

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
June 18, 2020**

The West Orange Zoning Board of Adjustment held a meeting on June 18, 2020 commencing 8:00 PM utilizing the virtual Zoom platform+.

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 asked everyone to stand for the Pledge of Allegiance.

PRESENT: J. Eben, D. Gabry, P. Neuer, B. Quentzel, J. Redwine
W. Steinhart, M. Straker, M. Sussman, A. Weiss

ABSENT: I. Schwarzbaum (excused)

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

ANNOUNCEMENTS

Future Meetings: July 16, 2020 (regular meeting)
August 20, 2020 (regular meeting)
September 17, 2020 (regular meeting)

Chairman Neuer announced for the record that Ronda Reinstein will be the designated official court reporter for this meeting.

Chairman Neuer also noted for the record that if anyone requests a copy of the transcript for this meeting, they must contact Ms. Reinstein directly to purchase it from her because Ms. Reinstein is not billing the township for her services this evening.

Chairman Neuer also announced that the attorney for application ZB-19-10/955 Pleasant Valley Way, that was scheduled to be heard at this meeting, was in touch with Ms. Beirne and requested a special meeting in July.

Chairman Neuer asked the Board Secretary to email the Board Members with all of the available dates in July for a special meeting.

Chairman Neuer stated for the record that application ZB-19-10/955 Pleasant Valley Way will be adjourned indefinitely until a definitive date for a special meeting in July may be determined.

MINUTES

May 21, 2020 (regular meeting)

Chairman Neuer stated that the draft minutes from the May 21, 2020 regular meeting were circulated to all of the Board Members.

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

Ms. Weiss made a motion to adopt said minutes and Chairman Neuer seconded the motion.

All were in favor.

SWEARING IN

Paul Grygiel, acting Planning Director for the Township and Greg Valesi, acting Engineer for the Township were sworn under oath.

RESOLUTIONS

1. ZB-20-01/Luxenberg

Approved 5/21/2020

Block: 17610; Lot: 10; Zone: R-5

17 Crestwood Drive

Seeking a "c" variance for front yard setback to extend the existing dining room

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.

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

Mr. Redwine asked Mr. Odegov if the neighboring driveways are similar to the one that he is building; he said yes.

Chairman Neuer asked Mr. Odegov if he has measurements for the other driveways in his neighborhood; he said no he just has the measurements for his driveway. Mr. Odegov said that the other driveways can easily fit four (4) cars.

Mr. Grossman asked Mr. Odegov if he can park two cars next to each other; he said yes but there is a retaining wall on one side of the driveway and if he parks too close to the wall he cannot open his car door.

Chairman Neuer asked Mr. Odegov why he parks his car with the driver's car door next to the retaining wall; he said because it is more convenient for him.

Chairman Neuer addressed Mr. Odegov and said that he is basing the need for the variance on the fact that parking his car with the driver side near the retaining wall is for his convenience.

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

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

Kevin Malanga, residing on Ridge Road, asked Mr. Odegov if all of the vehicles are owned and registered to him; he said that three (3) of the cars are registered in his name and one (1) is currently not registered in his name but he is planning on registering it in his name.

Mr. Malanga asked Mr. Odegov if the vehicles are passenger or commercial vehicles; he said passenger.

Mr. Grossman asked Mr. Odegov how much he wanted to widen the driveway; he said approximately eight (8) feet.

There were no further questions for Mr. Odegov.

Mr. Odegov stated that he would like his architect, Camilla Flannery, to testify next.

Camilla Flannery was sworn under oath and detailed her professional and educational background as a professional architect licensed in the State of New Jersey.

Chairman Neuer accepted Ms. Flannery as an expert in architecture.

Ms. Flannery stated that she was asked by Mr. Odegov to do the calculations that the Board requested to be done on the plans. She presented her plan that was submitted to the Board Members prior to the meeting and detailed it.

Ms. Flannery stated that the applicant is proposing Belgium block curbing which will retain some of the runoff if it exists.

Mr. Eben asked Ms. Flannery what the face of the Belgium block curb was; she said six inch (6 ") curb.

Mr. Eben asked Ms. Flannery if she recommend the curb to Mr. Odegov; she said that she discussed it with him.

