

**TOWNSHIP OF WEST ORANGE
PLANNING BOARD
MINUTES
May 1, 2013**

The Township of West Orange Planning Board held a regular meeting on May 1, 2013 at 7:30 P.M. in Council Chambers, 66 Main Street, West Orange, New Jersey.

Chairman Bagoff called the meeting to order at approximately 7:32 P.M. It was announced that notification of this meeting was given to the Township Clerk, and posted on the Township Bulletin Board on December 6 2012, in accordance with the requirements of the "Open Public Meetings Act".

PRESENT: Chairman Bagoff, Joanne Carlucci, Jerome Eben (7:44 P.M.), Tekeste Ghebremicael, Gerald Gurland, Vice Chairman Ben Heller Lee Klein, Councilwoman Susan McCartney (7:35 P.M.), William Wilkes II

ABSENT: Jason Lester, Ron Weston

ALSO PRESENT: Paul Grygiel, AICP, PP, Acting Township Planner; Patrick J. Dwyer, Esq., Board Attorney; Robin Miller, Board Secretary; Debbie Dillon, Audio-Digital Transcription Service

PLEDGE OF ALLEGIANCE

Chairman Bagoff requested all persons stand for the Pledge of Allegiance.

ROLL CALL

Chairman Robert Bagoff, Joanne Carlucci, Jerome Eben, Tekeste Ghebremicael, Gerald Gurland, Vice Chairman Ben Heller, Lee Klein, Jason Lester, Councilwoman Susan McCartney, Ron Weston, Williams Wilkes II.

ANNOUNCEMENTS

The next regular Planning Board meeting will be held on **June 5, 2013** at 7:30 P.M. in Council Chambers.

ADOPT MINUTES

Adopt the minutes of the April 3, 2013 Planning Board meeting.

DISCUSSION:

Mr. Gurland said he took issue with the April minutes regarding the testimony of Mr. Altieri that the ATM machines would be "accessible." He opined that the wording did not clearly indicate that the machines would be "handicap accessible". Chairman Bagoff said that the April minutes reflected what the witness stated; he advised Mr. Gurland that his concern would be noted in the May minutes.

The Board voted on adopting the minutes of the April 3, 2013 meeting as follows:

Motion: Mr. Ghebremicael

Second: Chairman Bagoff

Carlucci:	-	Eben:	-	Ghebremicael:	Y
Gurland:	Y	Heller:	Y	Klein:	Y
Lester:	-	McCartney:	Y	Weston:	-
Wilkes II:	-	Bagoff:	Y		

SWEARING IN

Paul Grygiel, AICP, PP, Phillips Preiss Grygiel LLC, Acting Township Planner.

RESOLUTION(S)

PB-13-04C/County of Essex-South Mountain Recreation Complex

Block(s): 163; Lot(s): 1; Zone: R-1

560 Northfield Avenue

Courtesy Review Application to construct Education Center at Turtle Back Zoo; to reconstruct Tree Top Adventure Course.

The Board voted on the Resolution as follows:

Motion: Chairman Bagoff

Second: Councilwoman McCartney

Carlucci:	-	Eben:	-	Ghebremicael:	Y
Gurland:	Y	Heller:	Y	Klein:	Y
Lester:	-	McCartney:	Y	Weston:	-
Wilkes II:	-	Bagoff:	Y		

PB-13-05C/County of Essex-South Mountain Recreation Complex

Block(s): 163; Lot(s): 1; Zone: R-1

560 Northfield Avenue

Courtesy Review Application to construct new pavilion over existing concrete pad and to install new playground structure at Turtle Back Zoo.

The Board voted on the Resolution as follows:

Motion: Chairman Bagoff

Second: Councilwoman McCartney

Carlucci:	-	Eben:	-	Ghebremicael:	Y
Gurland:	Y	Heller:	Y	Klein:	Y
Lester:	-	McCartney:	Y	Weston:	-
Wilkes II:	-	Bagoff:	Y		

PB-13-07/Village Supermarket Inc., d/b/a Shop Rite

Block: 155.21; Lot: 40; Zone: P-C

1 Rooney Circle

Preliminary and final site plan without variances to operate 24-hour business.

DISCUSSION

Mr. Dwyer advised the Board that the Application was for an Amended Site Plan, not a Preliminary and Final Site Plan as originally identified; he read the conditions of approval to the Board. Mr. Gurland said he had questions regarding the word "substantially" as used in Page Three (3), Item Eleven (11) of the Resolution because there may have been a major change to the site plan since the existing supermarket has been operating. Chairman Bagoff stated that the Application was not to change the footprint or structural changes; and there was no testimony stating same. Chairman Bagoff asked Mr. Dwyer if the wording could be misconstrued; Mr. Dwyer said it was in the eye of the beholder; but there was not testimony regarding changes to the building structure, just to the parking configuration.

Mr. Gurland further said he questioned the wording of Item Two (2), Page Four (4) of the Resolution. Mr. Dwyer answered that the wording was a standard item to be included in the Resolution; Chairman Bagoff concurred.

The Board voted on the Resolution as follows:

Motion: Chairman Bagoff

Second: Mr. Ghebremicael

Carlucci:	-	Eben:	-	Ghebremicael:	Y
Gurland:	Y	Heller:	Y	Klein:	Y
Lester:	-	McCartney:	Y	Weston:	-
Wilkes II:	-	Bagoff:	Y		

APPLICATION(S)

PB-13-08/Dialysis Center of West Orange, LLC

Block: 164; Lot: 1.03; Zone: OB-2
101 Old Short Hills Road, Ste. 120
Amended Site Plan.

