

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
SPECIAL MEETING
March 7, 2013**

The West Orange Zoning Board of Adjustment held a special meeting on March 7, 2013 commencing 8:00 PM at 66 Main Street, West Orange, N.J. in Council Chambers.

Chairman Neuer called the meeting to order at approximately 8:00 P.M. It was announced that notification of this meeting was given to the Township Clerk, the West Orange Chronicle, and posted on the Township Bulletin Board on February 21, 2013 in accordance with the "Open Public Meetings Act."

Chairman Neuer asked everyone to stand for the Pledge of Allegiance

Alice Beirne, Esq., Board Attorney, read the Opening Statement.

PRESENT: B. Buechler, D. Gabry, W. Merklinger, P. Neuer,
B. Quentzel, W. Steinhart, M. Sussman, A. Weiss

ABSENT: G. Bullock (excused absence)
L. Zaolino (unexcused absence)

ALSO PRESENT: P. Grygiel, Consulting Planner/Acting Planning Director
E. Keller, Consulting Engineer
Board Attorney, Alice Beirne, Esq.
Board Secretary, Rose DeSena
Harvey Grossman, Public Advocate

ANNOUNCEMENTS

Future Meetings: March 21, 2013 (Regular Meeting) - 8:00 PM
April 18, 2013 (Regular Meeting) – 8:00 PM
May 23, 2013 (Regular Meeting) – 8:00 PM

MINUTES

Adopt Minutes: February 21, 2013 (Regular Meeting)

Vice Chairwoman Gabry made a motion to approve the minutes; Mr. Steinhart seconded the motion. All were in favor to approve the minutes of the regular meeting held on February 21, 2013.

SWEARING IN

Consulting Engineer, Eric Keller and Consulting Planner for the Township, Paul Grygiel were sworn under oath.

APPLICATION

- 1. ZB-12-20/First Hartford Realty Corp.,** Carried from 1/10/13
Designated Agent for CVS
Block: 153.16; Lot: 1-6 & 24-27
265 Prospect Avenue
“D” Use variance & “C” variances for building a CVS Pharmacy

EXHIBITS

- A-29 - Layout & Materials colored rendering sheet CR-3 - revision date 2/25/13
- A-30 – Revised Drainage & Grading Plan sheet C-4 – revision date 2/25/13
- A-31 – Planting Plan sheet L-01 revision date 2/25/13
- A-32 – Utility Plan sheet C-5 – revision date 2/25/13
- A-33 – Delivery Vehicle Maneuvering Plan Sheet VM-1, 2, 3 – revision date 2/25/13
- A-34 – Lighting Plan sheet LT-1 – revision dated 2/25/13
- A-35 – Reduced version of layout and materials colored rendering - sheet CR-3
- A-36 – Summary of Variance Relief prepared by Peter Steck – 3/7/13
- A-37 – Variance Schedule A – revision dated 3/7/13
- A-38a – Letter addressing Traffic Impact Assessment Report comments prepared by Gary Dean – dated 12/18/12
- A-38b- Traffic Impact Assessment Report – dated 8/28/12
- A-39 – Peter Steck’s Planners Report dated 10/25/12

DISCUSSION

Chairman Neuer stated that this is a special Zoning Board meeting that was requested by CVS Pharmacy that has been carried from the special meeting held on 1/10/13 and will be the only application heard at this meeting. The Chairman then asked if anyone was present at this meeting for any other application since if they were then while they were welcome to observe this application there would be no other matters heard tonight. Seeing none the Chairman asked the attorney for CVS to approach.

Robert Williams, Esq. approached the podium and detailed his perceptions of what transpired at the meeting on 1/10/13. He stated that the applicant was required, by this Board, to re-submit certain materials and that Mr. Keller submitted an updated memo addressing these submissions.

Chairman Neuer noted for the record that the applicant has submitted many responses to comments and inquiries from the Board and its professionals to the Board as required.

Mr. Williams referred to Mr. Keller's memo dated 3/1/13 and stated that the applicant has agreed to comply with all of the comments in this report and that they will address them at this meeting. Mr. Williams stated that the applicant submitted a tree removal application and that the Township Forester, John Linson, submitted his report dated 3/7/13. He said that the applicant has agreed to make the adjustments that Mr. Linson suggested in this report.

