
MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT SPECIAL MEETING

8:00 P.M.

The West Orange Zoning Board of Adjustment held a special meeting on June 4, 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, Michael Dannemiller,
Todd Dubovy, Robin Miller,
Philip D. Neuer, Irv Schwarzbaum, Brent D. Scott
Marc Sussman, Alice Weiss

Absent:

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

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

ANNOUNCEMENTS

- Future Meetings: June 18, 2026 (Regular Meeting)
July 16, 2026 (Regular Meeting)
August 20, 2026 (Regular Meeting)

SWEARING IN

Township Professional(s) Mr. John Hess (Consultant Engineer), Mr. Christopher Dochney (Consultant Planner), and Ms. Isabel Rodriguez (Consultant Planner) were sworn under oath.

APPLICATIONS

- 1.) **ZB-22-13 MPB Realty (470 Eagle Rock Avenue)** (Carried from 5/28/2026)
Block: 153; Lot:38; Zone:B-2
470 Eagle Rock Avenue
Preliminary & Final Major Site Plan

[2026-03-Tree-Removal-Report \(rcd 3-10-2026\)](#)
[2026-03-06-Justifications-Memo 470-Eagle-Rock-AvenueWORev4 \(rcd 3-10-2026\)](#)
[2026-03-09-Township-Resubmission-Letter \(rcd 3-10-2026\)](#)
[26-03-16-MPB-Realty---Planning-Review-6 \(rcd 3-16-2026\)](#)
[26-03-17-Consultant Engineering-Review-6 \(rcd 3-17-2026\)](#)
[ZB-22-13-FORESTERS-MEMO-rev-3-18-26 \(rcd 3-18-2026\)](#)
[20260122 470-Eagle-Rock Deck-Exhibit-A-6-rcd-3-24-2026](#)
[2026-04-03-Township-Resubmission-Letter-rcd-4-6-2026](#)
[01-DEMOLITION-AND-TREE-REMOVAL-PLAN-EXHIBIT-rcd-4-6-2026](#)
[02-LANDSCAPE-PLAN-EXHIBIT-rcd-4-6-2026](#)
[2026-04-03-Planning-Report-and-Justification-of-Variances Rev5-rcd-4-6-2026](#)
[2026-04-Tree-Removal-Report-rcd-4-6-2026](#)
[26-04-07-MPB-Realty---Consultant Planning-Review-7 \(rcd 4-7-2026\)](#)
[470-EAGLE-ROCK-AVENUE-PROP-POPEYES-IHOP-ZB-22-13-FORESTERS-MEMO-rev-4-8-2026 \(rcd 4-8-2026\)](#)
[26-04-09-Engineering-Review-7 \(rcd 4-9-2026\)](#)
[2026-05-26-Planning-Report-and-Justification-of-Variances 470-Eagle-Rock-AvenueWO Rev6 \(rcd 5-26-26\)](#)
[5-26-26-email-from-Consulting-Plannerto-D-Chandler-re-no-new-review-letter-rcd-5-27-2026](#)
[5-26-26-email-from-Consulting-Engineer-to-D-Chandler-re-no-new-review-letter-rcd-5-27-2026](#)
[5-26-26-email-from-Town-Forester-to-D-Chandler-re-no-new-review-letter-rcd-5-27-2026](#)

PRESENTATION

- Ms. Ronda Reinsten, Court Reporter for application ZB-22-13 MPB Realty LLC (470 Eagle Rock Avenue) was sworn under oath.
- Ms. Danielle Kinback, Esq. entered the record on behalf of the application.
- Chairperson Neuer confirmed the number of meetings and dates of meetings (March 20, 2025, July 31, 2025, August 21, 2025, September 18, 2025, October 23, 2025, November 20, 2025, January 22, 2026, March 19, 2026, and April 16, 2026).
- Ms. Mallory Clark, Professional Planner, was sworn under oath and confirmed that all licenses are valid with no violations reported.
- Ms. Kinback said that Ms. Clark looked into the terms of the ordinance regarding how they measured the distance from another fast food use. So, Ms. Clark did submit an updated exhibit, with her report stating new information known as Appendix B as a replication of the image that the board saw in the presentation and prior testimony, but with corrected two metrics. At the last hearing. There were questions from the board members as to, how we were measuring the distance to the nearest fast food operations versus how the ordinance required it to be measured, so another glance was taken at that. The ordinance requires, that neither the structure itself or the closest driveway is within 500 feet of the property line of the nearest fast food use. So this exhibit corrects those numbers, measuring from those distances. For the record, the structure to property line measurement is 160 feet with the driveway to property line measurement is 76.25 feet, and just for the Board's recollection, measuring to the, property across Eagle Rock Avenue, where the target development is underway and that has the two (2) existing fast food locations of Jersey Mike's and Chipotle. So that's the only updated information. The updated metrics do not change any conclusions in prior testimony.

