

FRANZBLAU DRATCH
S. M. Chris Franzblau, Esq. (17669-1955)
A Professional Corporation
354 Eisenhower Parkway
Plaza I
Livingston, New Jersey 07039
(973) 992-3700
Attorneys for Plaintiff

DIAMOND SPRING REAL ESTATE
INVESTMENT, INC.

Plaintiff,

v.

TOWNSHIP OF NUTLEY, JOSEPH
SCARPELLI, MAYOR OF TOWNSHIP
OF NUTLEY, JOHN DOE and WILLIAM
DOE (fictitious names), XYZ CORP.
(fictitious corporation),

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY
Docket No. ESX-L-002663-19

Civil Action

SUMMONS

RECEIVED
MUNICIPAL CLERK'S OFFICE
2019 APR 10 A 10:42
TOWNSHIP OF NUTLEY

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 \$175.00 filing fee payable to the Clerk of the Superior Court 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 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. 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.

Michelle M. Smith

Michelle M. Smith/acting
Clerk of the Superior Court

DATED: April 9, 2019

Name of defendant to be served: Township of Nutley

Address of the Defendant to be Served: One Kennedy Drive, Nutley, NJ 07110

ATLANTIC COUNTY:

Deputy Clerk of the Superior Court
Civil Division, Direct Filing
1201 Bacharach Blvd., First FL
Atlantic City, NJ 08401

LAWYER REFERRAL
(609) 345-3444
LEGAL SERVICES
(609) 348-4200

BERGEN COUNTY:

Deputy Clerk of the Superior Court
Case Processing Section, Room 119
Justice Center, 10 Main St.
Hackensack, NJ 07601-0769

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 FL, Courts Facility
49 Rancocas Rd.
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
1st FL, Hall of Records
101 S. Fifth St.
Camden, NJ 08103

LAWYER REFERRAL
(856) 964-4520
LEGAL SERVICES
(856) 964-2010

CAPE MAY COUNTY:

Deputy Clerk of the Superior Court
9 N. Main Street
Box DN-209
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
Broad & Fayette Sts., P.O. Box 615
Bridgeton, NJ 08302

LAWYER REFERRAL
(856) 692-6207
LEGAL SERVICES
(856) 451-0003

ESSEX COUNTY:

Deputy Clerk of the Superior Court
50 West Market Street
Room 131
Newark, NJ 07102

LAWYER REFERRAL
(973) 622-6207
LEGAL SERVICES
(973) 624-4500

GLOUCESTER COUNTY:

Deputy Clerk of the Superior Court
Civil Case Management Office
Attn: Intake
First FL, Court House
1 North Broad Street, P.O. Box 129
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 Dept.
Brennan Court House - 1st Floor
583 Newark Ave.
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 08862

LAWYER REFERRAL
(908) 735-2611
LEGAL SERVICES
(908) 782-7979

MERCER COUNTY:

Deputy Clerk of the Superior Court
Local Filing Office, Courthouse
175 South Broad St., 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
Administration Building
Third Floor
1 Kennedy Sq., 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
71 Monument Park
P.O. Box 1269
Freehold, NJ 07728-1262

LAWYER REFERRAL
(732) 431-5544
LEGAL SERVICES
(732) 866-0020

MORRIS COUNTY:

Deputy Clerk of the Superior Court
Civil Division
30 Schnyler Pl., 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
Court House, Room 119
118 Washington Street
Toms River, NJ 08754

LAWYER REFERRAL
(732) 240-3666
LEGAL SERVICES
(732) 341-2727

PASSAIC COUNTY:

Deputy Clerk of the Superior Court
Civil Division
Court House
77 Hamilton St.
Paterson, NJ 07505

LAWYER REFERRAL
(973) 278-9223
LEGAL SERVICES
(973) 345-7171

SALEM COUNTY:

Deputy Clerk of the Superior Court
92 Market St., P.O. Box 18
Salem, NJ 08079

LAWYER REFERRAL
(856) 935-5628
LEGAL SERVICES
(856) 451-0003

SOMERSET COUNTY

Deputy Clerk of the Superior Court
Civil Division Office
New Court House, 3rd Fl.
P.O. Box 3000
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
1st FL, Court House
2 Broad Street
Elizabeth, NJ 07207-6073

LAWYER REFERRAL
(908) 353-4715
LEGAL SERVICES
(908) 354-4340

WARREN COUNTY

Deputy Clerk of the Superior Court
Civil Division Office
Court House
Belvidere, NJ 07823-1500

LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 475-2010

FRANZBLAU DRATCH
 S.M. Chris Franzblau, Esq. (176691955)
 A Professional Corporation
 354 Eisenhower Parkway
 Plaza I
 Livingston, New Jersey 07039
 (973) 992-3700
 Attorneys for Plaintiff

4-9-19

DIAMOND SPRING REAL ESTATE INVESTMENT, INC.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: ESSEX COUNTY
Plaintiff(s)	DOCKET NO. ESX-L-
v.	
TOWNSHIP OF NUTLEY, JOSEPH SCARPELLI, MAYOR OF TOWNSHIP OF NUTLEY, JOHN DOE and WILLIAM DOE (fictitious names), XYZ CORP. (fictitious corporation)	CIVIL ACTION
Defendant(s),	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

1. This is an action in Lieu of Prerogative Writ challenging the validity of the Town of Nutley, Ordinance N.O. 3414, (Article VII) hereinafter referred to as Amendment N.O. 3414 defined as "AN ORDINANCE TO AMEND AN ORDINANCE CODIFIED IN THE

CODE OF THE TOWNSHIP OF NUTLEY, CHAPTER 700,
ENTITLED ZONING" heard on February 19, 2019, annexed
hereto as **Exhibit A** and its purported zoning changes to Block
7400, Lot 1 (hereinafter "the Subject Property"), which is
designated in the 2001 Zoning Map as a B-3 zoning district in
accordance with the B-3 Zoning Ordinance of 1989 and again in
the 2004 Zoning Map. This B-3 zoning district as pertains to the
Subject Property is sought to be substantially changed to be
located into another zone as B-3A by Defendants in the
previously file and presently pending law suit entitled: Diamond
Spring Real Estate Investment, Inc. 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, , et al, Docket No. ESX-L-008547-17 before Judge Grace
Spencer.

2. 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. Annexed hereto as **Exhibit
B** is the Zoning Map of the Township of Nutley.
3. Plaintiff is the owner of real property that consists of the land and
buildings on the property in the Township of Nutley, identified as
Block 7400, Lot1. The Property's street address is 116 Harrison

Street, Nutley, New Jersey 07110.

4. This new proposed Amended Ordinance N.O. 3414 seeks, without compliance with the New Jersey Municipal Land Use Law (hereinafter referred to as "MLUL", 40 N.J.S.A. 40:55D to change the substantial uses of plaintiff's property by the proposed Amendment N.O. 3414, at public hearings on January 15, 2019 and February 19, 2019 and without personal notice to citizens of Township of Nutley and without Planning Board approval or Master Plan recommendations and without a hearing of the Township of Nutley Planning Board and other statutory violations.
5. Plaintiff is an interested party adversely affected by the unauthorized 2007 Zoning Map hindering the development of the Property designated as being with a B-3A zoning district, which was previously designated on the Township 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 and which is the subject matter of the suit described in Paragraph One (1) herein above. (Copies of the 2001 Map and 2004 Map attached hereto as **Exhibits C**). Plaintiff's rights to the use and enjoyment of the property have been denied, violated and infringed upon by the actions of the Defendants in enacting the purported N.O. 3414 ordinance as of February 15, 2019. The

aforesaid issues are presently being litigated in a similar suit and has not yet been resolved or finalized in the case presently pending at this time with same underlying issues. Amendment N.O. 3414 is an attempt to cause the pending suit to be disregarded and undermined.

6. 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, and is subject to the aforesaid New Jersey statutes (MLUL).
7. Defendant Township of Nutley Board of Commissioners (hereinafter "BOC") constituting 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 in accordance with MLUL. The Township is a public agency.
8. The defendants seek to assume that the Subject Property is not located in a B-3 zone and is not located in a B-3A zone which is different and seek to impose a zoning change pertaining to the Subject Property by the purported Amendment N.O. 3414 by changing the uses presently available to the Subject Property namely by changing the residential density, uses and bulk requirements, without compliance with MLUL and to circumvent the present pending case on these issues between these same

parties.

9. The purported Amendment N.O. 3414 was never presented to the Township of Nutley Planning Board. No notices of the aforesaid changes were ever served upon the property owners pursuant to MLUL pursuant to this attempted change of density and uses of as in the previous present litigation and in this new case. No hearing, no recommendations by a Master Plan, no recommendation from Planning Board, no filed transcripts, no notice to property owners pursuant to MLUL was undertaken and there are other deviations as required to be undertaken all of which were disregarded in efforts to change the residency requirements of B-3, as was attempted to be done in the case referred to in Paragraph One(1) herein above and presently pending.
10. In order to effectuate changes of residential density, and bulk requirements and otherwise would require compliance with MLUL procedures as per 40 N.J.S.A. 55D-62.1. The aforesaid proposed Amendment N.O. 3414 was simply a Resolution passed by the Board of Commissioners.
11. In January and February 2019 to circumvent the New Jersey statutes, MLUL and change the density and bulk requirements as described by the Mayor in the conference Sessions of Commissioners on January 19, 2019 the Mayor specifically

stated that the subject ordinance was a “density ordinance”.

