

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
February 16, 2017**

The West Orange Zoning Board of Adjustment held a regular meeting on February 16, 2017 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 the Star Ledger and posted on the Township Bulletin Board in accordance with the "Senator Byron M. Baer Open Public Meetings Act."

Chairman Neuer announced that a digital tape recording system is being utilized to record the proceedings of the meeting and instructed the general public on how the audio of the proceedings may be reviewed or obtained.

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, D. Nash, P. Neuer, B. Quentzel,
F. Sanders, M. Straker, M. Sussman, A. Weiss

ABSENT: I. Schwarzbaum (excused)
W. Steinhart (excused)

ALSO PRESENT: Liz Lenehy, Acting Planner for the Township
Eric Keller, Consulting Engineer
Alice Beirne, Esq., Board Attorney
Rose DeSena, Board Secretary
H. Grossman, Esq., Public Advocate

RESOLUTIONS

1. ZB-16-18/Panorama, LLC d/b/a/ Chit Chat Diner

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

410 Eagle Rock Avenue

Seeking amendments for upgrades to a prior approval for ZB-15-11

Chairman Neuer stated that this resolution was circulated to all of the Board Members and asked if any Board Member had any comments; there were none.

Chairman Neuer made a motion to adopt the resolution and Ms. Gabry seconded the motion.

The vote was as follows:

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

APPLICATIONS

1. ZB-16-04/Piacenza

Carried from 1/19/17

Block: 172.25; Lot: 12; Zone: R-4

14 Manger Road

“d” variance for establishing a home day care business

EXHIBITS

A-4 – Photo of the Mt. Pleasant School Driveway take from Google Maps.

Chairman Neuer noted for the record that Vice Chairman Buechler was not present at the last meeting when this application was heard and a transcript was not provided so he would not be able to vote.

Vice Chairman Buechler stepped down from the dais.

Marsha M. Moore, Esq., attorney for the applicant, approached the podium.

Ms. Moore stated that at the last meeting Joseph Staigar, the applicant's civil engineer, testified. She said that Mr. Staigar will address some questions at this meeting that were presented at the last meeting by the Board and Mr. Keller regarding the impact of the bus movements at the school driveway by the daycare driveway and the I.T.E. standards regarding the 24 hr. volume for a twenty (20) student daycare facility.

Joseph Staigar approached the podium and continued his testimony under oath. He said that he prepared a letter dated February 1, 2017 and circulated it to the Board Members in response to the issues raised at the last meeting.

Alan Ozarow, attorney for Robert Rosenfeld, asked Mr. Staigar for a copy of the letter dated February 2, 2017. Mr. Staigar complied.

Mr. Staigar presented a photo of the Mt. Pleasant School driveway, marked as Exhibit A-4 for identification, which was taken from Google Maps that was attached to his letter dated February 2, 2017.

Mr. Staigar referred to Exhibit A-4, detailing the superimposition of a school bus exiting the school driveway, and stated that the driveway centerlines have sufficient room to accommodate turns by the buses. He said there will be no impact on the school driveway from the daycare driveway and there will be no need to close the daycare driveway during the school peak hours.

Mr. Staigar also explained the ITE's 24 hour volume analysis of a 20 student daycare, as per his letter dated February 2, 2017.

Chairman Neuer asked Mr. Keller if he was satisfied with Mr. Staigar's testimony; he replied yes.

Ms. Moore asked Mr. Staigar his opinion about a question raised at the last meeting regarding a parent utilizing the garage space; he said that this is impractical because the applicant will keep the garage closed for security and energy conservation reasons. Mr. Staigar said that the garage space will be utilized by staff only.

Mr. Ozarow referred to Mr. Staigar's letter dated February 2, 2017 and stated that, according to the math, the number of trips generated in and out were incorrect. Mr. Staigar said that this was a typographical error and it should be changed to 31 trips in and 31 trips out.

Chairman Neuer asked Mr. Staigar if he would like to amend his letter dated February 2, 2017 to read 31 trips in and 31 trips out; he said yes.

There were no further questions for Mr. Staigar.

Chairman Neuer asked Ms. Moore what term is being used for this business; is it a child daycare facility or a family daycare facility; she said it is a child daycare.

Ms. Moore said she would like to re-call the applicant as her next witness.

Daniela Piacenza approached the podium and continued under oath.

