

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

May 18, 2023

8:00 P.M.

Will be held virtually

The West Orange Zoning Board of Adjustment held a regular meeting on May 18, 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, Jerome Eben,
Philip D. Neuer, Peter Ricci, Peter Scalora, Irv Schwarzbaum,
Brent D. Scott, Mark Sussman, Alice Weiss
Absent: Michael Dannemiller
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: June 15, 2023 (Regular Meeting)
July 20, 2023 (Regular Meeting)
August 17, 2023 (Regular Meeting)

- *Chairperson Neuer* announced that **ZB-23-01 Williams/6 Merrywood Drive** is being carried to the **July 20, 2023, Regular Meeting**.
- *Chairperson Neuer* announced that **ZB-22-08 Flores/ 156 Main Street** is being carried to the **June 15, 2023, Regular Meeting**.

SWEARING IN

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

RESOLUTIONS

- As this application pertains to both Chairperson Neuer and Vice Chairperson Schwarzbbaum, the Chair for this portion of the meeting was given to Board Attorney, Ms. Alice Beirne, Esq.
- Mrs. Weiss said that she is happy to second the motion and thinks the Board has a right to choose who is their Chair/Vice-Chair regardless of the Ordinance.
- Mr. Scott wanted to propose to table this resolution and asked how the Zoning Board of Adjustment has the right/authority to make decisions of this magnitude. Ms. Beirne said that the Zoning Board has the right to relax rules.
- Mr. Schwarzbbaum said that he wants this resolution to come to a vote as outside counsel opined so as a Board they can proceed accordingly.
- Mr. Neuer said that this resolution is open to legal interpretation. Mr. Drill studied state statutes and if there is a dispute, the Town Council can take action.
- Mr. Barbee asked if the Zoning Board has been operating out of compliance. Ms. Beirne said that the Zoning Board has the right to relax rules. To her recollection, no other nominations for Chairperson/Vice-Chairperson occurred since the original Ordinance in question passed. Mr. Barbee agreed to move to a vote to support based on legal advice received.

Proposed Revision to § 1.02 of the Zoning Board Rules and Regulations concerning Terms of Chairperson and Vice Chairperson

Motion: P. Neuer

Second: A. Weiss

Barbee:	Y	Scott:	N
Dannemiller (Alt. 1)	-	Sussman (Alt. 3):	Y
Eben:	N	Weiss:	Y
Ricci:	Y	Chairman Neuer:	Y
Scalora (Alt. 2)	Y		
Schwarzbbaum:	Y		

At the end of the vote, Ms. Beirne gave the chair back to Chairperson Neuer for the duration of the meeting.

ITEMS FOR BOARD DISCUSSION

- **Return to Live Meetings**

- Chairperson Neuer said that return to live meetings or a hybrid setting is being discussed with the administration. The main deciding factor is expenses. He then asked for Board Members to raise their hand if he/she is in approval of going back to in-person meetings.

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

- **Increasing Time for Public questions/commentary**

- Chairperson Neuer said that the statute gives the Chairperson the right to limit the time and amount of people who are allowed to speak.

- Mr. Barbee suggested to not run the clock while a question is being answered. Perhaps some start/stop monitoring in this regard needs to take place. Chairperson Neuer agreed and Mr. Fagan (Moderator) said that he would try to monitor clock times closely.

- Mr. Schwarzbaum said that he has no issue with the change to five minutes as opposed to three and likes Mr. Barbee's suggestion.

- Mr. Scott agrees with Mr. Barbee's suggestion and asked it to be noted for the record that, in his opinion, the Chairperson seems a little biased.

- **Status of Search for New Zoning Board Attorney**

- Chairperson Neuer stated that Ms. Beirne plans to retire and that a replacement is needed; he said that a Request for Services has been circulated and advertised.

- Mr. Barbee thanked Ms. Beirne for her many years of service and confirmed that she won't be leaving until a replacement is found. Ms. Beirne thanked Mr. Barbee and responded accordingly.