BOARD QUESTIONS

- Dr. Ben-Zvi asked for clarification referencing page three (3) in report and in the 14th page, it still says that the distance is on page three (3), 360 feet, and on the 14th page 320 feet. Ms. Clark responded that Appendix B which is entitled as the corrected distances would supercede the prior metrics in the report and for the purposes of the record that would be the matrices associated with the relief needed.
- B. D. Scott asked for confirmation that variances are still being sought. Ms. Clark said yes.
- M. Dannemiller asked for clarification and reference of what the minimum distance that is required for comparing against those two (2) measurements. Chairperson Neuer said that the Ordinance says the measurement is 500 feet.

PUBLIC QUESTIONS

- Andy Macleod (19 Fundis Road) asked that even if we were to accept the corrected measurements that have been provided, just in terms of the other two (2) conditional use failures, the 1,000-foot setback from the residential zone and the Rosney Terrace frontage deficiency. Does resolving two (2) of the four (4) conditions meaningfully change the D3 variance analysis performed, or does the application still require the board to find special reasons and affirmative public benefit for those two (2) remaining uncured variances. Ms. Clark said that it doesn't change her testimony or conclusions. She reiterated that this application does still require four (4) provisions from the conditional use conditions and doesn't in her opinion think that case law has established for a D3 variance is that the applicant needs to prove that the site can accommodate the impacts associated with the provisions that cannot be complied with and substantial traffic testimony regarding the frontage relief on Rosney Terrace as well as the distance of the driveway from the intersection at Rosney Terrace, and we also testified at the last hearing to the relationship of the property to the adjacent residential districts and that she doesn't believe that there are any substantially negative impacts associated. There has been an extensive traffic study, and all necessary queuing with excess capacity associated with the fast food use. She opined that this application has demonstrated safe turn movements in and out of the site, and overall site design and circulation affirms that it can be accommodated with the required traffic intensity associated with both proposed uses without causing any kind of detriment to general welfare or safety within the public right of way.
- Mr. Macleod asked for a reminder in terms of the traffic study cited when that traffic study was performed and when the conclusion was reached that was suitably accounted for the level of traffic. Ms. Clark said that she would have to check with Ms. Kinback if the traffic expert is present because they did perform a few counts which were revised in December or January based on a request from the Board to do additional study of additional intersections and their findings were that the proposed traffic generation for the project did not reach the required threshold that under state requirements for impacts from a traffic perspective.
- Mr. Macleod asked if there's any sort of legal basis that she is aware of for collapsing those two (2) separate conditions into one (1), as the application kind of outlines. Ms. Clark disagreed that collapsing is occurring noting that relief from that individual requirement. She noted that as a corner property, there are two (2) frontages. The ordinance isn't written to contemplate a corner property, meaning it doesn't contemplate properties that there are two (2) frontages along two (2) rights-of-way, and with that, from a planning perspective, the 200-foot requirement in her opinion, would be to ensure that the property had sufficient frontage to accommodate ingress and egress to the site safely without, disrupting the larger traffic flow on the right-of-way. Because the frontage from which we are directing ingress

and egress does have in excess of 200 feet, and aren't additionally putting any traffic demand directly onto that side street in Rosney Terrace because there are no curb cuts, so in her belief the intent of the Ordinance is satisfied and the requirement within that provision can accommodate the impacts of that relief needed, as is, required under the D3 variance.

- Mr. Macleod asked what affirmative public benefit justifies overriding that residential protection? You know, given that, you know, we've managed to address, say, two of the considerations, those have been corrected. Ms. Clark answered that she doesn't believe that the applicant has, directly recommended a public benefit tied to that. There was some testimony on in prior hearings, regarding the fact that the two (2) properties immediately to application site's rear are actually within the B2 zoning district, which is the district our property is in. Then the R6, residential district starts directly across the Rosney Terrace right-of-way, and directly across the Fundis Terrace right-of-way is the R6 district, within that 1,000 feet. Still, as stated in prior testimony, she doesn't believe that the application is creating substantially detrimental impacts on those residential districts.

Ms. Kinback did not have any redirect for her witness.