(Transcript of conference page 7, line 7).

12. In the public meeting which took place also on January 15, 2019 at a public hearing, (Transcript 7, 15, 84) the Mayor introduced the proposed Ordinance N.O. 3414 and again described to the public that it was a “density ordinance” (Line 15-23 of said transcript of public hearing). On February 19, 2019, the Mayor again in addressing the public meeting referred to the aforesaid ordinance as being a density ordinance change. (Transcript PAGE 8, 9, 17, 18, 20 21).
13. The attempted change was for the purpose of stabilizing additional costs of childrens’ education and other municipal fiscal costs. The B-3 zone in which the Subject Property is located is governed specifically by the 1989 Zoning Ordinance filed with the Clerk of the Township of Nutley and is the only filed Zoning Ordinance on record pertaining to the B-3 zone in which the Subject Property is located and which is corroborated by the Zoning Maps 2001 and 2004 published by the Township of Nutley.
14. The Clerk of Township of Nutley has testified under oath that the only zoning ordinance of record was the Zoning Ordinance of 1989 which sets the Subject Property on a B-3 zone. In 2017 the Building Inspector of the Township of Nutley admitted in

writing there were no other records on file in his offices or as a result of his inspection of Township of Nutley records as of 2017 other than the ordinance of 1989 as set forth herein above which represents the B-3 zone, only, and specifically the Subject Property is in a B-3 zone.

15. The B-3 zoning ordinance provides that the Subject Property is within the B-3 zone and permits mixed commercial and residential uses. The purported Amendment 3414 of 2019 is either ambiguous or completely eliminates the zoning of the Subject Property's residential use in its entirety or alternatively permits the use of the Subject Property for residential purposes for up to 24 units per acre.
16. The Subject Property is completely surrounded by a municipal park and residential property and is most suitable for residential and/or mixed use.

FIRST COUNT

CHALLENGING THE VALIDITY OF THE TOWN OF NUTLEY ORDINANCE NO. 3414 AS ADOPTED ON FEBRUARY 19, 2019 AND THEREAFTER PUBLISHED ON FEBRUARY 28, 2019, BASED UPON THE DEFENDANTS FAILURE TO PROVIDE THE PLAINTIFF WITH THE STATUTORILY REQUIRED PERSONAL NOTICE CONTRARY TO THE STATUTORY REQUIREMENTS OF THE MLUL AND SPECIFICALLY *N.J.S.A. 40:55d-62.1*, AS SAID ORDINANCE AFFECTS SUBSTANTIAL MATERIAL CHANGES TO THE DENSITY AND OR BULK REQUIREMENTS OF THE ZONING DISTRICT IN WHICH THE DENSITY AND OR BULK REQUIREMENTS OF THE ZONING DISTRICT IN WHICH THE PROPERTY IS LOCATED.

17. Plaintiff repeats and realleges the statements contained in the preceding paragraphs of this Complaint herein above and incorporates them herein as if set forth at length.
18. 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.
19. N.J.S.A. 40:55D-62.1 directs that all property owners within a zoning district shall receive personal notice if the municipal body seeks to change the classification or boundaries of a zoning district. The statute provides in pertinent part:

Notice of a hearing on an amendment to the zoning ordinance proposing a change to the classification or boundaries of a zoning district, exclusive of classification or boundary changes recommend in a periodic general reexamination of the master plan by the planning board pursuant to [N.J.S.A. 40:55D-89], shall be given at least 10 days prior to the hearing by the municipal clerk to the owners of all real property as shown on the current tax duplicates, located, in the case of classification change, within the district and within the State within 200 feet in all directions of the boundaries of the district, and located, in the case of a boundary change, in the State within 200 feet in all directions of the proposed new boundaries of the district which is the subject of the hearing.

• • • • •

A notice pursuant to this section shall state the date, time and place of the hearing, the

nature of the matter to be considered and an identification of the affected zoning districts and proposed boundary changes, if any, by street names, common names or other identifiable landmarks and by reference to lot and block numbers as shown on the current tax duplicate in the municipal tax assessor's office.

Notice shall be given by: (1) serving a copy thereof on the property owner as shown on the said current tax duplicate, or his agent in charge of the property, or (2) mailing a copy thereof by certified mail and regular mail to the property owner at his address as shown on the said current tax duplicate.

[N.J.S.A. 40:55D-62.1.]

20. Defendants failed to comply with the statutory requirements of N.J.S.A. 40:55D-62.1, as the failure to provide personal notice to DSRE prior to the adoption of Ordinance 3414.
21. The present relevant zoning ordinances affecting development of The Subject Property and other properties in the mixed use zoning districts within the Township of Nutley have no density limitation prior to the adoption of Ordinance 3414.
22. The Defendant, Board of Commissioners (hereinafter "BOC") by Mayor Scarpelli introduced Ordinance 3414 on or about January 15, 2019 at a public hearing.
23. As introduced on January 15, 2019, Ordinance N.O. 3414 permitted only 28 residential units per acre in the relevant mixed use zoning districts but specifically prohibited residences on Plaintiff's property.

24. During the aforementioned hearing, Mayor Joseph Scarpelli, as a member of the Defendant BOC, acknowledges that Ordinance N.O. 3414 causes material changes to the density of the mixed use zoning districts within the Township of Nutley as he refers to the introduction of the “density ordinance.” (Transcript of the BOC Conference Session of January 15, 2019.
25. On or about February 19, 2019, at a public hearing, the BOC further amended the density in the relevant mixed use zoning districts by reducing the permissible density to 24 units per acre, thereby increasing the substantial impact said ordinance would have on the effected zoning districts, and specifically eliminated residential density from the B-3A zone.
26. Ultimately, the Defendant BOC adopted Ordinance 3414 on or about February 19, 2019 at a public hearing thereby substantially restricting the permissible density and other bulk requirements in the effected zoning districts. However, the amended B-3A zone prohibits residency, and the amended B-3 zone now only permits 24 units per acre for mixed use development and is ambiguous as to its application to Plaintiff’s property by the change and effectively would change the residency, bulk and density classifications but “prohibits” residential.
27. The aforesaid Ordinance 3414 of February 2019 seeks to make

proposed zoning “classifications” as defined by the MLUL which can only be effectuated by compliance with 40 N.J.S.A. 55:62-1 which has been knowingly avoided and not complied with contrary to statutory and case law as prescribed in Robert Pacilli Homes LLC v Woolwich, 394 NJ Super 319 (App. Div 2007).

28. Residential and commercial use changes constitute “classification” changes within established statutory and case law criteria.
29. The 3414 Ordinance is an attempt to amend the B-3 Zoning Ordinance of 1989 by making changes in bulk and density requirements of the 1989 B-3 Zoning Ordinance and effectively “down zoning” the Subject Property by a Board of Commissioners in defiance of the “Municipal Land Use Law” 40 N.J.S.A. 55D-62.1 and other regulatory requirements by eliminating residential housing in its entirety and/or by reduction in density and effectuating changes in bulk requirements and uses.

WHEREFORE, the plaintiff Diamond Spring Real Estate Investment, Inc. demands judgment against the Defendant, Township of Nutley, the Mayor of Nutley (presently Joseph Scarpelli), jointly as follows:

- a. A declaration that the Township of Nutley, New Jersey Amendment to “Ordinance No. 3414 To Amend an Ordinance Codified in the Code in the Township of Nutley

Chapter 700" is void and of no effect, or to revise and amend the aforesaid ordinance to provide that the Subject Property have an alternative mixed use of building 24 residential units per acre as an alternate use of the aforesaid subject property irrespective of whether it is located in a B-3 or B-3A zone or that the property be subject to Eminent Domain.

SECOND COUNT
CONSTITUTIONAL CLAIM

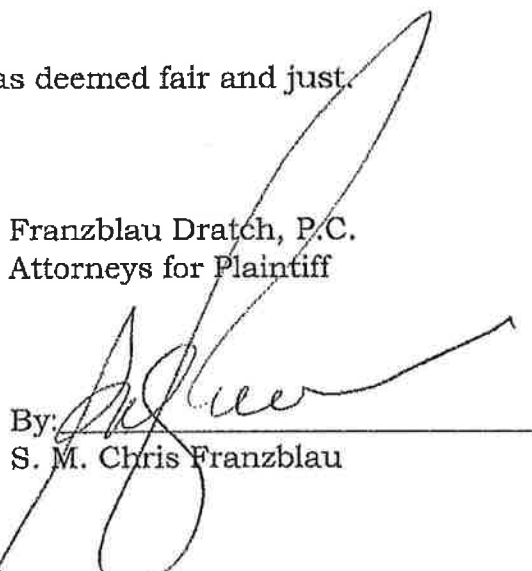
1. Plaintiff repeats and reiterates the allegations of the First Count of this Complaint and incorporates them herein as if set forth at length.
2. The actions of the Defendants in connection with the adoption of Ordinance No. 3414 constitutes a non-trespassory taking and condemnation and deprives the 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 constitution rights of the Plaintiff by way of its taking of its property without just compensation and in violation thereof by intentional wrongful application of law entitles the Plaintiff to full and complete compensation for its

property.

