

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
June 18, 2015**

The West Orange Zoning Board of Adjustment held a regular meeting on June 18, 2015 commencing 8:00 PM at 66 Main Street, West Orange, N.J. in Council Chambers.

Chairman Buechler called the meeting to order at approximately 8:00 P.M. It was announced that notification of this meeting was given to the Township Clerk, the West Orange Chronicle, and posted on the Township Bulletin Board on December 11, 2014 in accordance with the "Open Public Meetings Act."

Chairman Buechler asked everyone to stand for the Pledge of Allegiance.

Alice Beirne, Esq., Board Attorney, read the Opening Statement.

PRESENT: Bruce Buechler, Greg Bullock, Deborah Gabry, D. Nash,
Philip D. Neuer, Bart Quentzel, Irv Schwarzbaum, William
Steinhart, Mark Sussman,

ABSENT: Alice Weiss (excused absence)

ALSO PRESENT: Paul Grygiel, Consulting Planner
Eric Keller, Consulting Engineer
Alice Beirne, Esq., Board Attorney
Rose DeSena, Board Secretary
H. Grossman, Esq., Public Advocate
D. Dillon, Audio-Digital Transcription Service

ANNOUNCEMENTS

Future Meetings: July 16, 2015 (regular meeting) – 8:00 pm
August 20, 2015 (regular meeting) – 8:00 pm
September 17, 2015 (regular meeting) – 8:00 pm

MINUTES

Adopt Minutes: April 16, 2015 (regular meeting)

Chairman Buechler asked the Board Members if they had any additional comments to the April 16, 2015 regular meeting that were submitted to them for review besides the comments that Mr. Neuer submitted. Seeing none, he asked for a motion to approve said minutes.

Ms. Gabry made a motion to approve the minutes of the April 16, 2015 regular Zoning Board of Adjustment meeting as submitted to the Board members; Mr. Bullock seconded the motion and all were in favor.

It was noted for the record that Ms. Nash was present but did not vote on these minutes.

Adopt Minutes: June 4, 2015 (special meeting)

Chairman Buechler asked the Board Members if they had any additional comments to the June 4, 2015 special meeting that were submitted to them for review besides the comments that Mr. Neuer submitted. Seeing none, he asked for a motion to approve said minutes.

Ms. Gabry made a motion to approve the minutes of the June 4, 2015 special Zoning Board of Adjustment meeting as submitted to the Board members; Mr. Neuer seconded the motion and all were in favor.

It was noted for the record that Ms. Nash and Mr. Schwarzbaum were present but did not vote on these minutes.

SWEARING IN

Diane Nash was sworn in as a new Zoning Board Member as Alternate #3.

Consulting Planner for the Township, Paul Grygiel, and Consulting Engineer for the Township, Eric Keller were sworn under oath.

APPLICATION(S)

1. ZB-13-15/Quick Chek Corp.

Carried from 6/4/15

Block: 168; Lot: 26, 28; Zone: B-2

555 Northfield Avenue

Seeking multiple "D" and several "C" variances for site plan and subdivision

Approvals for developing a Quick Chek food store with fuel sales.

Chairman Buechler stated that this application is being continued from June 4, 2015. He said at that time, the public hearing was declared closed and closing arguments were delivered by Ms. Porter, Mr. Magaletta and Mr. Grossman.

Chairman Buechler said that the Board will now deliberate and render a decision to this application and he asked the public to express their comments after the decision is announced outside of the chamber so that the Board can continue with the remainder of the Zoning Board meeting.

Chairman Buechler stated that there are seven (7) voting Board Members and that is adequate for “d” and “c” variances. He said that Ms. Nash and Mr. Schwarzbaum will not be voting.

Chairman Buechler stated that he would like to take a poll from the Board Members just to gauge how they will be voting; whether they will approve or deny this application. He said that this will not be the formal vote and asked the Board Members if they would agree to a short circuit vote; they were all in favor.

Mr. Bullock stated that he is leaning to deny this application.

Ms. Gabry stated that she will vote to deny this application.

Vice Chairman Neuer stated that he will vote to deny this application.

Mr. Sussman stated that he will vote to deny this application.

Mr. Steinhart stated that he will vote to deny this application.

