

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

**March 19, 2026
8:00 P.M.**

The West Orange Zoning Board of Adjustment held a regular meeting on March 19, 2026, 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" and the "Publication Reform Act."

Chairperson Philip D. Neuer asked everyone to stand for the Pledge of Allegiance.

Ms. Kelly Carey, Esq., Board Attorney, read the opening statement.

ROLL CALL

Present: William Michael Barbee, Tal Ben-Zvi,
Laurence Cohen, Todd Dubovy,
Robin Miller, Philip D. Neuer,
Brent D. Scott, Marc Sussman,
Alice Weiss (excused tardiness/arrival: 9:36 PM)

Absent: Michael Dannemiller (excused absence), Irv Schwarzbaum (excused absence)

Also Present: Kelly Carey, Esq., Board Attorney
Diana L. Chandler, Board Secretary
John Hess, Consultant Engineer
Christopher Dochney, Consultant Planner

Ms. Carey and Chairperson Neuer confirmed the presence of a quorum of Board Members.

ANNOUNCEMENTS

Future Meetings: April 16, 2026 (Regular Meeting)
May 28, 2026 (Regular Meeting)
June 18, 2026 (Regular Meeting)

SWEARING IN

- Township Professional(s), Mr. John Hess (Consultant Planner) and Mr. Christopher Dochney (Consultant Planner) were sworn under oath.

MINUTES

- February 19, 2026, Regular Meeting

Motion: L. Cohen

Second: W. M. Barbee

Barbee:	Y	Schwarzbaum:	-
Ben-Zvi (Alt.):	Present Not Voting	Scott:	Y
Cohen:	Y	Sussman (Alt.):	-
Dannemiller (Alt.):	-	Weiss:	-
Dubovy (Alt.):	Y	Neuer:	Present Not Voting
Miller:	Y		

ANNUAL REPORT

Motion: Chairperson Neuer

Second: R. Miller

Barbee:	Y	Schwarzbaum:	-
Ben-Zvi (Alt.):	Y	Scott:	Y
Cohen:	Y	Sussman (Alt.):	Y
Dannemiller (Alt.):	-	Weiss:	-
Dubovy (Alt.):	Y	Neuer:	Y
Miller:	Y		

RESOLUTIONS

- ZB-24-15 Waystone Realty LLC

(Approved 2/19/2026)

42 Eagle Ridge Way

Block: 106; Lot: 24.01; Zone: R-1;

Application for Preliminary and Final Major Site Plan Approval with D
Variances was approved with conditions at the February 19, 2026, Regular Meeting.

Motion: B. D. Scott

Second: W. M. Barbee

Barbee:	Y	Schwarzbaum:	-
Ben-Zvi (Alt.):	-	Scott:	Y
Cohen:	Y	Sussman (Alt.):	-
Dannemiller (Alt.):	-	Weiss:	-
Dubovy (Alt.):	Y	Neuer:	-
Miller:	Y		

- **ZB-25-02 Montclair Stables LLC** (Approved 2/19/2026)
Block: 152.02; Lot: 176, 179, & 186 ; Zone: R-1, R-5, B-5,
12-22 Woodland Avenue

Application for Preliminary and Final Site Plan Approval with C and D Variances was approved with conditions at the February 19, 2026, Regular Meeting. Resolution with agreed revision requested by R. Miller was adopted at the March 19, 2026, Regular Meeting.

Motion: W. M. Barbee

Second: T. Dubovy

Barbee:	Y	Schwarzbaum:	-
Ben-Zvi (Alt.):	-	Scott:	Y
Cohen:	Y	Sussman (Alt.):	-
Dannemiller (Alt.):	-	Weiss:	-
Dubovy (Alt.):	Y	Neuer:	-
Miller:	Y		

APPLICATIONS

- 1.) **ZB-24-17 Pardo Development Group Inc.** (Carried from 1/15/2026)
104 Winding Way
Block: 46.01; Lot: 33
Application for C Variance for a single – family dwelling was denied at the March 19, 2026, Regular Meeting.

PRESENTATION

- Chairperson Neuer announced for the record as a reminder to all parties that Board Member, Mrs. Alice Weiss and Alternate Board Member, Dr. Tal Ben-Zvi are recusing themselves from this application.
- Mr. Stephen Hehl, Esq., entered the record on behalf of applicant, Pardo Development Group. He proceeded to provide a brief summary of previous testimony from appearances at the August 21, 2025, and November 20, 2025, meetings. He informed the Board that there are no new witnesses, or new testimony for this meeting but that all of the witnesses who previously testified are present at this meeting and are available for recall if necessary.