Mr. Buechler stated that, at the last meeting, the applicant was asked to submit a list of all the drive-thru Pharmacies; Mr. Williams stated that that list was submitted to the Board Secretary. Copies of that list were circulated to the Members of the Board.

Mr. Williams re-called Sharon Burke. Chairman Neuer stated that Ms. Burke will continue under oath as an expert in the field of Engineering.

Mr. Williams asked Ms. Burke if she submitted revised plans as requested by this Board; she replied yes.

Chairman Neuer asked Mr. Williams if Mr. Keller's memo was issued after the plans were re-submitted; Mr. Williams said yes.

Chairman Neuer stated for the record that the memo from Mr. Keller dated 3/1/13 is part of the file and does not need to be marked as an Exhibit.

Chairman Neuer referred to #3 of Mr. Keller's memo regarding an existing depressed curb along Prospect Avenue that is adjacent to the southerly property line that is being used by the adjacent property owner as a parking pad. He asked Mr. Williams if the applicant would consent to an easement as a condition if the application is approved. Mr. Williams said they will not consent to giving them an easement because CVS will be the lessee of the property and has determined to close it. Chairman Neuer instructed Mr. Williams to notify that neighbor that they can no longer park there or utilize that piece of property and to send a copy of that notice to the Board Secretary. The Chairman stated that the Board wants to make sure that the neighbor is protected and afforded the opportunity to appear before the Board before a vote is taken.

Mr. Williams referred to #4 of Mr. Keller's memo regarding the soil removal plan and asked Ms. Burke to address it. Ms. Burke said that Mr. Keller has concerns regarding how the applicant would get the soil there because it is coming from off site. Ms. Burke said that the soil will be brought in using Route 280. She said that once a contractor is hired they will instruct them to work with Mr. Keller providing him the final information.

Ms. Weiss asked Mr. Keller why they care how the soil is being brought in; Mr. Keller said the soil removal permit requires that they submit that information.

Chairman Neuer referred to #5 of Mr. Keller's memo and asked him if he was requiring the applicant to make the driveway on Prospect Avenue larger. Mr. Keller said that they do not have to make that driveway larger. He said that that the truck will cross a double yellow line while exiting from that driveway, which is not appropriate, but the Essex County Planning Board will address that matter.

Chairman Neuer stated that this application has to go before the Essex County Planning Board and asked Mr. Williams if he filed an application with them yet. Mr. Williams said they have not filed the application yet but they have met with the County and are working on the application. Chairman Neuer said that if the County has any changes then the applicant must come back to this Board to explain the changes.

Mr. Williams referred to #6 of Mr. Keller's memo and asked Ms. Burke if the lights will remain on all night; Ms. Burke replied yes.

Ms. Weiss asked Mr. Keller if he was in favor of the lights being on all night. Mr. Keller said yes because it is a 24 hour store.

Ms. Weiss asked Mr. Keller if the lights being on all night would affect the neighbors on Woodhull Avenue. Mr. Keller said that Pals Cabin currently has lights on all night and he does not think it will negatively affect the neighbors. He said that the lighting plan is much better than the applicant originally proposed and that the neighbors would have to look into the site to see the lights. Mr. Keller also said that there are not many lights in the back.

Chairman Neuer stated for the record that Ms. Weiss is a regular member of the Zoning Board and she has read all of the transcripts from the applicant's previous meetings, has signed the confirmation of those facts and will be eligible to vote on this application.

Mr. Williams referred to #7 of Mr. Keller's memo which requested that the Township Forester provide his comments in respect to the Tree Removal permit and the Landscaping Plan. He referred to Mr. Linson's report dated 3/7/13 which contained those comments and stated that the landscape plan is appropriate. Mr. Williams said that Mr. Linson did list two issues and said that the applicant will comply.

Chairman Neuer stated for the record that Mr. Linson recommended preserving two existing white pine trees and planting additional perennials and herbaceous plants within the planting bed and also removing the existing Black Locust tree and replacing it with a mixture of evergreen and deciduous flowering trees to provide suitable screening.