WHEREFORE the Plaintiff Diamond Springs Real Estate Investment, Inc., demands Judgment against the Defendants, jointly and severally as follows:

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

Franzblau Dratch, P.C.
Attorneys for Plaintiff

By: 
S. M. Chris Franzblau

John A. Zazzali, Esq.
Of Counsel

Dated: April 9, 2019

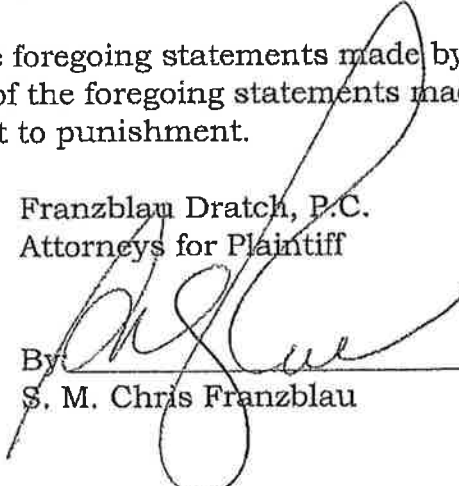
CERTIFICATION IN ACCORDANCE WITH RULE 4:5-1

The undersigned certifies on information and belief as follows:

1. The matter in controversy is the subject of an action pending which is Diamond Spring Real Estate Investment, Inc. 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, , et al, Docket No. ESX-L-008547-17.
2. The present pending action includes the same issues and inter-related issues with this Prerogative Writ and should be consolidated to prevent inconsistent results.
- 3.

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 wilfully false, I am subject to punishment.

Franzblau Dratch, P.C.
Attorneys for Plaintiff

By 
S. M. Chris Franzblau

Dated: April 9, 2019

VERIFICATION OF COMPLAINT

STATE OF NEW JERSEY)

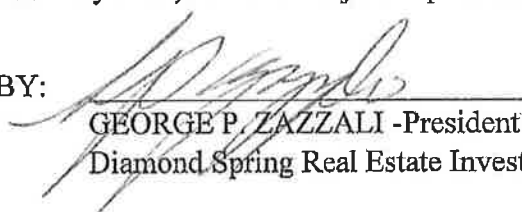
)

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.

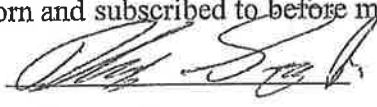
BY:


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

DATE:

Sworn and subscribed to before me this 9th day of April, 2019.

By:


Philip Sainz Jr., Notary
Notary Public of NJ
Commission Expires _____

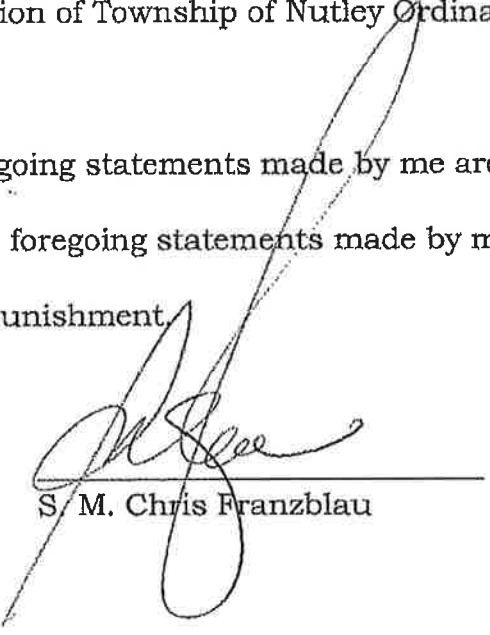
PHILIP SAINZ, JR.
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 2/15/24

CERTIFICATION

I, S. M. Chris Franzblau, Esq. do hereby certify that:

On April 8, 2019, I requested of the Township of Nutley a copy of any and all public records relating to the notices given to effected property owners prior to the adoption of Township of Nutley Ordinance No. 3414.

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 wilfully false, I am subject to punishment.


S. M. Chris Franzblau

Dated: *April 9, 2019*

Exhibit A

ORDINANCE NO. 3414

INTRODUCED BY: MAYOR JOSEPH P. SCARPELLI ON BEHALF OF THE BOARD OF COMMISSIONERS

INTRODUCED ON: JANUARY 15, 2019

PUBLISHED: JANUARY 24, 2019

PUBLIC HEARING: FEBRUARY 19, 2019

PUBLISHED: FEBRUARY 28, 2019

ORDINANCE NO. 3414

AN ORDINANCE TO AMEND AN ORDINANCE CODIFIED IN THE CODE OF THE TOWNSHIP OF NUTLEY, CHAPTER 700, ENTITLED ZONING, PARTICULARLY THE FOLLOWING ARTICLES:

ARTICLE III, TERMINOLOGY, DEFINITIONS

ARTICLE V, GENERAL REGULATIONS

ARTICLE VII, USE REGULATIONS, MIXED USE

ARTICLE IX, GARDEN APARTMENTS

ARTICLE XIII, PARKING SPACES AND LOADING BERTHS

ARTICLE XVIII, ADMINISTRATION

BE IT ORDAINED by the Board of Commissioners of the Township of Nutley, in the County of Essex, New Jersey as follows;

Article III, § 700-3 (B), Definitions.

AMEND

MIXED USE BUILDING — A building containing more than one use such as professional and business offices, restaurants and bars which serve food (first floor only), service establishments (personal and household); retail stores; and residential (not permitted on the first floor), as outlined in the Permitted Use for each District as per Article V. General Regulations

Article V, § 700-15. Permitted uses in B-1 Zoning District.

Amend

Subsection A. - Professional offices.

Subsection B. - Business offices.

Subsection K. - Mixed use buildings for commercial and residential uses subject to section 700-40.

Article V, § 700-16. Permitted uses in B-2 Zoning District.

DELETE

Subsection I. - Mixed use buildings for commercial and residential uses.

Article V, § 700-17. Permitted uses in B-3 Zoning District.

AMEND

Subsection J. Mixed-use buildings for commercial and residential uses subject to Section 700:40.

Article V, § 700-18. Permitted uses in B-3A Zoning District.

AMEND

Subsection A (10) – Mixed-use buildings for retail, service and office uses (Residential Prohibited).

Article V, § 700-19. Permitted uses in B-4 Zoning District.

AMEND

Subsection A (12) – Mixed-use commercial and retail (Residential Prohibited).

Article VII, § 700-40. Mixed-Use.

AMEND

A "mixed-use" is the use of a building, multi-stories in height, for residential and business uses, the residential use of which shall be permitted on the second and third floors of mixed-use buildings. The first floor of a building shall be determined by "street level entry" to the building regardless of topographical conditions. Mixed-use buildings containing residential uses shall only be permitted in the B-1 and B-3 districts in accordance with Sections 700-15 and 700-17. A mixed-use building with a residential use is strictly prohibited in any B3-A or B-4 Districts, which permits a mix of nonresidential mixed uses only. A mixed-use building is permitted in accordance with the following regulations and restrictions:

- A. The required off-street parking in conjunction with a mixed-use building shall be equal to the sum of the required off-street parking in Article XIII per each use.
- B. The maximum density for a mixed-use building is established in the Schedule of Regulations as to Bulk, Height and Other Requirements (Section 700 Attachment 3).
- C. A minimum of 30% of the first floor of a mixed-use building shall be non-residential interior space based on the footprint of the largest floor.
- D. The minimum size of a one-bedroom unit shall be 925 square feet. A two-bedroom unit shall be a minimum of 1,175 square feet.
- E. Every room area of 69 square feet or more (except the kitchen, the living/dining room, and bathroom) shall be considered as a bedroom, regardless of the building plan designation.
- F. Where more than 50% of the street frontage between intersecting streets or between an intersecting street and the Township boundary line is developed with business uses, the front yard requirement shall be equal to the average front yards of the existing business buildings between the intersecting streets, or between an intersecting street and the Township boundary line, on the same side of the street calculated to the nearest foot. However, in no case shall a building be located closer than three feet to the right-of-way line of Franklin Avenue.

- G. Where less than 50% of the street frontage between intersecting streets, or between an intersecting street and the Township boundary line, is developed with business uses, the front yard requirement shall be three feet from the right-of-way line of Franklin Avenue and 10 feet from the right-of-way line of any other street.

ARTICLE IX – Garden Apartments

ADD

§ 700-49.1. Permitted Zoning Districts

- ✓Garden Apartments shall not be permitted in any District except as presently exists in the R-3 and M-1 District. For the purposes of zoning, apartments in existence as of the year 2018, shall be considered a permitted use.

ARTICLE XIII – Parking Spaces and Loading Berths, Section 700-91, Subsection A

ADD

Mixed-Use
(Residential
Component)

There shall be 1.8 parking spaces for a one-bedroom unit and an additional 0.5 parking space for each additional bedroom.

Article XVIII, § 700-118. Interpretation and application of provisions

AMEND

In interpreting and applying the provisions of this chapter, if there is a conflict between Zoning Ordinance sections, the more restrictive of the two requirements limiting development shall govern and shall be held to be the minimum requirements for the promotion of the public health, safety, convenience, prosperity and general welfare.

