

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
November 19, 2015**

The West Orange Zoning Board of Adjustment held a regular meeting on November 19, 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: B. Buechler, C. Darconte, D. Gabry, D. Nash, P. Neuer,
I. Schwarzbaum, M. Sussman, A. Weiss

ABSENT: B. Quentzel (excused)
W. Steinhart (excused)

ALSO PRESENT: Paul Grygiel, Acting Consulting Planner
Eric Keller, Consulting Engineer
Alice Beirne, Esq., Board Attorney
Rose DeSena, Board Secretary
H. Grossman, Esq., Public Advocate

Chairman Buechler made a motion to utilize the Township Council's recording equipment as the official recording device for this meeting.

Vice Chairman Neuer seconded the motion and all were in favor.

ANNOUNCEMENTS

Future Meetings: December 17, 2015 (regular meeting)

MINUTES

October 15, 2015 (regular meeting)

Chairman Buechler asked the Board Members if they had any additional comments to the October 15, 2015 regular meeting minutes that were submitted to them for review; seeing none, he asked for a motion to approve said minutes.

Ms. Gabry made a motion to approve the minutes of the October 15, 2015 regular Zoning Board of Adjustment meeting as submitted to the Board members; Mr. Schwarzbaum seconded the motion and all were in favor.

It was noted for the record that Mr. Neuer was present but did not vote on these minutes because he was recused from hearing application ZB-15-11/Panorama, Inc. d/b/a/ Chit Chat Diner.

NEW BUSINESS

Chairman Buechler asked for a motion to adopt the 2016 Zoning Board of Adjustment Meeting Schedule that was submitted to the Board Members for review.

Vice Chairman Neuer made a motion to adopt the 2016 Zoning Board of Adjustment meeting schedule; Ms. Gabry seconded the motion and all were in favor.

SWEARING IN

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

RESOLUTION AMENDMENT

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

Adopted 10/15/15

Chairman Buechler stated for the record that this resolution was adopted at a prior meeting. He said that after the resolution was adopted it was discovered that it contained two typographical errors and the amendment rectifies these errors.

Chairman Buechler stated that before the Board votes on this resolution he would like to address a letter that was addressed to the Zoning Board dated November 18, 2015 from Travis McManigal requesting that application ZB-14-08 for Sai Hira Ram Trust be re-heard.

Chairman Buechler stated that, after reviewing the letter, he is asking the Board to consider this letter as a timely request for a re-hearing because the representative of the Temple did not testify

during the course of the meeting and he is recommending that the Board deny the request for a re-hearing.

Chairman Buechler said that Travis McManigal was originally represented by an attorney and Mr. McManigal decided to terminate the relationship. He said that in the opening statement read by the Zoning Board Attorney before every meeting, it advises all persons of their right to legal counsel.

Chairman Buechler said that Mr. McManigal opposed the underlying application and could have called a representative from Sai Hira Trust to testify and failed to do so. He said that a representative from the temple was present at every meeting.

Chairman Buechler stated that he is recommending that the request be denied and made a motion to approve the amended resolution that corrects the two typographical errors. He asked if any of the Board Members had any comments.

Vice Chairman Neuer stated for the record that he was recused from hearing this application and excused himself from the conversation.

Ms. Gabry stated that she agrees with Chairman Buechler and that it is up to the attorney to call someone to testify.

Mr. McManigal asked Chairman Buechler if he could approach; Chairman Buechler replied yes and said that he had seven (7) minutes to speak.

Travis McManigal approached and said that during the July 16, 2015 meeting he stated on record that they did not hear from the applicant. He said that there were six (6) instances that the Board, the applicant's attorney and witnesses stated that a representative from the Temple would testify to answer questions.

Chairman Buechler asked Mr. McManigal why he felt it was important to have Mrs. Thani testify; Mr. McManigal said that the neighbors would have had a better understanding of the operations of the temple.

Mr. McManigal pointed out specific pages in transcripts from some of the meetings when it was stated that someone from the Temple would testify.

