

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
October 19, 2017**

The West Orange Zoning Board of Adjustment held a regular meeting on October 19, 2017 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 the Star Ledger and posted on the Township Bulletin Board in accordance with the "Senator 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 asked everyone to stand for the Pledge of Allegiance.

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

PRESENT: B. Buechler, D. Gabry, D. Nash, P. Neuer,
B. Quentzel, I. Schwarzbaum, W. Steinhart,
M. Straker, M. Sussman, A. Weiss

ABSENT: Fred Sanders

ALSO PRESENT: Eric Keller, Consulting Engineer
Alice Beirne, Esq., Board Attorney
Rose DeSena, Board Secretary
Harvey Grossman, Esq., Public Advocate

ANNOUNCEMENTS

Future Meetings: November 16, 2017 (regular meeting)

December 21, 2017 (regular meeting)

Chairman Neuer announced that application ZB-16-17/New Cingular Wireless PCS, LLC (AT&T) that was scheduled to be heard at this meeting has requested to be carried over to the Zoning Board meeting to be held on November 16, 2017. He stated that in agreement with the applicant's counsel, due to the large number of adjournments requested, the applicant will either proceed at that time or withdraw the application without prejudice.

Chairman Neuer stated that this adjournment is granted and no further notice will be required.

Chairman Neuer also welcomed Ms. Gabry's students, studying land use law at Seton Hall, who were at the meeting.

MINUTES

September 14, 2017 (regular meeting)

Chairman Neuer stated that the draft minutes from the September 14, 2017 regular meeting were circulated to all of the Board Members.

Chairman Neuer said that he, Vice Chairman Buechler and Mr. Sussman submitted their comments for these minutes and asked if any Board Member had any additional comments; there were none.

Vice Chairman Buechler made a motion to approve the minutes of the September 14, 2017 regular meeting; Ms. Gabry seconded the motion and all were in favor.

It was noted for the record that Mr. Steinhart was present at this meeting but did not vote on these minutes because he was not in attendance at the September 14, 2017 meeting.

NEW BUSINESS

Chairman Neuer made a motion to adopt the West Orange Zoning Board of Adjustment meeting schedule for 2018 that was circulated to all of the Board Members; Ms. Gabry seconded the motion and all were in favor.

SWEARING IN

Eric Keller, serving as the consulting engineer and planner for the township for ZB-17-07/2017 Eagle Rock, LLC application, was sworn under oath.

APPLICATIONS

1. **ZB-17-08/470 Eagle Rock Holdings, LLC**

Block: 153; Lot: 38; Zone: B-2

470 Eagle Rock Avenue

Seeking a “d” use variance to permit a motor vehicle service station in a B-2 zone with bulk variances.

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

Chairman Neuer stated that Mr. Regan reached out earlier and requested to be carried over to the next Zoning Board meeting on November 16, 2017.

Chairman Neuer asked if any members of the public were present for this application; seeing none he said that the adjournment is granted and that no further notice will be required.

Mr. Regan stated that he received Mr. Keller’s memo dated 10/19/17 and the applicant will address all of the items in the memo.

2. **ZB-17-07/2017 Eagle Rock LLC**

Block: 176.05; Lot: 12, 12.13, 14; Zone: B-1 & R-6

Seeking preliminary and final site plan approval and preliminary and final subdivision approval to construct a bank.

EXHIBITS

A-9 – Revised proposed site plan – sheet 5 with a revision date of 10/14/17.

A-10 – Revised subdivision and cross access exhibit with a revision date of 10/18/17.

A-11 – ATM/residential proximity exhibit dated 10/18/17.

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

Mr. Williams stated that the applicant first appeared before this Board on September 14th and detailed the application.

Chairman Neuer stated for the record that Mr. Steinhart was not present at the September 14th meeting but has signed an affidavit stating that he has read the transcript from that meeting and will be eligible to vote on this application.

Mr. Williams said that the Essex County Planning Board approved the subdivision but did not approve the site plan as of date.

Chairman Neuer stated that if this application is approved, full and final approval from the Essex County Planning Board will be required as to both the subdivision and the site plan.

Mr. Williams referred to Mr. Keller's memo dated 10/12/17 and stated that they are requesting two additional waivers; one for the existing right of way and easements within 200' of the property and one for existing and proposed contours to extend at least 200' beyond the subject property.

Mr. Keller recommended that the Board approve these waivers because they are not necessary; Chairman Neuer granted the waivers.

