

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
September 12, 2013**

The West Orange Zoning Board of Adjustment held a regular meeting on September 12, 2013 commencing 8:00 PM at 66 Main Street, West Orange, N.J. in Council Chambers.

Chairwoman Gabry 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 November 21, 2012 in accordance with the "Open Public Meetings Act."

Chairwoman Gabry asked everyone to stand for the Pledge of Allegiance

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

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

ABSENT: W. Merklinger

ALSO PRESENT: Paul Grygiel, Consulting Planner
F. Russo, Consulting Engineer
Board Attorney, Alice Beirne, Esq.
Board Secretary, Rose DeSena
D. Dillon, Audio-Digital Transcription Service

ANNOUNCEMENTS

Future Meetings: October 17, 2013 (Regular Meeting) – 8:00 PM
November 21, 2013 (Regular Meeting) – 8:00 PM
December 19, 2013 (Regular Meeting) - 8:00 PM

MINUTES

Adopt Minutes: August 15, 2013 (Regular Meeting)

Mr. Buechler made a motion to approve the minutes as submitted to the Board Members; Mr. Neuer seconded the motion. All were in favor to approve the minutes of the regular meeting held on August 15, 2013,

SWEARING IN

Consulting Engineer, Frank Russo and Consulting Planner for the Township, Paul Grygiel were sworn under oath.

APPLICATIONS

- 1. ZB-13-05/Nicolas** **Carried from 8/15/13**
8 Pen Bryn Road
Block: 148.03; Lot: 13; Zone: R-6
“C” variances for side yard set-backs for installing a deck

Naomie Nicolas and Roberto A. Milten approached the podium. Ms. Nicolas stated that she is the applicant and is proposing to build a deck that requires a variance for the side yard set-backs.

Mr. Neuer said that the application stated that they were building a deck as is but said that he saw a new deck on the plans. He asked Ms. Nicolas if the original deck was removed. Ms. Nicolas stated that the original upper deck was destroyed during a storm and that they were replacing it on the existing foundation. She said that they are proposing to build a lower deck with a spa enclosed within it.

Mr. Buechler asked the applicant to explain the two tier stairs shown on the plans. Mr. Milten stated that the stairs on the upper deck collapsed and were replaced. He said that they will also be replacing the existing steps leading to the grass area below.

Mr. Buechler asked if they received any comments from their neighbors regarding the deck; Mr. Milten replied no. He said that some of the neighbors are anticipating using the spa.

Mr. Buechler asked Mr. Milten if he is a licensed Professional Planner; Mr. Milten replied no. Mr. Buechler said that he is listed on the application as the Planner and asked for clarification. Mr. Milten stated that Ms. Nicolas is his fiancée and they own the home together and he will be doing the construction work himself. Mr. Buechler asked Mr. Milten if he is a licensed contractor; Mr. Milten replied no.

Mr. Neuer asked Mr. Milten if the architect drew the deck plans; Mr. Milten replied yes. Mr. Neuer asked Mr. Milten if the architect will inspect the deck; Mr. Milten replied yes.

Ms. Nicolas stated that the architect, who prepared the plans, told them that he would oversee the project and inspect the deck periodically. She said that the architect said that the Town will be inspecting the deck also. Mr. Milten said that they will do whatever the Town requires them to do.

Mr. Neuer said that his concern is that Mr. Milten is not a licensed contractor and feels that a licensed contractor should do the work.

Chairwoman Gabry asked Mr. Milten why the deck has to be so big. Mr. Milten said that he wanted the lower deck to be flush with the existing upper deck. He said they also wanted more area on the deck for their daughter to play because the spa took away some of the deck area.

Chairwoman Gabry stated for the record that the applicant started building the lower deck without the proper permits from the Township. Mr. Milten said that the problem was with the lower deck only; he said the upper deck was already there.

Mr. Bullock asked Mr. Milten if they have the permits now; Mr. Buechler said that the Township will not issue any permits until the application is approved.

Chairwoman Gabry noted for the record that Ms. Weiss stepped up on the dais at 8:18 pm and will not be voting on this application.

Chairwoman Gabry asked Mr. Milten if he poured the concrete himself; Mr. Milten said no. He said that his uncle poured the concrete. Chairwoman Gabry asked Mr. Milten if his uncle is a licensed contractor in the State of New Jersey; Mr. Milten replied no. He said that he is a licensed contractor in the State of New York.