REDIRECT FROM BOARD

- Chairperson Neuer asked Ms. Clark about the conditional uses and if she agrees that there are a number of C Variances that are also required in order to approve this application. Ms. Clark said yes. Chairperson Neuer continued saying that the analysis is not limited to the conditional uses and the Board must focus, on the requests for C variances. Ms. Clark said that she addressed the D3 Variance in the sense that from the case law establishing for approval of the D3 is really the site being able to accommodate the impact. There are several C Variances that were discussed also. Chairperson asked if in her opinion, the C Variances subsumed within the D3. Ms. Clark said no that all were addressed individually in terms of satisfying the criteria.
- W.M. Barbee asked for confirmation on whether there was a traffic study done since Target has been open and would that change the analysis that's been recorded, and impact the application. Ms. Clark said that she can affirm there has not been further traffic studies done. Mr. Barbee followed up by asking if another one will be conducted. Ms. Clark said that she doesn't believe so that they have satisfied the requirement under the application process. Ms. Kinback answered saying that they don't anticipate another report as part of this application.
- L. Cohen asked about the unanswered questions from the Drsenner-Robin justification of Variances report that just came up referencing page 10 quoting that, "The project will not preserve any of the existing trees as they have been deemed invasive." Asking particularly in reference to that quote: what it means, why are you relying on the Engineer, and how could you consider invasive trees not to be counted as trees. Ms. Clark answered that the proposed, tree removal and landscape design, at the last hearing, was testified to the updated numbers as part of the planning presentation and are in excess on the tree replacement of the requirement by 42 trees, so there will be 42 more trees than are necessary under the Ordinance, under the replacement requirements, and as far as the removal, that was revised by the professional tree expert in that report, and the most recent review publicly available from the Township's Forester was that there were no additional comments on that report.

PROFESSIONALS QUESTIONS

- No questions from Mr. Christopher Dochney on the testimony this evening. However, he concurred that the C bulk Variances are not subsumed within a D3 Variance as it only applies to D1 and D2 Variances.

PUBLIC COMMENT

- Andy Macleod (19 Fundis Road) was sworn under oath and spoke in opposition to the application in regards to traffic and safety for the surrounding properties.
- Sally Malanga (Ridge Road) was sworn under oath and spoke in opposition to the application in regards to parking, excessive signage, encroachment on nearby homes, and lack of tree canopy.
- Antonio Worrall (11 Blackburne Terrace) was sworn under oath and spoke in opposition to the application due to traffic and the type of business this application is associated with.
- Dante Spagnuolo (20 Blackburne Terrace) was sworn under oath and spoke in opposition to the application due to traffic and the insects etc that this proposed business will bring.
- Justin Goldman (Moran Road) was sworn under oath and spoke in opposition to the application due to the tree canopy presence, safety, and traffic.
- Susan Hammer (509 Eagle Rock Avenue) was sworn under oath and spoke in opposition to the application due to the poor air quality that will come of it.
- Christian Borges (Westminster Terrace) was sworn under oath and spoke in opposition to the application due to the type of business this is.
- Jen Iorio (Bellevue Terrace) was sworn under oath and spoke in opposition to the application due to traffic.

9:04 PM – 9:10 PM Break at request of Applicant's Counsel upon return Ms. Kinback said that she didn't plan on bringing any witnesses up to respond to any questions or comments from the public. She offered clarification confirmed of the proposed businesses not being operational 24/7 (IHOP 6:00 AM – 12:00 AM and Popeyes Sunday-Thursday 10:30AM – 11:00 PM, Friday and Saturday 6:00 AM – 11:30 PM); offered closing remarks with benefits because of current building being abandoned for over five (5) years and repurposing it, exceeding the number of trees required for tree replacement with healthy vibrant plantings, including that no matter what kind of food being served is not the reason to deny an application, and approval would be needed either way.

Chairperson Neuer announced the meeting being closed.

Break 9:20 PM – 9:35 PM Upon return from the break, the Chairperson requested a roll call, and the presence of a quorum was confirmed