Mr. Eben asked Ms. Flannery if building the Belgium block curb is her solution to re-direct the run off to the other property; she said yes, that is the intent.

Chairman Neuer asked Ms. Flannery where the flow would go; she said into the street.

Chairman Neuer asked Ms. Flannery if Mr. Odegov can reduce the size of the driveway that he is proposing due to the fact that he only needs to park four (4) cars in the driveway because one of the cars will be parked in the garage; she said that the size he is proposing to increase the driveway is in order for the cars to be maneuvered.

Ms. Flannery stated for the record that she is only here to provide the calculations on the plans that were requested.

Chairman Neuer asked Ms. Flannery if the new driveway will be fifty two feet (52'); she said yes.

Mr. Quentzel asked if they will be using concrete, asphalt or pavers to build the driveway; Mr. Odegov answered and said he was planning on using concrete.

Chairman Neuer asked Mr. Odegov if he would be willing to install pavers instead of concrete; he said no because concrete and asphalt is better and smoother.

Mr. Quentzel asked Mr. Odegov if the current driveway is made of asphalt; he said yes. Mr. Odegov said he is planning on removing the entire driveway and making it all concrete.

Mr. Grygiel asked Ms. Flannery to state the calculations for the front yard impervious coverage; she said 39.8 percent.

Mr. Grygiel asked Ms. Flannery to state the calculations for the side yard impervious coverage; she said 49.3 percent.

Chairman Neuer asked Mr. Odegov if he is amending his application to request front and side yard impervious coverage variances; he said yes.

There were no further questions for Ms. Flannery from any of the Board Members or Board Professionals.

There were no questions for Ms. Flannery from any members of the public.

Chairman Neuer closed this portion of the hearing.

Ms. Weiss asked Mr. Odegov who exactly the five (5) cars are for in his household; he said his mother in law, his wife, his two children and himself.

Chairman Neuer stated for the record that he and Ms. Gabry have driven by the house and there is debris and construction materials all over the lawn and soil in the driveway. He advised Mr. Odegov to get better control on how his property is maintained.

Chairman Neuer stated that Mr. Odegov has not established the positive or the negative criteria that is required by the municipal land use law and the applicable ordinance to grant the variances.

Chairman Neuer said that Mr. Odegov has not provided any testimony that would allow this Board to approve the application.

Chairman Neuer asked Mr. Odegov if he would like to continue the application one more time so that he can hire a professional planner because he recommends that if the Board takes a vote now it will be denied.

Chairman Neuer asked Mr. Odegov to consider retaining a professional engineer so that he can design the dry well recommended by Mr. Eben.

Chairman Neuer asked Mr. Odegov if he is going to request an adjournment or does he want the Board to take a vote.

Chairman Neuer stated that even though he worked with an architect the Board has not heard enough to satisfy the criteria to approve the "c" variances.

Mr. Odegov asked Chairman Neuer if he could think about it and extend indefinitely; he said yes.

Chairman Neuer stated that this application will be adjourned without a date with the applicant's consent to extend the statutory time period for a decision and the applicant is required to re-notice when the time comes.

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

Chairman Neuer resumed the meeting at 9:40 pm.

2. ZB-20-03/Harvey Mgmt. Corporation

Block: 152.22; Lot: 1422; Zone: R

432 Pleasant Valley Way

Seeking a "d" and "c" variances for modifications to an existing fast food restaurant.

John Marmora, attorney for the applicant, stated that the Burger King fast food restaurant located

on Pleasant Valley Way is proposing to upgrade the facility and make some site changes; He said that the foot print of the building will not be changed.

Mr. Marmora said that they are proposing the addition of two (2) drive thru windows along with a new menu board.

Mr. Marmora said that this application requires a "D3" variance and several "C" variances that he detailed.

Mr. Marmora said that one hundred fifteen (115) parking spaces are required and they currently have forty six (46) parking spaces. He said that they will be decreasing the number to thirty eight (38) parking spaces but the drive thru lanes will accommodate the decrease in those parking spaces.