Mr. Quentzel stated that he is going to abstain from voting.

Chairman Buechler stated that he will vote to approve this application with modifications and conditions.

Chairman Buechler stated that there are five votes to deny the application and asked the Board if they want to have a discussion or go to the formal vote. He also noted for the record that the Board’s decision may be appealed.

Ms. Beirne stated that she would like the Board Members to state the reason for their vote for the resolution.

Chairman Buechler asked for a motion from the Board.

Vice Chairman Neuer moved to deny the entirety of the Quick Chek application requesting preliminary and final site plan approval and all of the variances.

Ms. Gabry seconded the motion.

Chairman Buechler asked the Board Secretary to call for the vote.

Mr. Bullock stated that this application had several safety issues that cannot be overlooked and the citizen opposition cannot be ignored.

Mr. Bullock voted yes to deny the application.

Ms. Gabry stated that the proposed site is in a congested area and that the applicant can find another location that can be more accommodating.

Ms. Gabry voted yes to deny the application.

Vice Chairman Neuer stated that he has the utmost respect for Ms. Porter and this is not about her not doing her job; he said that the location for this application is not appropriate. He said that he also has respect for the people representing Quick Chek and that Quick Chek would be a welcomed business in West Orange but just not in this location.

Vice Chairman Neuer referred to some of the testimony provided during the hearings and said that he questioned the credibility of the witnesses, specifically Mr. McDonough's testimony was not credible in this case. He said that the McDonough report was not valid the night he testified and that the Board relies on experts to explain the things that Board Members may not know.

Vice Chairman Neuer said that he was also not impressed by the testimony of Ms. Pomeroy, the planner for the objectors. He said that her testimony did not sway him at all.

Vice Chairman Neuer said that Mr. McDonough did not take the time and effort to update his fifteen (15) month outdated report which must be submitted to the Board Members at least ten (10) days in advance. He said that the professional planner's report and testimony are at the core of a variance application. He further noted that Mr. McDonough did not do a study of the area.

Vice Chairman Neuer said that the proposed Quick Chek is not offering any item that is not already offered in the area and that a larger piece of property would be more suitable for this multi-use project.

Vice Chairman Neuer said that Mr. McDonough kept saying that the lot line is invisible; he said that you can see the lot line and it is not invisible.

Vice Chairman Neuer said that he did not hear one valid reason why the lot line would be placed right on the building line of the existing hotel; he said that while the building should not be moved the lot line should be placed a minimum of ten (10) feet to the west. No credible evidence has been presented to justify this very substantial deviation from the Ordinance.

Vice Chairman Neuer said that there was no testimony provided regarding the operation of the hotel. He said that Mr. McDonough stated in his testimony that there is no egress from the rear of the hotel and that is not true. Vice Chairman Neuer said that there is a back door at the hotel.

Vice Chairman Neuer said that the hotel property is being reduced to one acre and the Township Ordinance requires a hotel to be on five (5) acres. He said that reducing the size of the lot increases the negative impact on the zone and the community. It is a substantial increase of an existing non-conforming use and no proofs have been submitted to support it.

Vice Chairman Neuer stated that the Board also needed to see a copy of any cross-easement agreements between the hotel and proposed Quick Chek properties, and they did not see it.

Vice Chairman Neuer said that as long as he has been sitting on this Board, he has never seen an application come before them requesting twenty two (22) variances; he said the Board has approved one or two variances but never twenty two (22).

Vice Chairman Neuer went on to explain some of the variances required for this application. He said that the building and impervious coverage will be increased, the lot is undersized for two uses even though the Township Ordinance permits two uses on one property in a B-2 zone. He went on to say there is a requirement that the fuel station must be 500' away from a public building. Even though there was credible testimony regarding current safety requirements there was no testimony regarding other factors which would justify being in close proximity to both a school and public buildings, the Arena Complex.

Vice Chairman Neuer stated the applicant did not prove why they wanted to squash two conditional uses into this site. He said that he also had concerns about pedestrian and vehicular circulation on the two proposed properties.

Vice Chairman Neuer stated that he disagrees with the testimony provided that no one will be there between midnight and five (5) a.m. He said that there are no other gas stations in town that provide gas after midnight and if someone needs gas at that time their GPS will direct them to this site.

