

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
July 18, 2019**

The West Orange Zoning Board of Adjustment held a regular meeting on July 18, 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,
I. Schwarzbaum, W. Steinhart, M. Straker, M. Sussman, A. Weiss

ABSENT: J. Redwine (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: July 25, 2019 (special meeting)
August 15, 2019 (regular meeting)
September 19, 2019 (regular meeting)

Chairman Neuer announced that application **ZB-18-02/Rosario**, that was scheduled to be heard at this meeting, has been withdrawn without prejudice by the applicant.

MINUTES

June 20, 2019 (regular meeting)

Chairman Neuer stated that the draft minutes from the June 20, 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.

Ms. Gabry made a motion to approve the minutes of the June 20, 2019 regular meeting; Mr. Sussman seconded the motion and all were in favor.

It was noted for the record that Ms. Phillips and Dr. Straker were not present for the June 20, 2019 meeting and did not vote on these minutes.

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-17-11/Youssef, Inc.

Carried from 6/20/19

Block: 111; Lot: 1.06; Zone: B-2

438 Eagle Rock Avenue

Seeking a 'd' variance and 'c' variances to permit the construction of a convenience store and other changes to the site.

EXHIBITS

A-1 – Sheet C-03 of the colorized site plan dated 6/29/18

Chairman Neuer stated for the record that Board Members Mr. Schwarzbaum, Ms. Phillips and Dr. Straker have all signed certifications that they have listened to the audio recordings of the January 17, 2019 meeting as to Mr. Schwarzbaum and Dr. Straker and the June 20, 2019 meeting as to Ms. Phillips and Dr. Straker, that they did not attend at which this application was heard. He stated that they can participate and will be eligible to vote should this matter should be concluded tonight.

The Chairman announced that Board Member Mr. Steinhart has stepped down from the dais since he is recused from hearing this application.

Michael Oliveira, attorney for the applicant, approached the podium.

Mr. Oliveira stated that his client last appeared on June 20, 2019 and briefly detailed the application; he said that the engineer, architect and applicant testified at that meeting and that Mr. Staigar will present the traffic and planning testimony at this meeting.

Mr. Oliveira called his first witness.

Joseph Staigar approached the podium and was sworn under oath.

Mr. Staigar detailed his educational and professional as a traffic expert and professional planner licensed in the State of New Jersey.

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

Chairman Neuer stated that the Board received a copy of a planning evaluation from Peter Steck that was revised on February 18, 2019 that satisfies the Township ordinance.

Chairman Neuer also stated that the Board received a copy of a traffic impact study, dated 4/1/16, that was submitted by Mr. Staigar and revised on 8/17/18 and 2/27/19.

Mr. Staigar detailed his traffic study and noted the peak hours that the traffic counts were conducted. He detailed the intersection of Prospect Avenue and Eagle Rock Avenue stating that it is heavily traveled and is controlled by a four-phase traffic signal.

Mr. Staigar stated that the site currently has a small 1700 sq. ft. convenience store and they are proposing to construct a 4000 sq. ft. building that will be used mostly for the convenience store.

Mr. Staigar stated that there are currently twelve (12) fueling positions on the site and will reduce the number to ten (10) fueling positions.

Mr. Staigar stated that the convenience store will have the same variety of retail but just more of it.

Mr. Staigar stated that they will be reducing the number of driveways from four (4) to three (3) and cutting the turning movements from thirteen (13) to seven (7).

Mr. Staigar stated that they are proposing a right turn in and a right turn out only on Prospect Avenue and there will be no left turn out onto Eagle Rock Avenue from the westerly driveway to that street; left turns will be permitted from the easterly driveway onto Eagle Rock Avenue..

Mr. Staigar stated that no fuel delivery trucks will enter the site during peak hours.

Chairman Neuer asked what hours are considered peak hours; Mr. Oliveira stated that the owner can answer that question.

Elias Addelnour approached the podium and continued under oath.

Chairman Neuer asked Mr. Addelnour what the busiest hours of operation are; he said from 6:00 am to 9:00 pm.

Chairman Neuer stated that a condition of approval will be that the fuel trucks will make deliveries only between the hours of 9:00 pm and 6:00 am.

Mr. Staigar stated that the site is required to have twenty five (25) parking spaces and they are proposing twenty (20) which includes two (2) handicap spaces. He stated that the fueling positions will also function as a parking space when a customer visits the convenience store while getting fuel.

Mr. Staigar stated that they met with the Essex County Planning Board and revisions were made based on that meeting.

Ms. Phillips asked Mr. Staigar what impact this will have on the intersection due to the increase of traffic; he said the accident rate will not increase at the intersection.

Chairman Neuer stated that the Board is concerned that the number of accidents may increase due to more traffic; Mr. Staigar stated that the reconfiguration of the driveways will create less accidents.

Mr. Schwarzbaum asked Mr. Staigar to detail the onsite circulation; he complied.

There were no further questions for Mr. Staigar, regarding his traffic testimony, from any of the Board Members or the Board Professionals.