Chairwoman Gabry noted for the record that the block number for this property was incorrect on the application. The application listed the property as Block 148.03 and the Board Secretary corrected it to Block 148.08.

There were no further questions for Ms. Nicolas and Mr. Milten from the Board or the Professionals.

Mr. Buechler asked if anyone was here for public comment; seeing none Chairwoman Gabry declared the hearing closed and asked if any of the Board members had any comments.

Mr. Bullock stated that his concern is that Mr. Milten is not a licensed contractor and that they are installing a spa. He asked Mr. Milten if they are hiring a licensed plumber and licensed electrician to install the spa; Mr. Milten replied yes. Mr. Bullock suggested that the Board make this a condition. Mr. Neuer said that this is not necessary because the Township's Building Department will not issue any permits unless the plumber and electrician are licensed.

Mr. Buechler said that he would like to see the architect come out two or three times during construction to oversee the project.

Mr. Neuer stated that he is not thrilled that the applicants began building the deck without the proper permits. He said that it is always better to ask for forgiveness instead of permission. Mr. Neuer said that he supports members of this Community who want to make improvements to their property and that he will recommend approval of this application.

Chairwoman Gabry said that she is not crazy about this application because the deck is too big but agrees with Mr. Neuer. She advised the applicants to come before the Board first next time and asked for a motion to approve the application.

Mr. Buechler moved to approve this application, subject to the condition that the applicant has the architect or another licensed architect inspect the structure as least two times during construction. He also recommended that the applicant submit a letter to the Board Secretary, from the architect, stating that he inspected it.

Mr. Neuer seconded the motion to approve the application.

The vote was as follows:

Buechler:	Yes	Steinhart:	Yes
Bullock:	Yes	Sussman:	Yes
Merklinger:	-	Weiss:	-
Neuer:	Yes	Chairwoman Gabry:	Yes
Quentzel:	Yes		

3. **ZB-13-03/Prism Green Assoc. III, LLC** Carried from 8/15/13
 Block: 155; Lot: 26.03; Zone: O-R
 Rooney Circle
 "D" use variance and "C" variances to construct a fitness center.

EXHIBITS

- A-1 – Aerial Map
- A-2 – Site Plan Rendering – Sheet 5
- A-3 – Architectural Plans dated 3/26/13
- A-4 – Colored Rendering
- A-5 – Landscape Plan dated 3/15/13

Chairwoman Gabry noted for the record that Mr. Steinhart and Mr. Neuer were recused from hearing this application and left the dais.

Francis X. Regan, Esq., attorney for the applicant, approached the podium and began detailing the application. Mr. Regan stated that the applicant is proposing to construct a 48,000 sq. ft. fitness center/health club on Rooney Circle. He said that the applicant is requesting a "D" variance because the use is not permitted on this property. Mr. Regan said that this application also requires the approval of several "C" variances for setbacks, lot coverage, parking and signage. He said that he has six witnesses that will testify and four of the witnesses are here tonight.

Mr. Regan called his first witness.

Eugene Robert Diaz approached the podium and was sworn under oath. Mr. Diaz detailed the background of the property stating that the two lots were sub-divided approximately two and a half years ago.

Mr. Buechler asked Mr. Diaz what his relationship is to Prism Green Associates; Mr. Diaz stated that he is a part owner.

Mr. Diaz stated that there was a deed restriction for this property, when it was sub-divided, and it can only be used for retail. He said that building an office building at this location, due to the present market, is unlikely so retail is not an option. Mr. Diaz stated that the fitness center being proposed does not fall under the restricted use in this zone and they ended up with a lease for an L.A. Fitness Center. He gave some background about the company stating that L.A. Fitness own over 400 health clubs and it is a financially healthy business.

Mr. Diaz described the lot and noted that there is a small 10 ft. strip of land that they do not own. He said that they have an easement and a landscape easement for this 10 ft. strip.

Mr. Buechler asked Mr. Diaz how long construction will take; Mr. Diaz said approximately ten months. Mr. Buechler asked Mr. Diaz when construction would start; Mr. Diaz said that, subject to approvals, by the fourth quarter of 2014.

Mr. Regan asked Mr. Diaz if the hours of operation will comply with the Township Ordinance; Mr. Diaz replied yes.

Mr. Regan asked Mr. Diaz how many employees there will be; Mr. Diaz stated that the maximum number of employees, onsite at one time, will be 20-25 employees.

