

**MINUTES  
TOWNSHIP OF WEST ORANGE  
ZONING BOARD OF ADJUSTMENT MEETING**

**May 11, 2023**

**8:00 P.M.**

**Will be held virtually**

The West Orange Zoning Board of Adjustment held a Special meeting on May 11, 2023, commencing at 8:00 PM 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.

**ROLL CALL**

Present: William Michael Barbee, Michael Dannemiller, Jerome Eben,  
Philip D. Neuer, Irv Schwarzbaum,  
Brent D. Scott, Mark Sussman, Alice Weiss  
Absent: Peter Ricci, Peter Scalora  
Also Present: Paul Grygiel, Consulting Planner for the Township  
John Hess, Consulting Engineer for the Township  
Alice Beirne, Esq., Board Attorney  
Diana L. Chandler, Board Secretary

**ANNOUNCEMENTS**

Future Meetings: May 18, 2023 (Regular Meeting)  
June 15, 2023 (Regular Meeting)  
July 20, 2023 (Regular Meeting)

- *Chairperson Neuer announced to let the record show that Mr. S. Thapar is at the meeting. His letter of resignation stated that his last day of service for the Township of West Orange will be May 31, 2023.*

**SWEARING IN**

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

- Mr. Stafford said that moving from independent living to nursing is a benefit to this application as residents will be able to age in place and expect to serve all health care services as they see fit.
- Mr. Stafford said that he was present for Ms. Wooley-Dillon's testimony. What she testified to in his opinion is comprehensively different from CCRC by quality and amenities for the community. The Greenhouse model vs. the CCRC model
- Mr. Richard Webster Esq. (representing objector, Loren Svetvillas, 699 Prospect Avenue) asked Mr. Stafford for confirmation that the minimum age is 62. Mr. Stafford said that the regulations have not been written but believes that to be so. Mr. Webster asked for confirmation that at least one member in the unit must be at least 62 years of age. Mr. Stafford answered in the affirmative. Mr. Webster asked if there is an assessment of some kind for residents. Mr. Stafford said that he is sure one exists, just that part of the regulation has yet to be confirmed. Mr. Webster asked for clarification about the full kitchen and whether the resident will be expected to cook all meals. Mr. Stafford said that all residents are required to take one meal daily as part of the monthly service fee. Mr. Webster asked what kind of extras are not included in fees. Mr. Stafford said usually physical therapy and extra meals for guests.

Chairperson Neuer asked the record to reflect that Mr. Scott left the screen from 8:45 PM-8:47 PM.

### **BOARD QUESTIONS**

- Mr. I. Schwarzbaum asked how Mr. Stafford became knowledgeable on the subject this application deals with. Mr. Stafford said that he went to many seminars, did research, and had a hand in a mortality and mobility study for actuaries.
- Mr. B. D. Scott questioned his expertise in a care type of role since his role is as CFO. Mr. Stafford said his expertise comes from the length of time in the industry. Mr. Scott asked about the differences in the kitchens. For example, the assisted living unit's kitchen appears to be a "store and warm" type of kitchen. Mr. Stafford confirmed. Mr. Scott asked if an individual's family can live there; and if so, is there a limit on the time. Mr. Stafford said that the family will not be able to live there but will visit situations on a case-by-case basis. Mr. Scott asked what happens to residents who run out of funds after being in this facility. Mr. Stafford said that he or she may have to move as part of the assessment is financial.

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### **NO PROFESSIONALS QUESTIONS**

#### **PUBLIC ADVOCATE**

- Mr. Thapar asked if Daughters of Israel is an Inc. or an LLC. Mr. Stafford said that it is under an Inc. Mr. Thapar followed up by saying that this is not a separate entity. Mr. Stafford said that financing may be in the future, but still operating as a non-profit status.

