

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
April 21, 2016**

The West Orange Zoning Board of Adjustment held a regular meeting on April 21, 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. The Chairman announced that notice of this meeting was given to the Township Clerk, the West Orange Chronicle and the Star Ledger and posted on the Township Bulletin Board in accordance with the "Sen. Byron M. Baer Open Public Meetings Act."

Chairman Neuer announced that a digital tape recording system is being utilized to record the proceedings of the meeting and instructed the general public on how the audio of the proceedings may be reviewed or obtained.

Chairman Neuer stated that one of the applicants retained the services of Ms. Rene Russo, a certified court reporter, and she will be recording the Sai Hira Ram Trust and Stratford Manor applications at this hearing.

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,
I. Schwarzbau, W. Steinhart, M. Sussman, A. Weiss

ABSENT: B. Quentzel (excused absence)

ALSO PRESENT: Paul Grygiel, Township Planner
Eric Keller, Consulting Engineer
Alice Beirne, Esq., Board Attorney
Rose DeSena, Board Secretary

ANNOUNCEMENTS

Future Meetings: May 19, 2016 (regular meeting)
June 16, 2016 (regular meeting)
July 21, 2016 (regular meeting)

Chairman Neuer announced that the applicant for application **ZB-16-02/Arceo** which was scheduled to be heard at this meeting, has requested that this matter be carried over to the next regular Zoning Board of Adjustment meeting to be held on May 19, 2016.

ANNUAL REPORT

Adopt: Zoning Board of Adjustment Annual Report – 2014 - 2015

Chairman Neuer asked the Board members if they reviewed the Annual Report and had any comments; seeing none the Chairman asked for a motion to approve the Zoning Board of Adjustment's 2014-2015 Annual Report.

Vice Chairman Buechler stated that report was well done by Mr. Grygiel and made a motion to adopt the Zoning Board of Adjustments Annual Report for 2014-2015.

Ms. Gabry seconded the motion to adopt the Zoning Board of Adjustment's Annual Report and all voted in favor.

MINUTES

Adopt Minutes: February 18, 2016 (executive session)

These minutes were not yet circulated and no vote was taken on them at this meeting.

February 25, 2016 (special meeting)

Chairman Neuer asked the Board Members if they had any additional comments to the February 25, 2016 special meeting minutes that were submitted to them for review; there were none.

Chairman Neuer asked for a motion to approve the minutes of the February 25, 2016 special meeting.

Mr. Buechler made a motion to approve the minutes of the February 25, 2016 special meeting; Ms. Gabry seconded the motion and all voted in favor.

The record reflected that Mr. Schwarzbaum and Ms. Weiss were present at this meeting but did not vote on these minutes because they were not present at the February 25, 2016 meeting..

March 17, 2016 (regular meeting)

Chairman Neuer made a motion to approve the minutes of the March 17, 2016 regular meeting.

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

SWEARING IN

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

DISCUSSION

1. Application of Oren Rice to request that the Board allow him to request a re-hearing of the Panorama, Inc. "Chit Chat Diner", Application ZB 15-11, out of time.

Chairman Neuer stated that a number of people have recently requested that certain actions be taken by the Board, or personally taken by him as Chairperson, for certain applications. He said the Board will discuss these requests but no vote will be taken on them.

Chairman Neuer stated that the first request was made by Oren Rice and he asked if Mr. Rice was present.

Chairman Neuer said to let the record reflect that Mr. Rice was not present.

Chairman Neuer said that Mr. Rice requested a re-hearing for application ZB-15-11 for the Chit Chat Diner. He said he reviewed the request with the Zoning Board's legal counsel and it is his opinion that the request was filed out of time and he will put some additional findings on the record in a few minutes.

Vice Chairman Buechler stated for the record that he was recused from hearing application ZB-15-11 for the Chit Chat Diner and asked the Chairman if he should step down from the dais before the Board discussed this matter.

Chairman Neuer said that he would like to see who is here first before they discuss any of the requests.

2. E-mail from Brooke Carlson regarding ZB-16-01 and ZB-14-08 (Sai Hira Ram Trust applications) and the Open Public Meetings Act, received by the Zoning Board on April 19, 2016.

Chairman Neuer said the next email request was from Brooke Carlson regarding the Sai Hira Ram Trust applications and asked if Ms. Carlson was present.

Chairman Neuer said to let the record reflect that Brooke Carlson not present,

3. E-mail from Suzanne Bodevin regarding ZB-15-02 (Black and White Taxi) and the Open Public Meetings Act, received April 7, 2016.

