

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
February 18, 2016**

The West Orange Zoning Board of Adjustment held a regular meeting on February 18, 2016 commencing 8:00 PM at 66 Main Street, West Orange, N.J. in Council Chambers.

Chairman Neuer 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 10, 2015 in accordance with the "Open Public Meetings Act."

Chairman Neuer 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, B. Quentzel, M. Sussman

ABSENT: I. Schwarzbaum (excused)
W. Steinhart (excused)
A. Weiss (excused)

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

Chairman Neuer stated for the record that the meeting is being recorded on the Township's audio recording system which shall constitute the official recording for the meeting this evening.

ANNOUNCEMENTS

Future Meetings: February 25, 2016 (special meeting)
March 17, 2016 (regular meeting)
April 21, 2016 (regular meeting)
May 19, 2016 (regular meeting)

REAPPOINTMENT

Chairman Neuer stated for the record that there had been a delay in certain paperwork that prevented the Board from appointing Legal Counsel for the calendar year of 2016 prior to this evening. That issue has now been resolved so that the appointment may proceed.

Chairman Neuer made a motion to appoint Alice Beirne, Esq. as Legal Counsel for the Zoning Board for the calendar year of 2016.

Ms. Gabry seconded the motion and all were in favor.

MINUTES

Adopt Minutes: January 21, 2016 (regular meeting)

Chairman Neuer asked the Board Members if they had any additional comments to the minutes of the January 21, 2016 regular meeting that were circulated by the Board Secretary that included all comments submitted in advance by any Board Member.

Seeing none, Chairman Neuer made a motion to approve the January 21, 2016 minutes; Mr. Sussman seconded the motion and all were in favor.

Chairman Neuer noted for the record that Vice Chairman Buechler was present but did not vote on these minutes since he had not attended that meeting.

Adopt Minutes: January 28, 2016 (special meeting)

Chairman Neuer asked the Board Members if they had any additional comments to the minutes of the January 28, 2016 special meeting that were circulated by the Board Secretary that included all comments submitted in advance by any Board Member.

Seeing none, Chairman Neuer made a motion to approve the January 28, 2016 minutes; Ms. Gabry seconded the motion and all were in favor.

Chairman Neuer noted for the record that Vice Chairman Buechler was present but did not vote on these minutes since he had not attended that meeting.

SWEARING IN

Paul Grygiel, consulting Planner for the Township was sworn under oath.

Chairman Neuer stated that the next item on the agenda is something that he asked to be inserted as a discussion of certain matters that have come to the attention of the Board Attorney which might require adjourning to executive session. He said that because there is only one application on the agenda to be heard this evening, rather than have the applicant sit and wait while the Board goes into executive session, they will hear the application first.

APPLICATION(S)

1. ZB-15-17/Prism Green Associates III, LLC

Block: 155; Lot: 26.03; Zone: O-R

Rooney Circle

Seeking "c" variances to erect a monument sign

Frank Regan, attorney for the applicant, approached the podium.

Mr. Regan began detailing the application stating that the matter is in regards to property on Rooney Circle and that the applicant is proposing to install a monument sign which requires two variances according to the Township's ordinance for sign regulations. Mr. Regan stated that notice was provided to all of the property owners within 200' of the site and published in the Star Ledger.

Mr. Regan stated that property is under construction for an L. A. Fitness health club that was approved by this Board back in October 2013.

Mr. Regan stated that he has two witnesses that will be testifying this evening; John Brucker, representative of the property owner and Joseph Staiger, Professional Engineer and Professional Planner.

Vice Chairman Buechler asked Mr. Regan if Mr. Staiger will be testifying as an Engineer or a Planner; he said as a Professional Planner.

Chairman Neuer stated that Mr. Staiger did not submit a Planners report.

Mr. Regan said no he did not; he will be providing testimony this evening.

Chairman Neuer said that when the Board accepts Planning testimony they require a Planners report to be submitted at least ten (10) days before the hearings so that the Board Members can review it.

Chairman Neuer stated that the application does not even list a Planner and he was a little concerned how

the applicant would prove the need for the variances without a Planner.

Chairman Neuer asked Mr. Regan if Mr. Staiger prepared a written report; he said no.

Mr. Regan said that if the Board does require that Mr. Staiger submit a written report then they will come back next month.