APPLICATIONS

1.) ZB-22-13 / MPB Realty LLC (470 Eagle Rock Avenue)

(Carried 4/20/2023)

470 Eagle Rock Avenue

Block: 153; Lot: 38; Zone: B-2

The applicant seeks C & D variances with preliminary and final site plan approval to build two (2) restaurant buildings with accessory drive-thru components.

PRESENTATION

- Mr. Benjamin Wine, Esq. entered the record on behalf of the applicant. Prior to Mr. Wine starting his testimony, Chairperson Neuer announced that the listing of 10% ownership

was not provided. Chairperson Neuer said that after the transfer of ownership for the address was done, a Certificate of Occupancy was not obtained. Mr. Wine stated that it was discovered only yesterday that the transactional attorney neglected to obtain the Certificate of Occupancy. Chairperson Neuer stated that it is required to show compliance for future promises. Mr. Wine said that he made many calls to take care of this and it is underway. Chairperson Neuer stated that a waiver of the Environmental Impact Statement has been requested but he is unsure if it can be granted as there is information still needed for air quality/air pollution. He said that a noise study was performed but only for the ordering kiosks and that the issue of vehicle idling must be dealt with. Chairperson also brought up that he is confused with the submission because of the different names on different submissions. Mr. Wine confirmed that the applicant is MBP Realty and the owner of the property is Orange Development. Chairman Neuer stated that the revision date is missing from the plans and that code enforcement has reached out and that the maintenance of the property must be better.

- Mr. Matthew Bersch, Engineer entered the record, was sworn under oath, and credentials were accepted.
- Mr. Bersch presented **Colorized Aerial Exhibit (Dated April 20, 2023) (Exhibit A-1 for Identification purposes)**. He explained that Sheet Two of the Combined Site Plan presents the present condition of the property, the environment around it, how it is zoned, and utilities which Mr. Wine asked for confirmation on how the property is serviced. Mr. Bersch said that it is serviced along Eagle Rock Avenue. The electrical box is open and definite updates are needed to the utilities and the perimeter buffer from the parking lot to the parking line
- Mr. Bersch presented the 5-18-2023 Alternate Site Plan Exhibit (Colorized) with no revision date (Exhibit A2 for Identification purposes)

BOARD QUESTIONS

- Mr. Schwarzbaum asked for the size of the property with drive-thru quick service restaurants. Mr. Bersch said that properties and businesses come in different shapes and sizes. Popeyes is the largest prototype with half an acre to one acre. Mr. Schwarzbaum asked if there are any projects comparable to this in the area. Mr. Bersch said that the Popeyes in Union on Route 22. Mr. Schwarzbaum asked for the lot size of that project, in which Mr. Bersch said that it is under construction. Mr. Schwarzbaum asked him to provide the Board with that information and Mr. Bersch said he would in his next submission.
- Mr. Ricci asked if there are two different restaurants on the site if they are franchises and what happens if one goes out of business. Mr. Wine said that this is a franchise corporate structure for both and he would have to get back to Board with confirmation of the names of companies if approved.
- Mr. Scott asked if this Sonic and Popeyes are owned by the same company. Mr. Bersch answered that he thinks they are owned by different companies
- Chairperson Neuer asked for confirmation that there are 18 spots for outdoor seating and no indoor seating. Mr. Bersch said that there is no indoor seating. In response to this, Chairperson Neuer asked Mr. Grygiel to review, to which he agreed. Chairperson asked for confirmation that Popeye and Sonic's franchises were on board with this application. Mr. Wine replied yes.

- Mr. Barbee requested a size comparison between this application and the one on Route 22.
- Mr. Scott asked if there are any other examples of stores like these being designed in suburban settings. Mr. Bersch said there are comparable locations in Toms River, NJ; Cherry Hill, NJ; Ranier, MA; Media, PA. In response to this, Chairperson Neuer asked for a listing to be submitted for the next meeting. Chairperson asked if there are any locations not on highways. Mr. Bersch answered in the affirmative.
- Mrs. Weiss said that she appreciates a listing but only believes that this board should be looking at examples of having two drive-thru restaurants in the state of New Jersey on a small lot of one acre or less. Mr. Bersch agreed to submit.

