

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
October 15, 2015**

The West Orange Zoning Board of Adjustment held a regular meeting on October 15, 2015 commencing 8:00 PM at 66 Main Street, West Orange, N.J. in Council Chambers.

Chairman Buechler 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 December 11, 2014 in accordance with the "Open Public Meetings Act."

Chairman Buechler asked everyone to stand for the Pledge of Allegiance.

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

PRESENT: B. Buechler, C. Darconte, D. Gabry, D. Nash, P. Neuer,
B. Quentzel, I. Schwarzbaum, W. Steinhart, M. Susman

ABSENT: A. Weiss (excused absence)

ALSO PRESENT: Kate Keller, Acting Consulting Planner
Eric Keller, Consulting Engineer
Alice Beirne, Esq., Board Attorney
Rose DeSena, Board Secretary
D. Dillon, Audio-Digital Transcription Service

ANNOUNCEMENTS

Future Meetings: November 19, 2015 (regular meeting)
December 17, 2015 (regular meeting)

MINUTES May 21, 2015 (regular meeting)

Chairman Buechler asked the Board Members if they had any additional comments to the May 21, 2015 regular meeting minutes that were submitted to them for review; seeing none, he asked for a motion to approve said minutes.

Ms. Gabry made a motion to approve the minutes of the May 21, 2015 regular Zoning Board of Adjustment meeting as submitted to the Board members; Mr. Steinhart seconded the motion and all were in favor.

MINUTES

September 17, 2015 (regular meeting)

Chairman Buechler asked the Board Members if they had any additional comments to the September 17, 2015 regular meeting minutes that were submitted to them for review; seeing none, he asked for a motion to approve said minutes.

Vice Chairman Neuer made a motion to approve the minutes of the September 17, 2015 regular Zoning Board of Adjustment meeting as submitted to the Board members; Chairman Buechler seconded the motion and all were in favor.

It was noted for the record that Ms. Gabnry and Mr. Sussman did not attend the September 17, 2015 meeting and did not vote on these minutes.

SWEARING IN

- Acting Consulting Planner for the Township, Kate Keller and Consulting Engineer for the Township, Eric Keller were sworn under oath.
- Chris DarConte was sworn in as a regular member of the Zoning Board of Adjustment.

RESOLUTIONS

1. ZB-14-08/Sai Hira Ram Trust, Inc.

Approved 9/17/15

Block: 177.02; Lots: 15.01 & 16; Zone: R-4
23-27 Laurel Avenue

Seeking “D” and several “C” variances for converting two properties to use as a house of worship and related uses.

Vice Chairman Neuer was recused from hearing this application and did not vote on this resolution.

Ms. Beirne stated that Mr. Williams, attorney for the applicant, and Ms. Gabry emailed her with suggested revisions to the resolution. She read the revisions, on record, and stated that she approved all of them and will incorporate them into the resolution.

Ms. Beirne stated that Chairman Buechler also emailed suggested revisions to this resolution that were distributed to the Board Members and she accepted those revisions.

Ms. Beirne also stated that she needed guidance from the Board regarding condition #12. She said that she needed clarification as to what Chairman Buechler stated at the meeting on 9/17/15 regarding this condition. Mr. Williams provided the Board with a copy of the transcripts from that meeting and it was determined, after reading the transcripts on record, that condition #12 would be eliminated.

Chairman Buechler made a motion to adopt the resolution with said revisions and Ms. Gabry seconded the motion.

The vote was as follows:

DarConte:	-	Schwarzbaum:	Yes
Gabry:	Yes	Steinhart:	Yes
D. Nash:	-	Sussman:	-
Neuer:	Recused	Weiss:	-
Quentzel:	Yes	Chairman Buechler:	Yes

**2. ZB-15-02/172 CSI Corp. t/a
Black & White Taxi Company**

Approved 9/17/15

44 Washington Street

Block: 118; Lot: 40; Zone: B-1

Seeking site plan approval and a “D” variance for the establishment of a taxi cab business in an existing garage.