PROFESSIONALS DISCUSSION

- C. Dochney said since this is a D3 variance, as was mentioned several times previously, in previous hearings, as well as earlier that the appropriate standard approved for the conditional use variances is not the same as for a D1 variance. They do still have to show the applicant's burden of proof is to show the positive and negative criteria have been satisfied, but it's not quite the same as the D1, where they don't have to show, quite the same special reasons. What they do need to show is that, despite the deviations from the code, which there are four (4) of of the 10 or 11 conditional use standards are not satisfied, that the site remains an appropriate location for a fast food restaurant and then with the negative criteria, they still have to satisfy the, both prongs of the negative criteria, which is no substantial detriment to the public good, meaning not gonna be a terrible detrimental impact to the quality of life for neighbors or to the character of the community, and then second, no substantial detrimental impact to the intent and purpose of the zone plan, and that means the deviations are not so severe, so as to essentially require a change in the zoning ordinance itself, which can only be done by the governing body, rather than a unique deviation where the code wasn't necessarily intended to apply to these specific circumstances, which is the authority of this

board to grant those variances and in that regard, in particular, with how the negative criteria is considered, which you've heard a lot of testimony on that, both from the applicant's planner as well as the residents who testified. It's important to keep in mind since this is a D3 variance and not a D1, that it should really be applied to the fast food restaurant to the extent that it's not permitted because it's a conditional use, and not necessarily to what would be otherwise permitted on this site. So, a restaurant, not fast food restaurant would be permitted on the site. So, regular impacts from a standard operation of a restaurant on the site, which the IHOP is a regular restaurant, that one's not fast food, that would otherwise be permitted, and if this were at the Planning Board, the standard impacts, if they didn't require any other variances, you know, you just kind of have to live with whatever those impacts from a restaurant would be if you live somewhere near it. So, keep in mind the impacts, particularly of the fast food and I think that relates a little bit to the drive-thru, even though they do meet the conditions for a drive-thru, they're not conditional use requirements, they're just bulk standards. They do meet those conditions. The drive-thru is associated with the Popeyes half and not the IHOP, so that is part of the fast food. He continued stating that just because several members of the public had mentioned that they feel fast food is maybe not the type of, quality of restaurant they were looking for, that they feel like maybe doesn't meet the the profile of their vision for West Orange. He agrees with Ms. Kinback that the perceived quality of a restaurant, fast food or not, is really not an appropriate consideration for the zoning board and not a reason to be voting yes or no on this application.

- J. Hess noted that there have been seven (7) review letters on this application back on April 9, 2026 and they have been limited to compliance with engineering design issues, and in the April 9th letter, no outstanding engineering design issues were remaining. It seems the case is strictly on the grant of the various variances that have been requested by the applicant.

BOARD DISCUSSION

- T. Dubovy spoke in opposition to this application due to many factors, including the shade tree requirement not being met to reach a 50% level.
- T. Ben-Zvi spoke in opposition to this application due to many factors, including the safety factors of this application.
- M. Dannemiller spoke in opposition to this application due to many factors, including that either of these uses could be great and nice on the site and the variances requested are not due to hardship but a desire to fit too much on a small site.
- M. Sussman spoke in opposition to this application due to many factors, including the proximity to the residential homes, trying to cram too much onto the single lot, and the Traffic Studies being done before Target opened.
- A. Weiss spoke in opposition to this application due to many factors, including the hours of operation for both proposed restaurants, in disagreement with their noise studies, and the traffic study not taking into account West Orange Plaza's recent opening of Target.
- B. D. Scott spoke in opposition to this application due to many factors, but stated that it is nothing against Popeyes as an organization just that this is just not suitable due to proximity to residences.
- R. Miller spoke in opposition to this application due to many factors, including non creditable testimony referencing the April 16, 2026 meeting where testimony stated that there would only be 120 cars per day. She believes that it be more similar to 120 per hour during high volume times which is just unacceptable in her opinion at that site.
- L. Cohen spoke in opposition to this application due to many factors, despite liking the food at both restaurants (IHOP and Popeyes), having such a detriment to the neighbors because of the two (2) restaurants in one deal not being acceptable to him as it's just not safe.

- W. M. Barbee had no extra comment than what he has already previously stated.
- I. Schwarzbaum spoke in opposition to this application due to many factors, including the fact that it being located in the B2 zone and zoned for a restaurant, not two (2) with too many variances being requested.
- Chairperson Neuer spoke in opposition to this application due to many factors, including the choice to repurpose the structure instead of demolishing it; the applicant's profitability is not something that justifies a variance; cramming two (2) restaurants into one what was originally one (1) is an overreach; and safety issues with traffic.

Motion to Deny: Chairperson Neuer

Second: W. M. Barbee

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

- By unanimous vote, application **ZB-22-13 MPB Realty (470 Eagle Rock Avenue)** is denied including all requests for variances. Board Attorney, Ms. Kelly Carey said that she is going to take the 45 days allowed to do the Resolution and aim to have it ready for the July 16, 2026, Regular Meeting.

Chairperson Neuer adjourned the meeting at 10:13 PM

Adopted: *6/18/26*

Diana Lyn Chandler
Diana L. Chandler, Secretary