Mr. Williams referred to #8 of Mr. Keller's memo regarding the applicant providing revised sign drawings. Mr. Keller stated that, according to the Township ordinance, the sign letters cannot extend more than 12" from the building and recommended including a note or other legend to that effect on the sign drawings that were provided. Mr. Williams said that the applicant will comply.

Mr. Williams stated that the applicant has provided information about the compactor. Ms. Burke detailed the compactor's specifications that were submitted with the application. Mr. Keller requested that the model number for the compactor should be placed on the plans. That will be complied with by the Applicant

Chairman Neuer asked if there were any further questions for Ms. Burke by Members of the Board or its professionals; seeing none, Chairman Neuer asked if any member of the public has any questions for Ms. Burke; seeing none the witness was excused.

Mr. Williams called his next witness.

Gary Dean approached the podium and was sworn under oath. Mr. Dean detailed his educational and professional background as a licensed professional Traffic Engineer in the State of New Jersey and stated that he has testified before other Boards. Chairman Neuer accepted Mr. Dean as an expert in the field of Traffic Engineering.

Chairman Neuer referred to a Traffic Impact Assessment report dated 8/28/12 and a letter dated 12/18/12 from Mr. Dean addressing the comments expressed in a memo prepared by Omland Engineering dated 10/29/12. The Chairman asked Mr. Dean if he prepared the 8/28/12 report and the 12/18/12 letter; Mr. Dean replied yes.

Chairman Neuer asked Mr. Dean if he was to ask him to read the report and the letter referenced above, would it constitute his testimony tonight; Mr. Dean replied yes. The Chairman asked to have the Traffic Impact Assessment dated 8/28/12 marked as Exhibit A-38a and the letter from Mr. Dean addressed to the Board dated 12/18/12 marked as Exhibit A-38b for identification.

Mr. Dean referred to sheet CR-3 of the Layout & Materials colored rendering with a revision date of 2/25/13. Chairman Neuer stated that sheet CR-3 of the Layout & Materials colored rendering with a revision dated of 2/25/13 was pre-marked as Exhibit A-29 for identification.

Mr. Dean began detailing the ingresses and egresses to and from the site shown on the rendering. He said that it is his opinion that the CVS Pharmacy will generate less traffic than Pal's Cabin Restaurant does now. Mr. Dean stated that directing the traffic to signalized intersections will also be much safer.

Mr. Dean addressed #1 of Mr. Keller's report dated 3/1/13 regarding the second drive-thru window that is being proposed. He said that almost every CVS store that has drive-thru windows has two because it provides better service to their customers. Mr. Dean said that the drive-thru is a convenience for the customer. He said that a transaction could take 3-5 minutes if the customer needed to consult with the pharmacist and the next customer would have to wait which could create stacking. Mr. Dean said that it reduces an impact on the neighborhood and just works better to provide the highest service to the customer.

Chairman Neuer asked Mr. Dean if that was the only reason; Mr. Dean said yes because it is a better design.

Mr. Quentzel asked Mr. Dean if they could make the two drive-thru windows one lane. Mr. Dean said the lanes will alternate and it would be virtually impossible for a customer to leave at the same time because one employee takes care of both drive-thru windows.

Ms. Weiss stated that she visited one of the CVS stores that had a drive-thru window and spoke to one of the employees. She said that the employee stated that if a customer wanted to talk to the pharmacist they would have to come inside of the store.

Ms. Weiss asked Mr. Dean to explain how one person can work both of the drive-thru windows. Mr. Dean said that the outer lane is served through a pneumatic tube like the ones used at a bank drive-thru. He said that the outer lane is usually used just to drop off a prescription.

There was some discussion regarding how a customer would know that the outer lane is used just for drop-off because there would be no signage designating that requirement.

Mr. Buechler referred to Mr. Dean's report and asked him how he made the determination that all movements at the intersection of Woodhull and Eagle Rock Avenue operate at service D or better at all hours of the day. Mr. Buechler stated that his recollection is that every traffic expert who has testified before this Board, for applications that involve this intersection, has stated that it operates at level F. Mr. Dean stated that depending on the time of the day certain movements operate at level F. He said that levels of service at certain peak hours operate at D, E and F levels and that he explains all of the levels at all of the hours of the day in his report.