It was at this time that Chairperson Neuer asked the Board Members if they had any specific questions for particular experts.

BOARD QUESTIONS

- M. Sussman asked John Baree (Professional Planner) about this property being a buildable lot. Mr. Baree was then sworn under oath and continued to be recognized as a Professional Planner. Mr. Baree said that one of the hardships resulting in the necessity of variances is the topography of the lot for relief. In response to this, Chairperson Neuer asked Mr. Baree for specifics. Mr. Baree referenced the steep slope disturbances for coverage with a C2 argument adjoining property price out of range.
- Chairperson Neuer asked Mr. Baree to expand with specifics upon the concepts that justify the variances beyond just “hardship” based on the Municipal Land Use

Act. Mr. Baree said that the property is constrained by the steep slope, reductions in lot area due to its shape (narrowness/width), and the property's topography.

- Chairperson asked for specifics regarding the proposed 20 feet high retaining wall. Mr. Baree said that it is on the backside of the property with an engineering basis that he could not testify to, but the slope of the property is such that the retaining wall is considered the "backstop for the buildable area."
- Chairperson asked for information pertaining to the potential purchase of the properties on either side of the application site. Mr. Hehl said that attempts were made. However, the amount was just not feasible/marketable.
- L. Cohen asked Mr. S. Hehl about the Green Acres letter and if the Town was asked if the purchase of this land was available. Chairperson and Mr. Hehl said that the process is a lengthy one with the end result being possibly not in favor of any party at all. In response to this, C. Dochney (Consultant Planner) responded saying that Green Acres it is a twenty (20) fold process for Open Space and that the process is timely (emphasizing that the process could take years).

PROFESSIONALS QUESTIONS

- J. Hess asked, referencing the retaining wall being at one point 20 feet high, asking if there is a possibility of making it smaller. Mr. Baree said that he could not answer.

PUBLIC QUESTIONS

- Kevin Malanga (53 Ridge Road) asked if the property is deficient in width. Mr. Baree said yes. Mr. Malanga asked if, at the time of purchase, the applicant knew the particulars about the property. Mr. Baree said that he did not know the answer to this question. Chairperson Neuer followed up, asking whether his client knew of any zoning change. Mr. Baree said that he did not know the particulars.

PRESENTATION

- Mr. John (Giovanni) Manilio, PE entered the record, was sworn under oath, and confirmed of no change in licenses/credentials.
- Mr. Manilio referenced Grading & Utility Plan and Construction Details (Revision Date – 11/4/2025) with walls along the driveway reaching the height of 20 feet, getting larger along the line.

BOARD QUESTIONS

- M. Sussman asked what the lot depth is. Mr. Manilio answered that it's 180 ft. He then followed up by asking for confirmation that the change in elevation is 70ft. Mr. Manilio said yes. Mr. Sussman asked if that is unusual. Mr. Manilio said yes and no because this is not a typical application site. Mr. Sussman asked for confirmation of the application site's address. Mr. Manilio said 101 Winding Way and that the Tax Assessor's Office was not able to give this property the address of "1 Undercliff Terrace" because there was already one with that address name.
- Chairperson Neuer asked if there was any analysis on the grading. Mr. Manilio said that there was a cut analysis with no results and there was no dirt coming in. Chairperson asked if Mr. Manilio was knowledgeable about the grade differential with the steep slope ordinance. Mr. Manilio said that this property would be unbuildable without variances and that review.
- It was at this time *Exhibit A1 Letter to Mr. Hehl* about the adjacent property was entered into the record. This letter stated that John & Alecia Marcantonio who

reside at 1 Undercliff Terrace, West Orange, NJ 07052, had an interest in selling their property for \$1,025,000.

PROFESSIONALS' QUESTIONS/DISCUSSION

- J. Hess voiced his concerns about the 20 foot wall and the logistics of if someone is walking on the high side of the wall, what the safety precautions are to protect them from a fall. Mr. Manilio said that there is going to be a four (4) feet high fence along the length of the wall. Mr. Hess asked particulars about the materials used for construction. Mr. Manilio said that he has gone back and forth with the applicant and that they have not nailed down on what the exact materials will be used. He thinks its going to be a concrete wall with the type being port in place. Mr. Hess said that would be their best choice.

NO PUBLIC QUESTIONS

PRESENTATION

- Mr. Nuno Catainica, Applicant/Owner, entered the record and was sworn under oath.