Mr. Williams said that at the last meeting, members of the public asked when the existing church was built. He said that on May 31, 1964 the church broke ground and opened on May 30, 1965.

Mr. Williams also said at the last meeting they were asked to identify any Chase Bank projects that has the blue lighting on the building like the one being proposed for this Chase Bank; he said that the closest one they could find was in Berkley Heights located at 96 Snyder Avenue.

Mr. Williams stated that he provided notes from the meeting with the Essex County Planning Board and they will not approve the bump out for the bus stop at this time. He said that his client is granting a reservation of rights to the County should that entity determine to proceed with the bus stop.

Chairman Neuer stated that a reservation of rights is not a grant of a right-of-way; he said that if the applicant makes any improvements on the property the property owner will not be reimbursed from the County for the improvements.

Mr. Williams stated that at the last meeting the applicant listened to all of the comments from the residents on Haller Road and redesigned the site to accommodate their concerns..

He said that the applicant's Engineer, Traffic Engineer and Planner will testify at this meeting tonight.

Chairman Neuer asked if Mr. Daniel was present at this meeting; Jerome Eben answered and stated that Mr. Daniel was not present.

Chairman Neuer asked Mr. Williams if he had a chance to look at the materials submitted by Mr. Daniel; he replied yes.

Chairman Neuer asked Mr. Williams what the applicant's position was regarding the certificate of authorization which is a statutory requirement but not necessarily a requirement to testify but to transact business in New Jersey.

Mr. Williams stated that Core Technology has applied for the certificate of authority and it is currently pending. He said that they are scheduled for a hearing on November 9th and he is certain that they will receive it.

Mr. Williams stated that James Lalli, who testified at the last meeting, is a professional architect licensed in the State of New Jersey; he said that he has a copy of his certificate which he can mark as an exhibit if need be. Mr. Williams said that he also has a copy of the certificate for Mr. McKenzie who worked on the plans. He said that the people who testified are licensed architects in the State of New Jersey.

Jerome Eben asked to approach the podium; Chairman Neuer told Mr. Eben that he will not be heard because he did not make the application to the Board; it was raised by Mr. Daniel.

Chairman Neuer stated that enforcement is under a different statute; he said that he recognized Mr. Lalli as a licensed architect in the State of New Jersey at the 9/24/17 meeting and he is standing by his decision.

Mr. Williams called his first witness.

Jeffrey Martell approached the podium and was sworn under oath.

Mr. Williams stated that Mr. Martell testified at the last meeting and was recognized as an expert in professional engineering. He said that Mr. Martell's license is still in good standing and that nothing has changed. Chairman Neuer recognized Mr. Martell as a licensed professional engineer.

Mr. Martell stated that they made some modifications to the site plan that was presented as Exhibit A-2 at the last meeting. He presented sheet 5 of the revised proposed site plan dated 10/14/17 that was marked as Exhibit A-9 for identification.

Mr. Martell referred to Exhibit A-9 and detailed the proposed changes stating that the cross access to the Chase bank parking lot has been made a one way; he said you can only travel from the Chase bank parking lot to the Township's parking lot. Mr. Martell said they also provided a curb island and a right turn arrow at the driveway on Haller Road; this discourages cross access and directs cars to make a right out only.

Mr. Martell stated that there are thirty six (36) parking spaces in the municipal parking lot; there is a slight decrease in impervious coverage and they are proposing to plant shrubs and trees as a buffer.

Mr. Martell stated that they eliminated the trash enclosure; he said that the cleaning service will be responsible for trash removal.

Mr. Martell stated that they reduced the wattage in the proposed lights which will bring down the overall light levels and the security light's wattage was cut down by half. He said that they will continue to work with Mr. Keller regarding the lighting.

Mr. Martell presented the ATM residential proximity exhibit dated 10/18/17 that was marked as Exhibit A-11 for identification.

Mr. Martell stated that there was some discussion about the noise from the PNC bank's ATM at the last meeting from a resident that lives near the PNC bank. He said that the resident lives forty two (42) feet from the PNC's ATM and the Chase bank ATM will be approximately one hundred and fifty seven (157) feet away from the resident's house; Mr. Martell said that they do not see the comparison. He said that unlike the PNC ATM, the Chase bank's ATM has no sound and no teller service; he said the machine does not have the ability to make noise.