Chairman Neuer asked Mr. Dean if the levels of service were determined before or after the County made some improvements to the intersection; Mr. Dean replied after. Mr. Dean said that at certain times it does operate at level F. He said that even if Pal's Cabin Restaurant stays on the site, they will also have a traffic impact at this intersection.

Mr. Buechler asked if both of the drive-thru windows will operate 24/7; Mr. Williams said that they will provide testimony to answer that question tonight.

Ms. Gabry asked Mr. Dean if he made any observations on how far back the traffic is backed up for the cars heading north; Mr. Dean said that traffic backs up beyond the site. He said that for this reason they have restricted a left turn out of the site on Prospect Avenue.

Mr. Steinhart stated that he has concerns about the functioning driveway on Woodhull Avenue. He said that there will be more traffic on Woodhull because Team Capital bank's driveway also exits on Woodhull Avenue. He said that it is not good now and he thinks it will become worse.

Chairman Neuer stated that the changes that they are making are going to have a negative impact on Woodhull Avenue. He said that this Board wants to make sure there is safe and efficient egress and ingress before the variances are granted.

Mr. Dean said that the driveway on Woodhull Avenue carries very little traffic. He said that during the peak hour there were 20 cars on Woodhull Avenue and the level of service is C.

Mr. Steinhart asked Mr. Dean how many vehicles can queue from the stop line on Woodhull; Mr. Dean said three vehicles can queue and the fourth vehicle exiting CVS would wait in the driveway.

Mr. Steinhart asked Mr. Dean how many cars would enter CVS from Woodhull Avenue; Mr. Dean said one car every five minutes on average during peak time.

Mr. Merklinger stated that there was previous testimony that a customer would have to go inside the store for a consultation. He then stated his observations that Woodhull Avenue may become a bottleneck because cars going east and west on Eagle Rock Avenue would use that driveway. Mr. Dean said that if Woodhull Avenue were a busier road he would agree but it has very little traffic.

Mr. Buechler asked Mr. Dean if an employee will come outside to block the bypass lane when a tractor trailer is entering the driveway from Prospect Avenue for deliveries so that other cars will know a truck is entering. He said that prior testimony stated that the truck would back into the loading zone. Mr. Dean referred to the Delivery Vehicle Maneuvering Plan and detailed how the truck will enter and back into the loading zone. Chairman Neuer noted for the record that sheet VM-1, 2, 3 of the Delivery Vehicle Maneuvering Plan with a revision date of 2/25/13 was pre-marked as Exhibit A-33 for identification. Mr. Dean stated that the truck can also swing wider and could pull into the loading zone but that would depend on the driver.

Chairman Neuer stated that a condition was previously accepted by the Applicant that the deliveries would be between midnight and 4AM only.

Chairman Neuer called for a recess at 9:40 pm.

Chairman Neuer resumed the meeting at 9:53 pm.

Chairman Neuer asked Mr. Dean how many lanes exit the shopping center on Eagle Rock Avenue; Mr. Dean said his perception is that there are two lanes and he analyzed it as two lanes.

Chairman Neuer asked Mr. Dean if he analyzed how many cars come in and out of the other CVS on Eagle Rock Avenue; Mr. Dean said yes. He said that the projections in his report are higher and are an overestimate of future traffic.

Chairman Neuer referred to page 6 of Mr. Dean's report and asked him if the applicant has considered any additional right of ways; Mr. Dean replied yes. He said that there have been discussions with the County about a right turn dedicated lane onto Eagle Rock Avenue. Chairman Neuer said there is a right turn dedicated lane there now.

Chairman Neuer asked Mr. Dean how many cars can stack in the queue in the drive-thru; Mr. Dean stated that his report identified three cars in each lane for a total of six. He said they can probably get seven cars in his opinion.

Chairman Neuer asked Mr. Dean to identify the benefit of two drive-thru lanes are from a Traffic Engineering stand point; Mr. Dean said so that the cars do not back up.