Mr. Buechler asked Mr. Diaz if there will be a food facility in the building. Mr. Diaz stated that they will have protein shakes for the members' consumption only.

Mr. Diaz stated that there will be a day care facility, onsite, with licensed people to baby sit for the members' children. Mr. Buechler asked Mr. Diaz if they will need a license for the day care facility; Mr. Diaz said that L.A. Fitness will be responsible for that.

There were no further questions for Mr. Diaz from the Board of the Professionals.

Chairwoman Gabry asked if any members of the public had any questions for Mr. Diaz; seeing none Mr. Diaz was excused.

Mr. Regan called his next witness.

Joseph Sparone approached the podium and was sworn under oath. Mr. Sparone detailed his educational and professional background as a licensed Professional Engineer in the State of New Jersey. He said that he has worked on projects similar to this one before. Chairwoman Gabry accepted Mr. Sparone as an expert in Professional Engineering.

Mr. Sparone stated that the site plans were signed by Joseph Staigar and that he worked with Mr. Staigar on the plans. Mr. Buechler questioned if Mr. Sparone could testify because his company did not sign and seal the plans and is just a member of the firm. Mr. Sparone stated that his company partnered with Mr. Staigar on the plans and the plans were prepared in his office. Mr. Buechler asked Mr. Sparone if his company would be willing to sign and seal these plans too; Mr. Sparone replied yes. Mr. Buechler stated that, before the Board approves this application, the plans will be signed and sealed by Mr. Sparone.

Ms. Beirne stated that Mr. Staigar has always testified as a Traffic Engineer. Mr. Regan said that Mr. Staigar is also a licensed Professional Engineer and that they will talk to him to work this out. Ms. Beirne stated that she wants Mr. Staigar to read Mr. Sparone's testimony and agree with it.

Mr. Sussman wanted clarification and asked Mr. Sparone if the site plans referenced him or his company; Mr. Sparone replied no.

Mr. Regan noted for the record that there were six (6) Board members present at the meeting tonight and requested a copy of the transcripts for a seventh Board member. He asked if the Board would also accommodate the applicant with a special meeting. Chairwoman Gabry said that the Board will discuss that later.

Mr. Sparone presented an aerial map photo. Chairwoman Gabry asked to have the aerial map marked as Exhibit A-1 for identification. Mr. Sparone referred to the aerial map and detailed the surrounding properties. Mr. Buechler asked Mr. Sparone where the fitness center will go; Mr. Sparone indicated on the aerial map the location of the fitness center.

Chairwoman Gabry asked Mr. Sparone how tall the adjacent property building is; Mr. Sparone said that he was not sure how tall it was and stated that it is four stories.

Mr. Russo asked Mr. Sparone how much frontage there is; Mr. Sparone said that there is zero feet of frontage.

Mr. Sparone presented a rendering of the site plan. Chairwoman Gabry asked to have Sheet 5 of the rendering site plan marked as Exhibit A-2 for identification.

Mr. Buechler asked Mr. Sparone what the distance is between the fitness center and the adjacent office building; Mr. Sparone replied 308 feet.

Mr. Sparone began detailing the first and second floors of the two story building. He also noted the new parking area on the plan and the proposed landscaping.

Mr. Buechler asked Mr. Sparone if they were proposing covered parking; Mr. Sparone replied yes.

Chairwoman Gabry asked Mr. Sparone to detail the number of parking spaces. Mr. Sparone said that the fitness center will provide 199 parking spaces which include the parking spaces under

the building. He said that there are a total of 179 parking spaces for the adjacent office building. Mr. Buechler asked Mr. Sparone if it will be one continuous parking lot; Mr. Sparone replied yes.

Mr. Diaz approached the podium and explained that there is a cross easement for access to both properties, from the driveway, that was approved in the subdivision application.

Mr. Sparone stated that they are proposing two stories on the building and the Township ordinance allows two and one half stories.

Mr. Sparone stated that the site has no direct frontage to the roadway and no rear yard and detailed all of the side yard setback variances being requested. He detailed the lot coverage, the building coverage and stated that the property also meets the steep slope requirements.

Mr. Sparone said that 199 parking spaces are being proposed and 324 parking spaces are required according to the Township Ordinance.