ATTACHMENT 3 - Schedule of Regulations as to Bulk, Height and Other Requirements Business Districts

AMEND SCHEDULE

700 Attachment 3

Schedule of Regulations as to Bulk, Height and Other Requirements
Business Districts

District	Type of Use	Minimum Lot Size				Minimum Yard Dimensions				Maximum Height		Maximum Lot Coverage (percent)	Surface Coverage Maximum Impervious Coverage (percent)	Additional Requirements
		Area (feet)	Width (feet)	Depth (feet)	Density (Dwelling Units per Acre)	Front (feet)	Rear (feet)	1 Side (feet)	Both Sides (feet)	Stories	Feet			
B-1	Neighborhood Business	5,000	50	100	N/A	20	25	6	10	2	25	50	80	
	Mixed-Uses	5,000	50	100	17.42	20	25	6	10	2	25	50	80	See §700-40
B-2	Residential above business	5,000	50	100	17.42	10 ^f	25	6	10	2	25	50	80	
	Neighborhood business	5,000	50	100	N/A	10 ^f	25	6	10	2	25	50	80	
B-3	Downtown Business	3,000	30	100	N/A	3	10; if adjacent to R Zone 30	None required, except height of building if side yard is adjacent to a R Zone minimum of 10 feet	0; 4 for each side yard if provided	3	40	50	90	at 10'
	Mixed-Uses	3,000	50	100	24 ^f	3	10; if adjacent to R Zone 30	None required, except height of building if side yard is adjacent to a R Zone minimum of 10 feet	0; 4 for each side yard if provided	3	40	50	90	See §700-40

60

District	Type of Use	Minimum Lot Size				Minimum Yard Dimensions				Maximum Height		Maximum Lot Coverage (percent)	Surface Coverage Maximum Impervious Coverage (percent)	Additional Requirements
		Area (feet)	Width (feet)	Depth (feet)	Density (Dwelling Units per Acre)	Front (feet)	Rear (feet)	1 Side (feet)	Both Sides (feet)	Stories	Feet			
B-3A	Downtown Business	5,000	50	100	N/A	3	10; if adjacent to R Zone 30	0; 4 if provided	0; 4 for each side yard if provided	3	40	70	90	
	Mixed-Uses	5,000	50	100	N/A	3	10; if adjacent to R Zone 30	0; 4 if provided	0; 4 for each side yard if provided	3	40	70	90	See §700-40
B-4	Nonresidential and Mixed-Uses	5,000	50	100	N/A	20	10; if adjacent to R Zone 30	1/2 building height (10 feet minimum); height of building is adjacent to R Zone	Height of building 10-20 feet	2	25	60% for buildings and storage areas	85%	See §700-40

Dts

ATTACHMENT 4 - Schedule of Regulations as to Bulk, Height and Other Requirements Industrial Districts

AMEND SCHEDULE

700 Attachment 4

Schedule of Regulations as to Bulk, Height and Other Requirements Industrial Districts

District	Type of Use	Minimum Lot Size				Minimum Yard Dimensions				Maximum Height		Maximum Lot Coverage (percent)	Surface Coverage Maximum Impervious Coverage (percent)
		Area (square feet)	Width (feet)	Depth (feet)	Density (Dwelling Units per Acre)	Front (feet)	Rear (feet)	1 Side (feet)	Side Other (feet)	Stories	Feet		
M	Manufacturing, warehouses, greenhouses, printing and auto service	16,000	100	100	N/A	20	Height of building; 50 if adjacent to R Zone	10	20	4	50	50%	N/A
M-1	Nonresidential and Mixed-uses	10,000	100	100	N/A	20	Height of building; 50 if adjacent to R Zone	10	20	4	50	50%	N/A
	Garden Apartment Group	43,560	150	100	20	35	Height of building; 50 if adjacent to R Zone	15	30	2.5	30	25%	N/A
M-O	M uses and office building	43,560	150	150	N/A	Height of building, minimum 20	Height of building, minimum 20; 50 if adjacent to R Zone	10	20	8	100	50%	N/A
M-2	Nonresidential and Mixed-uses	10,000	100	100	N/A	20	Height of building; 50 if adjacent to R Zone	10	20	4	50	50%	N/A

Notes:

1. Larger yard is to be located adjacent to side street line on corner lots.
2. If over 50% of the frontage in the B-2 Zone on one side of the street between intersecting streets or between an intersecting street and a Township boundary line is developed with business uses, the front yard requirement shall be equal to the average of the front yard depths of such business uses, but no less than three feet.

BE IT FURTHER ENACTED that all other terms and conditions and locations in Chapter 700 shall remain as heretofore set forth in the Code of the Township of Nutley, except where such a reading would not give meaning to and further the application of this amendment. In such case and in such event, the terms and conditions shall have a meaning consistent with the intent of this amendment; and

BE IT FURTHER ENACTED that the within ordinance shall become effective after passage and publication, pursuant to law.

Notes:

- 1 Larger yard is to be located adjacent to side street line on corner lots.
- 2 If over 50% of the frontage in the B-2 Zone on one side of the street between intersecting streets or between an intersecting street and a Township boundary line is developed with business uses, the front yard requirement shall be equal to the average of the front yard depths of such business uses, but no less than three feet.

Case Summary

Case Number: ESX L-008547-17

Case Caption: Diamond Spring Real Estate In Vs Township Of Nu

Court: Civil Part

Case Type: Actions In Lieu Of Prerogative Writs

Case Track: 4

Original Discovery End Date: 05/11/2019

Original Arbitration Date:

Original Trial Date:

Disposition Date:

Venue: Essex

Case Status: Active

Judge: Bahir Kamil

Current Discovery End Date: 05/11/2019

Current Arbitration Date:

Current Trial Date:

Case Disposition: Open

Case Initiation Date: 12/05/2017

Jury Demand: None

Team: 2

of DED Extensions: 0

of Arb Adjournments: 0

of Trial Date Adjournments: 0

Statewide Lien: No

Plaintiffs

Diamond Spring Real Estate Inv AKA Diamond Spring Real Estate Investment, Inc.

Party Description: Corp

Address Line 1: 116 Harrison Street

City: Nutley

State: NJ

Attorney Email: JOHNAZAZALI@YMAIL.COM

Address Line 2:

Zip: 07110

Attorney Name: John A Zazzali

Attorney Bar ID: 034902009

Phone:

Defendants

Township Of Nutley Board Of Co AKA Township Of Nutley Board Of Commissioners

Party Description: Business

Address Line 1: 1 Kennedy Drive

City: Nutley

State: NJ

Attorney Email: ACIFELLI@PIROZINNALAW.COM

Address Line 2:

Zip: 07110

Attorney Name: Angelo J Cifelli

Attorney Bar ID: 010291975

Phone:

Township Of Nutley

Party Description: Municipality

Address Line 1: 1 Kennedy Drive

City: Nutley

State: NJ

Attorney Email: ACIFELLI@PIROZINNALAW.COM

Address Line 2:

Zip: 07110

Attorney Name: Angelo J Cifelli

Attorney Bar ID: 010291975

Phone:

John Doe

Party Description: Fictitious

Address Line 1:

City:

State:

Attorney Email:

Address Line 2:

Zip: 00000

Attorney Name:

Attorney Bar ID:

Phone:

Eleni Pettas AKA Eleni Pettas Official Capacity-Record Custodian Township Nutley

Party Description: Individual

Address Line 1: 1 Kennedy Drive

City: Nutley

State: NJ

Attorney Email: ACIFELLI@PIROZINNALAW.COM

Address Line 2:

Zip: 07110

Attorney Name: Angelo J Cifelli

Attorney Bar ID: 010291975

Phone:

Township Of Nutley Zoning Boar AKA Township Of Nutley Zoning Board

Party Description: Business

Address Line 1: 1 Kennedy Drive

City: Nutley

State: NJ

Attorney Email: ACIFELLI@PIROZINNALAW.COM

Address Line 2:

Zip: 07110

Attorney Name: Angelo J Cifelli

Attorney Bar ID: 010291975

Phone:

Township Of Nutley Planning Bo AKA Township Of Nutley Planning Board

Party Description: Business

Address Line 1: 1 Kennedy Drive

City: Nutley

State: NJ

Address Line 2:

Zip: 07110

Attorney Name: Angelo J Cifelli

Attorney Bar ID: 010291975

Phone:

Attorney Email: ACIFELLI@PIROZINNALAW.COM

XYZ Corp.