Vice Chairman Neuer stated that leaving a car at the gas pump to go shopping is a pet peeve of his. He said that he believes that it is unsafe to walk through the lanes of traffic and blocking the lanes with your car. There was no credible evidence presented to allay these safety concerns which were stated on the record.

Vice Chairman Neuer stated that these are his personal opinions and beliefs and he does this with a heavy heart, because Quick Chek is a company that will be welcome in this community, but he is compelled to vote yes to deny this application.

Mr. Quentzel stated that he has been looking into the benefits of having a convenience store with fuel pumps on this site. He said they have made changes to the initial proposal, reducing the number of gas pumps and the square footage but, after listening to Vice Chairman Neuer, he also feels that there is too much bulk use on that site. Mr. Quentzel said that he is concerned with safety issues because the site is across the street from the zoo and children trying to cross the street to get to the site is very dangerous. He said that this is very difficult for him and initially he was going to abstain from voting but, after listening to Vice Chairman Neuer on the record, he believes that this is too much for this site.

Mr. Quintzel stated that this is not a good location and that he is voting yes to deny the application.

Mr. Steinhart stated that initially he thought this was a great idea and a compatible use, however, through testimony all the positives went away. He said traffic, specifically the turning movements in a highly congested area, was one of his concerns. Mr. Steinhart said that children running across the street to go to the Quick Chek would be very dangerous and he does not want to make it worse than it is now. He said a child is going to get hurt or possibly killed and he does not want to have that on his conscience if it does happen.

Mr. Steinhart stated that Quick Chek did not want to present traffic volumes, as requested by the Board, stating that this information is proprietary and that bothered him. He said for them to not want to provide the Board with that information leads him to believe that this information could not be good.

Mr. Steinhart voted yes to deny the application.

Mr. Sussman stated that most bases were covered and that Vice Chairman Neuer covered his concerns. He said that traffic and congestion were his main concerns, specifically too many turning movements. Mr. Sussman said that a five (5) acre site for a hotel is required by Township Ordinance and the hotel site would be reduced to one acre.

Mr. Sussman voted yes to deny the application.

Chairman Buechler stated that he would have voted to approve this application with a number of conditions. He said that he wanted to state for the record that the twenty four (24) hour approval that was part of this application is determined by the Township's Police Department and not this Board.

Chairman Buechler said that the testimony of the Traffic Engineer was credible; he thinks that this project would not generate any more traffic because the traffic is already there.

Chairman Buechler stated that he thinks that the neighbors are angry with the County, regarding the traffic in the area, and they are taking it out on Quick Chek.

Chairman Buechler stated that in regards to the competition, this is not relevant criteria for this Board to determine their decision.

Chairman Buechler stated that he would have conditioned approval by requiring that the applicant reduce the number of gas pumps.

Chairman Buechler voted no to the proposed resolution.

Bullock:	Yes to Deny	Schwarzbaum:	-
Gabry:	Yes to Deny	Steinhart:	Yes to Deny
D. Nash:	-	Sussman:	Yes to Deny
Neuer:	Yes to Deny	Weiss:	-
Quentzel:	Yes to Deny	Chairman Buechler:	No to proposed Resolution

Chairman Buechler stated for the record that this application has been denied by the Board.

2. ZB-14-08/Sai Hira Ram Trust, Inc.

Carried from 5/21/15

Block: 177.02; Lots: 15.01 & 16; Zone: R-4

23-27 Laurel Avenue

Seeking “D” and several “C” variances for converting two properties

To use as a house of worship and related uses.

EXHIBITS

A-26 – Summary of Relief Requested dated 6/18/15 – prepared by Peter Steck

O-1 – Photograph

O-2 – Photograph

Vice Chairman Neuer is recused from hearing this application and stepped down from the dais.

Robert Williams, Esq., attorney for the applicant, approached the podium.

Chairman Buechler stated that this application was last heard on May 21st and the Planner will present his testimony tonight. He said that the reason the Planner did not testify at the last meeting is because he was delayed in another community.

Peter Steck approached the podium and was sworn under oath.

Chairman Buechler stated that Mr. Steck has testified before this Board many times as a Professional Planner and is accepted as an expert in Professional Planning.