Ms. Beirne stated that Vice Chairman Neuer and Mark Winter, attorney for the applicant, provided her with comments for this resolution that were distributed to the Board Members and she accepted them.

Chairman Buechler asked for a motion to adopt the resolution with said revisions.

Vice Chairman made a motion to adopt the resolution with said revisions and Mr. Quentzel seconded the motion.

The vote was as follows:

DarConte:	-	Schwarzbaum:	Yes
Gabry:	-	Steinhart:	-
D. Nash:	Yes	Sussman:	-
Neuer:	Yes	Weiss:	-
Quentzel:	Yes	Chairman Buechler:	Yes

APPLICATION(S)

1. ZB-15-11/Panorama, LLC d/b/a Chit Chat Diner

Block: 111; Lot: 1.05; Zones: B-2 & PURD

410 Eagle Rock Avenue

Seeking preliminary & final site plan approval with “d” variance & bulk variances to demo an existing diner and construct a new one story restaurant.

EXHIBITS

A-1 – Floor Plan - sheet A-1.0 with a revision date of 9/24/15

A-2 – Mezzanine Plan - sheet A-1.1 with a revision date of 9/24/15

A-3 – Proposed elevations - sheet A-2.0 with a revision date of 9/24/15

A-4 – Proposed elevations -sheet A-2.1 with a revision date of 9/24/15

A-5 – HVAC Units on Roof - sheet A-3.0 dated 9/24/15

A-6 – Preliminary and Final Major Site Plan - sheets C-01 to C-12 (12 sheets)

A-7 – Site Plan (color) - sheet C-04

A-8 – Aerial Photograph (Google Map)

A-9 – Color Sampling Photograph

*Exhibits A-1 thru A-8 were pre-marked for identification.

It is noted for the record that Vice Chairman Neuer resides within 200’ of the site and was required to be recused from hearing this application. He stepped down from the dais and did not participate.

Robert Williams, Esq., attorney for the applicant, approached the podium.

Chairman Buechler advised Ms. Beirne that he was just made aware that one of the partners in his law firm is also a partner in the adjacent building to the proposed site and asked her if he should recuse himself.

Ms. Beirne stated that it is her opinion that Chairman Buechler does not have to recuse himself from hearing this application.

Mr. Williams also stated for the record that he did not see a reason for Chairman Buechler to recuse himself from hearing this application.

The adjacent property owner Typhon Realty, LLC, through its representative, also stated that they had no issue with Chairman Buechler hearing this matter.

Mr. Williams began detailing the application stating that his client is proposing to establish a restaurant, known as the Chit Chat Diner, on the site that was formerly the Eagle Rock Diner and before that it was Pals Pancake House. He said that the applicant owns another Chit Chat Diner in Hackensack New Jersey.

Mr. Williams called his first witness.

Michael Dipple approached the podium and was sworn under oath. He detailed his professional background as a Professional Civil Engineer licensed in the State of New Jersey and stated that he has testified before Boards in approximately two hundred (200) Municipalities. Mr. Dipple stated that he and his partner, Bill Voyt, worked on the project together; he said Mr. Voyt signed the plans and he did the design.

Chairman Buechler accepted Mr. Dipple as an expert in Civil Engineering.

Mr. Dipple presented sheets C-01 – C-12 of the site plans, with a revision date of 9/25/15, that were pre-marked as Exhibit A-6 for identification.

Mr. Dipple referred to sheet C-02 of Exhibit A-6 and detailed the existing conditions on the site. He said that the applicant is proposing to demolish the existing building and construct a new building.

Mr. Dipple referred to sheet C-03 and C-04 of Exhibit A-6 and detailed what is being proposed on the site i.e. the building, the new sidewalk, the signage and the fencing.

Mr. Dipple stated that they are proposing eighty five (85) parking spaces on the site and detailed their location and the striping of the stalls. He said that the proposed parking will be more efficient.

Chairman Buechler asked Mr. Dipple if these plans were revised to reflect the comments made at the Site Plan Review Advisory Board meeting; he replied yes.