### **PUBLIC QUESTIONS**

- Kevin Malanga (57 Ridge Road) asked about the monthly service fee for independent living. To which Mr. Stafford said that it has not been finalized. Mr. Malanga asked about the business plan.
- Robert Rashkes (35 Oakcrest Road) asked if unrelated people can share rent. Mr. Stafford answered in the negative. Mr. Rashkes asked if the Direct Care Team will be using the “Green House model” for the health care center. Mr. Stafford said that he is unsure. Mr. Rashkes rebutted asking if Mr. Stafford read that the “Green House Model” had no COVID-19 casualties. Mr. Stafford said that he did not see that.
- Renee Fabis (24 Skyline Drive) asked if siblings can share rooms. Mr. Stafford said yes, but it is not as if they can split the fee as it’s per person.

Chairperson Neuer announced at this time that A6 has been accepted into evidence.

### **PRESENTATION**

- Ms. Wooley- Dillon entered the record and confirmed that she is still under oath. Mr. Geneslaw asked what the proposed use at the “Regency Center” is. Ms. Wooley- Dillon said that it is caterers and appeared online but not in front of a board. Is it true that this was denied and was appealed in 2021 in the appellate court. Ms. Wooley- Dillon said that it could have been the site, but unsure. Mr. Geneslaw asked if she has ever not been accepted as an expert. Ms. Wooley Dillon said yes. Mr. Geneslaw asked questions based on the court review. Ms. Wooley Dillon said in response that Mr. Geneslaw is asking questions about an appeal of an unpublished case. Mr. Geneslaw questioned that saying that the statement of the judge was incorrect. Ms. Wooley Dillon agreed. Mr. Geneslaw characterized the testimony of Ms. Wooley- Dillon. Mr. Richard Webster objected. This was fully noted by Chairperson Neuer.

### **BOARD QUESTIONS**

- Mr. Dannemiller asked regarding line sight- heavily wooded is clearing. If the application is denied it has been testified that seven (7) single-family homes could be constructed in its place where he fears it will be directly in the line of sight.
- Mr. Scott said that this property is 5,000 feet in his opinion how impacted significantly would this be? Mr. Geneslaw objected due to a lack of relevancy. Ms. Wooley-Dillon said it can be impacted by noise traveling and the additional vehicles projected during construction.
- Mr. I. Schwarzbaum asked what homes on Skyline Drive are going to be able to see this if this application is approved. Ms. Wooley-Dillon responded that trees are mainly what is going to be able to be seen.
- Chairperson Neuer asked where Ms. Wooley-Dillon was standing during her observation. Ms. Wooley-Dillon said she was in the client’s neighborhood on Prospect Avenue at the intersection nearest Pleasant Valley Way.
- Mr. W.M. Barbee asked for clarification regarding the location of the golf course. Ms. Wooley-Dillon displayed by sharing her screen, which fulfilled his request and brought up another question as to what is in the line of sight. Ms. Wooley-Dillon said that it will mainly be trees.

***Vice Chairperson, I. Schwarzbaum stated for the record that he has to question the credibility of the report submitted by Mr. Webster and all other information needs to be relied upon.***

#### **PUBLIC ADVOCATE**

- Mr. Thapar asked where Ms. Wooley-Dillon was location-wise on the residence for her client. Ms. Wooley-Dillon said that she was in front of the home in the front lawn area.

#### **NO PROFESSIONALS QUESTIONS**

#### **PUBLIC QUESTIONS**

- Mr. Phil Litwinoff (11 Linden Avenue) asked Ms. Wooley-Dillon if she read the report from the applicant's Planner and if so, state what is across the street from the site. Ms. Wooley-Dillon responded that it is the Francis Byrne Golf Course. Mr. Litwinoff questioned the credibility of Mr. Stafford which Mr. Geneslaw objected.
- Mr. Kevin Malanga (57 Ridge Road) asked if there is a limit to the feet from the project that an objector can be. Chairperson Neuer said that they can be considered "interested parties" as long as they live within the municipality.

