

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
March 21, 2019**

The West Orange Zoning Board of Adjustment held a regular meeting on March 21, 2019 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.

PRESENT: J. Eben, D. Gabry, P. Neuer, L. Phillips, B. Quentzel, J. Redwine,
I. Schwarzbaum, W. Steinhart, M. Sussman,

ABSENT: M. Straker (excused)
A. Weiss (excused)

ALSO PRESENT: Paul Phillips, Acting Consulting Planner for the Township
John J. Hess, Consulting Engineer for the Township
Alice Beirne, Esq., Board Attorney
Rose DeSena, Board Secretary

ANNOUNCEMENTS

Future Meetings: April 11, 2019 (regular meeting)
May 16, 2019 (regular meeting)
June 20, 2019 (regular meeting)

Chairman Neuer announced for the record that application **ZB-18-02/Rosario**, that was scheduled to be heard at this meeting, has requested to be carried over and adjourned to the Zoning Board meeting scheduled for May 16, 2019 at 8:00 pm and no further notice will be required. The property which is the subject of this application lies partly in West Orange and partly in Montclair. The applicant is proceeding in Montclair and when that matter is concluded the West Orange application will move forward.

Chairman Neuer also announced that application **ZB-17-11/Youssef, Inc.**, that was scheduled to be heard at this meeting, has requested to be carried over and adjourned to the Zoning Board meeting scheduled for April 11, 2019 at 8:00 pm and no further notice will be required.

MINUTES

February 21, 2019 (regular meeting)

Chairman Neuer stated that the draft minutes from the February 21, 2019 regular meeting were circulated to all of the Board Members.

Chairman Neuer said that he submitted his comments for these minutes and asked if any Board Member had any additional comments; there were none.

Mr. Steinhart made a motion to approve the minutes of the February 21, 2019 regular meeting; Ms. Gabry seconded the motion and all were in favor.

It was noted for the record that Ms. Phillips and Mr. Eben, although present at this meeting, did not vote on these minutes because they were not in attendance at the February 21, 2019 regular meeting.

March 7, 2019 (special meeting)

Chairman Neuer stated that the draft minutes from the March 7, 2019 special meeting were circulated to all of the Board Members.

Chairman Neuer said that he submitted his comments for these minutes and asked if any Board Member had any additional comments; there were none.

Ms. Gabry made a motion to approve the minutes of the March 7, 2019 special meeting; Mr. Sussman seconded the motion and all were in favor.

It was noted for the record that Mr. Eben and Mr. Redwine, although present at this meeting, did not vote on these minutes because they were not in attendance at the March 7, 2019 special meeting.

SWEARING IN

Paul Phillips, acting consulting Planner for the Township and John J. Hess, Consulting Engineer for the Township, were sworn under oath.

RESOLUTIONS

1. ZB-18-08/B’Nai Shalom

Approved on 2/21/19

Block: 152.23; Lot: 1434; Zone: R-
300 Pleasant Valley Way

Seeking use variance, “c” variance and amended site plan approvals to permit a childcare center in an existing synagogue.

Chairman Neuer stated that this resolution was circulated to all of the Board Members and that this version included comments from himself.

Chairman Neuer asked if any Board Member had any other comments; there were none.

Mr. Schwarzbaum made a motion to adopt the resolution as submitted and Ms. Gabry seconded the motion.

The vote was as follows:

Eben:	-	Steinhart:	Yes
Gabry:	Yes	Straker:	-
Phillips	-	Sussman:	-
Quentzel:	Yes	Weiss:	-
Redwine:	Yes	Chairman Neuer:	Yes
Schwarzbaum:	Yes		

APPLICATIONS:

1. ZB-18-06/CLPF – Essex Green, LLC c/o Clarion Partners Carried from 3/7/19

Block: 155.21; Lot: 40; Zone: P-C

495 Prospect Avenue

Seeking “d” and “c” variances for the expansion and renovation of an existing Shopping center.

EXHIBITS

A-1 – Aerial map of the site dated 9/12/18

A-2 - Rendering of the Essex Green Shopping Center dated 11/15/18

A-3 – Tree Quantity Analysis dated 12/20/18

A-4 – Site Demolition Plan showing where the trees will be transplanted dated 12/20/18

A-5 – Upper Level Leasing Plan dated 10/18/18

A-6 – Rendering of the New Lower Level – Retail Building I dated 10/18/18
A-7 – Site Line Study of Proposed Towner Sign dated 11/15/18
A-8 - Site Line Study of Proposed Tower Sign dated 11/15/18
A-9 - Lower level site plan with a revision date of 11/15/18
A-10 – Digital sign analysis one dated 3/6/19.
A-11 – Digital sign analysis two dated 3/6/19.
O-1 – Photos taken by Linda Stiles dated 10/26/18
O-2 – Photos taken by Linda Stiles dated 10/26/18

Chairman Neuer stated that Mr. Eben signed an affidavit stating that he has listened to the audio of the 2/21/19 meeting and read the transcript from the 3/7/19 special meeting both of which he had not attended.

Chairman Neuer also said that Mr. Redwine signed an affidavit stating that he has listened to the transcript from the 3/7/19 special meeting that he had not attended.

Chairman Neuer stated that both gentlemen will be eligible to vote should this matter come be concluded tonight.

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

Mr. Regan stated that their Planner had completed testimony at the last meeting and they will start off with questions for him regarding his testimony.

Mr. Regan also stated that they have submitted revised architectural plans.

Sean Moronski, professional planner, approached the podium.

Ms. Beirne stated that Mr. Moronski will continue under oath from the last meeting.

Chairman Neuer asked if any Members of the Board had any questions for Mr. Moronski.

Mr. Eben stated that he has several questions for Mr. Moronski based on his report dated 9/11/18 and updated on 11/1/18.

Mr. Eben asked Mr. Moronski how many times he has visited the site; he said at least two (2) times.

Mr. Eben asked Mr. Moronski if he agreed with the Township's Planner that the site is in a blighted area; he said that the area was tired and in need of rehabilitation.

Mr. Eben asked Mr. Moronski if he questioned the Township's Planner about the Township's Master Plan currently being updated; he said he did not.

Mr. Eben asked Mr. Moronski what suggestions he would make to improve pedestrian access; he said that they have had discussions with the Township's Pedestrian Safety Committee and

included the recommendations they suggested into the plans.

Mr. Eben asked Mr. Moronski why the ADA crossings that were in the original plans have been removed from the updated plan; he said changes were made within the site and reflected in the updated plans.

Mr. Eben asked Mr. Moronski why, in his opinion, some of the prior tenants in the shopping center vacated their premises; the witness stated that he thinks it was because of the condition of the shopping center. Mr. Moronski said that the proposed improvements will create a better environment and will bring in a broader range of tenants.

Mr. Eben asked Mr. Moronski, based on the "phasing plan", where will the TGIF customers park during the construction phase; he said that final discussions regarding this will be made with the owner.

Mr. Eben asked Mr. Moronski if he feels that the proposed fourteen (14) loading areas will be sufficient; he said yes.

Mr. Eben asked Mr. Moronski to detail the different heights of the buildings; he complied. Mr. Moronski stated that the reason for the different heights of the buildings is mainly for aesthetics.

Mr. Eben asked Mr. Moronski why he did not mention in his report that some upgrades were made to the shopping center a few years ago such as the paving of the parking lot and the new facades; he said because they were not substantial upgrades. Mr. Moronski said that they are presently proposing substantial changes that will change the entire theme of the shopping center.

Mr. Eben asked Mr. Moronski, in his opinion what the purpose of the architectural renderings were; he said that the renderings were meant to show the proposed design to attract new customers and tenants.

Mr. Eben asked Mr. Moronski what his opinion is of the traffic re-configuration; he said it is an improvement.

Mr. Eben asked Mr. Moronski to detail the placement of the proposed signage; he complied. Mr. Moronski stated that they eliminated the large 48-foot-tall pylon sign and that the purpose of the signs is to identify the site.

Mr. Eben asked Mr. Moronski, in his opinion, what constitutes a town center; he said that in retail business it is a theme that draws retail and commercial use to the site and is an area that is active throughout the day.