Chairman Buechler advised Mr. McManigal that he could have called Mrs. Thani, who represented the Temple, to testify because she was present at almost every meeting. He said that some of the neighbors also met with Mrs. Thani outside of the meetings.

Mr. McManigal said that he did not speak to Mrs. Thani directly; he said that he believes that other neighbors met with her.

Mr. McManigal said that he specifically asked questions during the hearings and was told that Mrs. Thani will testify to those questions.

Mr. McManigal said that at the January 25th meeting Ms. Kasher asked a direct question as to when and how the applicant will address their questions. He also pointed out other times when neighbors were told that someone from the temple will testify specifically to the holidays and their operations and said that there were many times that the witnesses contradicted themselves.

Mr. McManigal stated that the Board Members never took the neighbors statements seriously and their statements were forgotten; he said much was passed over.

Ms. Weiss stated that the neighbors were instrumental in making it a better plan for the back yard neighbors. She said that the Board Members listened very carefully and that they knew what their holidays and operations were.

Mr. Schwarzbaum asked Mr. McManigal why he did not call the applicant to testify when he had the opportunity to do so; he said that he did not know he could call her to testify or he would have.

Mr. Schwarzbaum told Mr. McManigal that he had an attorney and that he made a decision not to keep counsel.

Mr. McManigal stated that they did not have representation and that Mr. Grossman should have advised them. Chairman Buechler said that they should know the law and that is not an excuse. He said that under Township Ordinance, Mr. Grossman is the Public Advocate and that he does not have a legal duty to advise every citizen of their rights. Chairman Buechler said that Ms. Beirne reads the opening statement before every meeting and advises all persons of their rights.

Chairman Buechler told Mr. McManigal that if he feels the Board errored, then he has the right to file an appeal.

Chairman Buechler made a motion to deny the request of the re-consideration of ZB-14-08 for Sai Hira Ram Trust and Mr. Gabry seconded the motion to deny the request.

The vote was as follows:

DarConte:	-	Schwarzbaum:	Yes to deny
Gabry:	Yes to deny	Steinhart:	-
D. Nash:	Yes to deny	Sussman:	Yes to deny
Neuer:	Recused	Weiss:	Yes to deny
Quentzel:	-	Chairman Buechler:	Yes to deny

Chairman Buechler stated that the motion for the request of the re-consideration of ZB-14-08/Sai Hira Ram Trust has been denied and Ms. Beirne will prepare a resolution.

Chairman Buechler then made a motion to adopt the amended resolution for ZB-14-08/Sair Hira Ram Trust; Ms. Gabry seconded the resolution.

The vote was as follows:

DarConte:	-	Schwarzbaum:	Yes
Gabry:	Yes	Steinhart:	-
D. Nash:	Yes	Sussman:	-
Neuer:	Recused	Weiss:	-
Quentzel:	-	Chairman Buechler:	Yes

It was noted for the record that Vice Chairman Neuer was recused from hearing this application and did not participate in this discussion.

INTERPRETATION

1. ZB-15-15/Interpretation of Zoning Requirements for Townhouse parking spaces

Chairman Buechler stated that the Zoning Official requested an interpretation of a parking requirement in the Zoning Ordinance.

After some discussion, in particular, the Board considered a footnote in “Parking Schedule I, Parking Requirements for Residential Land Uses” in Section 25-12.2a.1 related to the minimum parking requirements for one-family and two-family dwellings, indicating that a “minimum of one parking space for a single-family detached dwelling shall be provided in a garage.”

The Board’s analysis of this section looked at the definition of a “townhouse”: a “single family attached dwelling units with common walls.” Due to the distinction between a detached and attached dwelling, the Board indicated that in general the requirement of one parking space being provided in a garage would not apply to a townhouse.

However, the Board indicated it was not inclined to determine that this ordinance provision does not apply in all instances. Notably, a concern was raised that a prior approval may have required the provision of a certain number of parking spaces that included garages, and that the conversion of a garage to living space would reduce the number of approved spaces. In that instance, amended site plan approval — and potentially variance relief — would be required. Additional factual information about specific requests would be necessary to determine whether relief is necessary or required.