Mr. Williams asked Mr. Steck if he evaluated the proposed site; he replied yes.

Mr. Steck detailed the property and the existing conditions. He stated that the property has some slopes but is predominately a buildable piece of property.

Mr. Steck stated that the applicant is seeking site plan approval which requires “d” and “c” variances to establish a house of worship on a site consisting of two lots. He said that they originally wanted to maintain part of the existing building on lot 15.01 but because of comments from neighbors and the Board, they are now proposing to demolish the building.

Mr. Steck detailed the new proposed building and what rooms will be in the building.

Mr. Steck said that Thursdays and Sundays are the main days for people to come to worship and pray but there are three special days besides the regular days that people will come to worship. He said those special days are the Guru’s birthday, the Lunar New Year and Thanksgiving. Mr. Steck said that occupancy may peak during those special three days but they are anticipating the maximum attendance on the regular days will be no more than forty (40) people.

Mr. Steck stated that the property is located in an R-4 zone and he detailed what is permitted by the Township Ordinance for that zone. He said that a conditional use is not prohibited in this zone; he said that a conditional use has the status of a permitted use if it meets the conditions.

Mr. Steck presented a copy of the summary of relief requested that outlines the six conditions that must be met.

Chairman Buechler asked Mr. Steck if he prepared the summary of relief requested dated 6/18/15; he replied yes.

Chairman Buechler asked to have the summary of relief requested, dated 6/18/15, marked as Exhibit A-26 for identification.

Mr. Steck distributed copies of Exhibit A-26 to the Board Members and began detailing what six (6) conditions must be met. He said that the applicant does not meet four (4) of the six (6) conditions that he just described.

Mr. Steck detailed all of the variances being requested, what is required by the Township Ordinance and what they are proposing. He said that as a House of Worship it is an inherently beneficial use.

Chairman Buechler asked Mr. Steck what factual documentation he has to support his statement regarding the House of Worship being an inherently beneficial use; he said he did not have any.

Chairman Buechler asked Mr. Steck if he can site any cases to support his statement; he said no but there is federal law RLUIPA (Religious Land Use and Institutionalized Persons Act) to support his statement.

Mr. Steck stated that this will have a minimal impact on the zone due to the hours of the week they worship and a minimal amount of people being there. He also said that the care takers house was already operating as a house of worship at one time.

Chairman Buechler called for a recess at 9:39 pm.

Chairman Buechler resumed the meeting at 9:51 pm.

Mr. Steck continued with his testimony after the break and referred to the New Jersey Zoning and Land Use Administration book written by William M. Cox and Stuart R. Koenig regarding Churches and Houses of Worship being an inherently beneficial use.

Mr. Steck stated that the applicant is requesting a parking variance but the parking that is being proposed is more than adequate parking for this use.

Mr. Steck stated that the property is suitable for a House of Worship use and there will be no impact on traffic. He said that the SICA standards are met and there is no detriment to the zone or the community.

Chairman Buechler asked Mr. Steck if he reviewed Exhibit A-6, the sample schedule for the House of Worship; he replied yes.

Chairman Buechler said that the schedule did not coincide with his testimony; he said that the Guru's birthday was not on that schedule.

Mr. Steck stated that his testimony is accurate; he said that he had conversations with the applicant and he thought that the schedule was accurate at that time.

Chairman Buechler told Mr. Steck that he did not say that his testimony modifies the schedule.

Mr. Steck stated for the record that his testimony amends Exhibit A-6 and he corrected the schedule. He said that forgot about Exhibit A-6 because he did not present it originally.

Ms. Gabry stated that there was testimony regarding dignitaries visiting the site and asked Mr. Steck if that is still planned; he replied yes.

Ms. Gabry asked Mr. Steck where the dignitaries will stay when they visit; he said they will stay off-site.

Mr. Williams stated for the record that they revised and removed the area that would house the visiting dignitaries on the plan.

Mr. Grygiel stated that his concern is that if approved the variance will apply to any future use for a House of Worship. He said that there will be different impacts for different Houses of Worships, specifically the number of members.

Mr. Williams stated that they will accept a condition regarding the overflow of parking.

There were no further questions for Mr. Steck from the Board Members or the Board Professionals.

Chairman Buechler asked if any members of the public had any questions for Mr. Steck.