Mr. Dipple stated that the architecture on the proposed building is more modern for a diner. He said that the new sign is slightly smaller and shorter than the existing sign and will be in same location.

Mr. Dipple detailed how a vehicle would enter and exit the site.

Chairman Buechler asked Mr. Dipple if a vehicle can make a left turn westerly out of the driveway; he replied yes. He said that, because Eagle Rock Avenue is a county road, they will also be going before the Essex County Planning Board for their approval.

Mr. Dipple referred to sheet C-05 of Exhibit A-6, the grading, drainage and utility plan, and detailed it. He described the drainage pattern and stated that the storm water currently drains to the rear and into the office building to the left of the site and some run-off goes to Eagle Rock Avenue. Mr. Dipple said that they are proposing to change that pattern and will take all of the drainage to the front on the site. He said they will install an underground detention facility that will hold all of the run off and discharge it into Eagle Rock Avenue.

Mr. Williams asked Mr. Dipple if the storm water runoff will continue drainage onto the adjacent site; he said no.

Mr. Dipple referred to sheet C-05a of Exhibit A-6 and detailed the steep slopes plan. He said they are disturbing some of the steep slope area and there will be a little jump in the grade. Mr. Dipple said that a variance is required for that because it shows some disturbance. He said that there are some minor areas disturbed from prior development but no structures will be going on those areas.

Mr. Dipple referred to sheet C-06 of Exhibit A-6 and detailed the landscaping plan. He said that he met with the Township Forester, John Linson, and he was satisfied with the plan proposed. Mr. Dipple said that Mr. Linson advised them on what species of trees to plant and detailed what trees they are planting. He said that Eric Keller also suggested some species of trees to plant and they will also incorporate those into the plan.

Mr. Dipple referred to sheet C-07 of Exhibit A-6 and detailed the lighting plan. He stated that LED fixtures are being proposed and described the illumination of the parking area.

Chairman Buechler asked Mr. Dipple how high the light poles will be; he said twenty (20) feet high. Mr. Dipple stated that the light poles will have a shield that throws to the front and not to the back.

Chairman Buechler asked Mr. Dipple if the light poles were reduced by five (5) or six (6) feet how many light poles would you need; he said reducing the light poles to fifteen (15) feet is too low.

Mr. Keller stated that dropping the light poles would mean you need more poles and twenty (20) foot light poles, in his opinion, is adequate for this area.

There was a discussion between Mr. Dipple and Mr. Keller regarding the proposed lighting plan and Mr. Keller offered his suggested revisions to the proposal.

Mr. Williams stated that the lighting plan will be subject to Mr. Keller's approval.

Chairman Buechler asked Mr. Dipple if the four (4) parallel parking spaces shown on the plan are on the property line; he replied yes.

Chairman Buechler asked Mr. Dipple if there is a ten (10) foot buffer there; he said no. Mr. Dipple said that is an existing condition.

Mr. Dipple presented a colored rendering of the site plan that was pre-marked as Exhibit A-7 for identification.

Mr. Dipple referred to Exhibit A-7 and detailed all of the landscaping on the site.

Mr. Keller said that he had suggested, in his memo, the applicant install a pedestrian connection from Eagle Rock Avenue to the building; Mr. Dipple stated that the applicant agreed to do that.

Mr. Keller said that he reviewed Mr. Linson's memo and there is one item that he disagrees with regarding planting ornamental trees in the front. He said he will defer that decision to the Board.

Chairman Buechler asked Mr. Keller if the trees in the front would impair site line; he said he would like to hear what the traffic engineer has to say about that. Mr. Keller also said that there are overhead wires where those trees will be planted so they are going to need a shorter tree or PSE&G will cut them.

Mr. Keller stated that there is not an Exhibit for trucks making deliveries or emergency vehicles entering or exiting the site. He asked Mr. Dipple where the trucks will unload their product and how will they get there.

Mr. Dipple stated that the diner gets deliveries every day and, because of the size of the site, they use smaller trucks. He said that the deliveries are made during low customer hours.