Chairman Neuer said that the next email request was from Suzanne Bodevin regarding an application for Black and White Taxi Company and asked if Ms. Bodevin was present.

Chairman Neuer said to let the record reflect that Suzanne Bodevin was not present.

4. E-mail from Akhil Kumar regarding ZB-15-11 (Chit Chat Diner) and the Open Public Meetings Act, received by the Zoning Board April 7, 2016.

Chairman Neuer said that the next email request was from Akhil Kumar regarding the application for the Chit Chat Diner and asked if Mr. Kumar was present.

Chairman Neuer said to let the record reflect that Akhil Kumar was not present.

Chairman Neuer stated that he as Chairman has received inquiries from these individuals which has taken time from the Board's legal counsel, secretary as well as himself and then these individuals do not appear at the meeting where their inquiries are to be considered. He said Ms. Beirne has written many emails and he has taken the time to research the law so that the Chairman could properly respond to these inquiries.

Chairman Neuer said that he finds it disturbing that there are citizens of this community who the Board tries to protect. As Chairman, he listens to their complaints, performs research and consults with legal counsel and then those individuals do not appear to pursue the subjects of their inquiries when those matters are presented to the Board.

Chairman Neuer asked the Board's legal counsel to prepare an amendment to the Zoning Board Rules and Regulations so that any individual who submits inquiries to the Board, the Chairperson, including requests to have the Chairperson issue subpoenas, must provide their full name and addresses.

Chairman Neuer said that the requests from Brooke Carlson, Suzanne Bodevin and Akhil Kumar assert that pursuant to the Open Public Meeting Act, because of a clerical error, the meetings may have been conducted without a second publication but the Board is still conducting their investigation.

Chairman Neuer stated that even though the second notice may have not been published according to the Open Public Meetings Act, each one of those applications were fully and properly noticed to the public and all citizens within two hundred (200) feet of the site pursuant to the New Jersey Municipal Land Use Law.

Chairman Neuer read from the statute and stated that under the Open Public Meetings Act improper notice can make an action taken at an improperly noticed meeting "voidable" and any person seeking to have it "voided" must do so within forty five (45) days after the action sought to be voided has been made public.

Chairman Neuer stated that it is his opinion that the three applications in question are not subject to being "voided" because they were properly noticed pursuant to the New Jersey Municipal Land Use Act. He said in order for them to be declared "void" there would have to be a declaration by a court of competent jurisdiction.

Chairman Neuer said there were no claims filed by way of prerogative writ within the forty five (45) days. He said that the forty five (45) day time limit has been strictly enforced by our courts and cited case law including, Bernardsville Quarry vs. Bernardsville Borough as an example.

Chairman Neuer stated that application ZB-14-08 for applicant Sai Hira Ram Trust was approved on September 17, 2015, the resolution was adopted on October 15, 2015 and published on October 22, 2015.

Chairman Neuer stated that application ZB-15-02 for 172 CSI Corp. t/a Black and White Taxi was approved on September 17, 2015, the resolution was adopted on October 15, 2015 and published on October 22, 2015.

Chairman Neuer stated that application ZB-15-11 for applicant Panorama, LLC d/b/a Chit Chat Diner was approved on November 19, 2015, the resolution was adopted on December 17, 2015 and published on December 24, 2015.

Chairman Neuer stated that no lawsuits were filed in the Superior Court of New Jersey within the 45 days on any of these applications and that he recommends that the Board not take any independent action to void the decisions.

Chairman Neuer stated that the Open Public Meetings Act requires that notice of all public meetings must be delivered to two publications and unfortunately it was discovered recently that notice may not have been sent to a second publication.

Chairman Neuer stated that this oversight was due to an unintentional clerical error by someone who works in the Township administration possibly due to some confusion regarding the requirements of the Open Public Meetings Act and the requirements of the New Jersey Municipal Land Use Law. He said that once it was discovered, the Board Secretary was instructed to deliver the notice to the Star Ledger and now all scheduled regular meetings for the remainder of calendar year 2016 are properly noticed according to the Open Public Meetings Act and the New Jersey Municipal Land Use Law so that there are no potential further problems.

Chairman Neuer said that he recommends that no action be taken and opened the floor to the Board Members for any questions or comments.

Vice Chairman Buechler stated for the record that he was recused from hearing the application for the Chit Chat Diner but not the Black and White Taxi or Sai Hira Ram Trust applications. He said that he concurs with Chairman Neuer's analysis regarding some of the case law and the

applicable statutes and recommends that the Board adopt the Chairman's position and move forward with the remaining applications on the agenda for this meeting.