Party Description: Other

Address Line 1:

City:

Attorney Email:

Jane Doe

Party Description: Fictitious

Address Line 1:

City:

Attorney Email:

Address Line 2:

Zip: 00000

State:

Attorney Name:

Attorney Bar ID:

Phone:

Address Line 2:

Zip: 00000

State:

Attorney Name:

Attorney Bar ID:

Phone:

Case Proceeding							
Created Date	Scheduled Time	Court Room	Judge Name	Proceeding Description	Motion Type	Proceeding Status	Motion Status
04/27/2018	09:00	234HR	GRACE SPENCER	MOTION HEARING	MOTION FOR DISMISSAL	RSCHED	
05/25/2018	09:00	234HR	GRACE SPENCER	MOTION HEARING	MOTION FOR DISMISSAL	COMPLETED	CM
06/25/2018	09:00	234HR	GRACE SPENCER	MOTION HEARING	MOTION DISMISSING COMPLAINT	COMPLETED	CM
05/30/2018	10:00	234HR	GRACE SPENCER	CASE MANAGEMENT CONFERENCE		COMPLETED	
10/26/2018	09:00	234HR	GRACE SPENCER	MOTION HEARING	MOTION FOR SUMMARY JUDGMENT	COMPLETED	CM

Case Actions			
Filed Date	Docket Text	Transaction ID	Entry Date
12/5/2017	Complaint for ESX-L-008547-17 submitted by ZAZZALI, JOHN A, JOHN A. ZAZZALI, LLC on behalf of DIAMOND SPRING REAL ESTATE INV against TOWNSHIP OF NUTLEY, TOWNSHIP OF NUTLEY BOARD OF CO, TOWNSHIP OF NUTLEY PLANNING BO, TOWNSHIP OF NUTLEY ZONING BOAR, ELENIE PETTAS ET AL.	LCV2017578090	12/5/2017
12/6/2017	TRACK ASSIGNMENT Notice submitted by Case Management	LCV2017587759	12/6/2017
12/20/2017	AFFIDAVIT OF SERVICE submitted by ZAZZALI, JOHN, A of JOHN A. ZAZZALI, LLC on behalf of DIAMOND SPRING REAL ESTATE INVESTMENT, INC. against TOWNSHIP OF NUTLEY, TOWNSHIP OF NUTLEY BOARD OF COMMISSIONERS, TOWNSHIP OF NUTLEY PLANNING BOARD, TOWNSHIP OF NUTLEY ZONING BOARD, ELENIE PETTAS	LCV2017679686	12/20/2017
2/15/2018	Answer submitted by CIFELLI, ANGELO, J of PIRO ZINNA CIFELLI, ET AL on behalf of TOWNSHIP OF NUTLEY, TOWNSHIP OF NUTLEY BOARD OF COMMISSIONERS, TOWNSHIP OF NUTLEY PLANNING BOARD, TOWNSHIP OF NUTLEY ZONING BOARD, ELENIE PETTAS ET AL. against DIAMOND SPRING REAL ESTATE INVESTMENT, INC.	LCV2018292812	2/15/2018
2/28/2018	NOTICE OF APPEARANCE (NOT THE FIRST PAPER) submitted by FRANZBLAU, S, M of FRANZBLAU DRATCH, PC on behalf of DIAMOND SPRING REAL ESTATE INVESTMENT, INC. against TOWNSHIP OF NUTLEY, TOWNSHIP OF NUTLEY BOARD OF COMMISSIONERS, TOWNSHIP OF NUTLEY PLANNING BOARD, TOWNSHIP OF NUTLEY ZONING BOARD, ELENIE PETTAS ET AL.	LCV2018366635	2/28/2018
3/19/2018	LETTER OF OPINION submitted by FRANZBLAU, S, M of FRANZBLAU DRATCH, PC on behalf of DIAMOND SPRING REAL ESTATE INVESTMENT, INC. against TOWNSHIP OF NUTLEY, TOWNSHIP OF NUTLEY BOARD OF COMMISSIONERS, TOWNSHIP OF NUTLEY, JOHN DOE, ELENIE PETTAS, TOWNSHIP OF NUTLEY ZONING BOARD ET AL.	LCV2018492675	3/19/2018
3/20/2018	MOTION FOR DISMISSAL submitted by FRANZBLAU, S, M of FRANZBLAU DRATCH, PC on behalf of DIAMOND SPRING REAL ESTATE INVESTMENT, INC. against TOWNSHIP OF NUTLEY, TOWNSHIP OF NUTLEY BOARD OF COMMISSIONERS, TOWNSHIP OF NUTLEY, JOHN DOE, ELENIE PETTAS, TOWNSHIP OF NUTLEY ZONING BOARD ET AL.	LCV2018500825	3/20/2018
3/22/2018	The motion filed on 03/20/2018 will be decided on 04/27/2018. Oral argument has been requested. You will be notified when oral argument is scheduled. Do not come to the courthouse unless you are so notified. Re: MOTION FOR DISMISSAL [LCV2018500825]	LCV2018507884	3/22/2018
4/2/2018	5-DAY ORDER submitted by FRANZBLAU, S, M of FRANZBLAU DRATCH, PC on behalf of DIAMOND SPRING REAL ESTATE INVESTMENT, INC. against TOWNSHIP OF NUTLEY, TOWNSHIP OF NUTLEY BOARD OF COMMISSIONERS, TOWNSHIP OF NUTLEY, JOHN DOE, ELENIE PETTAS, TOWNSHIP OF NUTLEY ZONING BOARD ET AL.	LCV2018570424	4/2/2018
4/4/2018	GENERAL CORRESPONDENCE submitted by CIFELLI, ANGELO, J of PIRO ZINNA CIFELLI, ET AL on behalf of TOWNSHIP OF NUTLEY, TOWNSHIP OF NUTLEY BOARD OF COMMISSIONERS, TOWNSHIP OF NUTLEY, JOHN DOE, ELENIE PETTAS, TOWNSHIP OF NUTLEY ZONING BOARD ET AL. against DIAMOND SPRING REAL ESTATE INVESTMENT, INC.	LCV2018584404	4/4/2018
4/13/2018	GENERAL CORRESPONDENCE submitted by ZAZZALI, JOHN, A of JOHN A. ZAZZALI, LLC on behalf of DIAMOND SPRING REAL ESTATE INVESTMENT, INC. against TOWNSHIP OF NUTLEY, TOWNSHIP OF NUTLEY BOARD OF COMMISSIONERS, TOWNSHIP OF NUTLEY, JOHN DOE, ELENIE PETTAS, TOWNSHIP OF NUTLEY ZONING BOARD, TOWNSHIP OF NUTLEY PLANNING BOARD	LCV2018652299	4/13/2018
4/16/2018	GENERAL CORRESPONDENCE submitted by ZAZZALI, JOHN, A of JOHN A. ZAZZALI, LLC on behalf of DIAMOND SPRING REAL ESTATE INVESTMENT, INC. against TOWNSHIP OF NUTLEY, TOWNSHIP OF NUTLEY BOARD OF COMMISSIONERS, TOWNSHIP OF NUTLEY, JOHN DOE, ELENIE PETTAS, TOWNSHIP OF NUTLEY ZONING BOARD ET AL.	LCV2018662124	4/16/2018
4/21/2018	LACK OF PROSECUTION DISMISSAL WARNING submitted by Case Management	LCV2018697440	4/21/2018