Chairman Buechler asked what the proposed hours of operation will be for the diner; Mr. Williams said they will be open 24 hours a day, seven days a week and the Police Department will have to approve that.

Mr. Dipple detailed how a truck will enter to make the deliveries in the rear. He also stated that a fire truck can get to the back of the diner.

Chairman Buechler asked if the Township's Fire Official reviewed the plan; Mr. Williams replied yes.

Mr. Keller said that Mr. Dipple issued a letter dated 10/15/15 stating they will comply with all of the recommendations that were outlined in his letter dated 10/9/15.

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

Chairman Buechler asked if any members of the public had any questions for Mr. Dipple.

Ivy Cutler approached the podium and stated that she lives at 10 Smith Manor Boulevard. She said she is here on behalf of the Condo Association Board.

Chairman Buechler advised Ms. Cutler that she is here for herself and not the board.

Ms. Cutler stated that she has photographs of rocks falling from the cliff and asked Mr. Dipple what would happen if there was a mishap during demolition.

Mr. Dipple stated that he is not aware of falling rocks and said that they are not doing any work near the rear fence. He said that the existing building is a good distance from the cliff.

Ms. Cutler asked what if the demolition caused another rock fall; Mr. Williams said that they have insurance.

Ms. Cutler asked Mr. Williams if they will provide a dollar figure; he said that they will be guided by the Zoning Board.

Lawrence Rolnick approached the podium and stated that he lives at 545 Boulevard in Westfield New Jersey. He said that he is a member of Typhon Realty, LLC who owns the property to the left of the site and asked Mr. Dipple how long until the new drainage system will be operational.

Mr. Dipple stated that they will have to get permits after Board approval and the construction would start sometime in the spring of 2016. He said that the build-out takes nine (9) months and the drainage system will not go in until the parking lot is constructed. Mr. Dipple said the approximate time frame would be the fall of next year.

Mr. Rolnick asked Mr. Dipple if, because they are disturbing some of the slopes, will this turn into more water, sand and dirt from the site draining into their parking lot; he said that the soil erosion permit that they have to obtain from the Hudson, Essex and Passaic Soil Conservation District will manage that. Mr. Dipple stated that they will put some type of drainage system in right away, i.e. filters and a silk fence, and they will comply with whatever the soil conservation requires to prevent that happening.

Mr. Keller asked Mr. Dipple if they will agree to put up a super silk fence with hay bales behind it; he replied yes.

Mr. Keller referred to sheet C-02 of Exhibit A-6 and said that he recommends that the trees on the edge of the slope of the cliff remain.

Mr. Dipple stated that Mr. Linson identified evasive species and wants those trees removed.

Chairman Buechler asked Mr. Keller to reach out to the Township's Forester, Mr. Linson, and ask him to submit a supplemental letter to the Board.

Mr. Williams stated that they will comply with whatever Mr. Linson recommends.

There were no further questions for Mr. Dipple.

Chairman Buechler called for a recess at 9:28 pm.

Chairman Buechler resumed the meeting at 9:39 pm.

Mr. Williams called his next witness.

Steven B. Lazarus approached the podium and was sworn under oath. Mr. Lazarus detailed his educational and professional background as a licensed architect in the State of New Jersey.

Chairman Buechler accepted Mr. Lazarus as an expert in Architecture.

Chairman Buechler asked Mr. Lazarus how many times he visited the site; he replied four (4) times.

Mr. Lazarus stated that they met with the Township's Site Plan Review Advisory Board and detailed all of the Board's suggested revisions. He said that the revised plans reflect all of them except the HVAC units which he will detail where they will be located.

Mr. Lazarus presented the architectural plans that were pre-marked as Exhibit A-1 for identification and began detailing the entrance and the interior design noting the specific area where the NYC skyline can be viewed.

Chairman Buechler asked Mr. Lazarus if they have a liquor license; he replied yes.

Mr. Lazarus described where the deliveries will be made in the rear of the building. He said that the double door is the service door and the single door is a second means of egress.