Chairman Neuer asked Mr. Dean if he knew how long someone could tolerate waiting in a drive-thru lane; Mr. Dean did not know. Chairman Neuer said, based on his experience, someone can

wait in a lane for six minutes and if they only have to wait six minutes they do not need two lanes.

Mr. Keller suggested that the applicant put up a sign that says "do not block driveway" to prevent a potential queue on Woodhull Avenue. Mr. Dean said that he does not think there will be a queue because traffic is very light on Woodhull Avenue.

The Chairman asked if there were any further questions from Members of the Board or its professionals for Mr. Dean; there were none.

The Chairman asked if any members of the public had any questions for Mr. Dean.

Marlon Lewis approached the podium and stated that he lived at 10 Woodhull Avenue. He asked Mr. Dean if he thought that three quarters of the traffic exiting the site would use the Woodhull Avenue driveway; Mr. Dean replied that this was possible.

Mr. Lewis asked Mr. Dean if he thought that there will still be only three cars queuing along the driveway adjacent to Woodhull Avenue; Mr. Dean replied yes.

Mr. Lewis asked Mr. Dean if there was going to be any signage on Woodhull Avenue; Mr. Dean said that there will be some very low elevation signs and some standard roadway signs that say "do not block driveway".

Mr. Lewis asked Mr. Dean if he thought that they should have a sign on Woodhull Avenue that says "local traffic only"; Mr. Dean replied no.

Chairman Neuer asked Mr. Williams if the applicant would agree to a condition of having a "local traffic only" sign placed on Woodhull Avenue; Mr. Williams said there would be no objection to that.

There were no other members of the public that had questions for Mr. Dean.

Mr. Williams called his next witness.

Anthony Gallinari approached the podium and was sworn under oath. Mr. Gallinari stated that his is the Vice President of Acquisitions at First Hartford Realty who is sourcing for CVS Pharmacy.

Mr. Williams asked Mr. Gallinari if CVS will be open for 24 hours; Mr. Gallinari said yes. He said that the drive-thru windows will also be open for 24 hours.

Mr. Williams asked Mr. Gallinari to explain why CVS will need two drive-thru windows. Mr. Gallinari said that in response to a broader demographic there is more need and more demand. He said that there will be more population in the future because of the baby boom and said that the two drive-thru windows are in preparation for growth.

Mr. Buechler asked Mr. Gallinari if the proposed drive-thru windows are for prescriptions only; Mr. Gallinari replied yes.

Mr. Quentzel asked Mr. Gallinari where he got his baby boom statistics from; Mr. Gallinari said from the United States Census.

Mr. Gallinari stated that the two drive-thru windows are full service. He said the outside window is a pneumatic tube and a customer cannot pick up from there. Mr. Gallinari said that most pick-ups are from the inside window. He said by nature, people will go to the inside window for pick-ups and most drop-offs from the second window.

Mr. Buechler asked Mr. Gallinari how he based his testimony; Mr. Gallinari said from the pharmacists that work at the store.

Chairman Neuer asked Mr. Gallinari to state the percentage of customers who utilize the drive-through and the response was 4%.

Chairman Neuer asked Mr. Gallinari if CVS does not get approval for two drive-thru windows will they abandon the project; Mr. Gallinari said that he cannot answer for CVS. Mr. Williams said that Mr. Gallinari cannot make that decision for them.

Chairman Neuer asked Mr. Gallinari how many of the CVS stores who do not have a drive-thru window had to come back before a Board to ask for one. Mr. Gallinari said some stores have but not a majority of them have.

Mr. Gallinari said that with one drive-thru lane, a customer who is waiting over six minutes will leave and go to a Rite Aid that has two drive-thru lanes so that they do not have to wait. He said CVS is trying to avoid this. Mr. Gallinari said that there is a strong demand by the public for drive-thru windows. Chairman Neuer asked Mr. Gallinari what his projection is about increase of use in the next five years; Mr. Gallinari could not give a definite percentage.

Ms. Weiss asked Mr. Gallinari how many CVS stores in the state of New Jersey have two drive-thru windows; Mr. Gallinari replied 81 CVS stores have dual drive-thru windows.

Ms. Weiss asked Mr. Gallinari if it is possible to have a drive-thru window that is not open for 24 hours; Mr. Gallinari replied yes.