Ms. Moore asked Ms. Piacenza if she is limiting her daycare operation to twenty (20) children per day; she said yes. She said that she will not accept a child part time for one day but is willing to accept a child for two days.

Chairman Neuer asked Ms. Piacenza if a total of no more than twenty (20) children will be arriving and departing on a daily basis; she replied yes.

Mr. Quentzel asked Ms. Piacenza if three children leave during the day will she replace them; she said no.

Ms. Moore asked Ms. Piacenza if she will be renting out the business at any time; she replied no.

Chairman Neuer asked Ms. Piacenza to confirm that the daycare cannot operate without a head teacher; Ms. Piacenza said that is correct.

There were no further questions for Ms. Piacenza.

Ms. Moore called her next witness.

Peter Steck approached the podium and was sworn under oath. Mr. Steck detailed his educational and professional experience as a licensed Professional Planner in the State of New Jersey.

Chairman Neuer accepted Mr. Steck as an expert in professional planning.

Mr. Steck stated that he prepared a report dated December 19, 2016 that was submitted to the Board Members.

Mr. Steck stated that the site for the proposed daycare is on a half-acre lot and located directly across from an elementary school. He said that there is no signage being proposed or changes to the exterior of the house and he detailed the interior space that will be utilized for the daycare.

Mr. Steck stated that there will be twenty (20) individuals per day at the daycare; he said if a child leaves midday it will take away traffic from the afternoon peak hour.

Mr. Steck said that the main activity in the neighborhood is from the elementary school and that there is also an existing family daycare on Ralph Road that has five (5) children. He said that a family daycare can have up to five children and does not need Board approval.

Mr. Steck stated that the proposed daycare is in an R-4 zone that allows one family homes; he said a home occupation is allowed in that zone along with public and private schools. Mr. Steck said that the applicant is proposing a daycare center in a single family home which is not permitted in that zone. He said that the proposed daycare is a second principal use on the property.

Mr. Steck continued his testimony and stated that the applicant is requesting variance relief from the required number of parking spaces and that curbing in the driveway is also not being proposed.

Mr. Steck stated that the proposed family daycare is an inherently beneficial use and read the applicable section of the Municipal Land Use Law designating a family daycare as an inherently beneficial use.

Mr. Steck detailed the importance of daycare operations as stated in the Municipal Land Use Law and that this application does not have to satisfy the negative criteria.

Mr. Steck described the four-step Sica test for an inherently beneficial use and stated his opinion that this application meets the criteria.

Mr. Steck stated that a family daycare is a permitted use in a non-residential zone and listed all of the detriments of having a daycare in a home.

Mr. Steck stated that the applicant is volunteering conditions for the approval such as limiting the number of children to twenty (20); staggered morning drop-off; operating the daycare only on week days; drop-off in the parking lot and not on the street; the owner of the house owns the daycare center and cannot lease it out; owner is only utilizing a small component of the building and no signs will be on the property.

Mr. Steck stated that the family daycare is also a second use on one site but the State permits it by right.

Chairman Neuer stated that a family daycare was the basis for Mr. Steck's testimony; the Chairman then stated that those criteria do not apply here because, among other things, the applicant is proposing a child daycare and that this different use is not permitted.

Mr. Steck asked Chairman Neuer if the Board denies this application can the applicant can open a family daycare; he replied yes.

Chairman Neuer stated that Mr. Steck's testimony referenced a family daycare; he said this application is not the same because the Board has to approve a child daycare.

Chairman Neuer asked Mr. Steck if the Board could reduce the number of children to ten (10) as a condition; he said yes.

Chairman Neuer stated that the applicant testified that the proposed daycare will be affordable and asked Mr. Steck what affordable daycare is; he said today families need two incomes to own a house and that this is an alternative to allow a husband and wife to have two incomes. Mr. Steck did define affordable daycare.

Ms. Weiss stated that there must be a reason that the State will only allow up to eight (8) children at a family daycare and that anything over that number requires Board approval.

Mr. Steck said that more children means that there will be a greater impact but it does not take away that it is an inherently beneficial use.

In response to Mr. Steck's testimony that the exterior of this home would appear the same as the other homes in the neighborhood, Chairman Neuer asked Mr. Steck how many other homes in the neighborhood have seven (7) parking spaces; he said he did not know but stated that the parking spaces for this proposal are not visible from the street. The Chairman disagreed with Mr. Steck.