Mr. Williams asked Mr. Lazarus how many seats there will be; he said one hundred and eighty two (182) seats.

Mr. Sussman asked Mr. Lazarus if the single door in the back is an emergency exit; he replied yes but they prefer everyone enter from the front.

Mr. Lazarus detailed the storage areas in the building as outlined on Exhibit A-1.

Mr. Lazarus presented the proposed front and side elevations of the building, which was pre-marked as Exhibit A-3 for identification, and detailed them.

Mr. Lazarus presented a colored photograph that was marked as Exhibit A-9 for identification.

He referred to Exhibit A-9 and said that it represents the materials and colors that will be used on the facade. Mr. Lazarus said that the Exhibit does not show where the lights that will be located on the building and he detailed where they will be. He also said that the bathrooms will be ADA compliant.

Mr. Lazarus presented the proposed rear and side elevations of the building, which was pre-marked as Exhibit A-4 for identification, and detailed them.

Mr. Lazarus presented the proposed floor plans showing the location of the HVAC units on the building which was pre-marked as Exhibit A-5 and detailed it. He said that none of the units will be visible at this location.

Mr. Steinhart asked Mr. Lazarus why they were not constructing a pre-engineered building; he said because the applicant did not want one.

Mr. Quentzel asked Mr. Lazarus if they would consider making the exit in the rear for emergency use only; he said that would be up to the owner.

Chairman Buechler asked Mr. Lazarus if employee parking is in the rear of the building; he replied yes.

Mr. Keller asked Mr. Lazarus if it is an appropriate design to have delivery men carry products up the stairs; he said probably not but they do not have a choice.

Mr. Keller stated that the original design showed a ramp in the rear for deliveries and asked Mr. Lazarus if there is any reason why they cannot install the ramp; he said no.

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

Chairman Buechler asked if any members of the public had any questions for Mr. Lazarus.

Lawrence Rolnick approached the podium stating that he lived at 545 Boulevard in Westfield New Jersey. He asked Mr. Lazarus if they could put something over the HVAC units so that you cannot see them from the office windows of the adjacent building; he said they could plant trees.

Mr. Williams called his next witness.

Elizabeth Dolan approached the podium and was sworn under oath. She detailed her educational and professional background as a licensed engineer in the States of New Jersey, New York and Delaware.

Chairman Buechler accepted Ms. Dolan as a traffic expert.

Ms. Dolan stated that she prepared a traffic analysis that was submitted to the Board Members which provided traffic counts when the previous diner was still operating. She detailed the days and times that the traffic counts were done and stated that the traffic is busiest during the weekday evenings. Ms. Dolan stated that she did not use the numbers from the diner because it was not very busy so she used the higher numbers from the Institute of Transportation Engineers standards.

Chairman Buechler asked Ms. Dolan if you could make a left hand turn traveling west into the site if there is a double yellow line; she said yes, that is legal.

Chairman Buechler asked Ms. Dolan if they did an accident count; she replied no. Ms. Dolan stated that the Police Department did not require an accident count.

Ms. Dolan stated that they are required to have ninety one (91) parking spaces and they are six (6) parking spaces shy. She said that it is her opinion they have adequate parking spaces because the old diner had less parking with almost the same seating. Ms. Dolan said that they are increasing the amount of parking spaces that the prior diner had.

Chairman Buechler asked Ms. Dolan if there will be any impact on the traffic on Eagle Rock

Avenue; she said that the left hand turn out of the site is a challenge during peak traffic hours.

Chairman Buechler asked Ms. Dolan if the bowling alley site has any restrictions when exiting; she said that she does not know.

Mr. Williams asked Ms. Dolan if there is safe ingress and egress from the site; she replied yes.

Chairman Buechler asked Ms. Dolan if the trees remain on Eagle Rock Avenue will they visually impair the driver; she said the foliage may cause an impact on drivers. Ms. Dolan said that the trees must be limbed so that they do not hinder the site line.

Mr. Keller asked Ms. Dolan if she would recommend sight triangles; she said that sight triangles could be provided as a condition of approval.