Mr. Sussman said that he also concurs with the Chairman and is disappointed in those who filed these requests and did not have the courtesy to appear.

Mr. Schwartzbaum said that he also concurs with the Chairman and recommends that the Board take no action on all three requests.

Chairman Neuer asked Ms. Beirne to also revisit the rehearing section of the Zoning Board Rules of Procedure and asked her to tighten and clarify the procedures.

Mr. Sussman asked Chairman Neuer if they should add that any person who makes a request is required to appear before the Board; he replied yes.

Chairman Neuer stated that he would like the record to reflect that he issued four (4) subpoenas that were requested by someone and they were never picked up from the Board Secretary's office and they were never served.

APPLICATION(S)

1. ZB-15-17/Prism Green Associates III, LLC Carried from 3/17/16

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

Rooney Circle

Seeking "c" variances to erect a monument sign

EXHIBITS

A-1 – Sheet 2 of the site plan with a date of 10/27/15.

Mr. Steinhart stated that he is recused from hearing this application and stepped down from the dais.

Frank Regan, Esq., attorney for the applicant Prism Green Associates, approached the podium.

Mr. Regan stated that his client is here requesting two variances for a monument sign. He said that in October, 2013 the applicant was approved to construct a fitness center with signage but, at that time, they did not ask for an approval for a monument sign and, further, they stated that they would not be requesting approvals for any additional signage.

Mr. Regan stated that at the time of the approval, the applicant had not signed a lease with the tenant and that the lease was not executed until November 24, 2014. He said that he provided a copy of the redacted lease to the Board as requested at the last meeting.

Vice Chairman Buechler stated that the date on the lease that was sent to the Board was incorrect. He said that instead of a date there was an "ii" after the month and asked Mr. Regan if he has a copy of the actual lease.

Mr. Regan stated that he has a copy of the full lease in his office and it is dated correctly. He said that he did not send the Board a copy of the entire lease; he just sent them excerpts of the lease. Mr. Regan said that he has read it in its entirety and it has the correct date of November 24, 2014 on it.

Vice Chairman Buechler stated that the copy of the lease that was sent to the Board does not add up; he said there are no page numbers and he is not sure they received everything. He said that he did not read anything that states there is an actual contingency that the tenant could walk away from the lease if this sign is not approved.

Chairman Neuer referred to page seven (7) of the lease regarding pylon sign approvals and stated that the sign is not a mandatory requirement under the lease.

Mr. Regan stated that he is not disputing the provisions of the lease; he said that they are here before the Board to ask for sign approvals according to the provisions of the lease.

Chairman Neuer asked Mr. Grygiel if there is a pylon sign on the approved plan; he replied no.

Chairman Neuer asked Mr. Grygiel what the difference is between a monument sign and a pylon sign. Mr. Griegel said that a pylon sign is typically raised above the ground between two poles and a monument sign is typically lower to the ground and is on a base.

Chairman Neuer asked Mr. Regan if he is correct in saying that the lease presented to the Board refers to a pylon sign and the applicant is here for a monument sign; Mr. Regan said that is correct.

Mr. Regan stated that he has no idea why a pylon sign was included in the lease because it is not permitted in that zone and a monument sign is permitted.

Chairman Neuer stated that one of his concerns is that the applicant came back for a sign after a comprehensive application was approved for that site and they should have a good reason for this variance substantially after-the-fact.

Mr. Regan said that at the time the application was approved the applicant had no intention on putting up a monument sign. He said that something transpired when they negotiated the lease, after the application was approved, and that is why there are here at this meeting.

Mr. Regan called his first witness.

John Brucker approached the podium and was sworn under oath. Mr. Brucker stated that he is the senior project manager for Prism Green for the L.A. Fitness center.

Mr. Brucker detailed the sign stating that it will be 4' high and 6' wide and will be located ten (10) feet back from the property line off of Rooney Circle where it is more visible.

Vice Chairman Buechler asked Mr. Brucker if the sign will six (6) feet off the ground; he replied yes.

Vice Chairman Buechler asked Mr. Brucker if the sign is on Prism's property; he replied yes.

Vice Chairman Buechler asked Mr. Brucker if any work has been started to construct the sign yet; he replied no.

Chairman Neuer asked Mr. Brucker what location he would have to be coming from to see the sign; he said either coming from Prospect Avenue or Rooney Circle.

Chairman Neuer asked Mr. Brucker if he would have to go past the building going east on Rooney Circle before he saw the sign; he replied yes.