4/25/2018	Case Management Order-Court Initiated - GRANTED by Judge SPENCER, GRACE	LCV2018716720	4/25/2018
4/27/2018	The motion filed on 03/20/2018 will be decided on 05/25/2018. Oral argument has been requested. You will be notified when oral argument is scheduled. Do not come to the courthouse unless you are so notified. Re: MOTION FOR DISMISSAL [LCV2018500825]	LCV2018740814	4/27/2018
4/30/2018	OPPOSITION TO MOTION submitted by CIFELLI, ANGELO, J of PIRO ZINNA CIFELLI, ET AL on behalf of TOWNSHIP OF NUTLEY BOARD OF COMMISSIONERS, TOWNSHIP OF NUTLEY, JOHN DOE, ELENIE PETTAS, TOWNSHIP OF NUTLEY ZONING BOARD ET AL. against DIAMOND SPRING REAL ESTATE INVESTMENT, INC.	LCV2018754465	4/30/2018
4/30/2018	CROSS MOTION DISMISSING COMPLAINT submitted by CIFELLI, ANGELO, J of PIRO ZINNA CIFELLI, ET AL on behalf of TOWNSHIP OF NUTLEY BOARD OF COMMISSIONERS, TOWNSHIP OF NUTLEY, JOHN DOE, ELENIE PETTAS, TOWNSHIP OF NUTLEY ZONING BOARD ET AL. against DIAMOND SPRING REAL ESTATE INVESTMENT, INC.	LCV2018754573	4/30/2018
5/1/2018	The motion filed on 04/30/2018 will be decided on 05/25/2018. Oral argument has been requested. You will be notified when oral argument is scheduled. Do not come to the courthouse unless you are so notified. Re: CROSS MOTION DISMISSING COMPLAINT [LCV2018754573]	LCV2018755930	5/1/2018
5/2/2018	GENERAL CORRESPONDENCE submitted by FRANZBLAU, S, M of FRANZBLAU DRATCH, PC on behalf of DIAMOND SPRING REAL ESTATE INVESTMENT, INC. against TOWNSHIP OF NUTLEY BOARD OF COMMISSIONERS, TOWNSHIP OF NUTLEY, JOHN DOE, ELENIE PETTAS, TOWNSHIP OF NUTLEY ZONING BOARD ET AL.	LCV2018767566	5/2/2018
5/2/2018	GENERAL CORRESPONDENCE submitted by CIFELLI, ANGELO, J of PIRO ZINNA CIFELLI, ET AL on behalf of TOWNSHIP OF NUTLEY BOARD OF COMMISSIONERS, TOWNSHIP OF NUTLEY, JOHN DOE, ELENIE PETTAS, TOWNSHIP OF NUTLEY ZONING BOARD ET AL. against DIAMOND SPRING REAL ESTATE INVESTMENT, INC.	LCV2018770021	5/2/2018
5/4/2018	COURT Notice submitted by Case Management	LCV2018783767	5/4/2018
5/15/2018	OPPOSITION TO MOTION submitted by FRANZBLAU, S, M of FRANZBLAU DRATCH, PC on behalf of DIAMOND SPRING REAL ESTATE INVESTMENT, INC. against TOWNSHIP OF NUTLEY BOARD OF COMMISSIONERS, TOWNSHIP OF NUTLEY, JOHN DOE, ELENIE PETTAS, TOWNSHIP OF NUTLEY ZONING BOARD ET AL.	LCV2018849448	5/15/2018
5/24/2018	BRIEF submitted by CIFELLI, ANGELO, J of PIRO ZINNA CIFELLI, ET AL on behalf of TOWNSHIP OF NUTLEY BOARD OF COMMISSIONERS, TOWNSHIP OF NUTLEY, JOHN DOE, ELENIE PETTAS, TOWNSHIP OF NUTLEY ZONING BOARD ET AL. against DIAMOND SPRING REAL ESTATE INVESTMENT, INC.	LCV2018811944	5/24/2018
5/29/2018	GENERAL CORRESPONDENCE submitted by ZAZZALI, JOHN, A of JOHN A. ZAZZALI, LLC on behalf of DIAMOND SPRING REAL ESTATE INVESTMENT, INC. against TOWNSHIP OF NUTLEY BOARD OF COMMISSIONERS, TOWNSHIP OF NUTLEY, JOHN DOE, ELENIE PETTAS, TOWNSHIP OF NUTLEY ZONING BOARD ET AL.	LCV2018937418	5/29/2018
6/23/2018	LACK OF PROSECUTION DISMISSAL ORDER Notice submitted by Case Management	LCV20181102736	6/23/2018
7/27/2018	ORDER FOR DISMISSAL-Denied by Judge SPENCER, GRACE re: MOTION FOR DISMISSAL [LCV2018500825]	LCV20181306195	7/27/2018
7/27/2018	ORDER DISMISSING COMPLAINT-Denied by Judge SPENCER, GRACE re: CROSS MOTION DISMISSING COMPLAINT [LCV2018754573]	LCV20181306204	7/27/2018
9/18/2018	MOTION FOR SUMMARY JUDGMENT submitted by FRANZBLAU, S, M of FRANZBLAU DRATCH, PC on behalf of DIAMOND SPRING REAL ESTATE INVESTMENT, INC. against TOWNSHIP OF NUTLEY BOARD OF COMMISSIONERS, TOWNSHIP OF NUTLEY, JOHN DOE, ELENIE PETTAS, TOWNSHIP OF NUTLEY ZONING BOARD ET AL. *LINKED FILING*	LCV20181613263	9/18/2018
9/18/2018	The motion filed on 09/18/2018 will be decided on 10/26/2018. Oral argument has been requested. You will be notified when oral argument is scheduled. Do not come to the courthouse unless you are so notified. Re: MOTION FOR SUMMARY JUDGMENT [LCV20181613263]	LCV20181618075	9/18/2018
10/16/2018	OPPOSITION TO MOTION submitted by CIFELLI, ANGELO, J of PIRO ZINNA CIFELLI, ET AL on behalf of DIAMOND SPRING REAL ESTATE INVESTMENT, INC. against TOWNSHIP OF NUTLEY BOARD OF COMMISSIONERS, TOWNSHIP OF NUTLEY, ELENIE PETTAS, TOWNSHIP OF NUTLEY ZONING BOARD, TOWNSHIP OF NUTLEY PLANNING BOARD *LINKED FILING*	LCV20181804739	10/16/2018
10/22/2018	REPLY BRIEF submitted by FRANZBLAU, S, M of FRANZBLAU DRATCH, PC on behalf of DIAMOND SPRING REAL ESTATE INVESTMENT, INC. against TOWNSHIP OF NUTLEY BOARD OF COMMISSIONERS, TOWNSHIP OF NUTLEY, JOHN DOE, ELENIE PETTAS, TOWNSHIP OF NUTLEY ZONING BOARD ET AL. *LINKED FILING*	LCV20181839077	10/22/2018
10/26/2018	ORDER FOR SUMMARY JUDGMENT-Denied by Judge SPENCER, GRACE re: MOTION FOR SUMMARY JUDGMENT [LCV20181613263]	LCV20181895688	10/30/2018

4/8/2019

Township of Nutley, NJ General Regulations

Chapter 700 Zoning

Article V General Regulations

§ 700-7 Regulations applicable in all districts.

- A. No building shall hereafter be erected and no existing building shall be moved, altered, added to or enlarged, nor shall any land or building be used, designed or arranged to be used for any purpose other than is included among the uses listed in this article as permitted in the district in which such building or land is located nor in any manner contrary to any of the requirements specified in this article.
- B. No building shall hereafter be erected, reconstructed or structurally altered to exceed in height the limit designated in Article VIII for the district in which such building is located.
- C. No building shall hereafter be erected nor shall any existing building be structurally altered, enlarged, rebuilt or moved, nor shall any open space contiguous to any building be encroached upon or reduced in any manner, except in conformity to the yard, lot width and area, building location, percentage of lot coverage by building area and by impervious surface, minimum habitable floor area, off-street parking space, off-street loading space and other space and area regulations designated in Articles VIII and XIII for the district in which such building or space is located, subject to such modifications thereof and such general provisions as are set forth in said articles.
- D. Off-street parking space and off-street loading space shall be provided as specified in Article XIII and shall be provided with necessary passageways and driveways appurtenant thereto and giving access thereto. All such parking space and loading space, together with such passageways and driveways, shall be deemed to be required space on the lot on which the same is situated and shall not thereafter be encroached upon or reduced in any manner except as otherwise provided in said article.
- E. No yard or other open space provided contiguous to any building for the purpose of complying with the provisions of this chapter shall be considered as providing a yard or open space for any other building, and no yard or open space on one lot shall be considered as providing a yard or open space for a building on any other lot.
- F. Where a lot is formed from part of a lot already occupied by a building, such separation shall be effected in such manner as not to impair any of the requirements of this chapter with respect to the existing building and all yards and other open spaces in connection therewith, and no permit shall be issued for the erection of a building on the new lot thus created unless it complies with all the provisions of this chapter.
- G. Nothing in this chapter shall be deemed to require any change in the plans, construction or designated use of any building, the actual construction of which was lawfully begun prior to the time this chapter or any amendment thereof affecting the same takes effect and on which building actual construction is completed within one year after such time.
- H. Any use establishment in any district shall meet all the requirements of § 700-42, Performance standards.

§ 700-8 Permitted uses in all districts.

- A. The following uses may be established in any district except the PRD Zone without regard to any other provision of this article:
 - (1) Uses and buildings that are customarily accessory and incidental to uses permitted in the district on the same lot therewith, except as otherwise regulated in this chapter.
 - (2) Fences and retaining walls as regulated by § 700-71 of this chapter.
 - (3) Uses of land and erection of buildings by the Township for governmental purposes, including municipal uses which are proprietary in their function.
- B. The following uses may be established in any district except the B-3A District and PRD District without regard to any other provision of this article:

4/8/2019

Township of Nutley, NJ General Regulations

- (1) If, as a result of any national emergency, any resident engaged in a home profession or home occupation is ordered by the government of the United States or the government of the State of New Jersey or any of their various political subdivisions, departments or agencies to actively serve the United States of America and as a result thereof such individual finds it necessary to leave his occupation or profession, then, notwithstanding the definitional language contained in § 700-3, said residents may locate and hire another or others as are necessary to adequately cover and maintain the profession or occupation in his absence, provided a certificate of change of occupancy is obtained by said resident.
- (2) In addition to the period of time the resident is actively serving the United States of America, the individual or individuals who are covering and maintaining the occupation or profession may assist him during transition periods immediately prior to his departure and immediately subsequent to his return. These periods shall be sufficient to ensure an adequate transfer of information and to maintain the occupation or profession in a businesslike manner, not to exceed 90 days.

§ 700-10 Permitted uses in R-1A Zoning District.

The following uses are permitted in the R-1A Zoning District:

- A. Uses and buildings permitted in the R-1 District, as prescribed.

§ 700-11 Permitted uses in R-1AA Zoning District.

The following uses are permitted in the R-1AA Zoning District:

- A. Uses and buildings permitted in the R-1A Zoning District as prescribed.

§ 700-12 Permitted uses in R-2 Zoning District.

The following uses are permitted in the R-2 Zoning District:

- A. Uses and buildings permitted in the R-1 District (except home occupation and professions, see § 700-12C), as prescribed.
- B. Two-family dwellings, not to exceed one building or structure on each lot.
- C. Home occupations and professions, Category A.

§ 700-13 Permitted uses in R-3 Zoning District.

The following uses are permitted in the R-3 Zoning District:

- A. Uses and buildings permitted in the R-1 (except home occupation and professions, see § 700-13D) and R-2 Districts, as prescribed.
- B. Garden apartments, as provided in Article IX.
- C. Townhouses as permitted in Article X.
- D. Home occupations and professions, Category A.

§ 700-14 Permitted uses in R-SC Zoning District.

The following uses are permitted in the R-SC Zoning District:

- A. Senior citizen housing units.
- B. Accessory uses to senior citizen housing, including parking areas, community facilities and recreation areas.

4/8/2019

Township of Nutley, NJ General Regulations

to adjoining residential properties. The Construction Official shall also have the authority to specify any conditions as to security and operations it may deem reasonably necessary.