PUBLIC QUESTIONS

- Mr. Phil Litwinoff (Linden Avenue) asked what will this fast-food restaurant do to attract the public. In response to this, Mr. Bersch said it is beyond the scope of his testimony.
- Ms. Lenoire Gordan (Fundis Road) asked how many Sonic Restaurants were open pre-covid and how many still exist. Mr. Bersch said that he is not the proper person to answer.
- Ms. Joyce Rudin (38 Woodland Avenue) asked what the acreage of the site is: Mr. Bersch answered that the subject property including the vacant portion is 45,713 square feet (approximately 1.05 acres). Ms. Rudin asked for confirmation that Mr. Bersch designed the Popeyes located at 933 Route 22 West, Union, NJ. Mr. Bersch said that he doesn't remember the address but does not believe that is the site he designed. Ms. Rudin asked for the acreage of the Cherry Hill location and others in the area that Mr. Bersch designed, including those that are in the backyard of residential properties. Mr. Bersch stated that he has designed projects adjacent to residential properties. Chairperson Neuer requested that Mr. Bersch submit a list of commercial properties that he has designed that abut residential properties within the lineation of the distance from the residents to the property line. Mr. Wine agreed. Ms. Rudin asked for confirmation that the drive-thru would be in the rear of the property. Mr. Bersch answered in the affirmative; he said that the ordering location would be in the rear. Ms. Rudin asked what would the distance be from the drive-thru and the closest residential property west side of Rosney Terrace. Mr. Bersch said that the ordering station would be approximately 60 feet from the residential property but clarified that he did not testify regarding buffer or landscaping yet.
- Andy Macleod (Fundis Road) asked questions about the Noise Study and its deficits to it. Chairperson Neuer confirmed that a Noise Study was submitted and it was confirmed by the applicant's counsel that it will be updated.
- Ms. Kevin Malanga (57 Ridge Road) asked if Mr. Bersch has designed fast food restaurants directly next to residential zones. Mr. Bersch said that they are going to submit a list to incorporate the size of restaurants, lot size, and if there were residential properties next to it before their next appearance before the Board. Mr. Malanga questioned the configuration of the lot and the placement of the building and how the determination was made regarding the calculations for setbacks (front, rear, and side yard). Mr. Bersch said many factors come into play; the determination of the number of parking stalls, adequate circulation for delivery, garbage, and fire trucks, whether the site is safe and efficient, and whether driveways line up with drive aisles. He stated that typically one can see fast food restaurants of this nature in the center with all of those components on all sides. Mr. Malanga asked how the determination of where dumpsters

are placed is made. Mr. Bersch said that typically the brander/operator likes the trash enclosure in the rear of the building/restaurant. He also stated that the employee/ back doors are typically located nearest to it. Mr. Malanga asked how many feet from the property line this proposed trash enclosure is going to be. Mr. Wine said that Mr. Bersch did not go into detail testifying about the proposed site plan. He said that he will be returning to do so in great detail at a later meeting. Mr. Bersch stated that it is approximately 13.7 feet from the southern property line and that the trash enclosure closest to the Sonic will be 20.3 feet from the rear property line. Mr. Malanga asked if these drive-thrus are designed to accommodate motorcycles. Mr. Bersch answered in the affirmative.

9:47 PM-10:00 PM Break

Chairperson announced the return from the break except for Mr. J. Eben. Mr. Eben returned at 10:02 PM, so no need for an affidavit to remain eligible for voting purposes.