Chairman Buecher advised Mr. Grygiel to “clean up the Ordinance” in the Zoning Board Yearly Report to the Township Council for proposed revisions to the ordinance.

APPLICATION(S)

- 1. ZB-15-11/Panorama, LLC d/b/a Chit Chat Diner** **Carried from 10/15/15**
Block: 111; Lot: 1.05; Zones: B-2 & PURD
410 Eagle Rock Avenue
Seeking preliminary & final site plan approval with “d” variance & bulk
variances to demo an existing diner and construct a new one story
restaurant.

EXHIBITS

A-10 – Site Plans – 15 sheets with a revision date of 11/19/15
A-11 – Color Rendering of Site Plan dated 11/5/15
A-12 - Architectural Plans – revision date of 9/24/15

Chairman Buechler stated that he and Vice Chairman Neuer are recused from hearing this application and turned the Chair over to Ms. Gabry.

Vice Chairman Neuer and Chairman Buecher stepped down from the dais.

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

Mr. Williams stated that this application was last heard at the regular Zoning Board meeting held on 10/15/15. He said that Chairman Buechler requested that their Engineer return and that they are prepared to address the Board’s concerns.

Michael Dipple, engineer for the applicant, approached the podium.

Mr. Williams stated that Mr. Dipple was sworn in at the last meeting on 10/15/15 and is still under oath.

Ms. Beirne stated that Mr. Dipple was previously qualified as an expert in Engineering.

Mr. Williams asked Mr. Dipple to address Mr. Keller’s concern regarding the illumination levels being slightly too low.

Mr. Dipple presented a set of site plans with a revision date of 11/19/15 that were marked as Exhibit A-10 for identification. He referred to sheet C-07 of the lighting plan and detailed the location of the light candles stating that they added one additional light fixture and moved them counter clock wise. Mr. Dipple said that by rotating the lights they ended up with good light levels.

Mr. Keller stated that he was satisfied with the revisions to the lighting plan and recommended that the applicant provide the calculations of the uniformity ratio as a condition; Mr. Williams said they will agree to that condition.

Mr. Dipple referred to sheet C-09 of the vehicle circulation plan and stated that there was a concern regarding a delivery or emergency vehicle not being able to get to the rear of the building from the west driveway. He said that he used templates running the large vehicle through that area and the vehicle did get through except in one location where one employee parking space was located and so they moved that parking space. Mr. Dipple also described how an emergency vehicle would maneuver if there was a car fire in the rear of the building and said that the best place to fight a fire would be from the front of the building and not the rear. He said that if there was a significant fire that they would shut down Eagle Rock Avenue.

Mr. Keller stated Mr. Dipple addressed his concerns and that the Fire Department will go in the out driveway in case of an emergency.

Mr. Schwartzbaum asked Mr. Dipple if a tractor trailer can make a right hand turn into the site from Eagle Rock Avenue; he replied yes.

Mr. Dipple referred to Exhibit A-11 of the colored rendering of the site plan. He said that Mr. Keller had a question regarding the removal of the trees along Eagle Rock Avenue.

Mr. Keller stated that his question for Mr. Linson was regarding having the trees removed in the front along Eagle Rock Avenue; he said that Mr. Linson deferred that to the Board.

Mr. Keller said that his other question to Mr. Linson was his concern regarding the removal of the trees along the edge of the cliff because a resident expressed their concern regarding rock falls. He said that Mr. Linson stated that the trees can be removed but the stumps must remain.

Mr. Williams said that this is acceptable; Ms. Beirne said that this will be a condition of approval.

Mr. Williams stated that the applicant is proposing to take down the trees along Eagle Rock Avenue and that they concur with Mr. Linson. He said that they will provide low level shrubs in that area in order to protect headlights shining on to Eagle Rock Avenue.

Mr. Williams said that additional efforts are being proposed to prevent soil erosion.