Chairman Neuer asked if any members of the public had any questions for Mr. Staigar regarding his traffic testimony.

Robert Rashkes approached the podium and stated that he lives at 35 Oak Crest Road.

Mr. Rashkes asked Mr. Staigar if there will be a pedestrian crosswalk going from the driveway to the convenience store; he said no.

There were no further questions for Mr. Staigar regarding his traffic testimony.

Mr. Oliveira stated that Mr. Staigar will now present testimony as a Professional Planner.

Mr. Staigar stated that his testimony will be based on Peter Steck's report, revised on 2/18/19, which was submitted to the Board and his own observation.

Mr. Staigar stated that the site is in a B-2 zone in which service stations are a permitted use but auto repair is not. He said that they are removing the auto repair use but it still does not satisfy all of the conditional use requirements so they are seeking a "d3" variance.

Mr. Staigar detailed all of the variances being requested based on what is required by Township Ordinance and what is being proposed.

Mr. Staigar detailed the positive and the negative criteria, stating that the Township's Master Plan update encourages the economic development and improved design of such areas, and will cause no detriment to the zone.

Mr. Eben wanted it noted for the record that the Planning Board considered and discussed a request from the Administration to designate 25 properties (reduced to 18) along Eagle Rock Avenue from the Chit Chat Diner going east up the hill across Prospect to Mayfair Farms on the north side and the Chinese Restaurant on the South side as an Area of Need. He said that after a lot of discussion over several months a motion was made to table the request for one (1) year.

There were no further questions for Mr. Staigar, regarding his planning testimony, from any of the Board Members or the Board Professionals.

Chairman Neuer asked if any members of the public had any questions for Mr. Staigar regarding his planning testimony; there were none.

Mr. Oliveira approached the podium, summed up and asked the Board to approve this application.

Chairman Neuer stated that the Board had requested the applicant produce the Licensed Site Remediation Professional (LSRP) who exercised jurisdiction and oversight as to this property to testify at this meeting but he declined to come because he did not want to testify for the owner.

Chairman Neuer stated that this Board has the authority to issue a subpoena to have the LSRP appear and testify and asked the Board Members by show of hands if they wanted to do that; all were in favor of not issuing the subpoena.

Chairman Neuer made a recommendation to vote on this application tonight and offered a motion to approve with the following conditions:

- Solar Panels to be installed on the canopy and the roof of the proposed building.
- Fuel deliveries be limited to strictly between the hours of 9:00 pm and 6:00 am.
- Comply with all requirements set forth in the bargain and sale deed dated 4/13/12.
- Comply with the matters set forth in the Response Action Outcome dated 12/15/16 by Andrew Thomas, LSRP commencement of and throughout construction.
- Install a backup generator on the site in the event of a power failure.
- Signage details to be provided on the final set of plans.
- Environmental restrictions and required engineering controls shall be recited on the final plans.
- Final Plans shall recited the conditions of approval.

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

The vote was as follows:

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

2. ZB-19-03/Morris Union Holdings, LLC

Block: 155, Lots: 26 & 29; Zone: OR

347 Mt. Pleasant Avenue

Seeking a "d" use variance and "c" variances for parking spaces to construct a surgery center on the premises of 347 Mt. Pleasant Avenue.

EXHIBITS

A-1 – Schematic Site Plan dated 6/7/19.

A-2 – Floor plans for the outpatient surgery center tenant fit out dated 5/28/19.

A-3 - First floor elevator plan – existing/proposed.

A-4 - Planning Exhibit (zone chart) for 347 Mt. Pleasant Avenue.

Chairman Neuer stated that Dr. Straker and Mr. Eben are recused from hearing this application and each stepped off the dais.

Chairman Neuer also stated that Mr. Steinhart has resumed his place on the dais.

Robert Williams, Esq., attorney for the applicant, approached the podium and detailed the application.

Mr. Williams stated that the applicant is proposing to reconstruct the third floor of an existing medical/office building into a surgery center. He said that in response to item #6 in the CME memo dated 6/27/19 the hours of operation will be from 6:00 am to 6:00 pm five (5) days a week.

Chairman Neuer advised Mr. Williams to provide Ms. Beirne with a copy of the recorded parking easement for the site.

Mr. Williams gave some background regarding the owner/operator of the surgery center, Dr. Kaixuan Leu.

Mr. Williams detailed who will be testifying on behalf of the application and called his first witness.

Gerard Gesario approached the podium and was sworn under oath.

Mr. Gesario detailed his educational and professional background as a professional engineer licensed in the State of New Jersey.

Chairman Neuer accepted Mr. Gesario as an expert in professional engineering.

Ms. Weiss asked Mr. Gesario when the last time he visited the site was; he said today.

Mr. Gesario presented sheet C-100 of the site plan dated 6/19/19 that was marked as Exhibit A-1 for identification.

Mr. Gesario referred to Exhibit A-1 and detailed it; he said that they will comply with items 2 through 5 on page 3 in the CME memo dated 6/27/19.