Chairman Neuer stated for the record that he represents someone who owns some Wendy's and asked Mr. Marmora if he feels this would be a conflict; Mr. Marmora replied no.

Andrew Paterno and Michael Wallstein, owners and operators of the Burger King, were sworn under oath.

Mr. Paterno stated that they are not affiliated with Burger King other than owning and operating this one. He detailed the hours of operation, the number of staff they employ, when deliveries are made and when the trash is picked up.

Mr. Paterno said their objective is to improve the efficiency of the drive thru especially because there is currently no interior service. He said even post re-opening, eighty five percent (85%) of their business is done through the drive thru.

Mr. Paterno stated that they have never maxed out their parking and will be celebrating fifty (50) years in the community. He said they have a great relation with the police, the schools and the sports coaches and offer college scholarships to high school seniors. Mr. Paterno stated that they are also a big supporter of the Valerie Fund.

Mr. Marmora asked Mr. Paterno to comment on Mr. Grygiel's revised report dated 6/15/2020 regarding condition #4 of approval in resolution ZB-00-27 that was not satisfied regarding providing landscaping between the two driveways on the south side of the property.

Mr. Paterno said that when they met with the Township Planner, at the time, while they were installing the landscaping on the southern side of the property, there was not enough width to plant any landscaping.

Chairman Neuer stated for the record that the prior Planner did not have the authority to eliminate the condition and asked Mr. Marmora if he wanted to amend that application to eliminate condition #4 in resolution ZB-00-27; Mr. Marmora said yes.

Chairman Neuer asked Mr. Grygiel if the 6:00 am to 1:00 am hours of operation require relief; he said the applicant must comply with the Police Ordinance regarding the hours of operation.

Mr. Eben expressed his concern regarding the maintenance of the property; he said in the rear of the property there is debris in that area and the dumpster has equipment in it.

Mr. Paterno said that they make an effort to keep the site clean and that equipment is stored in the dumpster. He said that the doors on the dumpster enclosure should be closed and that they

have a landscaper there every week. Mr. Paterno said that they will commit to keeping the site in proper order.

Chairman Neuer asked Mr. Paterno why they need to store equipment outside; he said that they remove equipment from the kitchen that is not in service but he will look at what is currently outside and dispose of whatever they can.

Chairman Neuer stated for the record that no outdoor storage is permitted and instructed Mr. Paterno to have the equipment removed. He said this will be a condition and to have it removed within ninety (90) days of the approval.

Mr. Paterno stated that after eleven o'clock pm (11:00 pm) they operate the drive thru only.

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

Mr. Marmora introduced his next witness.

Emmanuel Obiora, architect for the applicant, was sworn under oath.

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

Chairman Neuer accepted Mr. Obiora as an expert in the field of architecture.

Mr. Obiora presented sheet A-2 of the floor plans that were submitted to the Board Members prior to the meeting and detailed them.

Mr. Obiora presented sheet A-1 of the elevation plans that were submitted to the Board Members prior to the meeting and detailed them. He said that two signs are being proposed on the exterior building; one above the window and the Burger King Logo sign.

Mr. Eben asked Mr. Obiora how the water will drain from the canopies; he said that over the windows they have canopies that will let the water through and the canopy over the drive thru drains from the sides.

Chairman Neuer advised Mr. Obiora to note that on the plans delineating what kind of canopies are being placed where.

Mr. Eben asked Mr. Obiora if, as the architect, he will be designing something new for the dumpster cover; he said no.

Mr. Eben stated that someone should take a look at the drains because overflow means that there is a problem on the roof.

Ms. Weiss asked Mr. Obiora if they can remove the sign that says "flame grilled" because she feels that it is unattractive; he said no because that is a Burger King requirement.

Ms. Weiss recommended that the free standing sign that says mozzarella sticks be removed.

Mr. Grygiel stated that he is satisfied with the applicant's submissions.

Mr. Valesi stated that his questions regarding the sign details that were submitted were addressed.

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

Mr. Marmora presented his next witness.

Chester DiLorenzo was sworn under oath and detailed his professional and educational background as a professional engineer and a professional planner licensed in the State of New Jersey. He stated that he will be testifying as the applicant's engineer and planner.