EXHIBITS:

- A-1** - Drawing A1.0 – Site Plan and Project Information prepared by Christopher D. Kidd & Associates, LLC, revised plan dated 4/19/13;
- A-2** - Drawing A2.0 – Interior Floor Plan prepared by Christopher D. Kidd & Associates, LLC, drafted 4/4/13;
- A-3** - Drawing A3.0 – Existing Site Photos prepared by Christopher D. Kidd & Associates, LLC, drafted 4/4/13;
- A-4** - Decibel Level Diagram, prepared by Christopher D. Kidd & Associates, LLC, dated 4/30/13;
- A-5** - Aerial Exhibit, prepared by Maser Consulting P.A., dated 4/30/13.

Sandy L. Galacio, Esq., Windels Marx Lane & Mittendorf, LLP, attorney for Applicant appeared before the Board; he gave an overview of the Application for an Amended Site Plan with variances for an approximately 5,120 square feet, ten patient station outpatient dialysis clinic in an existing medical office building. The Technical Review Committee approved the technical site plan for interior improvements in March; the Board adopted the Resolution at the April meeting. The scope of work now being submitted included two new exterior door and frame assemblies within the existing window system and one new set of exterior double delivery doors within the existing frame. The new doors would be used for deliveries and emergency exits; not for public entrances, and would be secured from the exterior at all times. A new concrete sidewalk would be built to connect the new doors to the existing sidewalk. Additional work would include the installation of an emergency back-up diesel generator with a concrete pad and enclosure at the exterior of the building on the south side. The mechanical system would be separate from the existing building's central system in order to be backed-up on the emergency generator and would include five (5) new condensing units on the exterior of the building at grade as well as several fresh air intake louvers on the existing façade. The proposal would require a bulk variance for lot coverage; and possibly another variance for the fence, which was discussed at the Technical Review meeting. Mr. Galacio read Section 254.8(d) the Ordinance requirements for fence permits, which reads, "In all non-residential districts, a fence or wall to be used for screening may not exceed six (6) feet in height. If a property owner desires to exceed the six (6) feet limitation, the property owner shall apply to the Planning Board for technical Review. Mr. Galacio said the proposed fence height was eleven feet. Answering an inquiry from Mr. Dwyer, Mr. Grygiel said he believed the fence variance was warranted.

Mr. Galacio introduced his first witness; Jeff Dale, Vice President of Project Management, American Renal Associates. Mr. Dale was sworn in, presented his credentials, and was accepted by the Board to be an expert witness for the Applicant. Mr. Dale said the Application was for an end-stage renal disease treatment center. American Renal Associates owned one-hundred-thirty-one (131) centers in the United States, and would be partnering with the doctors at the

proposed site. The facility would service patients seeking renal care treatment on an outpatient basis up to three days per week.

Mr. Eben inquired if patients would be incapacitated while undergoing treatment; Mr. Dale answered in the negative. All patients would be fully aware, ambulatory and able to exit the premises in the event of an emergency situation.

Christopher D. Kidd, AIA, ALA, RIBA, Christopher Kidd & Associates, LLC, was sworn in, stated his credentials, and accepted by the Board to be an expert in architecture. Mr. Kidd gave a brief overview of the project including the installation of a new generator as required by law for this type of facility. Mr. Kidd detailed the type of generator and its specifications; a 150 kW diesel generator, approximately ten feet in height, to be placed twenty-five feet from the south side of the existing building away from fresh air intake units; increasing the impervious surface by 738 feet. Referring to Exhibit A-4, he detailed the decibel level for the generator; it would be within acceptable guidelines. A fence would be installed to screen the generator; pads would be installed for the required new HVAC equipment; it was important to control humidity levels for patient comfort. Mr. Kidd said he did not anticipate any tree removal, but possibly the removal of some small shrubbery during installation. The New Jersey Department of Consumer Affairs had approved the site to operate the facility on April 9, 2013. The building fell under the 2009 International Business Code, Business Group B, for an outpatient dialysis clinic.

Mr. Eben stated that Mr. Kidd testified that the building fell under Business Group B use, yet there was no code information listed on the drawings. Further, Mr. Eben said that he thought it was a use variance. Mr. Kidd answered that a dialysis center had previously operated in the building. Mr. Eben opined he did not believe the building was the right site for dialysis patients; he was concerned that immobile patients would not be able to exit in the case of an emergency. Mr. Kidd answered that the majority of patients would be able to leave on their own accord; others would be assisted if necessary. He said Mr. Eben's points were valid; however, the NJ State DCA had granted approval for the dialysis center at the site.

Mr. Eben said the proposed generator would be located in the front yard; he was concerned that it was a big unit for the front yard. He asked if the refueling equipment would be dragged across the lawn; and where would the truck be parked during refueling; he stated the truck would block parking spaces. Mr. Kidd said the proposed location was the best possible space for the unit. Chairman Bagoff said a condition of approval would be to limit the time(s) the tank be refueled or tested.

Mr. Ghebremicael asked if the Applicant had considered a natural gas generator that would be much cleaner and less noisy. Chairman Bagoff said that for this type of use, the DCA required a diesel generator; the requirements had been discussed at the previous Technical Review meeting.

Referring to Exhibit A-1, (Drawing A1.0 Site Plan and Project Information), Chairman Bagoff asked Mr. Kidd to verify the square footage of the additional impervious coverage; Mr. Kidd said the total amount of impervious surface was approximately 760 square feet. Chairman Bagoff asked if the generator could be screened by landscaping. