

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
April 11, 2019**

The West Orange Zoning Board of Adjustment held a regular meeting on April 11, 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 J 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, B. Quentzel, J. Redwine,
I. Schwarzbaum, W. Steinhart, A. Weiss

ABSENT: L. Phillips (excused)
M. Straker (excused)
M. Sussman (excused)

ALSO PRESENT: Paul Grygiel, Consulting Planning Director for the Township
John Hess, Consulting Engineer for the Township
Alice Beirne, Esq., Board Attorney
Rose DeSena, Board Secretary
Harvey Grossman, Esq., Public Advocate

ANNOUNCEMENTS

Future Meetings: May 16, 2019 (regular meeting)
June 20, 2019 (regular meeting)
July 18, 2019 (regular meeting)

Chairman Neuer announced for the record that application **ZB-18-09/555 Northfield Avenue, LLC**, 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.

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 June 20, 2019 at 8:00 pm and no further notice will be required.

ANNUAL REPORT

Adopt: Zoning Board of Adjustment Annual Report – 2018

Chairman Neuer asked for a motion to approve the Zoning Board of Adjustment's Annual Report for 2018.

Ms. Gabry made a motion to the Zoning Board of Adjustment 2018 Annual Report; Mr. Steinhart seconded the motion.

The vote was as follows:

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

MINUTES

March 21, 2019 (regular meeting)

Chairman Neuer stated that the draft minutes from the March 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. Redwine made a motion to approve the minutes of the March 21, 2019 regular meeting; Ms. Gabry seconded the motion and all were in favor.

It was noted for the record that Ms. Weiss, although present at this meeting, did not vote on these minutes because she was not in attendance at the March 21, 2019 regular meeting.

SWEARING IN

Paul Grygiel, Consulting Planning Director for the Township and John Hess, Consulting Engineer for the Township, were sworn under oath.

APPLICATIONS:

1. **ZB-18-06/CLPF – Essex Green, LLC c/o Clarion Partners Carried from 3/21/1**
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.

EHIBITS

- 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.
- A-12 - Plaza barricade plan –dated 4/4/19
- A-13 - Colorized Plaza barricade plan - dated 4/4/19
- P-1 – Photos taken by Linda Stiles dated 10/26/18
- P-2 – Photos taken by Linda Stiles dated 10/26/18
- P-3 - Email from Mr. Fowler to Pedestrian Advisory Board and Jerry Guarino
- P-4 - Examples of landscaping – eight (8) pages
- P-5 - Photo of a living plant wall

Chairman Neuer stated that Ms. Weiss signed an affidavit stating that she has listened to the audio of the 3/21/19 meeting that she did not attend.

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

Chairman Neuer said that before they begin he would like to state for the record that Zoning Board Members have been advised not to read any emails or correspondence from parties connected with any pending applications that come before this Board.

Chairman Neuer stated that the Board Members sit in a Quasi-Judicial capacity; He then read the basis for the rules pertaining to this matter.

Chairman Neuer stated that this Board has never accepted letters or petitions submitted to the Board because they cannot be properly authenticated. He said that if a member of the public would like to contribute to the issue it must be stated at the hearing on the record in front of the applicant and their attorney as well as the members of the public and will be subject to cross examination.

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

Mr. Regan stated that Mike Szura, landscape architect for the applicant, will answer questions regarding the tree inventory plan.

Chairman Neuer stated that Mr. Szura has been sworn previously and continues his testimony under oath.

Mr. Regan asked Mr. Szura if the tree inventory plan that was submitted in February 15, 2019 is consistent with his prior testimony and complies with the Township Tree Ordinance; he replied yes.

Chairman Neuer asked if any Board Members had any questions for Mr. Szura.

Mr. Eben asked Mr. Szura if trees will be planted in the areas that they opened up; he said no but additional shrubs and ground covers will be installed.

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

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

Sally Malanga approached the podium and stated that she lives on Ridge Road.

Ms. Malanga referred to the tree diagram plan dated 2/15/19 and questioned some of the trees that were being removed. She asked Mr. Szura if they would consider not cutting them down during the initial phase of the project; he said as long as they are not conflicting with anything they can remain until Building I is constructed.

Ms. Malanga asked Mr. Szura to detail the size and types of trees that are scheduled to be removed in the courtyard; he complied.

Ms. Malanga asked Mr. Szura why the trees in the courtyard and other areas are being removed; he said for improvements in those areas.

There were no further questions for Mr. Szura.

Mr. Regan called his next witness.

Anthony Kohler, architect for the applicant, approached the podium. Chairman Neuer stated that this witness has been sworn previously and continues his testimony under oath.

Mr. Kohler presented the Plaza barricade plan dated 4/4/19 marked as Exhibit A-12 for identification and the colorized Plaza barricade plan dated 4/4/19 that was marked as Exhibit A-13 for identification.

Mr. Kohler referred to the barricade plans and detailed them. He stated that the plan was reviewed and approved by the Township Police Chief.

Mr. Eben stated that the ADA curb cuts should be lined up with the crosswalk; Mr. Regan stated that it will be shown on the final plans.

Chairman Neuer stated that if the application is approved, the final site plan will depict where the bollards, the light fixtures and the planters will be located.

Mr. Eben also stated that he had a few suggestions such as moving the ADA ramp so it is centered in the aisle way and pushing back the planters that are too close to the curb; Mr. Kohler stated that they will take a look at that.

Mr. Eben asked Mr. Kohler if they are proposing to protect any of the other entrances to the shopping center; he stated that they discussed all of the issues with the police chief and no bollards will be put in front of the movie theater. Mr. Kohler stated that they will protect the area along Building B, where the new entrance from Prospect Avenue will be, just like the area along restaurant row.

Mr. Schwarzbach asked Mr. Kohler if the bollards can stop a vehicle; he replied yes.

Mr. Grygiel asked Mr. Kohler if they can get service vehicles into the area with the bollards; he said yes. Mr. Kohler said that they will have one removable bollard.

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

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

Khabirah Myers approached the podium and stated that she lives on Marion Drive.

Ms. Myers asked Mr. Kohler if the crosswalks will be ADA compliant; he said yes that they are required, by law, to make them ADA compliant.

There were no further questions for Mr. Kohler.

Mr. Regan stated that he has no further witnesses and rested.

Chairman Neuer opened the meeting for public comment.

Harvey Grossman approached the podium and was sworn under oath.

Mr. Grossman stated that he is advocating for the public and they would like to see the number of trees increased on the site and have the applicant provide additional pervious coverage in order to manage the storm water run-off.

Ms. Weiss stated that Bowman Consulting approved the drainage plan and that she, as a Board Member, relies heavily on his opinion.

Mr. Steinhart agreed with Ms. Weiss regarding the drainage plan.

Mr. Schwarzbaum asked Mr. Grossman what effect Super Storm Sandy had on the westerly side of the shopping center site; he said that he received many calls from residents who had flooded basements after Super Storm Sandy.

Mr. Quentzel stated that this is an existing site that is going to be improved and does not understand the basis of Mr. Grossman's objection.

Mr. Eben stated that he understands that Mr. Grossman is advocating for the public but said that he should have had some sort of document stating specifically his requests to the Board.

Mr. Redwine stated that storm water run-off is part of the Township's Master Plan when talking about development or re-development.

Mr. Redwine asked Mr. Grossman if there were any other aspects of the Master Plan that could have been improved upon in this project; he said increasing the number of trees and the size of the islands where the trees will be planted and replacing some of the pervious coverage with impervious coverage.

Chairman Neuer asked Mr. Grossman if he had any specific suggestions on how to improve the storm water management plan for this project; he said yes. Mr. Grossman said to replace the asphalt with pervious coverage which would help retain the storm water on the site rather than run-off away from the site.

Chairman Neuer asked if any members of the public have questions for Mr. Grossman.

Loren Svetvilas approached the podium and stated that he lives on Prospect Avenue.

Mr. Svetvilas asked Mr. Grossman if he has the public's interest in mind with his comments; he replied yes.

Ms. Weiss stated for the record that the Board knows that Mr. Grossman's intentions are for the good of the public and in no way are they diminishing him. She said that, from a legal standpoint, they are relying on the expertise of the Board's consulting engineers.

Jerry Guarino approached the podium and was sworn under oath. He stated that he lives at 10 Belgrade Terrace.

Lori Kapferer also approached the podium and was sworn under that oath. She stated that she lives at 65 Fitzrandolph Road.

Mr. Guarino stated that he is present at this meeting as Chair of the Pedestrian Safety Advisory

Board. He said that he and Ms. Kapferer, who is a member of the Pedestrian Safety Advisory Board, would like to place on record what Clarion agreed to do based on their meeting with them.

Mr. Guarino presented an email from Mr. Fowler addressed to the Members of the Pedestrian Advisory Board dated 4/11/19 that was marked as Exhibit P-3 for identification.

Mr. Guarino read the contents of the email into the record as to what Clarion agreed to do.

Chairman Neuer asked Mr. Regan if the applicant is willing to accept what was agreed upon in Exhibit P-3 as conditions of approval; he replied yes.

Chairman Neuer stated that any items in that email that requires the Township to absorb the cost, the condition must be subject to governing body approval for the expenditures.

Ms. Kapferer stated that she has one other request that was not included in the email. She said that there was an item regarding sidewalks being provided near the Shop Rite connecting to Executive Drive that was going to be addressed at a later time. Ms. Kapferer said that she is requesting that this also be noted on the plan.

Chairman Neuer stated that Executive Drive is not part of this application. He asked Mr. Regan if the applicant is agreeing to a condition that stipulates that if in the future Executive Drive is redeveloped that the applicant will install sidewalks in that location.

Mr. Regan stated that the applicant is not prepared to commit to putting a sidewalk at this location at this time.

Chairman Neuer asked if any members of the public have any questions for Mr. Guarino.

Andrew Roberts approached the podium and stated that he lives on Marion Drive.

Mr. Roberts asked Mr. Guarino if sidewalks are being proposed for Marion Drive; he said yes the Township is installing sidewalks on Marion Drive between May and July of 2019.

Kevin Malanga approached the podium and stated that he lives on Ridge Road.

Mr. Malanga asked Mr. Guarino what the signal timing is for the crosswalk going from Prospect Avenue to Eagle Ridge.

Chairman Neuer stated that Prospect Avenue is an Essex County Road; he said that particular signal is under their jurisdiction and they control the timing of it.

Sally Malanga approached the podium and stated that she lives on Ridge Road.

Ms. Malanga asked Mr. Guarino how many linear feet of sidewalks he requested and why was he turned down for his request for sidewalks; he said he cannot answer the linear footage but everything the Pedestrian Safety Board asked for has been agreed to by the applicant. Mr.

Guarino said that Clarion has been very cooperative with what the Pedestrian Safety Advisory Board requested.

There were no further questions for Mr. Guarino.

Chairman Neuer called for a recess at 9:30 pm.

Chairman Neuer resumed the meeting at 9:38 pm.

Chairman Neuer stated for the record that the Municipal Land Use Act states that the Zoning Board has one hundred and twenty (120) days to conclude their work on this application. He said that the application was deemed complete the first week of October, 2018 and the one hundred and twenty (120) days expired in February of this year. Chairman Neuer stated that the completion date for this application is now fifty (50%) percent over what is required by the statute.

Chairman Neuer stated that the applicant has agreed to numerous extensions and that it is his desire to conclude this application this evening so that the applicant is not further delayed.

Chairman Neuer stated that he not only has an obligation to the public but also to the applicant.

Chairman Neuer advised the public that if they are going to restate something that has already been said on record to please just state that they approve what a specific person has already said.

Chairman Neuer stated that the Township Forester, Mr. Linson, is present at this meeting to answer questions as requested by either Ms. Malanga or Ms. Stiles, at the last meeting.

John Linson, Township Forester, approached the podium and was sworn under oath.

Sally Malanga approached the podium and stated that she lives on Ridge Road.

Ms. Malanga asked Mr. Linson if he reviewed the revised tree removal plan; he said yes.

Ms. Malanga asked Mr. Linson if the revised plan complies with the Township's tree ordinance; he said yes.

Mr. Linson stated that it is unfortunate that some of the trees have to be removed due to site improvements but they are being replaced with additional trees; he said that there is a balance.

Mr. Linson said that he is recommending to the Board that the applicant provide better maintenance of the trees on site and provide a tree maintenance plan. He said that he feels the plan is superior to what they have in place now and that in five (5) years there will be some sizeable trees on the site.

Mr. Linson also stated that originally he did not realize that five (5) of the trees that are being removed was due to the replacement of the storm drain but now he understands the reasons.

Kevin Malanga approached the podium and stated that he lives on Ridge Road.

Mr. Malanga asked Mr. Linson if he would advise the applicant not to cut down two (2) of the trees near proposed building G for the purpose of making parking spaces in that location; he said that it is important to have those trees removed for site improvements.

Soma Sinha approached the podium and stated that she lived on Sichel Court.

Ms. Sinha asked Mr. Linson how many trees are being cut down; he said there are three hundred and forty one (341) existing trees on the site, one hundred and fifty two (152) are being removed and that three hundred and eighty three (383) will be existing on the site after construction.

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

Ms. Stiles asked Mr. Linson to describe the difference between a major and minor tree; he complied.

Sangeeta Badlani approached the podium and stated that she lives on Florence Place.

Ms. Badlani asked Mr. Linson why he agreed to the removal of some trees; he said for economic reasons.

Loren Svetvelas approached the podium and stated that he lives on Prospect Avenue.

Mr. Svetvelas asked Mr. Linson how many of the new trees may not make it; he said with a tree maintenance plan in place they will survive.

Alana Amaya approached the podium and stated that she lives at 12 Helen Avenue.

Ms. Amaya asked Mr. Linson if the applicant was to increase the number of trees with new native trees, would that increase pollination; he said that there are several pollinator trees being planted and detailed those trees.

There were no further questions for Mr. Linson.

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

The following members of the public were sworn under oath and placed their comments on the record:

Benjamin Robinson – Marion Drive
Kevin Malanga – Ridge Road
Lisa Brittan – Burnett Terrace
Rosary Morelli – Ralph Road
Carol Schlitt – 10 Overlook Avenue
Sally Malanga – Ridge Road

Louis Dorf – 4 Hepworth Court
Joyce Rudin – Woodland Avenue
Loren Svetvelas – Prospect Avenue
Robert Rashkes – 35 Oak Crest Road
Sangeeta Badlani – Florence Place
Alana Amaya – 12 Helen Avenue

Mr. Regan approached the podium and summed up asking the Board to approve this application.

Chairman Neuer declared the hearing closed.

Mr. Eben stated for the record he does not support this application and stated his reasons on record.

Mr. Quentzel stated that he is in favor of this application and stated his reasons on record.

Mr. Redwine stated that he does not support this application and stated his reasons on record.

Ms. Gabry stated that she is in favor of this application and stated her reasons on record.

Mr. Schwarzbaum stated that he is in favor of this application and stated his reasons on record.

Mr. Steinhart stated that he is in favor of this application and stated his reasons on record.

Ms. Weiss stated that she is in favor of this application and stated her reasons on record.

Chairman Neuer defined the purpose of the Zoning Board of Adjustment; he stated that the Board is a creature of statute and adjusts the Township's Zoning Ordinance by granting permission for certain approvals that are sought.

Chairman Neuer stated that he is in favor of this application and stated his reasons on record.

Chairman Neuer made a motion to approve this application with the following conditions:

- Installation of a guide rail on the wall near Building G
- Items in the Bowman Consulting letter dated 10/18/2018 to be complied with by the Applicant
- No build area in the parking lot in front of the existing Sears building to be removed
- Applicant must have a maintenance bond for landscaping for five (5) years
- Juniper hedges to remain
- Tree removal permit has been approved by the Township Forester
- Applicant must develop a snow removal plan to be submitted to the Township Engineer and Forester prior to a construction permit
- Applicant agrees to test the soil in the islands and replace if necessary
- Applicant must supply a tree maintenance plan
- Applicant must comply with the Township's Fire Officials memo except item #3 which is only applicable to new construction
- All plans must be amended and revised to show the underground connection to the buildings
- Advertising on the digital sign shall be limited to tenants and not products

- Large tower sign taken off of the plans and shall not be constructed
- Applicant agreed to install pedestrian crossing signs at Marion Drive
- Plans must show decorative fencing by building G
- Stairs on the upper level must be shown on the plans
- Roofs will be replaced with light colored roofs by tenants
- The trees in the upper area will remain until Building I is constructed
- Bollards must appear on the site plan
- Additional bollards and a guard rail will be installed to protect Building B Plaza
- Applicant will provide an easement for access from Rooney Circle
- Langan Engineering will be involved in the landscape maintenance plan and field work
- Applicant will provide a guard rail near Macy's Backstage
- The applicant is bound by all of the testimony by all of their experts and principals on record
- All conditions are to be printed on the final site plan

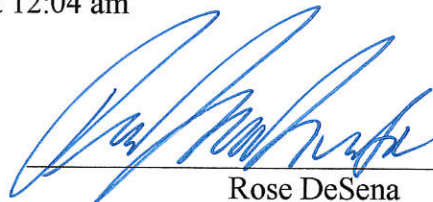
Ms. Gabry seconded the motion to approve the application with said conditions.

The vote was as follows:

Eben:	No	Steinhart:	Yes
Gabry:	Yes	Straker:	-
Phillips	-	Sussman:	-
Quentzel:	-	Weiss:	Yes
Redwine:	No	Chairman Neuer:	Yes
Schwarzbaum:	Yes		

The meeting was adjourned by Chairman Neuer at 12:04 am

Adopted: May 16, 2019

 5/17/19
 Rose DeSena
 Zoning Board Secretary