BOARD QUESTIONS

- Chairperson Neuer asked if Mr. Catainica was a decision maker to purchase. Mr. Catainica said that his partner, Mr. Oswald Pardo was the decision maker and is not present this evening's meeting.
- Chairperson asked if Mr. Catainica was aware of the costs. Mr. Catainica said yes.
- Chairperson asked if the physical constraints have changed. Mr. Castainica said no.
- R. Miller asked if Mr. Catainica has ever developed like this before. Mr. Catainica said yes, but in a commercial setting, not residential. Ms. Miller followed up asking if Mr. Catainica if he's ever dealt with steep slopes like this before. Mr. Catainica said no.
- L. Cohen asked if he had ever considered using stilt construction for this property. Mr. Catainica said that it would be a dis-justice to the neighborhood.

NO PROFESSIONALS QUESTIONS

PUBLIC QUESTIONS

- Kevin Malanga (53 Ridge Road) asked if Mr. Catainica considers himself an experienced developer. Mr. Catainica said yes.
- Mr. Malanga asked for the number of properties developed. Mr. Catainica said approximately 20-30 properties. Mr. Malanga asked

PUBLIC COMMENT

- Anthony Nicottera (3 Undercliff Terrace) was sworn under oath and spoke in opposition to the application.
- John Marcantonio (1 Undercliff Terrace) was sworn under oath and spoke in opposition to the application.
- Nicholas Recchia (100 Winding Way) was sworn under oath and spoke in opposition to the application.

Mr. S. Hehl Esq, offered closing arguments for this application stating that this property "doesn't want to be zoned into inutility."

BOARD DISCUSSION

- Chairperson Neuer said that he is not in favor of this application because it is a self-created hardship, stated that this is not a homeowner but a developer's project where they are going to (in his opinion) forget about this project as soon as he is finished with it.
- R. Miller and B. D. Scott mentioned their agreement with Chairperson Neuer with Mr. Scott saying that he is especially not in favor of this application due to the unnecessary hardship of the site.

Motion To Deny: Chairperson Neuer
Second: R. Miller

Barbee:	Y	Schwarzbaum:	-
Ben-Zvi (Alt.):	-	Scott:	Y
Cohen:	Y	Sussman (Alt.):	Y
Dannemiller (Alt.):	-	Weiss:	-
Dubovy (Alt.):	Y	Neuer:	Y
Miller:	Y		

BREAK 9:29 PM – 9:36 PM.

Upon return from the break, Chairperson requested a roll call and the presence of a quorum was confirmed.

- 2.) **ZB-22-13 MPB Realty (470 Eagle Rock Avenue)** (Carried from 1/22/2026)
Block: 153; Lot:38; Zone:B-2
470 Eagle Rock Avenue
Preliminary & Final Major Site Plan

PRESENTATION

- Mr. Benjamin Wine, Esq. entered the record on behalf of the applicant, provided a summary of previous testimony from other meetings.
- Mr. Matthew Bersch, PE was sworn under oath and credentials were confirmed of no change.
- Mr. Bersch referenced Landscape Plan (Dated 3-6-2026) reflecting changes requested from the Forester and Professionals.
 - Mr. Bersch confirmed that his office has reviewed the forester's February 5, 2026 memo. In working with the landscape architect to prepare this Landscape Plan exhibit, a Demolition and Tree Removal exhibit, and an updated Tree Removal Report were all prepared to address the comments from that memo, and were all resubmitted as part of the most recent submission.
 - The changes shown on these documents include clarifying a discrepancy between the Tree Removal Report and the tree replacement calculations on this Demolition and Tree Removal Plan with an updated a tree protection fence detail, and there was a change made to a particular tree species that was being proposed.

- Mr. Bersch confirmed that his office had received the updated memo from the forester dated March 18, 2026. In reviewing that Mr. Bersch said that he feels that they have addressed all of the technical comments except for one but testified that they agree to work with the forester to address this last remaining comment.

NO PROFESSIONALS' QUESTIONS

- C. Dochney had no questions. But wanted to put a minor point of clarification regarding the number of parking spaces that are completely permitted on the record. Since everything up to the line of the building face is essentially a front yard, he counted 12, maybe 13 spaces that would technically be in a side yard on this application. Even a few of the spaces on the east side in the front of the east side of the parking lot are in the front yard. Those require variances as well. Everything along both frontages, both of those parking lots are triggering a variance. So it's only the parking by the dumpster and by the east side of the building that is technically totally permitted by code. So of the 48 spaces, 36 are triggering a variance with only 13 "good spaces".