- (6) Notwithstanding any other section of this chapter, where an off-premises parking lot adjoins a residential use or residential zone, there shall be a minimum of a six-foot-wide landscaped strip adjoining the residential lot line, unless a wider buffer is specifically required. The landscaping shall consist of densely planted evergreens at least a minimum of six feet high at planting.

N. Commercial schools.

§ 700-16 Permitted uses in B-2 Zoning District.

The following uses are permitted in the B-2 Zoning District:

- A. Neighborhood retail stores and personal and household service establishments, as defined in Article III. No loading or unloading across any sidewalk is permitted. No crating, outdoor display and/or outdoor sales are permitted, except that occasional outdoor sales may be held as provided by Ordinance No. 1845.^[1]

[1] *Editor's Note: Said Ord. No. 1845, adopted 4-15-1975, as amended 7-2-1991 by Ord. No. 2358, and which comprised original Ch. 190, Sales and Displays, Outdoor, of the 1978 Code, was repealed 12-4-2007 by Ord. No. 3039.*

- B. Professional and business offices.
- C. Bars and taverns.
- D. Restaurants, but not drive-in restaurants or fast-food establishments.
- E. Take-out food establishments.
- F. Financial institutions without drive-in facilities.
- G. Residence on the second floor of business buildings only.
- H. Amusement devices as an accessory use as defined in and subject to requirements of § 700-38 hereof.
- I. (Reserved)^[2]
- [2] *Editor's Note: Former Subsection I, regarding mixed use buildings, was repealed 2-19-2019 by Ord. No. 3414.*
- J. Discount store, except that no discount store shall be located within 1,000 feet of another discount store business; the distance between such discount store businesses shall be measured from the nearest entrance of the existing discount store to the nearest entrance of the premises where the other establishment is sought to be located along the route that a pedestrian would normally walk.
- K. Commercial school.
- L. Automobile parking lots on premises other than those upon which the use is located and which are needed for partial or complete compliance to minimum off-street parking requirements of Article XIII, subject to the following standards:
- (1) The Zoning Official must review the proposed off-premises site and make a determination of suitability.
 - (2) All such spaces through ownership or long-term lease shall be under the control of the owner or operator of the use to which such spaces are appurtenant. The legal instrument containing proof of ownership or lease shall be filed with the application. The certificate of occupancy for use or uses served by the off-premises parking spaces granted under this subsection shall be valid only for such time period as the facilities are available as required, unless application is made for an alternate location or variance, as the case may be.
 - (3) All such parking areas shall be located on the same street and within 500 feet of the entrance to the building which the parking area serves.

4/8/2019

Township of Nutley, NJ General Regulations

- (5) Parking requirements of § 700-91 are met.
- (6) No amusement device shall be used, placed, maintained or operated in any premises within 500 feet of a school, church or other house of worship. The distance shall be measured from the nearest entrance of the school or church to the nearest entrance of the premises on which the amusement device is located or is sought to be located along the route that a pedestrian would normally walk.
- (7) No business establishment having amusement devices as a principal use shall be located within 2,000 feet of another business establishment having amusement devices as a principal use. The distance shall be measured from the nearest entrance of the existing establishment to the nearest entrance of the premises where the other establishment is sought to be located along the route that a pedestrian would normally walk.
- (8) No business establishment having amusement devices as a principal use shall be located in a building in which any portion of such building is used for residential purposes.
- L. Discount store, except that no discount store shall be located within 1,000 feet of another discount store business; the distance between such discount store businesses shall be measured from the nearest entrance of the existing discount store to the nearest entrance of the premises where the other establishment is sought to be located along the route that a pedestrian would normally walk.
- M. Commercial school.
- N. Automobile parking lots on premises other than those upon which the use is located and which are needed for partial or complete compliance to minimum off-street parking requirements of Article XIII, subject to the following standards:
 - (1) The Zoning Official must review the proposed off-premises site and make a determination of suitability.
 - (2) All such spaces through ownership or long-term lease shall be under the control of the owner or operator of the use to which such spaces are appurtenant. The legal instrument containing proof of ownership or lease shall be filed with the application. The certificate of occupancy for use or uses served by the off-premises parking spaces granted under this subsection shall be valid only for such time period as the facilities are available as required, unless application is made for an alternate location or variance, as the case may be.
 - (3) All such parking areas shall be located on the same street and within 500 feet of the entrance to the building which the parking area serves.
 - (4) No such parking areas shall be located in any district where the use it serves is prohibited.
 - (5) During or prior to approval, reports from the Department of Public Safety concerning policing, traffic and pedestrian activity shall be received and considered. The Construction Official may impose conditions in approving the use to insure that the parking lot shall be properly integrated and sufficiently screened so as not to be offensive or detrimental to adjoining residential properties. The Construction Official shall also have the authority to specify any conditions as to security and operations it may deem reasonably necessary.
 - (6) Notwithstanding any other section of this chapter, where an off-premises parking lot adjoins a residential use or residential zone, there shall be a minimum of a six-foot-wide landscaped strip adjoining the residential lot line, unless a wider buffer is specifically required. The landscaping shall consist of densely planted evergreens at least a minimum of six feet high at planting.

§ 700-18 Permitted uses in B-3A Zoning District.

A. The following uses are permitted in the B-3A Zoning District:

- (1) Professional and business offices.
- (2) Restaurants and bars which serve food, excluding drive-in restaurants or fast food.
- (3) Take-out food establishments.

4/8/2019

Township of Nutley, NJ General Regulations

wider buffer is specifically required. The landscaping shall consist of densely planted evergreens at least a minimum of six feet high at planting.

§ 700-19 Permitted uses in B-4 Zoning District.

A. The following uses and buildings shall be permitted in B-4 District:

- (1) Neighborhood retail stores and personal and household service establishments, as defined in Article III. No loading or unloading across any sidewalk is permitted. No crating, outdoor display and/or outdoor sales are permitted, except that occasional outdoor sales may be held as provided by Ordinance No. 1845.^[1]

[1] Editor's Note: Said Ord. No. 1845, adopted 4-15-1975, as amended 7-2-1991 by Ord. No. 2358, and which comprised original Ch. 190, Sales and Displays, Outdoor, of the 1978 Code, was repealed 12-4-2007 by Ord. No. 3039.

- (2) Storage and sales facilities for building materials.
- (3) Laboratories for research, analysis, design and/or experimentation.
- (4) Bar, restaurants and take-out food establishments.
- (5) Automotive sales agencies for the sale of new motor vehicles and parts within a building and external building sales of vehicles only.
- (6) Laundries, dry-cleaning and dyeing plants.
- (7) Printing establishments, provided that no individual motor exceeds 10 horsepower.
- (8) Commercial greenhouses.
- (9) Commercial schools.
- (10) Light assembly as follows: the manufacture, compounding, processing, packaging or treatment of apparel, art goods, photographic equipment, millinery, precision instruments, musical instruments, housewares and similar items.
- (11) Amusement devices as an accessory use as defined in § 700-38 hereof.
- (12) Mixed use commercial and retail (residential prohibited).
[Amended 2-19-2019 by Ord. No. 3414]
- (13) Service establishment - business.

B. A dense evergreen screening at least five feet in height and width shall be provided and maintained along the side and rear lot lines of any premises in the B-4 District devoted to commercial or industrial use where abutting a residence or an R Zoning District.

C. No outdoor storage operation shall utilize a front yard.

D. Automobile parking lots on premises other than those upon which the use is located and which are needed for partial or complete compliance to minimum off-street parking requirements of Article XIII, subject to the following standards:

- (1) The Zoning Official must review the proposed off-premises site and make a determination of suitability.
- (2) All such spaces through ownership or long-term lease shall be under the control of the owner or operator of the use to which such spaces are appurtenant. The legal instrument containing proof of ownership or lease shall be filed with the application. The certificate of occupancy for use or uses served by the off-premises parking spaces granted under this subsection shall be valid only for such time period as the facilities are available as required, unless application is made for an alternate location or variance, as the case may be.

4/8/2019

Township of Nutley, NJ General Regulations

B.. Any use and building permitted in an M Zoning District.