#### **REDIRECT FROM OBJECTOR ATTORNEY**

- Mr. Webster asked regarding the Voorhees case if the court was found to be creditable. Ms. Wooley-Dillon answered in the affirmative. Mr. Webster asked if this mistake should make testimony "shakey". She said no.

#### ***Break 9:54 PM – 10:05 PM***

- Mr. Webster concluded his testimony on behalf of his client Mr. Loren Svetvillas.
- Mr. Geneslaw confirmed that he has no other experts to call and testify regarding this application.

#### **CLOSING ARGUMENTS**

- Mr. Geneslaw thanked the Board for their efforts in participating in the eleven (11) meetings for this application. He then gave a summation of the services that Daughters of Israel has been providing to the West Orange community since 1962 stating that the current model of providing services is not sustainable long term due to the changes in the ways people choose to live as they age. Rather than continue to let the decline in the trajectory occur, the applicant chose to be proactive and evolve to provide services that today's seniors demand. This project allows for long-term financial stability and will be there for the population that Daughters of Israel serves. By increasing the levels of care in state-of-the-art facilities, a greater number of individuals can remain in the community as they age.
- Mr. Geneslaw spoke about the changes that this application went through at the suggestion of the Board, stating that in the original submission in December 2021 and formally presented to the Site Plan Review Advisory Board (SPRAB) it was a good project but with the input of Township Professionals and public, he opined to say it became a great one. The modifications taking place during the eleven (11) hearings

were to reduce impacts. For example, one story of construction was eliminated. 244 additional trees are to be saved compared to the original submission in 2021. Phase Four (4) was eliminated and with it 19 independent living units. In turn, eliminating changed the construction timeline from ten (10) years to six (6) years. Landscaping is being proposed to be enhanced along Pleasant Valley Way, with steep slope being minimized. Mr. Geneslaw continued by stating that this application does not create a nonconforming use. There are some similarities between this application and a hospital. This project is inherently beneficial use, advances many zoning principles which fit in with the negative criteria. Mr. Geneslaw stated that since the submitted revised plans, the Township Municipal Engineer and the Township Forrester are pleased with the plans as revised. The project will comply with applicable noise codes, experienced contractors, and the construction of market-rate units, the applicant expects to pay taxes once assessed by the Tax Assessor, the construction is out of sync with the character as most of the area is not residential, traffic for this project will at total there will be 17 new trips generated during peak hours so it will not be a substantial change from what it is presently, this project includes many sustainability and design measures utilizing solar panels, green roofs, and interior measures. Mr. Geneslaw stated that there is a decrease in services for memory care in favor of luxury units.

#### **PUBLIC COMMENT**

- Mr. Kevin Malanga (57 Ridge Road) was sworn under oath and opined in objection to this application.
- Ms. Zasah Khademi (4 Dawes Ave) was sworn under oath and opined in objection to this application.
- Ms. Renee Faibis (24 Skyline Drive) was sworn under oath and opined in objection to this application.
- Ms. Victoria Nnanna (6 Parsons Drive) was sworn under oath and opined in objection to this application.
- Ms. Claire Sylvestri (20 Clearview Drive) was sworn under oath and opined in objection to this application.
- Ms. Andrea Sultan (11 Swazey Avenue) was sworn under oath and opined in favor of this application.
- Ms. Roz Feder (28 Lakeview Drive) was sworn under oath and opined in favor of this application.
- Mr. Phil Litwinoff (11 Linden Avenue) was sworn under oath and opined in objection to this application.
- Ms. Joyce Rudin (38 Woodland Avenue) was sworn under oath and opined in objection to this application.
- Ms. Sally Malanga (57 Ridge Road) was sworn under oath and opined in objection to this application.
- Ms. Ella Slivka (8 Parson Drive) was sworn under oath and opined in objection to this application.
- Mr. Robert Rashkes (35 Oakcrest Road) was sworn under oath and opined in objection to this application.