Chairman Neuer said that coming from Prospect Avenue you can see the large mural on the façade and asked Mr. Brucker why they would need the monument sign; he said because the tenant would like to delineate the entrance to the fitness center so that people would not turn into the office building driveway by mistake.

Mr. Gabry asked Mr. Brucker why he thinks people would be confused about finding the L.A. Fitness building when there is a huge sign that says L.A. Fitness on the front of the building; he said because people might turn into the wrong driveway.

Ms. Gabry asked Mr. Brucker if the driveways are connected; he said yes.

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

Chairman Neuer asked if any members of the public had any questions for Mr. Brucker; there were none.

Mr. Regan called his next witness.

Joseph Staigar approached the podium and was sworn under oath. Mr. Staigar detailed his educational and professional background as a professional engineer, traffic engineer and planner licensed in the State of New Jersey.

Vice Chairman Buechler asked Mr. Staigar if he will be testifying as the engineer, the planner and the traffic engineer of this project; he replied yes.

Chairman Neuer accepted Mr. Staigar as an expert in professional engineering and professional planning and also as a traffic engineering expert.

Mr. Regan asked Mr. Staigar if he prepared the site plans for the original application; he replied yes.

Vice Chairman Buechler asked Mr. Staigar if the original site plans were signed by him.

Mr. Staigar said that he signed the original site plans but another engineer in his firm testified for him at the original hearing because he could not be at that meeting.

Chairman Neuer asked Mr. Staigar how many site plans he prepared in the last five (5) years; he said approximately three (3) dozen.

Mr. Staigar presented the site plan; Chairman Neuer asked to have sheet 2 of the site plan dated 3/12/13 marked as Exhibit A-1 for identification.

Mr. Staigar referred to Exhibit A-1 and detailed the site. He said that the property does not have any frontage; it is land-locked and surrounded by private property. Mr. Staigar said that this is why the applicant is here because they are proposing the sign on the side yard even though it may look like a front yard.

Mr. Staigar said that the sign will be located ten (10) feet from the property line in the side yard and twenty five (25) feet is allowed per ordinance.

Vice Chairman Buechler asked Mr. Staigar if the sign is perpendicular to Rooney Circle; he replied yes. Mr. Staigar said that the sign is actually twenty five (25) feet from the curb line of Rooney Circle.

Mr. Staigar said the best visibility of the sign would be on the curb line; he said the purpose of the sign is to locate the driveway for LA Fitness so they do not use the driveway for the adjacent medical building.

Vice Chairman Buechler stated that no other businesses in the Essex Green Plaza have a sign to locate their driveways.

Mr. Staigar said most of the businesses on Route 10 have signs to locate their driveways; Vice Chairman Buechler said there is no comparison to this.

Vice Chairman Buechler asked Mr. Staigar to state the distance between the medical building driveway and the health club driveway; he said approximately forty (40) or fifty (50) feet.

Chairman Neuer asked Mr. Staigar why he did not design the health club driveway to be closer to the building; he said it was designed this way because of the grades.

Vice Chairman Buechler asked Mr. Staigar why he did not put the monument sign on the original site plan. He said that the Board asked if there are going to be any other signs during the initial hearing for this project and the applicant said no. Mr. Regan responded and said at that time it was not their intention to put up a monument sign.

Ms. Gabry asked Mr. Staigar if he is sure that the distance between the two driveways is forty (40) feet because the driveways appear to have more distance than that between them; Mr. Staigar said that was an approximation and after looking at it again he said the driveways are more like one hundred (100) feet apart.

Mr. Staigar said that the applicant prefers that the health club members only use the driveway for the fitness center; he said that they do not want the people leaving the medical building to intermingle with the people coming to the gym.

Mr. Regan asked Mr. Staigar if the driveways were existing; he replied yes. Mr. Staigar said that he could not move the driveway for the medical building; he said that they were stuck with the location of the driveway and the existing access for the health club

Mr. Schwarzbaum asked Mr. Staigar if there is a smaller sign that they could put up delineating the health club driveway that would not require a variance; he replied no. Mr. Staigar said that it is not the size of the sign it is the location of the sign.

Chairman Neuer asked Mr. Staigar if they could paint the words "LA Fitness" on the asphalt; he said yes but no one would see it as they approach the driveway.

Chairman Neuer asked Mr. Staigar if a line of sight drawing was prepared; he said no he did not do that as part of the submission but he can do that now if the Board would like him to.

Ms. Weiss said that the same people usually go to the gym and will not have a problem finding it; she said that does not appear to be an issue. Mr. Staigar said that there are constantly new customers joining the gym.