Mr. Eben questioned the stacking of the cars in the proposed drive-thru that could accommodate up to six (6) cars and asked Mr. Moronski if he felt that was safe; he said that the cars are contained within the shopping center and do not empty out on to a street. Mr. Moronski said that he feels that it is not too many cars and is safe.

Mr. Eben asked Mr. Moronski if he felt that there is enough space between the outdoor seating and the proposed drive thru; he said yes.

Mr. Schwarzbaum asked Mr. Moronski if he think that one hundred and eighty less parking spaces are sufficient for the site; he said that the uses are scattered and will not be utilized at the same time. Mr. Moronski said that he feels one thousand five hundred thirty-eight (1,538) parking spaces are sufficient for the site.

Mr. Schwarzbaum asked Mr. Moronski how he arrived at his conclusion that there is better pedestrian access on the site; he said the circulation and proposed layouts of the building make it safer for the pedestrian. Mr. Moronski said that they also included the Township's Pedestrian Safety Committee's suggestions in the plan.

Mr. Sussman asked Mr. Moronski to detail how much gross floor space there is on the site to justify how many parking spaces are being proposed; he complied. Mr. Moronski stated that there is non-leasable space on the site that does not generate customers.

Chairman Neuer asked Mr. Moronski if a drive-thru would reduce the amount of parking spaces being utilized on the site; he said yes.

Mr. Phillips asked Mr. Moronski if a drive-thru service is unusual for a shopping center; he said no.

Mr. Phillips asked Mr. Moronski to approximate what the distance would be to the external lot lines where the height variances are being sought; he said several hundred feet from the external lot lines.

Mr. Phillips asked Mr. Moronski if the free standing buildings are well within the Township ordinances height requirement; he said yes.

Mr. Hess advised the applicant to make efforts to maintain the ratio of the types of businesses which become tenants to those that will not require parking during the same hours of the day.

Mr. Schwarzbaum asked Mr. Moronski if the lighting on the digital sign will have any impact on the residential development across the street from the shopping center. Mr. Moronski said that the digital sign will not be facing the development and the brightness of the sign is just enough to be able to read it; he said that he feels that it will not have any impact on the development.

There were no further questions for Mr. Moronski from any of the Board Members or the Board Professionals.

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

Linda Stiles approached the podium and stated that she lives on Jones Place.

Ms. Stiles asked Mr. Moronski to delineate on the tree diagram plan dated 2/15/19 where the

trees are that are going to be removed.

Chairman Neuer stated that Mr. Moronski did not testify to that and cannot answer that question.

Ms. Stiles asked Mr. Moronski what the required side front yard setback for building G is; he said one hundred (100) feet.

Ms. Stiles asked Mr. Moronski how high the proposed retaining wall along building G is; he said nine (9) feet.

Ms. Stiles asked Mr. Moronski what the maximum height allowed for the retaining wall per Township Ordinance is; he said six (6) feet.

Kevin Malanga approached the podium and stated that he also has questions regarding the revised landscaping plan. He said that according to the minutes of the January 17, 2019 meeting, Chairman Neuer advised Ms. Sally Malanga that she would have the opportunity to continue with her questions for Mr. Szura, the landscape architect, once he submitted certain elements in the Township's tree ordinance that are required to be submitted by the applicant.

Chairman Neuer asked Mr. Regan if Mr. Szura was present at this meeting; he said no.

Mr. Regan stated that there has been extensive questioning about the trees and he does not know what more Mr. Szura can say about it.

Mr. Malanga read into the record what Chairman Neuer said in the minutes January 17, 2019 Zoning Board meeting.

Mr. Regan stated that the Township Forester, Mr. Linson, has reviewed the revised plan and was satisfied with it and had no further comments. He said that he does not see a need for the landscape architect to come back for further questioning.

Chairman Neuer stated that they will continue with the meeting tonight without Mr. Szura the landscape architect.

Mr. Malanga stated that they do not know if the revised plan conforms to the township tree ordinance unless they have the township forester present to testify to that.

Chairman Neuer advised Mr. Malanga that if he is requesting the presence of a witness to be present at the meeting he must submit a letter to the Board Secretary with his request and he will review it.

