 1468
ADOPTED DECEMBER 16, 1958
AS AMENDED AND SUPPLE-
MENTED. REVISION DATES
SHOWN, LOWER RIGHT CORNER.

TOWN OF NUTLEY, N.J. ZONE USE

- RESIDENCE**
- R-1 RESIDENTIAL 1 FAMILY
 - R-2 RESIDENTIAL 2 FAMILY
 - R-3 GARDEN APARTMENTS
- BUSINESS**
- B-1 PROF. & BUS. OFFICES & RESEARCH LABS
 - B-2 NEIGHBORHOOD BUSINESS
 - B-3 B-3A DOWNTOWN BUSINESS
 - B-4 GENERAL BUSINESS & LIGHT ASSEMBLY
- INDUSTRY**
- M-0 INDUSTRY & OFFICE PARK
 - M-1 INDUSTRY & GARDEN APARTMENT GROUPS
- PARKS**
- M MANUFACTURING
 - R-SC RESIDENTIAL - SENIOR CITIZEN
 - PLANNED RESIDENTIAL DEVELOPMENT



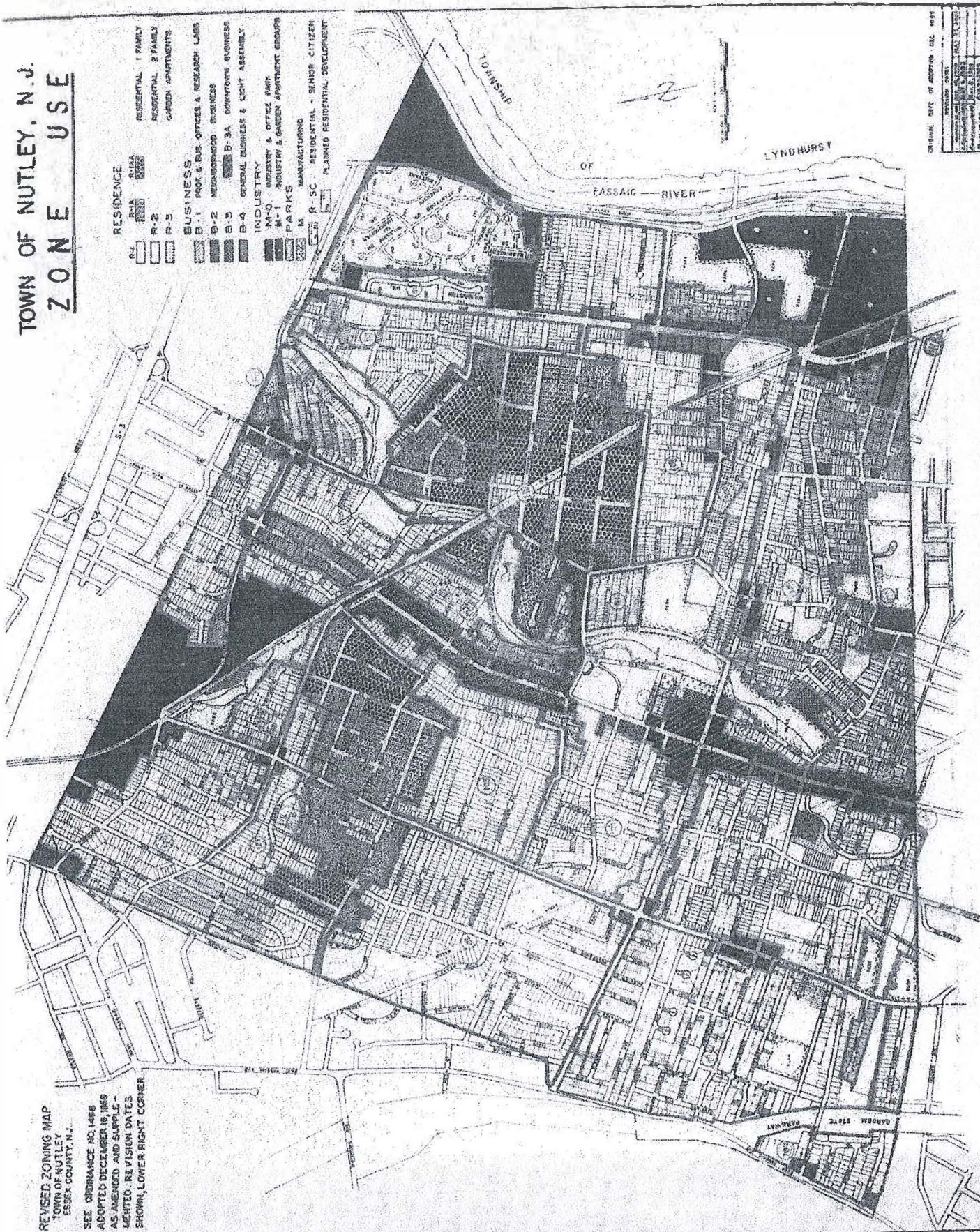
ORIGINAL DATE OF ADOPTION - DEC. 1958

REVISION	DATE
1	DEC. 16, 1958
2	MAY 6, 1962
3	MAY 6, 1962
4	MAY 6, 1962
5	MAY 6, 1962
6	MAY 6, 1962
7	MAY 6, 1962
8	MAY 6, 1962
9	MAY 6, 1962
10	MAY 6, 1962

EXHIBIT C

TOWN OF NUTLEY, N.J. ZONE USE

- RESIDENCE**
- R-1 SINGLE FAMILY
 - R-2 2 FAMILY
 - R-3 GARDEN APARTMENTS
 - R-4 1 FAMILY
 - R-5 2 FAMILY
- BUSINESS**
- B-1 PROF. & BUS. OFFICES & RESEARCH LABS.
 - B-2 NEIGHBORHOOD BUSINESS
 - B-3 B-3A DOWNTOWN BUSINESS
 - B-4 GENERAL BUSINESS & LIGHT ASSEMBLY
- INDUSTRY**
- M-0 INDUSTRY & OFFICE PARK
 - M-1 INDUSTRY & GARDEN APARTMENT GROUPS
 - M-2 MANUFACTURING
 - M-3 R-SC PLANNED RESIDENTIAL DEVELOPMENT



REVISED ZONING MAP
TOWN OF NUTLEY
ESSEX COUNTY, N.J.
SEE ORDINANCE NO. 1456
ADOPTED DECEMBER 18, 1959
AS AMENDED AND SUPPLEMENTED
DATE, REVISION DATES
SHOWN, LOWER RIGHT CORNER

REVISION	DATE	BY	REASON
1	1959	...	...
2	1960	...	...
3	1961	...	...
4	1962	...	...
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6	1964	...	...