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

Chairman Neuer asked if any members of the public had any questions for Mr. Staigar.

Tal Ben-Zvi approached the podium and stated that he lives at 5 Allsop Court. He asked Mr. Staigar what a right of way is; he said that it is a road that the town or county owns. Mr. Staigar said that Rooney Circle is the right of way.

There were no further engineering questions for Mr. Staigar.

Mr. Staigar stated that now he will be testifying as the applicant's Planner. He said that his testimony will be based on his report submitted to the Board Members.

Mr. Staigar stated that the applicant is seeking variance approval for a proposed monument sign. He said that this requires two variances; one for the sign location in the side yard and one for the minimum side yard setback for the sign.

Chairman Neuer asked Mr. Grygiel if this would be an expansion of a non-conforming use regarding the number of signs on this property; he said he would have to check the township ordinance to see if there is a limited number of signs allowed.

Mr. Staigar said the sign meets the townships ordinance as far as the size; he said the sign is less than half of what is allowed. Mr. Staigar said that it is important to have signs that locate driveways and the monument sign provides identification.

Mr. Staigar said that signs are only allowed in front yards and this site does not have a front yard; he said if the site did have a front yard the applicant would not be here tonight.

Mr. Staigar said that they meet the criteria for the C1 and C2 variance. He said that the sign will not be detrimental to the public good, it will not impair the zoning ordinance and they have met all of the requirements. Mr. Staigar said that no one will ever know that this is a side yard because it appears to be a front yard.

Vice Chairman Buechler asked Mr. Staigar if the Board approved the application for the health club in 2013; he replied yes.

Vice Chairman Buechler asked Mr. Staigar if variances for signs were approved at that time; he replied yes. Mr. Staigar said that variances for façade signs were granted at that time.

Vice Chairman Buechler asked Mr. Staigar if the applicant requested a monument sign at that time; he replied no.

Vice Chairman Buechler asked Mr. Staigar if anything has changed since 2013 specifically the topography; he said that the building has been built.

Vice Chairman Buechler asked Mr. Staigar if the driveway was in that location in 2013; he replied yes. Mr. Staigar said that in 2013 he could not figure out if they would need a monument sign. He said that if they did figure out they needed a sign at a later date then they would come back before the Board and they did.

Chairman Neuer stated that there is a sign on the building that someone can see from outer space and the applicant decides to come back before the Board and wants them to approve another sign. He said that he has a problem with Mr. Staigar's testimony and he is also not happy with the redacted lease.

Vice Chairman Buechler said that it is his opinion that this does not meet the criteria.

Mr. Grygiel said that the Board granted the applicant a variance for two (2) façade signs and two (2) variances for sign area. He said the overall number of signs permitted in an O-R zone is four (4) signs. Mr. Grygiel said that pylon signs are permitted in that zone and in the ordinance the definition of a free standing sign is interchangeable with a pylon sign.

Chairman Neuer stated that the applicant is over on the façade signs.

There were no further questions for Mr. Staigar regarding his testimony as a Professional Planner.

Chairman Neuer asked if any members of the public had any questions for Mr. Staigar.

Tal Ben-Zvi approached the podium and stated that he lives at 5 Allsop Road. He asked Mr. Staigar if the health club project is completed according to the resolution; he replied yes.

Mr. Ben-Zvi wanted to know if their Planner is saying in his report that because the applicant had site plan approval in 2013, and was granted variances at that time, that they should be granted these variances.

Mr. Regan said that they explained that the applicant is here requesting variances for a monument sign.

Mr. Staigar said that he prepared the Planner's report and that is not the purpose of why the applicant is here.

Chairman Neuer declared the meeting in recess at 9:40 pm.

Chairman Neuer called the meeting back to order at 9:50 pm.

Chairman Neuer opened the meeting up for discussion.

Chairman Neuer asked if any members of the public would like to address the Board who are in favor or opposed to this application; there were none.

Mr. Schwarzbaum stated that given that the Board granted the applicant variances for signs in a previous application, he is not in favor of granting the variances for the monument sign. He said that it is a very large sign and he would be in favor of a small "enter here" sign as opposed to the large monument sign.

Mr. Sussman said that he recommends denying the application for many reason cited during the hearing. He said the Board already granted the applicant variances for signs and this sign is not necessary.

Chairman Neuer stated that he concurs with comments Vice Chairman Buechler made during the hearing. He said that the Board granted them substantial variances for signs and there are enough signs. Chairman Neuer also said that the mural is massive and it is questionable if the mural is just a sign by another name.