Chairman Neuer called for a recess at 9:20 pm.

Chairman Neuer resumed the meeting at 9:30 pm.

Gary Van Wyk approached the podium and stated that he lives on Burnett Terrace.

Mr. Van Wyk referred to Mr. Moronski's report and asked him how his definition of a "town center design" fulfills the Municipal Land Use requirements and is not just being used as a marketing term; He said that the layout of the buildings and the signage creates a desirable visual environment.

Mr. Van Wyk asked Mr. Moronski to explain the justification of the signage; he stated that signage is part of a unique design of individual businesses and it enhances the site.

Mr. Moronski stated that the MLUL requires that you need to meet one of the requirements for the purpose of zoning and this application has met more than that. He said for the drive-thru five of the requirements have been met which he presented in his testimony.

Robert Rashkes approached the podium and stated that he lives at 35 Oak Crest Road. He asked Mr. Moronski if there will be any restrictions on tobacco smoking on the site; he said that they will comply with State laws for shopping centers regarding smoking.

Mr. Rashkes asked Mr. Moronski if they will move the existing police sub-station to a different location; he said he does not know.

Mr. Rashkes asked Mr. Moronski what type of security they are proposing; he said that the owner will address that with the Police Department.

Mr. Rashkes asked Mr. Moronski if there will be Wi-Fi on the site; he said he does not know.

Mr. Rashkes asked Mr. Moronski if there will be pay telephones on the site; he said he does not know.

Phillip Litwinoff approached the podium and stated that he lives at 11 Linden Avenue. He asked Mr. Moronski why it is necessary to have a digital sign at this shopping center when the Short Hills Mall, which is a very successful mall, does not have any signage; he said comparing the Short Hills mall is not an accurate comparison to Essex Green. Mr. Moronski said basically all of the smaller stores in the Short Hills Mall are located inside and Essex Green is an outdoor shopping experience. He said that there is outdoor signage for the large anchors at the Short Hills mall along with signage for some of the restaurants.

Mr. Litwinoff asked Mr. Moronski why they are proposing fast food establishments; he said that a drive-thru is not just for fast food restaurants and not to assume that fast food is being proposed.

Mr. Litwinoff asked Mr. Moronski to detail what they are proposing for pedestrian safety on the site; he complied.

Joyce Rudin approached the podium and stated that she lives on Midland Avenue. She asked Mr. Moronski if he knows what they have in mind for the proposed drive through's; he said no

because he is not involved with that. Mr. Moronski said that drive-through's are a present-day standard in the retail industry; he said that permitting them promotes bringing people to the site.

Carol Schlitt approached the podium and stated that she lives at 10 Overlook Avenue. She referred to Mr. Moronski's report and asked him to explain why a drive-thru is not a detriment in the PC zone; he said that drive-throughs are not a substantial detriment to the zone and are used for a variety of uses. Mr. Moronski stated that they bring in new business and revitalize a shopping center.

Kevin Malanga approached the podium and stated that he lives on Ridge Road. He asked Mr. Moronski if use variances are only granted in exceptional circumstances; he said they are granted for inherently beneficial uses or if it is particularly suited for the zone.

Mr. Malanga asked Mr. Moronski if there was anything in the 2010 Master Plan that recommended a drive thru would be permitted in this zone; he said there was no specific mention of drive thru lanes in the 2010 Master Plan whether pro or con.

Mr. Malanga asked Mr. Moronski why he thinks a drive-thru window is not permitted in this area; he said that a drive thru window is not permitted in this area in this Municipality but there are various reasons such as traffic issues and site layout. Mr. Moronski said he does not know the specific reason that West Orange does not allow a drive thru in this zone.

Mr. Malanga referred to Mr. Moronski's report and asked him what wider range of uses a drive thru window offers; he said there are restaurant uses and food retail uses. Mr. Moronski said that drive through's are more common in terms of commerce and there is a high demand now for a drive thru especially for families and older people who want the drive thru convenience.

Mr. Malanga asked Mr. Moronski to discuss the proposed improved circulation plan; he said that the improvements are not just internal but for the ingress and egress also.