Mr. Buechler asked Mr. Sparone if they had spoken to L.A. Fitness regarding the number of parking spots. Mr. Diaz approached the podium and stated that he met with them and L.A. Fitness is comfortable with the number of parking spaces being provided.

Mr. Sparone stated that there is no designated loading space being proposed. He said the only deliveries made are by Federal Express or UPS trucks and they are made during peak hours at the front entrance. He said the Township Ordinance requires they have three loading spaces and they will need a variance for that.

Mr. Sparone stated that they will have a separate trash enclosure with six foot plants surrounding it.

Mr. Sparone pointed out where the retaining wall will be located and said that it will run the full length of the building.

Mr. Sparone stated that they will stabilize the steep slope so that there is no disturbance.

Mr. Sparone said that there is an existing storm water detention system underground and that they will mimic that same design. He said that it will be at or below the existing conditions. Mr. Regan asked Mr. Sparone if it will interfere with the buildings footings or structure; he replied no.

Mr. Buechler asked if they read the Boards consulting Engineer's memo dated 5/21/13; Mr. Sparone replied yes. Mr. Buechler asked Mr. Russo if the applicant agreed to satisfy the comment he noted in his memo; Mr. Russo said that Mr. Staigar did not express any objections to his comments.

Mr. Buechler asked if the applicant will comply with the Township's Fire Sub Code Official comments in his letter dated 5/21/13. Mr. Regan said that if the application is approved they will comply with everything they need to comply with.

Mr. Buechler noted for the record that the applicant has agreed to comply with Omland Engineering and the Township's Sub Code Official's comments and that it will be a condition in any resolution.

Mr. Sparone detailed the light poles. Mr. Buechler stated that the Board would like to see the light poles 25' or lower. He asked Mr. Sparone how high the light poles are at the adjacent office building; Mr. Sparone said he did not know. Mr. Buechler said they will have to verify how high they are when they come back because the height of the light fixtures should be uniform.

Ms. Weiss said that she did not see any signs on the plans. Mr. Sparone said that the Architect will testify to that.

Mr. Buechler asked Mr. Regan if there will be any free standing signs; he replied no.

Ms. Gabry asked Mr. Sparone if there will be anything in the front of the parking spaces that face the slope that would prevent the cars from driving off of the slope; Mr. Sparone said that there will be landscaping there.

Mr. Buechler said that he understands that the applicant will have signs on the building and that there will not be any free standing signs. He asked Mr. Regan if there will be any signs on the street. Mr. Regan said that the applicant is still in the process of deciding if they need any other necessary signs. He said that if they decide they do need any other signs then they will come back before the Board.

Ms. Weiss asked Mr. Sparone if L.A. Fitness has any standard colors for their signs; Mr. Sparone said that the Architect will answer that question.

Mr. Grygiel asked if there will be any landscaping around the transformer. Mr. Diaz approached and said that the building blocks the visibility of the transformer. He said if it is feasible then they will landscape around it.

Mr. Russo asked what the hours of operation will be; Mr. Diaz said that their hours of operation will conform to the Township's Ordinance.

Mr. Russo asked what time the outdoor lights will be on and off; Mr. Diaz said the lights will be on until at least midnight. He said that this will provide ample time for the employees to leave safely.

Mr. Buechler suggested that they inquire what time the lights are on until at Essex Green.

Mr. Russo asked if the dumpster enclosure met the accessory structure setbacks; Mr. Regan said that the Planner will answer that question.

There were no further questions for Mr. Sparone from the Board or the Professionals.

Chairwoman Gabry asked if any members of the public had any questions for Mr. Sparone; seeing none, Mr. Sparone was excused.

Chairwoman called for a recess at 9:33 pm.

Chairwoman Gabry resumed the meeting at 9:45 pm.

Mr. Regan called his next witness.

Lance Blake approached the podium and was sworn under oath. Mr. Blake detailed his educational and professional background as a licensed Professional Architect in the State of New Jersey. He stated that he has testified before numerous Boards and worked on many fitness center applications. Chairwoman Gabry accepted Mr. Blake as an expert in Architecture.

Mr. Blake presented architectural plans dated 3/26/13. Mr. Regan asked Mr. Blake if he prepared the plans that were submitted; Mr. Blake replied yes. Chairwoman Gabry asked to have the architectural plans dated 3/26/13 marked as Exhibit A-3 for identification.