Chairman Neuer asked who will address item #7 in the CME memo; Mr. Williams stated that no signage is being proposed in this application.

Chairman Neuer stated that all of the requested waivers listed in the CME memo dated 6/27/19 are granted.

Mr. Gesario stated that the applicant is also proposing to make the existing elevator larger.

Chairman Neuer advised Mr. Gesario to revise the drawings so that it reflects three (3) stories.

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

Mr. Williams called his next witness.

James Brick approached the podium and was sworn under oath.

Mr. Brick detailed his educational and professional background as an architect licensed in the State of New Jersey.

Chairman Neuer accepted Mr. Brick as an expert in architecture.

Mr. Brick presented the tenant fit out for the outpatient surgery center dated 5/28/19 that was marked as Exhibit A-2 for identification.

Mr. Brick referred to Exhibit A-2 and detailed it.

Mr. Brick presented the first floor elevator plan that was marked as Exhibit A-3 for identification and detailed it.

Mr. Williams asked Mr. Brick if he reviewed the CME report dated 6/27/19; he said yes.

Mr. Brick referred to item #1 in the CME report and stated that he will provide the bump out information for the elevator and put it on the plans.

Mr. Williams referred to Mr. Grygiel's memo dated 6/27/19 and asked Mr. Brick to explain what the abbreviation VIF stands for; he said Verify In Field.

Mr. Schwarzbaum asked Mr. Brick if the elevator will be used just for the surgical center; he said no.

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

Mr. Williams called his next witness.

J. Michael Petry approached the podium and was sworn under oath.

Mr. Petry detailed his educational and professional background as a Professional Planner licensed in the State of New Jersey.

Chairman Neuer accepted Mr. Petry as an expert in professional planning.

Mr. Petry presented the planning exhibit zone chart for 347 Mt. Pleasant Avenue that was marked as Exhibit A-4 for identification.

Mr. Petry referred to Exhibit A-4 and detailed it. He said that the applicant is proposing to create a surgery center and extend the existing elevation.

Mr. Petry detailed the variances being requested and stated that this use is not permitted on lot 29 but is a permitted use on lot 26.

Mr. Petry stated that there are a total of two hundred and thirty eight (238) parking spaces on site and forty (40) of those spaces are shared; he said that there is a parking easement agreement on site to share the back parking lot with lot 26.

Mr. Petry stated that the use is suitable for this site and he detailed the positive and negative criteria stating that it is an inherently beneficial use

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

Mr. Williams called Dr. Kaixuan Leu.

Kaixuan Leu approached the podium and was sworn under oath.

Dr. Leu stated that there is a need for this use in this area because outpatient surgery can meet the needs of his patients that come from all over. He said this facility will be used for minimally invasive surgery, the hours of operation are 6:00 am to 6:00 pm five (5) days a week but occasionally they might have to be open on a Saturday.

Mr. Schwarzbaum asked Dr. Leu how many people he has on staff; he said twenty (20).

Mr. Schwarzbaum asked Dr. Leu to state the size of his office in Union, New Jersey; he said 10,000 sq. ft.

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

Mr. Williams stated that he urges the Board to approve this application and summed up.

Ms. Weiss stated that she feels this is a wonderful use and recommended that the Board approve this application.

Chairman Neuer made a motion to approve the application with no conditions; Ms. Gabry seconded the motion.

The vote was as follows:

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

Mr. Williams stated that he discussed this with Ms. Beirne that the applicant has severe time constraints because they have to go back to the State and cannot do a lot without a resolution. He said that there is a resolution that Ms. Beirne can offer this evening but if the Board feels that there is not enough time they would come back next week at the special meeting next Thursday night.

Ms. Beirne stated that she has copies of a draft resolution if the Board would like to review it and adopt the resolution at this meeting.

All of the Board Members agreed that there was time to review the resolution and vote on it this evening, except Mr. Schwarzbaum.

Chairman Neuer advised Ms. Beirne to distribute the resolution to the Board Members and if Mr. Schwarzbaum decides not to participate that would be his prerogative.

Ms. Beirne stated that there was no public comment, no public questions or no conditions of approval.

Ms. Beirne stated that she will spell out what the requested waivers were in the resolution and include that Dr. Kaixuan Leu testified.

Chairman Neuer stated that Exhibit A-4 was a planning exhibit and not a planning report.

Chairman Neuer stated that on the last line of the resolution the word intend should be intent.

Ms. Beirne stated that the easement agreement that she has to review should be included as a condition of approval.

Chairman Neuer stated that he is amending the resolution to include the condition that the easement agreement must be submitted to Ms. Beirne for her to review.

Chairman Neuer instructed the Board Secretary to take a re-vote on the application and moved to approve the application with said condition; Ms. Gabry seconded the motion.

The vote was as follows:

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

Chairman Neuer made a motion to adopt the resolution that was circulated to the Board Members; Ms. Gabry seconded the motion.

The vote was as follows:

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

The meeting was adjourned by Chairman Neuer at 10:50 pm.

Adopted: August 15, 2019


Rose DeSena, Board Secretary