Chairman Neuer stated that the Planner did not meet the positive and negative criteria and that his credibility was not establised and recommended that the other Board Members vote no on this application.

Vice Chairman Buechler made a motion to deny the application. He said that the applicant came before this Board in 2013 for preliminary and final site plan approval and variances for signs and the applicant was specifically asked at that time if they will put a monument sign up and their attorney said no. Vice Chairman Buechler said that nowhere in the lease does it stipulate that the tenant must construct a monument sign. He said that there are no signs in any of the other driveways for the stores in the Plaza so by LA Fitness not having a sign will not create any confusion. Vice Chairman Buechler stated that there have been no changes in the topography since 2013 and that it is his opinion that they have not met the criteria for the C1 and C1 variances.

Ms. Gabry seconded the motion to deny the application.

The vote was as follows:

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

- 2. ZB-16-01/Sai Hira Ram Trust, Inc. Carried from 3/17/16**
23 Laurel Avenue
Block: 177.02; Lots: 15.01 & 16; Zone: R-4
Request modification of a condition in a prior resolution

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

Mr. Williams stated that his client is requesting a modification of condition #10 in resolution ZB-14-08. He said that the condition mandated that the applicant pull a demolition permit to demolish an existing building within ninety days of the date of the resolution that was adopted by this Board on October 15, 2015 or else the resolution would be null and void.

Mr. Williams said that immediately after the approval, the applicant engaged a construction manager to seek the demolition permit from the Township. He said that West Orange has a number of requirements that have to be met before they issue a demolition permit and one is to get a disconnect permit from Public Service Electric and Gas Company. Mr. Williams said that the disconnect permit was filed with Public Service on November 24, 2015 and was issued to them seven (7) weeks later on January 13, 2016.

Mr. Williams stated that they returned to the Building Department to apply for the demolition permit and received it on January 21, 2016. He said that once they received the demolition permit, the applicant commenced to demolish the structure and currently the building and all of the debris have been removed. Mr. Williams said that the applicant did everything they possibly could to comply with the condition.

Mr. Williams stated that he supplied the Board Members with copies of all of the correspondence between the applicant, Public Service and the Township Building Official in an effort to get Public Service to the site right away but it could not be accomplished.

Mr. Williams referred to the language in condition #10 of the adopted resolution and said that nowhere in the transcripts or the minutes of the meeting was it said that the resolution would be null and void if the applicant did not comply. He said that he never objected to the wording in the resolution because the applicant had all intentions on complying.

Mr. Williams said shortly after the ninety (90) days, the applicant was fined by the Township Zoning Official for not taking the building down within the ninety (90) days as required by the condition. Once the complaint was filed in court, he said that he would file an application to modify the condition and come back before the Zoning Board. Mr. Williams said that the applicant did everything they could to take the building down and he would like the Board to remove the condition.

Mr. Williams asked if the Board Members received all of the documentation that he submitted; Vice Chairman Buechler replied yes.

Chairman Neuer stated for the record that he was recused from hearing this application but the basis for his recusal no longer exists.

Chairman Neuer stated that he consulted with Ms. Beirne and they determined that he could conduct this hearing but he will not vote on the matter.

Chairman Neuer stated for the record that he is present but not voting on this application.

Ms. Beirne stated that there are three members of the public that requested certain procedural issues regarding this application.

Ms. Beirne said that she received a request from Brooke Carlson for the issuance of subpoenas but she received an email today from Ms. Carlson stating that she is withdrawing her application for the subpoenas.

Ms. Beirne said that she received a request from John Walsh for the issuance of subpoenas but she received an email from Mr. Walsh today stating that he is withdrawing his application for subpoenas.

Ms. Beirne stated that she received a request from Tal Ben-Zvi to subpoena financial records from the applicant. She said that after a consultation between Chairman Neuer and herself they determined to deny that request but invited Mr. Ben-Zvi here this evening to argue his reason why he is entitled to request the financial records

Vice Chairman Buechler asked Mr. Williams if he was aware of the request made by Mr. Ben-Zvi; he replied no.

Ms. Beirne advised Mr. Williams that she sent him an email advising him of the request made by Mr. Ben-Zvi to subpoena the financial records approximately two months ago. Mr. Williams said he may have seen the email.

Ms. Weiss asked if they should vote on this application first before listening to Mr. Ben-Zvi's application.

Chairman Neuer said no because the request to subpoena financial records relates to this application and it is important that they take care of this procedural matter.

Tal Ben-Zvi approached the podium and stated that he lives at 5 Allsop Court.