Mr. Malanga asked Mr. Moronski to detail where the signs will be located; he referred to the architectural plans and complied.

Mr. Malanga asked Mr. Moronski to explain why some occupants will get more than one sign; he said that a tenant who occupies one of the corner building may have two signs.

Sally Malanga approached the podium and stated that she live on Ridge Road. She asked Mr. Moronski if one of the proposed drive thru windows could become a fast food restaurant; he said yes.

Ms. Malanga asked Mr. Moronski if a fast food restaurant with a drive thru window uses throw away plastic items; he said that even uses that do not have a drive thru would also utilize those items.

There were no further questions for Mr. Moronski.

Mr. Regan stated that their architect, Mr. Kohler, is present to answer questions regarding the revised plans.

Mr. Kohler approached the podium and Ms. Beirne advised him that he will continue under oath.

Mr. Kohler detailed what the revisions were that were requested by the Township Planner and how their firm was identified.

Mr. Quentzel asked Mr. Regan if any consideration was taken regarding how to make the barriers safer near the Macy's Backstage

Mr. Regan stated that they did receive a report from the Township's Police Department that in the summer of 2018 a car did go over the guard rail near the Macy's Backstage. He said that the applicant will extend the guard rail in that location.

Mr. Eben wanted clarification regarding what had been revised on sheet A001 of the architectural plans dated 3/11/19 versus the revised site plan dated 2/15/19 specifically that the architectural plans do not show all of the cross walks; Mr. Kohler explained that that sheet A001 is an area location plan and does not show the pavement markings. He said that they re-submitted the entire set of the architectural plans and all of the sheets did not have revisions.

Mr. Eben asked Mr. Kohler why there was no staircase by Building G on the revised plans or a decorative fence that he suggested instead of a guard rail; he said that the retaining wall will have an ornamental fence on top of it. Mr. Kohler stated that they will not add a staircase in that location because they felt that it was not safe for pedestrians. He said that they will add a staircase near Building I as a condition of approval.

Mr. Eben questioned the pinching of the curbs that he talked about at a past meeting and said that he thought that the applicant agreed to do it. He said that he does not see it on the revised drawings.

Mr. Regan referred to the transcripts from the March 7th special meeting and stated that Mr. Disario, the Traffic Engineer, testified to the pinch points being widened and the revisions that were made in respect to that.

Mr. Eben stated that they are not on the drawings and he would like to see them on the plans.

Chairman Neuer advised Mr. Regan to have Mr. Fowler prepare a single sheet showing where the pinch points are on the drawings.

Mr. Redwine asked Mr. Kohler what considerations he made for the revisions regarding the West Orange Master Plan; he said that everything proposed is for the shopping center's intended and permitted use so the Township Master Plan did not come into play with his design.

Mr. Redwine asked Mr. Kohler if anything has progressed regarding the applicant considering using alternative energy and if it is reflected in the revised plans; he said that it has progressed in

the sense that they have talked about the types of tenants that might bring that type of alternative energy to the project. Mr. Kohler said a lot of those initiatives happen on the tenant's side of their fit-out by utilizing, for example, their roof. He said they are still considering installing alternative energy parking spaces.

Mr. Kohler stated that the only re-design on his revised architectural plans were the elimination of some doors at the back of Building A.

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

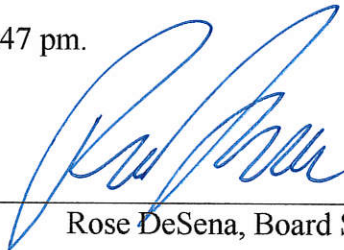
Chairman Neuer stated that because of a statement that he made on the record at the January 17, 2019 meeting, he accepts Mr. Malanga's position and requests that the landscape architect return to the next meeting.

Chairman Neuer advised the Board Secretary to reach out to the Township Forester, Mr. Linson, to let him know that his appearance is required at the next meeting.

Chairman Neuer stated that this application will be carried over to the next meeting held on April 11, 2019 and that no further notice will be required.

The meeting was adjourned by Chairman Neuer at 10:47 pm.

Adopted: April 11, 2019

 4/12/19

Rose DeSena, Board Secretary