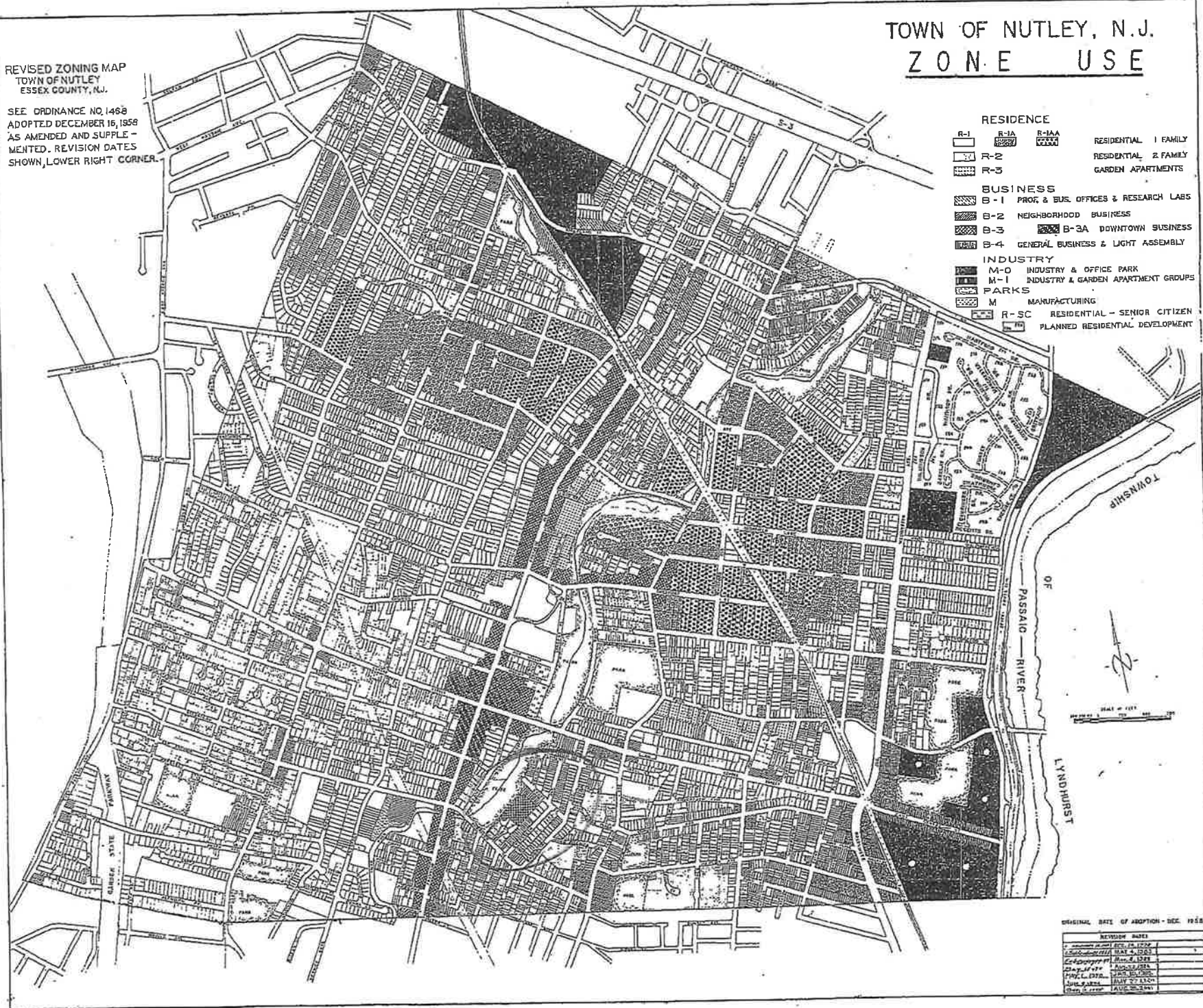
Exhibit B

TOWN OF NUTLEY, N.J. ZONE USE

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.

- 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

NEIGHBORHOOD	DATE
1. 1st Ward	DEC. 1958
2. 2nd Ward	MAY 4, 1963
3. 3rd Ward	MAY 4, 1963
4. 4th Ward	AUGUST 1968
5. 5th Ward	MAY 10, 1968
6. 6th Ward	MAY 20, 1968
7. 7th Ward	AUG. 20, 1968
8. 8th Ward	AUG. 20, 1968

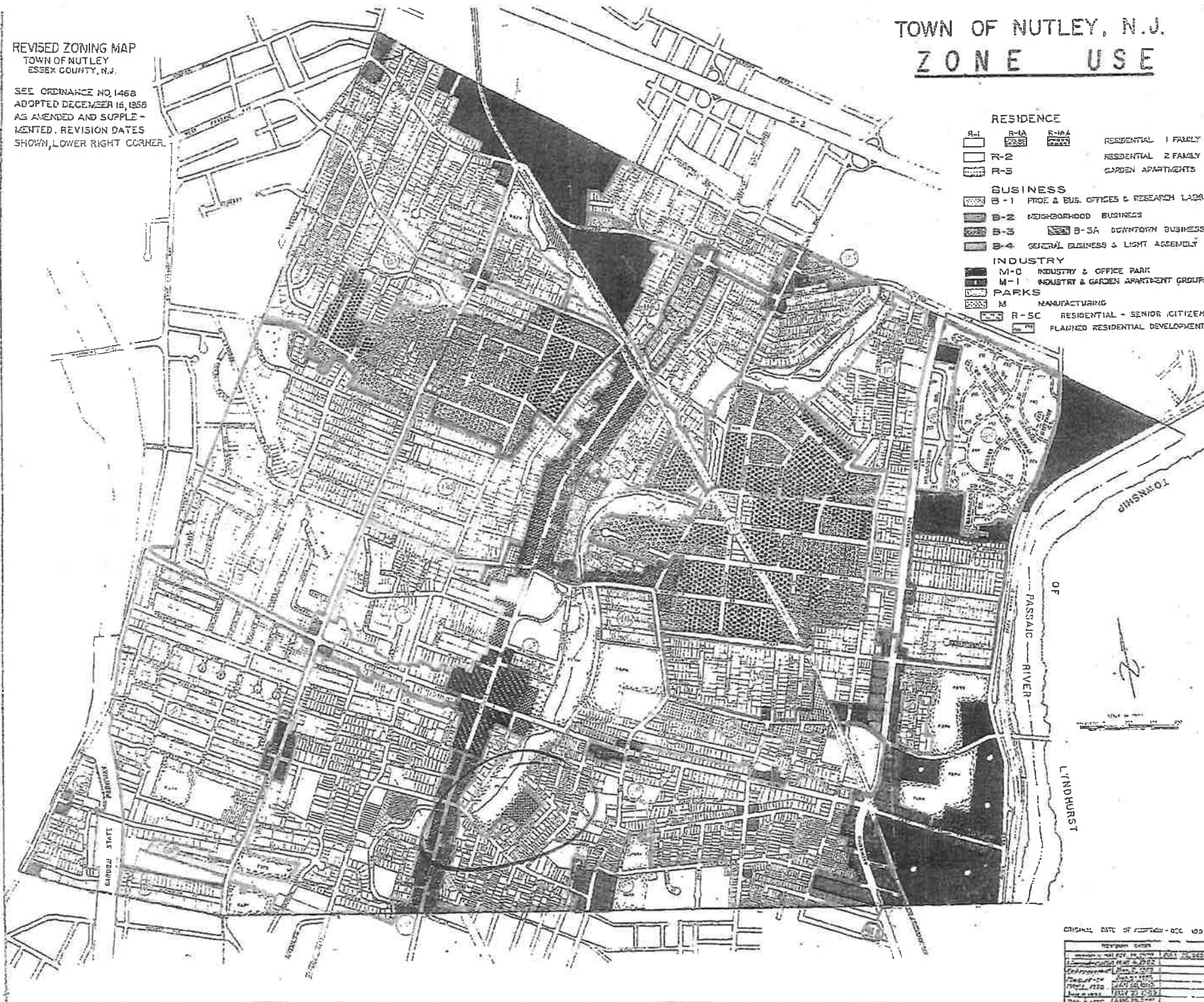
Exhibit C

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

SEE ORDINANCE NO. 1468
ADOPTED DECEMBER 16, 1958
AS AMENDED AND SUPPLEMENTED.
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-1 INDUSTRY & OFFICE PARK
 - M-2 INDUSTRY & GARDEN APARTMENT GROUPS
- PARKS**
- M MANUFACTURING
 - R-SC RESIDENTIAL - SENIOR CITIZEN PLANNED RESIDENTIAL DEVELOPMENT



ORIGINAL DATE OF ADOPTION - DEC 1958

REVISION	DATE	DESCRIPTION
1	1958	ADOPTED
2	1962	AMENDED
3	1965	AMENDED
4	1968	AMENDED
5	1970	AMENDED
6	1972	AMENDED
7	1975	AMENDED
8	1978	AMENDED
9	1980	AMENDED
10	1982	AMENDED
11	1985	AMENDED
12	1988	AMENDED
13	1990	AMENDED
14	1992	AMENDED
15	1995	AMENDED
16	1998	AMENDED
17	2000	AMENDED
18	2002	AMENDED
19	2005	AMENDED
20	2008	AMENDED
21	2010	AMENDED
22	2012	AMENDED
23	2015	AMENDED
24	2018	AMENDED
25	2020	AMENDED

Civil Case Information Statement

Case Details: ESSEX | Civil Part Docket# L-002663-19

Case Caption: DIAMOND SPRING REAL ESTATE IN VS
TOWNSHIP OF NU

Case Initiation Date: 04/09/2019

Attorney Name: S M FRANZBLAU

Firm Name: FRANZBLAU DRATCH, PC

Address: PLAZA ONE - 354 EISENHOWER PARKWAY

P.O. BOX 472

LIVINGSTON NJ 07039

Phone:

Name of Party: PLAINTIFF : Diamond Spring Real Estate

Inv

Name of Defendant's Primary Insurance Company

(if known): Unknown

Case Type: ACTIONS IN LIEU OF PREROGATIVE WRITS

Document Type: Complaint

Jury Demand: NONE

Hurricane Sandy related? NO

Is this a professional malpractice case? NO

Related cases pending: YES

If yes, list docket numbers: Docket No. ESX-L-008547-17

Do you anticipate adding any parties (arising out of same transaction or occurrence)? YES

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO

Title 59? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

04/09/2019
Dated

/s/ S M FRANZBLAU
Signed