Chairman Neuer accepted Mr. DiLorenzo as an expert in Engineering and Professional Planning.

Chairman Neuer asked Mr. DiLorenzo if the planner's report that was submitted to the Board was signed by him; he said yes and that he revised it and forgot to change the date on it.

Chairman Neuer also recognized Mr. DiLorenzo as a professional land surveyor.

Mr. DiLorenzo presented the site plans that were submitted to the Board Members and detailed them. He detailed the loading zones, the dual drive through's and the number of parking stalls. Mr. DiLorenzo stated that the dual drive thru is a better design and more efficient than the old design.

Mr. DiLorenzo presented his planning testimony and detailed the existing conditions and what is being proposed. He said that the efficiency of the design of the new drive through's are being improved providing a safer way for the cars to enter and leave the site.

Mr. DiLorenzo said that the site is justified in the reduction of the parking stalls; he said that the landscaping will be re-installed and he will recommend that the roof scuppers are piped down into a header and that they install an underground drain.

Mr. DiLorenzo said that the doors to the dumpster will be replaced with corrugated doors and they will paint the dumpster enclosure.

Mr. DiLorenzo detailed the positive and the negative criteria for the "d" and the "c" variances and stated that this project will have no substantial detriment to the public good.

Chairman Neuer asked Mr. DiLorenzo if the proposed design provides a safe and efficient egress and ingress to and from the site; he said yes.

Chairman Neuer asked Mr. DiLorenzo if the application is approved, will it contribute to the health and safety of the public; he said yes.

Chairman Neuer asked Mr. DiLorenzo if the application is approved will it contribute to light, air and open space of the community; he said yes.

Chairman Neuer asked Mr. DiLorenzo if the application is approved will it promote a desirable visual environment to the community; he said yes.

Chairman Neuer referred to the two photos on page seven (7) of Mr. Grygiel's revised report dated 6/15/2020 and asked Mr. DiLorenzo if he felt that installing a fence would improve the

condition to make the driveway entrance less confusing; he said that he would suggest installing a fence and place a Burger King logo on one side and a Dunkin donut logo on the other side.

Mr. Eben suggested they eliminate two more parking spaces, delineating which ones to eliminate on the plans, in order to provide more landscaping.

Chairman Neuer echoed Mr. Eben's suggestion to eliminate the two parking spaces.

Mr. DiLorenzo stated that he would recommend removing one of the parking spaces, add a little more landscaping and widen the driveway on the one side and keep the other parking space.

Mr. Quentzel asked Mr. DiLorenzo if they are doing anything to help the environment or installing solar panels; he said that is a question for the architect but he feels that there is no benefit to solar and he is trying to get more "green" into the site.

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

Mr. Marmora stated that he has no other witnesses and summed up; he asked the Board to approve the application and stated that they will work with the Board and accept the conditions stated.

Chairman Neuer stated that there was no public comment and he closed the public hearing.

Chairman Neuer stated that this was a good application, the upgrade is good for the site and he will recommend that the Board vote in favor of approving it.

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

- Condition #4 of Resolution ZB-00-27 be rescinded
- Equipment stored on the outside be removed within 90 days
- Parking configuration amended to remove one parking spot
- Fence installed on the south border
- Landscaping provided
- Doors to dumpster replaced in conjunction with the construction
- Plans to show the scuppers piped down into a header and an underground system for proper drainage
- Plans to show the difference between the two canopies.

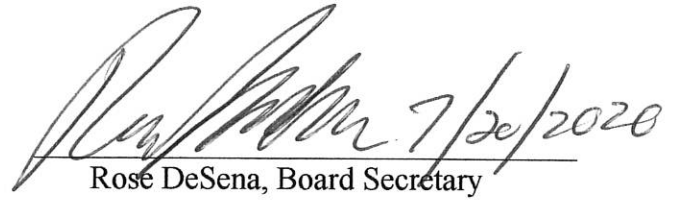
Ms. Gabry seconded the motion to approve with said conditions.

The vote was as follows:

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

The meeting was adjourned by Chairman Neuer at 11:03 pm.

Adopted: July 16, 2020

 7/20/2020
Rose DeSena, Board Secretary