Mr. Martell said that they were asked if there are any other ATM's in town; he said that they did a survey and he physically visited fifteen (15) properties in close proximity to the proposed Chase bank site. Mr. Martell said that there are six (6) drive thru ATM's and four (4) exterior walk up ATM's for a total of ten (10) that operate twenty four hours/seven days a week and are in close proximity to some residences.

Mr. Martell presented the revised subdivision and cross access exhibit with a revision date of 10/18/17 that was marked as Exhibit A-10 for identification. He said that this was updated to reflect the reservation to the frontage of the property for the potential bus stop location.

Mr. Quentzel referred to Exhibit A-9 regarding the cross access from the Chase bank to the Township's parking lot and asked Mr. Martell if they allow the tire strip spikes; he said no.

Mr. Schwarzbaum asked Mr. Martell to detail how to enter the ATM from Pleasant Valley Way and Eagle Rock Avenue; he referred to Exhibit A-9 and complied.

Mr. Schwarzbaum asked Mr. Martell if they could install speed bumps in the driveways; he said they could if need be.

Ms. Gabry asked Mr. Martell if a vehicle could make a left turn into the site from Eagle Rock Avenue; he said no. Mr. Martell said there will be a sign that says no left turn.

Mr. Martell addressed the technical comments in Mr. Keller's memo dated October 12, 2017. He stated that they will comply with whatever Mr. Keller and/or the Board decides regarding items #11 to #27 excluding item #26 regarding the dumpster which was withdrawn from the plan.

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

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

Jerome Eben approached the podium and stated that he lives at 26 Walker Road. He asked Mr. Martell if they looked at flowing the traffic from the opposite direction of what is being proposed in the drive thru window; Mr. Martell said yes and that this is the best design. He said that Mr. Keller is also satisfied with the design of the drive thru.

Mr. Eben asked Mr. Martell why they propose to stripe the lane in the one way driveway coming into the commuter lot and not make it narrower; he said so that an emergency vehicle can utilize it.

Mr. Eben asked Mr. Martell what they are proposing for the space between the commercial aspect of the commuter parking lot and the house along the westerly parking area on Haller Road; he said that they are moving the parking spaces on that side of the lot and, as Mr. Keller suggested, they are increasing the buffer by five (5) feet.

Joe Krakoviak approached the podium and stated that he lives at 20 Grandview Avenue. He asked Mr. Martell if the proposed access road that they are making a one way will force all of the cars parked in the commuter lot to exit on to Haller Road; Mr. Martell said that it will operate just as it does today.

Theodore Podhorcer approached the podium and stated that he lives at 14 Haller Road. He asked Mr. Martell what measures are being provided to prevent people from going down the wrong way in the one way driveway; he said they are installing signs that say do not enter.

Chairman Neuer advised Mr. Williams to notify the West Orange Police Department and instruct them to enforce the one way do not enter signs.

Michael Sinnreich approached the podium and stated that he lives at 7 Haller Road. He asked Mr. Martell if there will be a no left turn sign on to Haller Road; he said yes. Mr. Martell said that they will be installing MUTCD traffic sign that is an enforcement compliant sign that the police will have the power to enforce it.

Mr. Sinnreich asked Mr. Martell what days and hours will construction take place; he said that construction will comply with the Township ordinance. Mr. Keller stated that work is prohibited on Sunday and Saturday work is permitted. Mr. Martell said that no construction vehicles will go through Haller Road.

There were no further questions for Mr. Martell.

Chairman Neuer called for a recess at 9:21 pm.

Chairman Neuer resumed the meeting at 9:32 pm.

Mr. Williams called his next witness.

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

Chairman Neuer accepted Mr. Seckler as an expert in traffic engineering.

Mr. Seckler stated that he prepared a report that was submitted to the Board with a revision date of 10/5/17. He referred to his report and detailed it.

Mr. Seckler stated that the proposed bank has two frontages that are on County roads. He said that his report is based on the 9th edition of the trip generation manual. Mr. Martell said that there will be a reduction of traffic with the new bank because it is a benign use. He said that the use limits the traffic on the road during peak hours and does not bring in new traffic.

Mr. Seckler stated that the applicant will purchase a new controller computer at the intersection that will control the traffic lights because the current one is old. He said that the new controller can control the lights dependent on the number of cars in the queue and the new pedestrian signal head that the applicant is providing will tell the pedestrians when to walk. Mr. Seckler stated that the application is also providing infrastructure improvement at the intersection.

Dr. Straker asked Mr. Seckler if they will need new traffic lights with the new controller computer; he said no.