BOARD QUESTIONS

- L. Cohen asked what trees are being saved based on his review of the March 18, 2026 memo from the forester. Mr. Bersch referencing the Demolition and Tree Removal Plan saying that all trees being removed are outlined in circles with Xs stating that there are little to no trees that are actually being saved but all the trees onsite are being removed.
- Mr. Cohen referenced the trees along the eastern side of the property line and asked if he was concerned about them due to the rarity of the type. Mr. Bersch said that a majority of the trees on this property are either invasive, dead, dying or diseased. Further adding that they are complying with the replacement calculations to replant 64 trees. But planting hundreds of other evergreen trees, deciduous shrubs, evergreen shrubs and plantings throughout the site. Increasing the impervious coverage onsite.
- Chairperson Neuer asked if Mr. Bersch is a licensed Tree Expert. Mr. Bersch said no. Chairperson followed up by asking if Marla Roller, the Landscape Architect is a Licensed Tree Expert. Mr. Bersch said no. In response to that, Chairperson Neuer referenced the March 18, 2026, memo from the Township Forester where Mr. Kipp stated that "A New Jersey state licensed tree expert must provide a written report itemizing each tree by species, DBH, location (diagram) and health in order to determine replacement requirements. Once this is received, we will calculate replacement." Confirming that based on the information about Ms. Roller's credentials, that the applicant has not complied with that requirement.
 - In response to this, Mr. Wine and Chairperson Neuer had a back and forth where it was determined by Chairperson Neuer that not utilizing a licensed tree expert will not be granted a condition stating that, "To make that a condition of approval to come afterward is taking away the authority of the Board to make a determination." Mr. Wine asked to add to the record that the applicant believes that they are in excess of the replacement requirement at a significant level.
- Chairperson Neuer asked if Mr. Bersch had calculations as to whether more impervious coverage could be removed if there were only one restaurant on this site? Mr. Bersch said that he hadn't completed that calculation.

- Chairperson Neuer asked if there is parking shown in the front yard? Mr. Bersch said yes, that the front yard along Eagle Rock Avenue is 10 spaces, the frontage along Rosney Terrace is 15 spaces, and on the east side of the property is eight (8) spaces. Chairperson and Mr. Bersch confirmed that the total in this regard is 33 spaces as opposed to the total number of parking spaces shown on the site being 48. Chairperson looped in Mr. Dochney, who stated that in reports issued by him, the variance is required for parking in the front yard. However, with this being a corner lot, it's effectively the front and the west side are both front yards, so both frontages of parking requires a variance. So two (2) out of four (4) sides of this property are where parking is not allowed.

PUBLIC QUESTIONS

- Hussein Ismail (6 Rosney Terrace) asked about what will occur in case of overflow parking. Mr. Bersch said that they will comply with the Zoning Ordinance based on the proposed use.
- Mr. Ismail asked if Mr. Bersch has experience with two (2) restaurants on one property. Mr. Bersch said that there is proof of the concept existing and working in other locations in the state.
- Mr. Ismail asked for the address of the recently approved site. Mr. Bersch said that it is on Route 17 in Hasbrock Heights.

Mr. Wine provided redirect with Mr. Bersch. Mr. Wine asked if even operating or fitting out this existing restaurant as a single restaurant would generate a similar or possibly greater demand. Mr. Bersch said yes because the parking calculation is based on the square footage of patron space or the number of seats. So it is possible that a single restaurant use would require more parking onsite, depending upon the general layout. Mr. Wine asked if the proposed IHOP, which is the sit-down traditional permitted use restaurant that's part of this application, that has, based on seats and/or square footage, a significantly higher parking requirement than the 12 or 13 parking that spaces do not fall within a setback, is that correct? Mr. Bersch said yes.

PRESENTATION

- Ms. Mallory Clark, Professional Planner was sworn under oath, credentials were accepted, confirmed of being present for all previous testimony, and that she has visited the site.
- It was at this time, a discussion occurred on whether Ms. Clark's writings should be considered reports or statements due to not having signatures or Planner's Licenses. Ms. Clark confirmed that she did write all five versions of the Planner's Report and that it is just common practice for her firm to not include licenses.
- Ms. Clark submitted **Exhibit A-6 (Dated - March 16, 2026) Planning Presentation**, where the variances and justifications were explained.
 - Starting with the D(3) variance, which is the variance for conditional use approval associated with the fast food operation. In terms of the D(3) conditional use variance, the drive-through window was not associated with that specific variance relief. It's just the fact that the Popeye's operation is defined within the ordinance as a fast food use. So with or without that drive-through operation, the D(3) would be necessary based on the way that the Popeye's falls within the fast food definition of the ordinance. There are 10 criteria within the zoning ordinance. There are four criteria with which

the application is not compliant. This is all also detailed in the report, but to summarize:

