

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT MEETING
JUNE 9, 2022
8:00 P.M.**

The West Orange Zoning Board of Adjustment held a special meeting on June 9, 2022 commencing 8:00PM utilizing the virtual Zoom platform.

Chairperson Philip D. Neuer called the meeting to order at approximately 8:00 PM. 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."

Chairperson Neuer asked everyone to please rise for the Pledge of Allegiance.

Alice Beirne, Esq., Board Attorney read the opening statement.

Present: Jerome Eben, Philip D. Neuer, Jonathan Redwine, Peter Ricci,
Mark Sussman, Dr. Michael Straker, Irv Schwarzbaum Alice Weiss;

Absent:

Also Present:

Ms. Malvika Apte, Consulting Planner Director for Township
(proxy for *Mr. Paul Grygiel*)
Alice Beirne, Esq. Board Attorney
Diana L. Chandler, Board Secretary
Sarabraj S. Thapar, Public Advocate
John Hess, Consulting Engineer for the Township

ANNOUNCEMENTS

- Future Meetings: June 16, 2022 (regular)
July 21, 2022 (regular)
August 18, 2022 (regular)
- *Chairperson Neuer* announced that these meetings will remain virtual until said differently.

SWEARING IN

- Township Professionals, *Ms. Malvika Apte*, Consulting Township Planner (proxy for *Mr. Paul Grygiel*) and *Mr. John Hess*, Engineer were sworn under oath.

APPLICATIONS

**1.) ZB-22 ZB-22-02 - Monarch Development Group JV LLC co Michael Glynn
(Mayfair Farms Holding Corp.) - 481 Eagle Rock Avenue
Block:152.01 ; Lot:1445.01 ; Zone: B-2
481 Eagle Rock Avenue**

Seeking “c” and “d” variances to subdivide the existing property and create construction of a multi-level senior housing facility.

- *Mr. Antimo DelVecchio, Esq.* entered on the record on behalf of the applicant.
- *Chairperson Neuer* announced that the day prior he raised a question to *Mr. DelVecchio* regarding whether or not this application should proceed as a bifurcated application or if it should go forward with all the required relief i.e., Site Plan and Subdivision approval.

BOARD DISCUSSION

- *Chairperson Neuer* made a statement about how New Jersey case laws allow bifurcated applications was amended to allow an applicant to elect to seek only variances in the initial stage and then after variances were approved to proceed with a subsequent application for approval of subdivision and Site Plan approval may be required. By just stating the facts of the application, there is no issue in his opinion. However, according to the Superior Court of New Jersey there are other issues and factors that have to be taken into consideration. *Chairperson* quoted from two cases decided by the Appellate Division “*Meridian Quality Care Inc. V. Board of Adjustment of the Township of Wall*” and “*House of Fire Christian Church V. Zoning Board of Adjustment of the City of Clifton*” that factors such as traffic flow, traffic congestion, ingress, egress, building orientation, and nature of the surrounding properties are highly relevant to both the determination of whether to grant the use variance and the later decision approve the site plan with bifurcation would not be appropriate if the Board considers that the use variance and the site plan issues are interrelated that both applications should be considered in a single administrative proceeding at which the Board would also decide the negative criteria based on the entire plan submitted. *Chairperson* then opined to say that this application fits the latter description. He then said *Mr. DelVecchio* is going to present his case on the bifurcation then the Board will decide on whether to proceed with the application.
- *Mr. DelVecchio* said that he disagrees with *Chairperson Neuer* stating that the cases cited are not as clear as they are read in their totality. Starting with the statutory starting place of 76B “Developer may elect” to submit separate applications lays responsibility in the first right to the developer to make that decision. It doesn’t say that the developer makes the elections subject to the Board’s approval or election unless certain factors are considered.
- *Mr. DelVecchio* said that in regards to “*Meridian Quality Care Inc. V. Board of Adjustment of the Township of Wall*” the case law sometimes relies on passages from Land Use are not necessarily what they appear to be when fact checked and its sites are looked at in their totality. In *Mr. DelVecchio*’s opinion this is one of those

cases. He continued to say that in the citation of “*Meridian Quality Care Inc. V. Board of Adjustment of the Township of Wall*” it doesn’t say that the Board will make determination on an appropriateness decision nor states who makes that decision.

- *Mr. DelVecchio* confirmed that he is before the Board this evening for a Use Variance involving a currently beneficial use and said that they have submitted everything that the Board would get with a Use Variance and Site Plan application with the exception of the detailed drainage system. He opined to say that since this is a comprehensive application, he would like to present testimony of those professionals that won’t change at this meeting. To which *Chairperson* responded that he disagrees on who makes that decision and to offer experts to testify would and could be an appealable issue. *Chairperson Neuer* then urged *Mr. DelVecchio* and his client to resubmit as there are inconsistencies in reports (for example in regards to the number of beds.)
- *Mr. Peter Ricci* asked what are the benefits to the applicant to get use variances and what are the benefits of bifurcation. *Chairperson Neuer* said that now is not the time for that but allowed *Mr. DelVecchio* was allowed to answer stating that the applicant wanted to be sure of the project particulars due to possible financial strain.
- *Mr. Jonathan Redwine* said that a change of use would require change to property and as an example the water drainage should be heard together and should be displayed at the same time.
- *Mrs. Alice Weiss* voiced her opinion to have it as a full board presentation as opposed to piecemealing it together for fluidity purposes.

Discussion Closed.

Chairperson Neuer announced that the Board will be crediting this application \$750.00 which will be held in their escrow account for this meeting. Only payments for *Ms. Chandler* (Board Secretary) and *Ms. Brill* (Moderator) will be provided for the preparation of this Special meeting. Applicant will also coordinate with *Ms. Chandler* for a Site Plan Review Advisory Board Meeting (SPRAB). *Ms. Chandler* gave the three upcoming dates for SPRAB (July 12,2022; August 9, 2022; September 13, 2022).

Motion: *Chairperson Neuer*

Second: *I. Schwarzbaum*

Eben:	Y	Straker:(Alt. 4)	
Redwine:	Y	Sussman:	Y
Ricci:	N	Weiss:	Y
Schwarzbaum:	Y	Chairperson Neuer:	Y
		Yes:	

Notes: Application seeking bifurcation of application that sought “d” use variances, “c” bulk variances, subdivision and site plan approval to construct of a multi-level senior housing facility was denied. Applicant will re-submit a full application and then be scheduled for a meeting at a later time.

Chairperson Neuer adjourned the meeting at 8:32PM.

Adopted: 2/16/2023


Diana L. Chandler, Secretary