Chairperson Neuer announced Public Comment is closed.

### ***Recess 11:10 PM-11:15 PM***

- Chairperson Neuer announced the following conditions for approval of the application.
  - o Traffic is to be revisited after six (6) years.
    - Mr. Hess said in response to this that all traffic and drainage would be assessed by the Essex County Planning Board.
  - o Phase Four (4) elimination and that all construction would take no more than six (6) years.
  - o The minimum age of one resident must be at least 62 years of age.
  - o During Phase One (1), Phase Two (2), and Phase Three (3) all cranes will be removed from the site for hiatuses in between phases.
  - o A design waiver involving soil permeability about CME's Review #3 (Dated-February 6, 2023)
  - o Licenses and approvals must be acquired.
  - o The pub as a dining venue is only when alcohol is supplied as a "club license".
  - o All square footage must be listed on plans.
  - o As-built plans per phase must be submitted.
  - o All utilized equipment must meet regulations.
  - o After completion, no off-site parking is to occur.
  - o All conditions must be printed prominently on the Cover Page of the Final Site Plans, or no signatures will occur.

### **BOARD DISCUSSION**

- Mr. Scott said that regarding landscaping and noise since West Orange has no noise ordinance to encourage equipment in between phases to stay put.
- Mrs. Weiss agreed with Mr. Scott and opined that the equipment should stay put instead of the equipment going back and forth.
- Mr. Thapar asked what the period between hiatuses is. Mr. Stafford said that it is two months as per the testimony.
- Mr. W.M. Barbee stated that he is on the fence in a moral/ethical sense regarding this application because of the statement from the CFO about how this application is to help people age in place. But if they run out of funds, that individual would have to move.
- Mr. Schwarzbaum said that he is in approval of the application for the past creditability of the Daughters of Israel site and believes that the work they do showcases what services will be brought in the future.
- Mr. Scott voiced his concerns against this application and believes the traffic study from the applicant is "a joke".
- Mr. Dannemiller stated that this application is in the best interest of the public. Approving this now is better than the alternative possibility of individual homes.
- Chairperson said that there is no such thing as a perfect application and touched on a few of the issues brought up:
  - o Approved the removal of equipment condition.
  - o Believes that this application serves a beneficial use.
  - o Regarding traffic there is only expert testimony.

**Motion: I. Schwarzbaum**

**Second: P. Neuer**

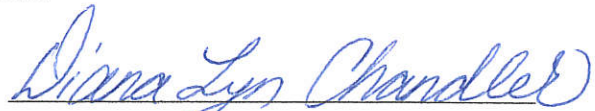
|                             |          |                          |          |
|-----------------------------|----------|--------------------------|----------|
| <b>Barbee:</b>              | <b>N</b> | <b>Scott:</b>            | <b>N</b> |
| <b>Dannemiller (Alt. 1)</b> | <b>Y</b> | <b>Sussman (Alt. 3):</b> |          |
| <b>Eben:</b>                | <b>N</b> | <b>Weiss:</b>            | <b>Y</b> |
| <b>Ricci:</b>               | <b>-</b> | <b>Chairman Neuer:</b>   | <b>Y</b> |
| <b>Scalora (Alt. 2)</b>     | <b>-</b> |                          |          |
| <b>Schwarzbaum:</b>         | <b>Y</b> |                          |          |
|                             |          |                          |          |

Chairperson Neuer announced that application **ZB-21-21 Daughters of Israel** seeking C1, C2, and D Variances with preliminary and final site plan approval to redevelop the campus into a continuum of care community offering independent living, assisted living and skilled nursing components was denied by a vote of four (4) in favor and three (3) opposed where five (5) affirmative votes are required.

Chairperson Neuer adjourned the meeting at 12:12 a.m.

Adopted:

6/15/23



Diana L. Chandler, Secretary