Chairman Neuer asked Mr. Steck how many other daycares presently operate in West Orange; Mr. Steck said he does not know because he did not do a survey on that.

Chairman Neuer asked Mr. Steck to state the maximum size of a home occupation; Mr. Steck responded it is half of what the applicant is proposing.

Mr. Quentzel asked Mr. Steck if the applicant would consider a lower number of children if the Board suggested that; he said he did not know.

Mr. Quentzel asked Mr. Steck if it is in the Board's purview to suggest a lower number of children; he said yes.

Ms. Nash asked Mr. Steck if someone can run a family daycare and a child daycare simultaneously; he said he does not think so.

Chairman Neuer said that Mr. Steck suggested a condition that the applicant cannot lease the daycare or sell it with the variance. Ms. Moore stated that the owner of the daycare must reside in the home.

Chairman Neuer asked Ms. Moore if she is saying that if the property is sold the new owner can own the daycare; she said that if the property is sold, the new owner has to have a certified operator working at the daycare.

Chairman Neuer asked who the owner of the daycare is going to be.

Ms. Piacenza said that the daycare is an LLC owned by her and that LLC will be the owner and operator.

Chairman Neuer said that based upon the testimony presented, Ms. Piacenza does not have the credentials to operate the daycare.

Ms. Moore said that Ms. Piacenza does have the credentials to be the owner; she needs a head teacher for the daycare to function.

Mr. Ozarow asked Mr. Steck if his testimony regarding the daycare being an inherently beneficial use is a presumption; he said no. Mr. Steck said that is the definition in the Municipal Land Use Law.

Mr. Ozarow asked Mr. Steck if there were one hundred daycares on Manger Road would it still be an inherently beneficial use; he said yes.

Mr. Ozarow asked Mr. Steck if he felt the site was suitable for a daycare; he said yes.

Mr. Ozarow asked Mr. Steck if he felt the daycare would be a detriment to the neighborhood; he said no. Mr. Steck said that if the Board determines that it is a detriment then they can deny it.

Mr. Ozarow asked Mr. Steck if someone lived next door to a daycare that had twenty (20) toddlers would that be considered a detriment; he said in his opinion no it would not. Mr. Steck said that the daycare workers would keep the noise down and there would not be twenty (20) children outside at one time.

Mr. Grossman asked Mr. Steck if the applicant will be cooking on the site; he said that the applicant testified that there will not be any cooking on the site. Mr. Steck said that he believes that food will be stored in the daycare area.

Tal Ben-Zvi approached the podium and stated that he lives at 5 Allsop Court. He asked Mr. Steck to testify as to the hardship for the parking variance.

Chairman Neuer stated that the traffic expert testified to that; not Mr. Steck so that Mr. Steck is not required to answer.

Mr. Steck stated that the positive criteria is satisfied subject to the Sica test.

There were no further questions for Mr. Steck.

Chairman Neuer called for a recess at 9:24 pm.

Chairman Neuer resumed the meeting at 9:34 pm.

Devon Facey approached the podium. Mr. Facey, applicant for ZB-16-11, stated that his application was scheduled to be heard at this meeting. He said that he did not think the Board would get to his application at this meeting and asked if he could have it carried over to the March 16, 2017 meeting.

Chairman Neuer stated for the record that ZB-16-11/Facey, that was scheduled to be heard at this meeting, will be carried over to the next Zoning Board meeting held on March 16, 2017 and that no further notice will be necessary.

Chairman Neuer also announced that the Board will hear applications ZB-16-16/Image Resources Group on behalf of Macy's Backstage and ZB-16-15/Public Service Electric & Gas Company before the ZB-16-06/Zamora application is heard.

Chairman Neuer asked Ms. Moore to approach.

Ms. Moore approached the podium and provided her final summation on this application.

Ms. Moore stated that the applicant has agreed to cap the number of children to twenty (20) and not stagger the hours. She said the children will be supervised and there will not be twenty (20) children outside at any times. Ms. Moore stated that the applicant will reside on the site as the operator and, because it is an owner occupied use, she will continue to reside in the home and not lease or sub-lease the property. She stated that the positive and negative criteria was satisfied and asked the Board to approve the application.

Chairman Neuer asked if any members of the public had any comments or testimony to offer to the Board.

Alan Ozarow, attorney for Robert Rosenfeld, approached the podium and stated that twenty (20) children are too many to have in a small area and will create an extreme detriment. He said that the parking will also be a substantial detriment.