Mr. Schwarzbaum asked Mr. Seckler what the approximate cost will be for the new controller computer; he said approximately forty or fifty thousand dollars. Mr. Seckler said that the applicant will purchase it and the County will install it.

Mr. Keller referred to comment #29 on page 7 of his memo dated 10/12/17 and asked Mr. Seckler to explain how the site traffic movements will operate with the queues extending beyond the driveways; he complied.

Mr. Keller referred to comment #31 on page 7 of his memo dated 10/12/17 and asked Mr. Seckler if there will be signs indicating that shoppers can park in the bank parking lot during non-banking hours; he said they can provide signage or whatever else the Board suggests.

There were no further question for Mr. Seckler from the Board Members or the Board Professionals.

Ms. Weiss asked Mr. Seckler if he stated that Saturday and Friday evenings were the most popular banking times; he said Friday during lunch and during the commute home are the busiest times.

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

Jerome Eben approached the podium and stated that he lives at 26 Walker Road. He asked Mr. Seckler to detail the how he would enter and exit the site if he lived west of the proposed bank; Mr. Seckler referred to Exhibit A-9 and complied.

Theodore Podhoczec approached the podium and stated that he lives at 14 Haller Road. He asked Mr. Seckler how many cars per day exit to Haller Road from the Municipal parking lot; he said thirty-something cars per day.

Mr. Podhoczec asked Mr. Seckler what the anticipated volume of cars would be with the new one way pass-thru; he said approximately one car every six (6) or eight (8) minutes. Mr. Seckler said there may be a few more cars but it will not have any significant negative impact on Haller Road.

Mr. Podhoczec asked Mr. Seckler what the accident rate would be for a driveway of this type; he said there will be no significant increase in accidents.

Mr. Williams called his next witness.

Peter Steck approached the podium and was sworn under oath. Mr. Steck detailed his professional and educational background as a Professional Planner licensed in the State of New Jersey.

Chairman Neuer accepted Mr. Steck as an expert in Professional Planning.

Mr. Steck stated that he submitted a revised report dated October 3, 2017 which supersedes the report he originally submitted. He referred to his report and began detailing it stating that the proposed site was previously used as a church. Mr. Steck stated that there is currently no agreement with the owner of the site and Township to utilize the parking lot.

Mr. Steck detailed all of the variances being requested and stated that the proposed bank is a permitted use but the drive-thru is not. He detailed all of the other bank drive-thru's in the area and said that there is nothing in the Master Plan regarding drive thru's. Mr. Steck detailed what is allowed in the B-2 zone and stated that parking is allowed as a conditional use.

Vice Chairman Buechler asked Mr. Steck when the existing parking lot was built; he said he did not know.

Mr. Steck stated that a drive-thru is an accessory use to a principal use; he said it is a beneficial

use for safety reasons; it allows someone to remain in their car.

Mr. Steck stated that the site will be getting a lot more landscaping, a municipal parking lot for public use and a bank that will allow parking in their lot after hours; he said that the bank will be helping other businesses in the area by providing parking.

Mr. Steck detailed the negative criteria and stated that this will not create any detriment to the zone.

Ms. Gabry asked Mr. Steck how many parking spaces are currently in the Municipal parking lot; he said twenty three (23).

Mr. Keller referred to his memo dated 10/12/17 and asked Mr. Steck if the sign on the building will be on for twenty four (24) hours; he said yes. He said by having that sign illuminated for twenty four (24) hours shows that there is some activity on the site.

Mr. Schwarzbaum asked Mr. Steck if the Chase Bank sign can be dimmed; he said no.

Chairman Neuer asked Mr. Steck how long will the temporary sign be up for; he said approximately six (6) months.

Mr. Williams said that they will conform to the Township ordinance. He said that they are asking for a variance for the temporary sign and it will be removed after completion of construction or after six (6) months; whichever comes first.

Vice Chairman Buechler asked Mr. Steck if the PNC bank has a sign illuminated all night; he said he does not know.

Mr. Keller asked Mr. Steck to discuss the purpose of the monument sign; he said that it is a form of advertising and is beneficial helping the people traveling on Pleasant Valley locate the bank.

Mr. Keller asked Mr. Steck when the monument sign will be illuminated; he said from dusk to dawn.

Mr. Martell stated that they can turn off the illuminated sign that faces the parking lot and just keep the other two signs on.