- The first component is the distance to other fast food uses, which is a minimum 500 feet within the ordinance. The application site is about 320 feet from businesses that are on the side of Eagle Rock Avenue that do qualify as fast food uses under the ordinances (Jersey Mike's and Chipotle) which meet the fast food ordinance definition as well.
- The next aspect of the D(3) Variance is the distance to the residential district boundary, which is a minimum of 1,000 feet. The application site is 170 feet on the west, which is really crossing over Rosney Terrace to those nearest residences, as well as in the rear there are about 140 to 120 feet to a residential district boundary.
- In terms of minimum lot area and minimum lot frontage, any frontage is required 200 feet. This application site has two (2) frontages where the application site is compliant on the Eagle Rock Avenue frontage but deficient on the Rosney Terrace frontage 182.4 feet.
- The last component of this criteria that not in compliance with is the distance between the driveway and the intersection, where one 100 feet is required from the radius and the existing driveway that is proposed to be used under this application is 13.2 from the intersection.
- In looking wholistically from a planning perspective at all of the criteria, really all ten of criteria for this conditional use, the conditions are really aimed at mitigating traffic and circulation impacts that are typically associated with a fast food use, both within internal site circulation and on adjacent roadways and the adjacent properties.
- In Ms. Clark's opinion there's a substantial detriment, as previously stated, given that it's not a direct neighbor of fast service restaurants, and are not creating cumulative queuing challenges from people coming on the side of Eagle Rock Avenue, with the curb cuts being substantially distanced from one other, so access to the site has a safe enough distance that it won't cause any kind of immediate backup of one related to the other. Additionally, in terms of the distance to the residential property lines that on one side there is a right-of-way between our property and the residential properties, I don't think that there's a substantial detriment most significantly. And this kind of works in tandem with the deficit in the frontage length on Rosney Terrace, where the applicant isn't proposing any egress along that frontage.
- Ms. Clark referenced *Coventry Square v. Westwood Zoning Board of Adjustment* in 1994 in which the Supreme Court noted that conditional uses, even when they do not meet all the conditions required in the ordinance, are nonetheless compatible uses within the zone. So the burden of proof isn't the same as considering a D-1 use variance but considering these accomodations/impacts associated with the components of a project that are noncompliant.

- Ms. Clark said that the associated impacts with the fast food use, which in her opinion works in tandem with how they play out in the built environment and in the everyday operation with the drive-thru window.
- In referencing the bulk variances, Ms. Clark said that in summation of them that:
 - the minimum lot area for a drive-up window, which that was a variance that has been discussed on the record previously. The code for it requires five (5) acres for a drive up window and not exclusive to a fast food use, pharmacy, or bank. In terms of maximum impervious coverage, the zone allows for 60 percent. As was just addressed by our civil engineer, the existing site is a nonconforming 80.9 percent, which will be reduced to 75 percent, still nonconforming but an improvement from existing conditions. As also was just discussed, there is a front yard parking variance where it's not prohibited as there are 10 spaces that are within the true front yard.
 - maximum façade signage. So there are two (2) signage variances with this application. The code allows for one (1) per use. There are two (2) uses onsite, so that would allow two (2) signs permitted. There are four (4) signs proposed associated with the fast food use, and then three (3) with the standard restaurant use. Maximum façade signage is the next signage relief. The code allows a maximum of 120 square feet, and cumulative between those the seven (7) signs there are 229 square feet.
 - curbing within 5 feet of a structure is prohibited. Where the applicant proposes a curb along the entirety of the drive-thru lane next to the structure. And then the dedication of one (1) loading space is required, where there are zero (0) striped dedicated loading spaces proposed.
 - The two design waivers that are required are covered under the tree canopy preservation, the parking lot shade ordinance has a requirement which is really like a future projection where within 25 years you're supposed to have 50 percent of parking area shaded by trees. That's really looking at the long-term mature growth of the tree canopy. And in Ms. Clark's opinion, she doesn't anticipate that the application site will meet that given the current planting configuration onsite.

It was at this time prior to Ms. Clark continuing her testimony that Chairperson Neuer announced this application ZB-22-13 MPB Realty (470 Eagle Rock Avenue) is carried with preservation of notice to the April 16, 2026, Regular Meeting via the Zoom platform. Mr. Wine waived the statutory time period for this application.

Chairperson Neuer adjourned the meeting at 11:00 PM.

Adopted:

4/16/26

Diana Lyn Chandler
Diana L. Chandler, Secretary