Mr. Dipple said that they are proposing to go above what is required by imploding super silt fencing and hay bales that will hold back the soil runoff during construction.

Mr. Keller said that he is satisfied with this and that item #13 should be stricken from his 11/16/15 review memo.

Mr. Schwarzbaum asked Mr. Dipple how long construction will take; he said up to six (6) to eight (8) months for complete construction. Mr. Dipple said that the site itself will not be exposed for that long. He said that they will install the drainage system first and the soil would only be exposed for two (2) to three (3) months.

Mr. Keller stated that the key thing is that once the application is approved, his staff is out there inspecting. He said that drainage and runoff is paramount.

Mr. Williams stated that they removed four of the employee parking spaces that were initially proposed but they would like to keep the four parallel parking spaces along the westerly property line. He said that they requested a parking variance but they do not need one. Mr. Williams said that they are proposing eighty five (85) parking spaces and they only need sixty one (61) parking spaces. He said that he would propose that they approve with the four parking spaces along the westerly property line but for the initial development, they will provide arborvitae and grass. Mr. Williams said that if they need the parking spaces in the future, they want them back and they will install grass and arborvitae along the property line as a buffer.

Mr. Keller said that he has no problem with that; he said they have enough parking according to the Township Ordinance. He said that trees are inappropriate along the westerly property line and they should consult with Mr. Linson.

Mr. DarConte asked Mr. Keller if storm water would pass over into the westerly section of the property line; he replied no. Mr. Keller said that the storm water would only go north and south. He said that the driveway pitches away from the diner and the water will flow towards the diner and not towards the neighbor's property.

Mr. Williams asked Mr. Keller if he had any further questions.

Mr. Keller stated that they are proposing one handicap parking space in the front along with two westerly handicap parking spaces. He said that he would like to see one handicap parking space straight flush with a bollard.

Mr. Keller asked Mr. Dipple if the applicant is proposing to install a ramp in the rear of the building for deliveries instead of the stairs; he said no. Mr. Dipple said the owner wants to leave it as stairs and that they will use a portable ramp when making deliveries.

Ms. Gabry asked Mr. Dipple if the back door will be used for deliveries only; he replied yes.

There were no further questions for Mr. Dipple from the Board Members, the Board Professionals or members of the public.

Mr. Williams called his next witness.

Steven B. Lazarus approached the podium. Mr. Williams stated that Mr. Lazarus was sworn in at the 10/15/15 meeting and will continue under oath.

Ms. Beirne stated that Mr. Lazarus was previously qualified as an expert in Architecture.

Mr. Lazarus presented revised architectural plans, dated 9/24/15, that were marked as Exhibit A-12 for identification. He referred to the plans stating that the double doors in the rear of the building will be used for deliveries and the single door will be for egress only.

Mr. Lazarus stated that the applicant provided additional screening for the HVAC system on the roof and that no one on the street would be able to see the unit. He said that the only one that would be able to see the HVAC unit is someone on the fourth floor in the adjacent building.

Mr. Williams asked Mr. Lazarus if the HVAC units could be screened any further; he replied no. Mr. Lazarus said that it is not feasible.

Mr. Lazarus stated that the Township's Fire Official will determine where to place the Knox Box that is required.

Mr. Grossman asked Mr. Lazarus if there will be any cooking odors coming from through the vents of the HVAC unit; he replied no. Mr. Lazarus said that the unit has filters.

There were no further questions for Mr. Lazarus from the Board Members, the Board Professionals or members of the public.

Ms. Weiss stated that she thinks this is a great application but is concerned about the diner being open twenty four (24) hours with the liquor license.

Mr. Williams said that liquor will not be served twenty four (24) hours. He said that the twenty four (24) hour operation is a Police regulation and is under their jurisdiction.

Ms. Gabry reiterated and said that this is a police issue.

Mr. Grygiel stated that the use variance is because a small section of the parking lot is in a PURD zone; he said that the restaurant itself is a permitted use.

Mr. Williams summed up and asked that the Board approve this application.

Ms. Gabry asked if any of the Board Members had any comments.