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152	2110	...	...
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154	2112	...	...
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264	2222	...	...
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283	2241	...	...
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360	2318	...	...

EXHIBIT D

THOMAS J. EVANS
Director of Revenue and Finance

PAT INTINDOLA
Construction Official

DAVID BERRY
Zoning Official



TOWNSHIP OF NUTLEY

1 KENNEDY DRIVE
NUTLEY, NEW JERSEY 07110

TELEPHONE: (973) 284-4957 • FACSIMILE: (973) 284-0071

CODE ENFORCEMENT DEPT.

BUILDING
PLUMBING
ELECTRICAL
FIRE
ZONING

May 2, 2017

Mr. Alan Genitempo
Piro, Zinna, Cifelli, Paris, & Genitempo LLC
360 Passaic Avenue
Nutley NJ 07110

RE: DIAMOND SPRING POOL CLUB
116 Harrison Street
Block/Lot: 7400/1

Dear Mr. Genitempo:

It has been brought to my attention by a letter dated April 27, 2017 received from Mr. John A. Zazzali, Esq., that our zoning map with a revision date of May 10, 2007, shows the above captioned property to be located in a B-3A zoning district.

As a long time Planning Board member, I do not recall to include any properties outside those on Franklin Avenue to be included when we adopted the B-3A zone. Our intent was that shoppers would park in the municipal lot and walk to those businesses in the B-3A zone. We certainly did not include the Diamond Spring Pool Club. Also, the pool club if in a B-3A zone would be a non-conforming use; subject to tax appeals.

The zoning map prior to May 10, 2007 dated August 29, 2001 shows the property to be located in a B-3 zone.