Tal Ben Zvi approached the podium and was sworn under oath. He stated that he lives at 5 Allsop Court and said that the applicant is creating her own hardship. Mr. Ben Zvi said that the applicant has no background in child care and he would like her to get certified first.

Ms. Moore said that the licensing authority requires Zoning Board approval before the applicant may be issued her certification. She said that you cannot get a license to operate a daycare without Zoning Board approval.

There were no further comments from the members of the public.

Chairman Neuer closed the meeting.

Chairman Neuer stated that he is not in favor of the application because the applicant testified that she purchased the home with the intention of making it a daycare. He said that the applicant created her own hardship and should not have purchased the property until she received Zoning Board approval.

Chairman Neuer stated that there was no testimony as to the number of daycares in this community so there is no proof of special need for any additional daycare facility. Further, the applicant cannot be the operator of the facility and will have to hire an outsider to do this.

Chairman Neuer stated that there was no testimony as to how the applicant's tuition compares to other daycare facilities; he said the Board has no idea if the tuition is affordable or at market rate.

Chairman Neuer stated that there was no testimony regarding the number of younger and older students that will be enrolled; he said that the greater number of younger children requires a greater number of staff to be hired and that will require additional parking.

Chairman Neuer stated that this is not a family daycare facility and Mr. Steck compared this to a family daycare in his testimony; that testimony was not based upon the proposed use and that limits its' credibility.

Chairman Neuer stated that there was no testimony in regards to the affordability of the daycare and the use of family daycare statutes to justify this application is not appropriate.

Ms. Gabry stated that she agrees with Chairman Neuer and is not in favor of the application.

Mr. Quentzel said that he thought that the Board could possibly reduce the number of children but, because that is not possible, he is not in favor of the application.

Ms. Weiss stated that this is not about the applicant; this is about zoning and neighborhoods. She said that Ms. Moore did a good job and she feels there are too many children in a residential neighborhood. Ms. Weiss said the negatives outweigh the positives and that the applicant might consider starting a family daycare.

Chairman Neuer made a motion to deny the application and Ms. Gabry seconded the motion to deny the application.

The vote was as follows:

Buechler	-	Schwarzbaum:	Recused
Gabry:	Yes to Deny	Steinhart:	-
D. Nash:	Yes to Deny	Straker:	Yes to Deny
Quentzel:	Yes to Deny	Sussman:	Yes to Deny
Sanders:	-	Weiss:	Yes to Deny
		Chairman Neuer:	Yes to Deny

2. ZB-16-16/Image Resources Group **Carried from 1/19/17**
on behalf of Macy’s Backstage

Block: 155.21 & 155; Lots: 40 & 40.03; Zone: P-C

495 Prospect Avenue

Seeking two “c” variances to install an additional façade sign

EXHIBITS

A-1- Photos of Existing Signage

Robert C. Williams, attorney for the applicant, approached the podium and detailed the application.

Mr. Williams stated that the applicant is asking the Board to permit them to install a second façade sign when only one is allowed.

Mr. Williams presented photos of the existing signage which was marked as Exhibit A-1 for identification. He referred to Exhibit A-1, showing all of the existing signage for the store, and said that the store is not visible from Prospect Avenue. Mr. Williams said in order to have better visibility from the Shop Rite parking lot, they are proposing a façade sign.

Mr. Williams called his first witness.

Thomas Fitzsimmons approached the podium and was sworn under oath.

Mr. Fitzsimmons, fabrication foreman for National Sign and Lighting Company, detailed the size and location of the proposed sign. He also detailed how the sign will be mounted to the façade of the building and said it will be lit only until 11:00 pm like the existing signs in the shopping center.

Vice Chairman Buechler asked Mr. Fitzsimmons if there is only one door to the store; he replied yes.

There were no further questions for Mr. Fitzsimmons.

There were no comments from the Board professionals or any member of the public.

Chairman Neuer closed the meeting and asked for a motion.

Vice Chairman Buechler made a motion to approve the application; Mr. Quentzel seconded the motion.

The vote was as follows:

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

3. ZB-16-15/Public Service Electric & Gas Company

325 Mt. Pleasant Avenue

Block: 155; Lot: 26.01; Zone: O-R

“d” variance for electrical and civil upgrades to the West Orange PSE&G switching station.