Chairman Neuer stated that rather than carry this over to the next meeting, he will accept Mr. Staiger's testimony subject to whether or not the other Board Members would like to have a written report.

Chairman Neuer asked Mr. Regan to present his case.

Vice Chairman Buechler stated that when the applicant came before this Board in 2013 asking for preliminary and final site plan approval for the site, he specifically asked the applicant whether they plan to have a free standing sign and they replied no.

Vice Chairman Buechler read from the adopted minutes of the September 12, 2013 meeting when he asked Mr. Regan if the applicant is proposing a monument sign and he replied no. He then read from the adopted minutes of the October 28, 2013 Zoning Board meetings when he asked Mr. Burgis, the applicant's planning consultant, if the applicant is seeking to erect a monument sign on Prospect Avenue and he replied he did not know.

Vice Chairman Buechler said that it is one thing for an applicant to come back for unforeseen issues but in this case they are asking for a free standing sign that, when asked if they are proposing a free standing sign during the 2013 Zoning Board hearings, they replied no or that they were not planning on doing that.

Vice Chairman Buechler asked Mr. Regan why the Board should consider this when they already gave them site plan approval and a variance for signs. He said that in part this is a legal question and also the Board does not act on applications in a piecemeal fashion.

Mr. Regan said that he is not disputing the testimony given at that time but he does not recall saying that are not going to have a monument sign. He said that his recollection at the time was that they did not know the dimensions of the sign and he thought that they indicated that.

Chairman Neuer stated that Mr. Regan's statements and Mr. Burgis' testimony are the minutes that are taken by the Board Secretary and the Board Members review them very carefully.

Mr. Regan said, once again, that he is not disputing the testimony; he said that it was his recollection that they were not certain of the dimensions of the sign at the time.

Mr. Regan said that, never the less, they are here now requesting the Board's consideration of a monument sign that is allowed in the OR zone.

Chairman Neuer said that he agrees with Vice Chairman Buechler stating that the legal issue is as to whether or not the applicant is barred because they submitted an application that included a very comprehensive sign package and the Board granted them the variances for it.

Chairman Neuer stated many years ago he represented the Essex Green Shopping Center and appeared before the Planning Board for a sign package for Sears that was approved. He said four months later, they still did not have a lease, and he found out that the Chicago hierarchy for Sears adopted a new sign package and said they would not sign the lease unless the new sign package was approved. Chairman Neuer stated that he had to come back before the Planning Board to explain that the applicant could not get the lease signed unless the new sign package is approved and the Board then approved it as a changed circumstance.

Chairman Neuer said that if there is a lease that stipulates that LA Fitness mandates a monument sign is to be erected then the applicant can show the lease to the Board. He said there has to be something to justify the applicant coming back before the Board asking for a monument sign. Chairman Neuer said that there is no reason why the application presented to the Board in 2013 should not have included the monument sign.

Vice Chairman Buechler said that his initial concern is that during the September 12, 2013 hearing it was specifically asked by himself if they would be erecting a monument sign and the reply was no and during the October 28, 2013 hearing he asked Mr. Burgis and he said that he did not know. He said this is about policy of what is better zoning use as to how the Board considers applications.

Mr. Regan said he understands and there may be a requirement in the lease, but he does not have the lease with him this evening.

Mr. Sussman stated that he recollects that this is a build to suit for a LA Fitness and not just a health club; Mr. Regan said yes it is.

Mr. Sussman said that the applicant would have been aware in 2013 what signs were required for the LA Fitness.

Mr. Regan said that he does not think the lease was finalized at the time they appeared before the Board in 2013 but he would have to verify that.

Mr. Regan said that he would like to consult with his client.

Chairman Neuer adjourned the Prism application so that Mr. Regan could consult with his client for approximately ten (10) minutes or fifteen (15) minutes.

Chairman Neuer addressed the Board and said that over the past month or so there has been correspondence regarding the way certain notices have been given as well as requests for subpoenas and other procedural matters. He said as per his discussion with Ms. Beirne, the Board legal counsel, this is something that each Board Member should be aware of because this might lead to litigation and under the Sunshine Law they would have the right to discuss it in executive session.

Chairman Neuer moved to adjourn to executive session; Vice Chairman Buechler seconded the motion to move to executive session.

The vote was as follows:

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

Chairman Neuer adjourned to executive session at 8:26 pm.