Michal Kasher approached the podium and stated that she lives at 11 Barton Drive. She asked Mr. Steck how many people are on the premises today; he replied fifteen (15).

Ms. Kasher asked Mr. Steck how many people will be on the premises a year from now; he said the same, fifteen (15).

Ms. Kasher asked Mr. Steck how many people will be on the premises five and ten years from now; he said he did not know.

Chairman Buechler stated that there was testimony that in ten (10) years they are anticipating a growth in membership to approximately seventy five (75) to one hundred (100) people.

Tal Ben Zvi approached the podium and stated that he lives at 5 Alsop Court. Mr. Ben Zvi asked Mr. Steck if his planning report, dated November 9, 2014, was based on the Zoning Board meeting held September 18, 2014; he said he thinks so.

Mr. Ben Zvi asked Mr. Steck if he revised his written report since November 2014; he replied no.

Mr. Ben Zvi referred to page three (3) of Mr. Steck's report dated November 9, 2014 regarding the hours of worship and asked him if they were willing to restrict the hours of operation; he replied no. Mr. Steck said that members can come before or after hours to meditate or pray.

Mr. Ben Zvi asked Mr. Steck if any events will be held outdoors; he said not that he knows of.

Mr. Ben Zvi asked Mr. Steck if they are planning to have any music or singers perform outdoors; he said he does not know.

Mr. Ben Zvi asked Mr. Steck if the additional floor space they are proposing requires additional parking spaces; he said that he did not testify to that, the Architect did.

Mr. Ben Zvi asked Mr. Steck if they would be willing to accept no parking on the lawn as a condition; he said that the applicant will answer that.

Mr. Ben Zvi said that the reason he is asking that question is because Mr. Petry testified that cars will park illegal if need be; he said that it is in the January 15, 2015 minutes.

Mr. Williams stated that he does not recall Mr. Petry saying that cars will park illegal.

Chairman Buechler read from the transcript of the January 15, 2015 meeting. He said that a member of the public asked Mr. Petry if overflow parking is needed where will people park and Mr. Petry said generally they will find parking spaces along the site and park illegally.

Mr. Ben Zvi asked Mr. Steck if they are proposing to make the building higher now than the original proposal; he stated that the building will be higher now but it still conforms to the Township ordinance.

Mr. Ben Zvi asked Mr. Steck what the condition of the house is on 15.01; he said it is in bad shape.

Mr. Ben Zvi said there are shingles falling off of the roof and it has been boarded up by the police.

Mr. Ben Zvi asked Mr. Steck if he knew that the police boarded the house up because there was a vagrant living in it; he said he was not aware of that.

Mr. Ben Zvi asked Mr. Steck how many parking spaces are required, by Township Ordinance, for this buildings square footage; he said thirty four (34). Mr. Steck said one parking space for every three seats.

Mr. Ben Zvi asked Mr. Steck if the building was smaller would it require less variances; he replied yes.

Mr. Ben Zvi asked Mr. Steck how smaller congregations differ from larger congregations; he said that there is nothing in the Township Ordinance regarding that.

Mr. Ben Zvi asked Mr. Steck if there has been any other use on the property since the property was purchased by the applicant; he said he did not know.

Chairman Buechler asked the applicants for the application ZB-15-06/Fell and Burton to approach.

Chairman Buechler noted the time and explained to the applicants that the meetings end promptly at 11:00 pm and that they will not get to their application. He asked the applicants if they would like to be carried over to the next Zoning Board meeting held on 7/16/15; they replied yes.

Chairman Buechler stated for the record that application ZB-15-06 for Fell and Burton will be carried over to the July 16, 2015 meeting and that no further notice will be required.

Chairman Buechler also advised Mr. Williams, the attorney for application ZB-15-05/Chabad of West Orange that the Board will not get to this application and asked if they wanted to be carried over to the July 16, 2015 meeting; he replied yes.

Chairman Buechler stated for the record that application ZB-15-05/Chabad of West Orange that was scheduled to be heard at this meeting will be carried over to the July 16, 2015 meeting and that no further notice will be necessary.

Katarzyna Adamczyk approached the podium and stated that she lives at 8 Allsop Court. She asked Mr. Steck if he knew that there were squatters living in the vacant house at one time; he replied no.