- Mr. David Haden (24 Harrington Terrace) asked what the hours of operation are. Mr. Bersch said that the hours of operation for Popeyes to be Sunday to Thursday 10:30 AM-11:00 PM; Fridays and Saturdays 10:30:00AM-12:00 AM. Hours for Sonic are 8:00 AM-12:00 AM daily.
- Ms. Isabel Biz (N. Rosney Terrace) asked if the safety of students and pedestrians will be taken into effect. Mr. Bersch said no studies have taken place but this application does propose the installation of sidewalks. Chairperson advised Mr. Wine to have this question addressed in future submissions. Ms. Biz asked what precautions are being taken to stop parking on Rosney Terrace. Mr. Bersch said that the traffic engineer can answer this question. Ms. Biz asked what plans are in effect to prevent/protect the residents if this becomes a noisy site. Mr. Bersch stated that a noise report has been submitted and a revision is going to be submitted to the Board. Ms. Biz asked if Mr. Bersch has visited the neighborhood and in proximity to the site. Mr. Bersch answered in the affirmative.
- Mr. Mitch Zelmanovich (Freeman Drive) asked about the length of the drive-thru lanes. Mr. Bersch said that they are approximately 180 square feet. Mr. Zelmanovich asked how many cars can be in que at a time. ~~To which~~ Mr. Bersch answered approximately 11.
- Mr. Barry Wright (9 Fundis Road) asked if Mr. Bersch visited the site. Mr. Bersch answered in the affirmative. Mr. Wright asked who owns the fence on the southern perimeter of the property. Mr. Bersch said that he is unsure but this application is not proposing a new fence.
- Mr. Kyrillos Meseha (6 Blackburne Terrace) asked about the quantity and the location of grease interceptors on the property. Mr. Bersch said that there are two associated with a proposal which are external and underground the drive-thrus. Mr. Meseha asked when these will be serviced. Mr. Bersch said that he anticipates it to take place during non-operating hours. Mr. Meseha asked about the smell and usage of exhaust plans. Mr. Bersch said that exhaust fans will be used. Mr. Meseha asked in regards to impervious coverage, will drainage be analyzed? Mr. Bersch answered in the affirmative that 345 square feet of impervious coverage are being analyzed.

- Mr. Hussein Ismail (6 Rosney Terrace) asked how many two-restaurant configurations are built on a lot of this size and are constructed in the state of NJ. Mr. Bersch said that a list is being provided for this nature in the future.
- Ms. Elizabeth Ismail (6 Rosney Terrace) asked if there is going to be access to this site through any adjacent properties and how many boards gave approvals regarding your other applications. Mr. Bersch said that he could not answer that, but on the list that will be provided for future testimony, he can add that criteria.
- Ms. Ismail asked who will be in charge of vermin control regarding this application? Mr. Bersch said that the Site Operator will most likely be in charge of this.

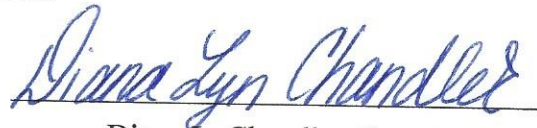
Mr. Barbee offered some things to keep in mind for Mr. Bersch to consider with the revisions that he is already agreed to resubmit. He was concerned that he could not, while looking at the plans, decipher if they were for one building (business) or both considering it is one lot. He also stated that he is very concerned about the delivery truck's abilities, tree line spacing, and the resident who lives on Rosney Terrace directly behind the site with a sidewalk separating the property from its neighbors. Mr. Wine said that between Mr. Bersch, Mr. Savage, and the environmental impact statement all of those concerns should be addressed.

Chairperson Neuer announced that this application is being adjourned to the June 15, 2023, Regular Meeting to preserve notice for the application. No testimony will be given and at that meeting, a special meeting date will be announced.

Mr. Schwarzbaum asked as a suggestion for Mr. Bersch to look at the Dunkin Donuts on Northfield Avenue because it only has one drive-thru lane. Once in the lane, a person cannot get out. With this application, he would like to avoid something like that happening again in the future.

Chairperson Neuer adjourned the meeting at 10:48 PM.

Adopted: 7/20/2023


Diana L. Chandler, Secretary