Chairman Neuer called the meeting back to order at 8:44 pm.

Mr. Regan stated that, after consulting with his client, he said that they are prepared to go forward and can respond to the questions raised by the Board regarding the lease and why they did not ask for the monument sign the last time they appeared before this Board.

Chairman Neuer addressed Mr. Regan and stated that unless his client has a copy of the lease here then they would be better off having this carried over to the next meeting.

Chairman Neuer said that his concern is that if they go ahead with their testimony this evening they might not provide the Board with sufficient information to justify an approval.

After consulting with his client, Mr. Regan asked if this could be carried over to the next regular Zoning Board meeting on March 17, 2016.

Chairman Neuer advised Mr. Regan to submit a copy of the lease to the Board Secretary at least ten (10) days before the meeting so that she could distribute it to the Board Members in a timely manner.

Mr. Regan asked Chairman Neuer if the Board would like them to submit a Planners report even though it is not required.

Chairman Neuer said that the Board would appreciate a planners report, even though Mr. Regan is correct in saying that it is not mandated for this application. Chairman Neuer further observed that if the Planner is going to refer to cases the Board Members should be given the opportunity to read the cases ahead of time.

Chairman Neuer stated that this application will be carried over to the next regular meeting to be held on March 17, 2016 and that no further notice will be necessary. He said that the application will be first on the agenda.

Chairman Neuer stated that before they adjourn there was a question raised concerning the notice for the Executive West, LLC applications which were heard at a special meeting on January 28, 2016. He said the question was if the meeting itself was the subject of proper notice according the Open Public Meetings Act.

Chairman Neuer said that the the Board has provided a transcript of the January 28, 2016 meeting that can be reviewed in the office of the Board Secretary. He said that if copies of any specific pages of the transcript are needed, they will be provided to those who request them.

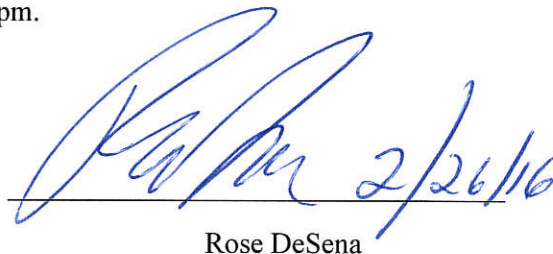
Chairman Neuer stated that a notice was published in the West Orange Chronicle and the Star Ledger explaining that it had come to the attention of the Zoning Board that notice of the special meeting held on January 28, 2016 was not published in two newspapers as required in the Open Public Meetings Act.

*It was noted for the record that Chairman Neuer read the notice that was published in the newspapers in its entirety. A copy of that notice is attached to and made part of these minutes.

Chairman Neuer asked if there were any questions regarding this matter; there were none.

The meeting was adjourned by Chairman Neuer at 8:54 pm.

Adopted: February 25, 2016



Rose DeSena

Zoning Board Secretary

TOWNSHIP OF WEST ORANGE

PLANNING DEPARTMENT

PROOF OF PUBLICATION AFFIDAVIT

DATE: February 19, 2016

As Zoning Board Secretary for the Township

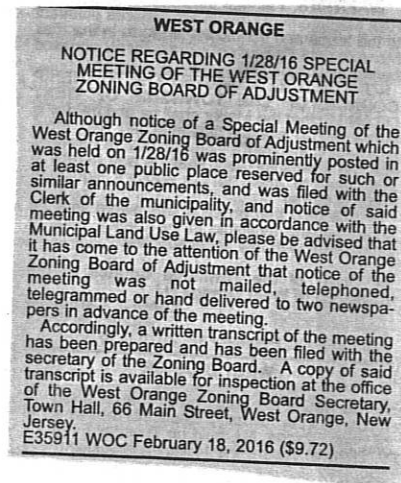
of West Orange, in the County of Essex, State of New Jersey

I, Rose DeSena, hereby certify that a Public Notice, of which a

copy is attached hereto, was published in the West Orange

Chronicle newspaper, in the February 18, 2016

issue of said newspaper.



Rose DeSena

Zoning Board Secretary
Planning/Development

Sworn and subscribed before me this 19th day of

FEBRUARY, 2016

Notary Public of New Jersey

ROBIN L. MILLER
ID # 2364194
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 9/6/2012

9/12/17