Chairman Neuer asked Mr. Ben-Zvi if he received the subpoenas that he issued for him for documents; he replied yes that he served Mr. Williams and received the documents he requested.

Chairman Neuer asked Mr. Ben-Zvi if there is a supplemental request from him for subpoenas for financial records; he replied yes.

Chairman Neuer asked Mr. Ben-Zvi to state the reasons for his request for the subpoenas.

Mr. Ben-Zvi said there are four reasons for the request.

Mr. Ben-Zvi said the first reason is that the applicant's 990 report that they submitted to the IRS in 2015 showed that their total assets were less than \$50,000. Mr. Ben-Zvi said that it was his contention in this hearing that the delay for the applicant taking down the structure was because of lack of funding. He said full disclosure of their finances was required in order for his expert to provide testimony regarding their lack of funding.

Mr. Ben-Zvi said that the second reason was for impeachment. He said that Anita Thani is listed on the application ZB-16-01 as a trustee and she is not a trustee. Mr. Ben-Zvi said that Mr. Williams was aware of this and did not disclose that. He said that he believes that the financial records can disclose that.

Mr. Ben-Zvi said that the third reason is because there is false information in the corporate disclosure regarding the nature of the property owner, Sun King. He said that there is a document from the New Jersey Treasury Department showing different facts regarding that corporation.

Mr. Ben-Zvi said the last reason is because in March he requested a subpoena for Kumar Mahtani whose address on the application was listed as 23 Laurel Avenue. He said that was not the correct address because the house at that address was vacant. Mr. Ben-Zvi said that he requested a correct address and was supplied an address in the United Arab Emirates that was also incorrect. He said that the financial report submitted to the IRS shows that Mr. Mahtani has an address in Essex County New Jersey and he could have been served the subpoena.

Chairman Neuer asked Ms. Beirne to swear in Mr. Ben-Zvi; Mr. Ben-Zvi was sworn under oath.

Chairman Neuer asked Mr. Ben-Zvi if all of the statements he just made on the record are under oath; he replied yes.

Chairman Neuer stated that, with respect to the gentleman in the United Arab Emirates, the Zoning Board does not have jurisdiction. He said that his subpoena would be meaningless outside of the State of New Jersey and that is why he denied the request for that subpoena.

Chairman Neuer advised Mr. Ben-Zvi that the reason that he denied issuing a subpoena for the applicant's IRS documents is because he already seems to have them. He said that it would be senseless to have Mr. Williams present them again.

Chairman Neuer advised Mr. Ben-Zvi that if he would like to re-visit this request, he would need to be more specific about what documents he is requesting and to name a time period for all documents in question. Chairman Neuer told Mr. Ben-Zvi that if he believes false statement have been made then he must be more specific as to what documents he is requesting.

Chairman Neuer stated that Mr. Ben-Zvi's request for subpoenas is denied without prejudice and he can re-file if he wants to with the instructions that he just provided him with.

Chairman Neuer stated that Mr. Williams is back on record.

Mr. Williams continued with his testimony stating that the applicant demolished the structure as fast as they could so he would like to have condition #10 in the adopted resolution deleted.

Mr. Williams also said that on a Saturday, when the applicant's contractor was working on the site, a resident called the West Orange Police Department and told them that they had a letter that prohibited any work to be done on the site on Saturday. He said that the Police shut down the job and the applicant lost one day's work because of that.

Mr. Williams said that the site is clear now; the structure is down and all debris removed so he would like to have the resolution amended.

Vice Chairman Buechler asked Ms. Beirne if they can just rescind the condition; she replied yes.

Vice Chairman Buechler stated that the Zoning Board has the legal authority to lift condition #10 in the resolution according to the New Jersey Municipal Land Use Law. He said that the applicant filed a new application to lift condition #10 and has proved to the Board that compliance with this condition was out of their control.

Vice Chairman Buechler stated that the purpose of the "null and void" statement in condition #10 of the resolution was only to put emphasis on getting the structure demolished.

Vice Chairman Buechler suggested that all of the emails and correspondence should be made as part of the evidence; Chairman Neuer stated that Mr. Williams cannot authenticate these documents so they will remain in the file as part of the application because they were submitted as part of the application.

Vice Chairman Buechler stated that the Board can rely on these documents in order to demonstrate that the applicant made every effort to get Public Service to the site as soon as possible.

Vice Chairman Buechler said that the Board should not penalize any applicant that is prevented from completing a project because of outside agencies.

Vice Chairman Buechler recommended that condition #10 in the adopted resolution should be modified because the applicant made good faith efforts to comply with the condition.