Ms. Nash stated that she will vote to approve this application.

Mr. Schwarzbaum said that he will recommend that the applicant remove the parking spaces on the west side of the property and provide landscaping in that area along with installing the silk fencing and bales of hay. He said that he is in favor of the application.

Mr. DarConte said that there was a concern expressed about the employee parking space in the rear of the building that could possibly prevent an emergency vehicle from getting through and asked if it should be removed.

Ms. Gabry deferred that question to Mr. Keller.

Mr. Keller said that this parking space is appropriate and should be left there because an employee can always move their car in case of an emergency.

Mr. Sussman said that he is satisfied and feels that the site should continue as a diner site and it will make it an even better diner site.

Ms. Weiss said that she agrees with the other Board Members.

Ms. Gabry said that she feels that this is a boost to the area and made a motion to approve with the following conditions:

- Submit a set of plans that include Mr. Keller's comments
- Install a super silt fence
- Trees remain except the invasive species according to Mr. Linson's recommendations
- Trees along Eagle Rock Avenue replaced with low level shrubs
- Trees along the cliff are to be removed and the stumps are to remain
- Site triangle easements included
- Calculations of light ratio
- Four parking spaces along the westerly side of property will be banked and plant shrubs
- Knox Box included by the direction of the Fire Department
- Door in the rear of the building will be used for emergency egress only
- Handicap spaces will be constructed with one flush curb
- HVAC units will be screened as per the design proposed
- Portable ramps will be used for deliveries

Mr. Keller clarified that in his review letter numbers thirteen (13) and eighteen (18) were stricken and everything else is included; tree stumps are only to remain on top of the cliff in the rear; pre-construction meeting before work begins and provide escrow.

Mr. Sussman seconded the motion to approve with said conditions.

The vote was as follows:

DarConte:	Yes	Schwarzbaum:	Yes
Gabry:	Yes	Steinhart:	-
D. Nash:	Yes	Sussman:	Yes
Neuer:	Recused	Weiss:	Yes
Quentzel:	-	Chairman Buechler:	-

Ms. Gabry called for a recess at 9:32 pm.

Chairman Buechler returned to the dais and resumed as Chair.

Chairman Buechler resumed the meeting at 9:32 pm.

2. ZB-15-12/Executive West, LLC

Block: 80.03; Lots: 10 & 21; Zone: R-1

Ridge Road

Seeking preliminary and final site plan approval with a “d” variance and bulk variances
For the construction of a 36 unit townhouse development

3. ZB-15-13/Executive West, LLC

Block: 82.03; Lot: 17; Zone: R-1

Ridge Road

Seeking preliminary major subdivision approval with variances for the creation of two
residential lots with an abutting road for egress and ingress.

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

Chairman Buechler asked Mr. Williams if ZB-15-12 and ZB-15-13 are separate applications; he replied yes. Mr. Williams said that they were filed as two separate applications but they are so intertwined and he is going to present them together. He said one is dependent on the other because of the road.

Chairman Buechler stated that Ms. Weiss is recused from hearing this application.

Mr. Williams said that this application will go on longer than the time that they have left at this meeting and that they would like to be carried over to the December 17, 2015 regular Zoning Board meeting. Mr. Williams stated that after that they hope to get special meetings to get through these applications in a timely fashion.

Chairman Buechler asked Mr. Williams how many meetings he thinks it will take to get through the applications; he said three or four nights.

Vice Chairman Neuer stated that he will be out of the country on December 17th and that he would like Mr. Williams to order the transcript for him so that he can read it.

Mr. Williams stated that they will provide a court stenographer if they have to.

Chairman Buechler asked if the attorney for the objector has any objection with carrying this over to the 12/17/14 meeting; he replied no.

Chairman Buechler stated that this application will be carried over to the regular Zoning Board meeting held on 12/17/15 and that no further notice will be necessary.

The meeting was adjourned by Chairman Buechler at 10:02 pm

Adopted: December 17, 2015



Rose DeSena
Zoning Board Secretary