Kat Delacruz approached the podium and stated that they live at 3 Barton Drive. He asked Mr. Steck if the caretakers dwelling was included in the impervious coverage; he replied yes.

Ms. Delacruz asked Mr. Steck what the impervious coverage would be if the lots remain separate; he said he did not know because the lots are being merged.

Ms. Delacruz asked Mr. Steck what the height of the house of worship will be; he said 32.67'. Ms. Delacruz asked Mr. Steck why the building is going to be so big; he said because it is the wish of the applicant.

Ms. Delacruz asked Mr. Steck if he knew that there was a petition signed by the neighbors; he replied no.

Ms. Delacruz asked Mr. Steck if he visited the property; he replied yes.

Ms. Delacruz asked Mr. Steck if he drove past Barton Drive; he replied yes.

Ms. Delacruz asked Mr. Steck if people would park on Barton Drive if the parking lot on the site was full; he said he did not know. Mr. Steck said that they could park on a public street. Travis McManigal approached the podium and stated that he lives at 5 Allsop Court. He asked Mr. Steck what 'inherently beneficial use' means; he said that it benefits the community.

Mr. McManigal asked Mr. Steck how this will be beneficial to the neighborhood; he said that people practicing religion is considered beneficial in general.

Mr. McManigal asked Mr. Steck how high the main structure will be; he said 32.7' tall.

Mr. McManigal asked Mr. Steck how many people will be attending the different events held at different times; he said there will be between ten (10) and twenty (20) people there at one time.

Mr. McManigal asked Mr. Steck why the applicant is building such a large structure and not a smaller footprint so that they do not have to ask for all of the variances; he said that the applicant can frame it anyway they want.

There were no further questions for Mr. Steck.

Mr. Williams stated that there are no further witnesses.

Chairman Buechler opened up the meeting for public comment.

Deepu Sebastian approached the podium and was sworn under oath. Mr. Sebastian stated that he lives at 4 Allsop Court and has concerns about the project getting delayed because the vacant house is in disrepair and is not safe. He said that the neighborhood is already accustomed to having a House of Worship right down the street so this should not be an issue. Mr. Sebastian also said that the hypothetical issue of increased membership is not valid.

Katarzyna Adamczyk approached the podium and was sworn under oath. Ms. Adamczyk stated that she lives at 8 Allsop Court and has safety concerns for her children. She said the building is not safe and there was a vagrant living there at one time which is twenty (20) yards from her house. Ms. Adamczyk said that she would like to see the vacant house demolished whether this is approved or not.

Tal Ben Zvi approached the podium and was sworn under oath. Mr. Ben Zvi stated that he lives at 5 Allsop Court and presented photos of the house on lot 15.01 to the Board.

Chairman Buechler asked Mr. Ben Zvi if he took the photos; he replied yes.

Chairman Buechler asked to have the photos marked as Exhibit O-1 and O-2 for identification.

Mr. Ben Zvi said that these were taken from his bedroom window and it shows that the house is in disrepair. He said that it is time to resolve the problem with this house.

Mr. Ben Zvi stated that he met with the applicant and discussed what his concerns were as a neighbor and that some changes were made to their proposal addressing the concerns. Mr. Ben Zvi said that he also had a discussion with the applicant about their religion in an effort to understand it.

Mr. Ben Zvi said that from 11am to 1pm there is not a lot of traffic on Laurel Avenue and he feels there would not be any traffic issues if the temple was restricted to those hours only.

Mr. Ben Zvi said that even though he feels that the term inherently beneficial use is not the right term to use because it will not benefit the neighborhood the neighbors should welcome them into the neighborhood if the application is approved.

There were no further comments.

Chairman Buechler noted the time and stated that the Board adjourns promptly at 11:00 pm. He said that this application will be carried over to the July 16, 2015 meeting and that no further notice will be necessary.

Mr. Williams stated that his client, Chabad of West Orange, would now like to request a special Zoning Board meeting.

Chairman Buechler stated that the Board does not have any special meetings during the months of July and August.

The meeting was adjourned by Chairman Buechler at 11:01 pm

Adopted: July 16, 2015


Rose DeSena
Zoning Board Secretary