Mr. Blake stated that he has prepared architectural plans for other L.A. Fitness Centers. He said that the plans he is presenting are the exact plans that were submitted in the architecture package. Mr. Blake detailed the ground floor plan; the underground parking, the main entrance, the children's room, the locker room and the indoor pool.

Mr. Buechler asked Mr. Blake why the electrical room does not have access from inside of the building; Mr. Blake said that it is not necessary.

Mr. Bullock asked Mr. Blake how big the swimming pool was; Mr. Blake said he did not know the exact size but said it is not an Olympic size pool.

Mr. Blake detailed the second floor plan, the exterior elevations and described the exterior of the building. He noted on the plans a small portion of the building that is being "bumped out" and said that the air conditioner unit will be hidden behind it.

Mr. Blake described the signage on the building. Mr. Buechler asked Mr. Blake how far the two mounted signs on the building jut out from the building; he replied four to five inches. Chairwoman Gabry asked Mr. Blake to find out exactly how far the signs project out from the building.

Mr. Buechler asked Mr. Blake what color the lettering will be on the signage; he replied white.

Mr. Buechler asked Mr. Blake if they are requesting a variance for signage; he replied yes.

Chairwoman Gabry asked Mr. Blake to explain the shading devices on the window; Mr. Blake detailed the devices.

Mr. Bullock asked Mr. Blake if any other L.A. Fitness Centers buildings are 60' in high; Mr. Blake said he did not know but said he would find out.

Mr. Regan asked Mr. Blake if he knew the height of the adjacent office building; Mr. Blake said that it is more than 45 feet high.

Mr. Regan asked Mr. Blake if he thought the height of the fitness center building would have an impact on the area; Mr. Blake replied no.

Mr. Blake presented a color rendering of the finished building. Chairwoman Gabry asked to have the color rendering marked as Exhibit A-4 for identification. Mr. Blake detailed the materials to be used on the exterior of the building noting that it would be two different colors of brick. He detailed where the mural and the cornice in question will be on the façade stating that the cornice will be setback from a small portion of the face of the building.

Mr. Quentzel asked Mr. Blake if they would be installing security cameras; Mr. Blake said that he did not know but would discuss that with the client. He said that security cameras are not required.

There were no further questions for Mr. Blake from the Board or the Professionals.

Chairwoman Gabry asked if any members of the public had any questions for Mr. Blake; seeing none Mr. Blake was excused.

Mr. Regan called his next witness.

Christoph G. Rummler approached the podium and was sworn under oath. Mr. Rummler detailed his educational and professional background as a Landscape Architect licensed in the State of New Jersey. Chairwoman Gabry accepted Mr. Rummler as an expert in landscaping.

Mr. Rummler stated that he had met with the Township Forester, John Linson. He referred to Mr. Linson's memo dated 5/16/13 and said that they will comply with his recommendations.

Mr. Rummler presented the Landscape Plan dated 3/15/13. Chairwoman Gabry asked to have the Landscape Plan dated 3/15/13 marked as Exhibit A-5 for identification. Mr. Rummler detailed the landscape plan.

Mr. Russo asked Mr. Rummler how high the tree will be in front of the mural; Mr. Rummler said that the tree they are proposing in front of the mural will grow to 40' tall and will take approximately fifteen years to reach its maximum height.

There were no further questions for Mr. Rummler from the Board of the Professionals.

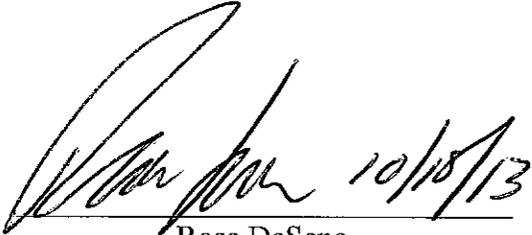
Chairwoman Gabry asked if any members of the public had any questions for Mr. Rummler; seeing none Mr. Rummler was excused.

Mr. Regan stated that he had no further witnesses tonight and requested a special meeting date. After a brief discussion the Board set a tentative date of Monday October 28, 2013 for the special meeting. The Board Secretary stated that she would confirm this date after checking the availability of Council Chambers.

Chairwoman stated that this application will be carried over to the next regular Zoning Board meeting on October 17, 2013 and that no further notice will be required.

The meeting was adjourned by Chairwoman Gabry at 10:39 PM.

Adopted: October 17, 2013



Rose DeSena
Zoning Board Secretary