Kate Keller asked Ms. Dolan if the sign location will visually impair the driver; she replied no.

There were no further questions for Ms. Dolan from the Board Members or the Board Professionals.

Chairman Buechler asked if any members of the public had any questions for Ms. Dolan; there were none.

Mr. Williams called his next witness.

Peter G. Steck approached the podium and was sworn under oath.

Chairman Buechler stated for the record that Mr. Steck has testified before this Board many times and he is accepted as an expert in Professional Planning.

Mr. Steck stated that he submitted two reports and he is testifying from the 9/28/15 report tonight.

Mr. Steck stated that the building on the site was previously a diner but is presently vacant. He said that the existing building will be removed to accommodate more space for the new building which will take advantage of the New York City skyline.

Mr. Steck stated that the property is in a split zone; the parking is in a B-2 zone and the refuse area is in the PURD zone. He detailed all of the items of relief that are required stating that the "d-1" use variance is required because of the PURD zone.

Mr. Steck stated that because of the irregular shape and orientation of the property the PURD portion cannot be used for residential use.

Chairman Buechler stated that if the applicant reduced the size of the building they would not need the "d-1" variance. He advised Mr. Steck that he does not feel that he met the requirements for a "d-1" use.

Mr. Steck stated that he would like to continue with his testimony. He said that because the portion of the site in the PURD zone used to be a quarry the extreme hardship is from the topography. Mr. Steck stated that this development encourages the most appropriate use of the land. He said they are proposing a new building and parking lot and the aesthetics will be a benefit to the area from an economic development point of view.

Mr. Steck detailed the positive and negative criteria and stated that the special reasons are satisfied and the application can be approved without detriment to the public good.

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

Chairman Buechler asked if any members of the public had any questions for Mr. Steck.

Mr. Rolnick approached the podium and stated that he lives at 545 Boulevard in Westfield New Jersey. He asked Mr. Steck if there was a way to improve the soil to absorb the water between the two properties; he said that he cannot answer that question.

There were no further questions for Mr. Steck.

Chairman Buechler stated that there are changes to the plans that he would like to see before the Board deliberates. He said that he will open up the meeting for public comment and then continue the hearing to the 11/19/15 regular meeting.

Chairman Buechler asked if any members of the public had any comments.

Lawrence Rolnick approached the podium and was sworn under oath. He said that the prior owner of the property was discharging water off of the cliff which resulted in a lawsuit. Mr. Rolnick said that an agreement was made between the prior owner of the property and the prior owner of the adjoining property, that he is currently a partner in, which diverted the water to his property. He said that an easement was supposed to be filed and that was never done. Mr. Rolnick said that they are worried about soil sediment running off with the water runoff when construction begins and are requesting additional buffering that would absorb this water runoff. Mr. Rolnick said they would also like them to enclose the HVAC units for the aesthetics.

Mr. Williams asked Mr. Rolnick when he purchased the property; he said two years ago.

Mr. Williams asked Mr. Rolnick if he was aware that the prior owner was tied into their drainage system; he said he knew something was agreed upon. Mr. Rolnick said that the prior owner of his building gave the prior owner of the diner permission to tie into his system with a condition to replace the trees and shrubs that he removed but he never did.

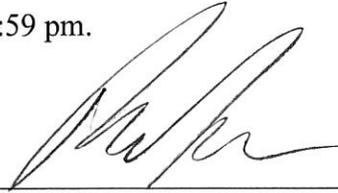
Mr. Williams said that any issues Mr. Rolnick had was with the prior owner and this does not apply. He said this was all done prior to his client buying the property.

Chairman Buechler closed public comment and stated that this application will be carried to the regular Zoning Board meeting held on 11/19/15. He said no further notice will be necessary.

Chairman Buechler stated that all revised drawings must be submitted to the Board Secretary at least ten (10) days before this meeting.

The meeting was adjourned by Chairman Buechler at 10:59 pm.

Adopted: November 19, 2015



Rose DeSena
Zoning Board Secretary