EXHIBITS

A-1 - Letter from Essex County Planning Board dated February 15, 2017

A-2 – Aerial Photo of the Site

Chairman Neuer stated for the record that there is a court reporter present for the PSE&G application who is designated as the official transcriber for this application.

Vice Chairman Buechler was recused from hearing this application and stepped off the dais.

Ms. Gabry stated that she is a member of the Essex County Country Club that is within 200 feet of the site and asked Ms. Beirne if this would be a conflict; she replied no.

Dr. Straker stated that he owns property within 200’ of the site but does not live there.

Ms. Beirne stated that this is a conflict and said that Dr. Straker cannot hear the application.

Dr. Straker stepped off of the dais.

Glen C. Kienz, attorney for the applicant, approached the podium.

Mr. Kienz detailed the application and stated that they are proposing to make final improvements on the site that will provide additional back-up electricity. He said that they will be installing three concrete foundations to put the A frames up and they will be the same size as the existing ones.

Mr. Kienz said that the applicant is requesting a height variance for the structure and a variance for the expansion of a pre-existing non-conforming use.

Mr. Kienz referred to a condition of a prior approval for ZB-09-07 for PSE&G regarding the installation of sidewalks along Mt. Pleasant Avenue. He said, at that time, they met with the County and were told that they did not need sidewalks there.

Mr. Kienz said that on February 14, 2017, the County approved this application with the condition that they install sidewalks along Mt. Pleasant Avenue and Prospect Avenue.

Mr. Kienz presented the letter from the Essex County Planning Board dated February 15, 2017 that was marked as Exhibit A-1 for identification.

Mr. Kienz stated that they will need State and County approval to install the sidewalks.

Chairman Neuer stated that the application to the State should denote how important the sidewalks are because it is unsafe. He asked Mr. Kienz how long it would take to file the application; he said within the next three (3) to six (6) months.

Chairman Neuer stated that the applications to the State and to Essex County will be filed within three (3) months.

Chairman Neuer asked if anyone had any questions regarding the sidewalks.

Robert Rashkes approached the podium and stated that he lived at 35 Oak Crest Road. He asked Mr. Kienz why the applicant paid \$600 to the State of New Jersey in 2007 requesting sidewalks; he said that was an application fee not a permit fee.

Mr. Kienz called his first witness.

John Mele approached the podium and was sworn under oath. Mr. Mele detailed his professional background as an Engineer and Planner licensed in the State of New Jersey.

Chairman Neuer accepted Mr. Mele as an expert licensed professional engineer and a licensed professional planner.

Chairman Neuer asked Mr. Mele if his testimony would mirror what Mr. Kienz stated; he said yes.

Mr. Mele presented the aerial photo of the site that was marked at Exhibit A-2 for identification. He said that it was taken from google maps on October 11, 2014.

Mr. Mele referred to Exhibit A-2 and delineated where the A Frames are being proposed. He said that the trailers will be removed after seventy two (72) hours of the issuance of the certificate of occupancy. Mr. Mele stated that this will not cause any impairment to the zone or the zoning ordinance.

There were no questions for Mr. Mele from the Board Members, the Board Professionals or members of the public.

Chairman Neuer asked if any members of the public had any comments or testimony to present to the Board.

Robert Rashkes approached the podium and was sworn under oath. Mr. Rashkes stated that he lives at 35 Oak Crest Road and said that he recommends that the Township receive any/all correspondence from PSE&G regarding the sidewalks.

Chairman Neuer closed the public portion of this hearing..

Ms. Weiss asked Mr. Kienz if they could plant more trees on the site; he said no because of the nature of the site but said they will look into it with the Township Planner.

Chairman Neuer made a motion to approve the application with the following conditions:

- Applicant must file an application to install sidewalks on Mt. Pleasant Avenue and Prospect Avenue with Essex County and NJ Department of Transportation within three (3) months of this hearing date or no later than May 16, 2017.
- Applicant must install the sidewalks or contribute funds to have the Township install the sidewalks
- Applicant will work with the Township Planner in regards to providing shrubs or trees along the fence.

Chairman Neuer stated that the applicant can negotiate the bond with the Township Engineer.

Chairman Neuer asked for a motion to second the application with said conditions; Ms. Gabry seconded the motion.

The vote was as follows:

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

The meeting was adjourned by Chairman Neuer at 11:01 pm.

Adopted: March 16, 2017



Rose DeSena
Zoning Board Secretary