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

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

Jerome Eben approached the podium and stated that he lives at 26 Walker Road. He asked Mr. Steck why he thinks the entrances to the businesses at the two adjacent corners are on angles; he said because they abut the front property line and that is where they have their entrances.

Mr. Eben asked Mr. Steck where the entrance to the Chase bank is; he said in the back.

Mr. Eben asked Mr. Steck what his opinion is regarding the bank not having a front door; he said the bank not having a front door is not a significant issue because banks have other concerns in terms of security.

Mr. Eben asked Mr. Steck would it be beneficial to eliminate two parking spaces in the bank parking lot so that the parking would be even with the building; he said no because it would be less parking for the retail customers after bank hours.

Mr. Eben asked Mr. Steck if he thinks more landscaping is necessary as a buffer on Haller Road; he said no. Mr. Steck said there is nothing better than the row of arborvitae that is being proposed as the buffer.

There were no further questions for Mr. Steck.

Mr. Williams stated that concludes his application.

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

Jerome Eben approached the podium and was sworn under oath. He stated that he lives at 26 Walker Road and said that he thinks this is a great project but he would like it to be a better project. He said he would like to see more landscaping and more enforcement in regards to turning the illuminated sign off at night and taking the temporary sign down.

Mr. Eben stated that, according to architect's law, if a licensed architect that works for a company is not 66% owner a company then the company cannot practice architecture. He said that this Board has aided and abetted the illegal practice of architecture.

There were no further comments from members of the public.

Mr. Williams summed up and asked the Board to approve this application. He said that the applicant is giving the Town a parking lot, has obliged the residents and will re-do the traffic light at the intersection of Eagle Rock Avenue and Pleasant Valley Way. Mr. Williams stated that this is a great use for this corner.

Chairman Neuer declared the public hearing closed.

Mr. Steinhart stated that the subdued illuminated signs on this site adds to the security of the neighborhood and he would rather see them than not see them.

Ms. Gabry stated that she thinks it is a great application and urged all of the Board Members to vote yes.

Chairman Neuer made a motion to approve the application to grant preliminary and final subdivision approvals and preliminary and final site plan approvals.

Chairman Neuer stated that he took into consideration Mr. Eben's comments and there was no unlawful practice of architecture. He said that this Board did not aid or abet in anything and have done anything improper. Chairman Neuer stated that he accepted the testimony of their architect who was licensed and he testified pursuant to that license.

Chairman Neuer stated that the testimony of Mr. Martell was credible and professional, Mr. Olivio's testimony as the landscape architecture was clear and convincing, Mr. Seckler's report was well done and Mr. Steck's testimony was spot on and his report well written.

Chairman Neuer asked that the resolution of approval include the conclusion set forth by Mr. Steck in his report dated October 3, 2017.

Chairman Neuer stated that the following conditions should also be incorporated into the resolution of approval:

- Lot to be conveyed to the Township be repaired, seal coated and striped before conveyed to the Township.
- All fill brought to the site should be certified clean subject to the Township's Engineer.
- Pruning of the shrubs subject to the Township Forester.
- The arborvitae on Haller Road to be cleaned up.
- Controller and pedestrian head to be purchased by the applicant and installed by the County.
- Deed of reservation in favor of Essex County for the bus bump out in the future.
- Lighting pointed downward with shields on them subject to the Township's Engineer.
- Traffic and directional signage, subject to a letter sent to the police department, asking them to enforce signs on private property.
- Sign on the building façade facing parking lot to be turned off from 9pm to 6am.
- Temporary construction sign may be left in place for no more than 180 days.
- Ten days prior to the resolution of approval revised plans must be submitted to Mr. Keller's office for approval by November 6, 2017.
- Erasing all lot lines and adding the two new ones.
- All items in Mr. Keller's memo dated October 12, 2017 must be addressed.

Chairman Neuer stated that his motion includes site plan and sub-division approval. Essex County approval and any other approvals that are required by law must be obtained by the applicant. .

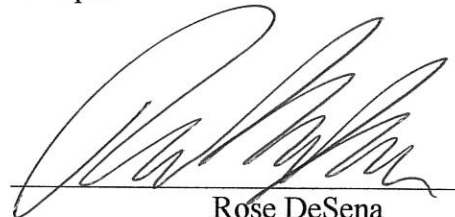
Vice Chairman Buechler seconded the motion to approve.

The vote was as follows:

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

The meeting was adjourned by Chairman Neuer at 11:17 pm

Adopted: November 16, 2017

 11/17/17

Rose DeSena
Zoning Board Secretary