Ms. Weiss asked Mr. Gallinari if the CVS stores with 24 hour drive-thru windows are on a main street; Mr. Gallinari said that most of them are on busier intersections.

Ms. Weiss asked Mr. Gallinari about the safety of the drive-thru and asked if they have had any incidents; Mr. Gallinari said none that he is aware of. He said that he only knows of some incidents inside of stores where they have had theft which is mostly shoplifting.

Mr. Steinhart asked Mr. Gallinari if they are building a CVS store on Rt. 10 in Livingston New Jersey where the old Saturn dealership was; Mr. Gallinari replied yes.

Mr. Steinhart asked Mr. Gallinari if there are any restrictions to turning out of the driveways and did the drive-thru need a variance; Mr. Gallinari said that he did not know.

Mr. Steinhart asked Mr. Gallinari if the store is going to be open for 24 hours; Mr. Gallinari said he did not know.

Mr. Steinhart asked Mr. Gallinari where the drive-thru will be situated; Mr. Gallinari said that it will be in the rear of the building.

Mr. Merklinger asked Mr. Gallinari if they would consider outside drop-off only and inside consultation only; Mr. Gallinari said that it would be possible and he will ask CVS if they would accept that as a condition.

Chairman Neuer asked if there were any further questions from Members of the Board and its professionals for Mr. Gallinari There were none.

Chairman Neuer asked if there were any members of the public that had any questions for Mr. Gallinari. There were none. Mr. Williams called his next witness.

Peter Steck approached the podium and was sworn under oath.

Mr. Steck detailed his educational and professional background as a Professional Planner licensed in the State of New Jersey. Chairman Neuer accepted his credentials as an expert in Professional Planning.

Chairman Neuer asked Mr. Steck if he prepared the planners report, dated 10/25/12, that was submitted to this Board; he replied yes. The Chairman asked Mr. Steck if he asked him to read this report into the record verbatim, would that constitute the basis of his testimony; Mr. Steck replied basically yes with some revisions to the plans that were revised. The Chairman asked to have Mr. Steck's report marked as Exhibit A-39 for identification.

Mr. Steck stated that the CVS is proposing to construct a pharmacy with a drive-thru component at this site. He said that nothing in the Township ordinance prohibits a drive-thru, but because it is in a B-2 retail business zone it is not permitted and requires a "D" variance. Mr. Steck stated that a revised list of variances was submitted because, as the application evolved, the variances lessened.

Mr. Steck referred to the handout that was given to the Board members listing the variances that are being requested. Chairman Neuer asked to have Schedule A listing the variances being requested with a revision date of 3/7/13 marked as Exhibit A-37 for identification. Mr. Steck listed all of the variances that the applicant is requesting.

Mr. Steck detailed his opinions as a licensed professional planner of the positive and negative criteria and stated that, from a Planning perspective, the second drive-thru offers convenience to the customers. He said that by the customer remaining in their car during the evening hours it

will provide them security. Mr. Steck stated that another benefit of remaining in their cars would be during inclement weather. He said that it is also very convenient for parents having small children with them. He said that neither one nor two drive-thru windows will be a detriment to the Zoning Ordinance.

The Chairman noted the time was 11:00 pm and stated that the Board adjourns at this time. He asked the Board members if they wanted to stay longer to have Mr. Steck finish his testimony or if they wanted to adjourn; the consensus of the Board was to adjourn.

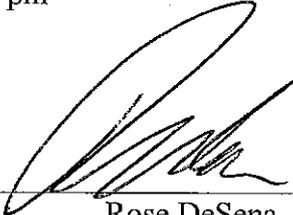
Chairman Neuer said that the application will be carried to the regular Zoning Board meeting on 3/21/13 and that no further notice will be required.

Mr. Williams said that Mr. Steck may not be able to attend on 3/21/13; Chairman Neuer told Mr. Williams that if Mr. Steck cannot make this date then he must appear and request a special meeting.

ADJOURNMENT

The meeting was adjourned by Chairman Neuer at 11:08 pm

Approved: March 21, 2013



Rose DeSena
Zoning Board Secretary

3/22/13