Whereas my research hasn't shown any ordinance change nor any recommendation in the Nutley Master Plan to change to a B-3A. I believe a mistake has been made and must be corrected. I had also contacted our Township Engineer, and Township Clerk, who also cannot verify why the map was changed from B-3 to B-3A. I would like the authorization to change the zoning map on this property from B-3A to B-3. We the Planning Board at one time recommended the zone be changed to residential which also was never completed.

Looking forward to your response.

Sincerely,

Pat Intindola

cc: Board of Commissioners
Township Clerk
John Zazzali, Esq.

EXHIBIT E

BOARD OF COMMISSIONERS
TOWNSHIP OF NUTLEY, NEW JERSEY

Resolution

Introduced by: Commissioner Thomas J. Evans *Date:* June 26, 2017
Seconded by: Commissioner Alphonse Petracco *No.* 147-17

WHEREAS, the Township of Nutley has a need to acquire the services of an Attorney as Special Counsel to specifically provide legal counsel services concerning "Municipal Zoning Review" in the Township of Nutley as a non-fair and open contract pursuant to the provisions of N.J.S.A. 19:44 A-20.4 or 20.5, as appropriate; and

WHEREAS, it has been determined that the value of the aggregate services to be provided by this counsel for the year will not exceed \$7,500.00; and

WHEREAS, the Law Firm of Cleary, Giacobbe, Alfieri, Jacobs LLC., 169 Ramapo Valley Road, Upper Level 105, Oakland, NJ 07436, has submitted an acceptable proposal to provide this service at an hourly rate of \$175.00, for Partners and Associates; and

WHEREAS, the anticipated term of this contract is for a six (6) months, from July 1, 2017 through December 31, 2017; and

WHEREAS, the Law Firm of Cleary, Giacobbe, Alfieri, Jacobs LLC., has completed and submitted a Business Entity Disclosure Certification which certifies that they have not made any reportable contributions to a political or candidate committee in the Township of Nutley in the previous one year; and that the contract will prohibit them from making any reportable contributions through the term of the contract; and

WHEREAS, funds are available from account no. 7-01-226-205 (Subject to Adoption of the 2017 Municipal Budget) and have been certified by the chief financial officer, said certification being attached to this resolution,

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Township of Nutley authorizes the Mayor to enter into a contract for said services with the Law Firm of Cleary, Giacobbe, Alfieri, Jacobs LLC; and

BE IT FURTHER RESOLVED that the Business Disclosure Entity Certification and the Determination of Value be placed on file with this resolution.

...

I, Eleni Pettas, Township Clerk of the Township of Nutley, Essex County, NJ, do hereby certify that the foregoing is a true copy of a resolution adopted by the Board of Commissioners at a regular meeting held June 26, 2017

<i>Record of Vote</i>	<i>Commissioner Steven L. Rogers</i>	<i>Commissioner Mauro G. Tucci</i>	<i>Commissioner Thomas J. Evans</i>	<i>Commissioner Alphonse Petracco</i>	<i>Mayor Joseph P. Scarpelli</i>
<i>Yes</i>					
<i>No</i>					
<i>Not Voting</i>					
<i>Absent/Excused</i>					

AFFIDAVIT

The Local Finance Board is authorized by N.J.S.A. 52: 27BB-10 to adopt standard rules for municipal financial administration and N.J.S.A. 40A: 4-57 prohibits the expending of money, incurring of liability or the entering into; of any contract which by its terms involves the expenditure of money for any purpose for which no appropriation is provided, or in excess of the amount appropriated for such purpose. By virtue of the powers vested in the Local Finance Board by N.J.S.A. 52: 27BB-10 on October 20, 1975, the Local Finance Board adopted a procedure for the expenditure of public moneys by a municipality. This procedure became effective January 1, 1976.

In accordance with the rules and regulations adopted by the Local Finance Board with respect to the awarding of Contracts by the Municipal Governing Body, I do hereby certify that funds are available for the following purpose and this contract may be adopted.

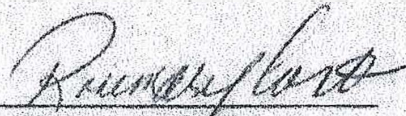
Purpose: PROFESSIONAL SERVICES-Spec. Counsel-Zoning Review

Account: 7-01-226-200

Fund: Current Fund

Amount: \$7,500.00

Date: June 26, 2017


Rosemary Costa
Treasurer, C.F.O.