Chairman Neuer asked Mr. Williams if the structure is down; he replied yes.

Chairman Neuer recommended that the condition should be modified and to extend the completion date to April 21, 2016.

Ms. Gabry recommended that the “null and void” statement in the condition also be removed.

Mr. Schwarzbaum stated that he concurs and the Board should give the applicant an extension.

Vice Chairman Buechler made a motion to modify condition #10 in the resolution; Ms. Gabry seconded the motion to modify the condition.

Chairman Neuer asked if any members of the public had any comments.

Tal Ben-Zvi approached the podium and stated that he would like to express his thanks to the applicant and to Mr. Williams for bringing down the “eyesore”. He said that it took a long time but he is thankful and that he hopes that they move forward fast and there is a cap on the completion of the project. Mr. Ben-Zvi said that he supports the motion to modify condition #10.

The vote was as follows:

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

3. ZB-15-16/Stratford Manor Rehabilitation &Care, LLC

Block: 166.15; Lots: 7 & 11; Zone: OB-1
787 Northfield Avenue

Seeks preliminary and final amended site plan approval with “d” and bulk variances to add a physical therapy room in the rear of an existing building.

Chairman Neuer stated that ZB-15-16/Stratford Manor Rehabilitation will not be completed at this meeting and he recommended that the Board discuss the Interpretation request from the Township’s Zoning Official.

Mr. Williams stated that the applicant would like to be carried over to the next Zoning Board’s regular meeting held on May 19, 2016.

Chairman Neuer stated for the record that ZB-15-16 for Stratford Manor Rehabilitation will be carried over to the next Zoning Board meeting held on May 19, 2016 and that no further notice will be required.

4. ZB-16-03/Interpretation

Zoning Official requests interpretation of the permitted uses in a B-2 zone specifically if a funeral home falls within any of the categories of a B-2 zone.

Chairman Neuer stated that the Township Zoning Official, Ms. Adams, requested that the Zoning Board interpret the permitted uses in a B-2 zone, specifically if a funeral home falls within any of the categories in that zone.

Mr. Grygiel stated that he had a conversation with Ms. Adams when she had an inquiry regarding a funeral home in a B-2 zone. He said that she asked him if it fits into any of the categories in the B-2 zone and he told her that it was his opinion that it did not but she wanted to formally have the Zoning Board interpret this under the New Jersey Municipal Land Use Law.

Vice Chairman Buechler read all of the uses of the B-2 zone in the current ordinance.

Vice Chairman Buechler asked Mr. Grygiel if a funeral home is mentioned in any of the Township ordinances; he replied no. Mr. Grygiel said funeral homes are silent in the master plan.

Chairman Neuer asked Mr. Grygiel if there is a current application that triggered this request; he said he did not know.

Chairman Neuer said that the Township ordinance states that any use that is not specifically permitted under the ordinance is prohibited so it is his opinion that the funeral home is a prohibited use in the B-2 zone.

Chairman Neuer asked if the Board Members would like to recommend to the Township Council an amendment to the ordinance that would allow a funeral home as a permitted use in the B-2 zone.

Chairman Neuer stated that if the Board Members are so inclined, he can submit a letter to the Township Council asking them to consider where a funeral home fits in because the ordinance is silent when it comes to a funeral home and whether it would be a conditional use or a permitted use.

Mr. Sussman recommended that this should be a task for the Township Planner to recommend what zones would be appropriate for a funeral home and if it should be a conditional or a permitted use because parking is a big issue.

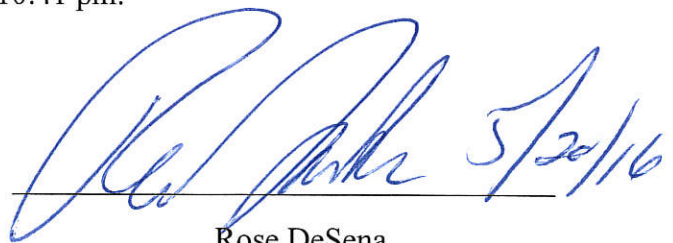
Chairman Neuer moved to adopt a resolution to advise Ms. Adams that it is the opinion of the Zoning Board that the B-2 zone does not permit funeral homes.

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

Chairman Neuer advised the Board Members to email Mr. Grygiel if they have an opinion as to what they would like to do with funeral homes and to copy him on the email.

The meeting was adjourned by Chairman Neuer at 10:41 pm.

Adopted: May 19, 2016



Rose DeSena

Zoning Board Secretary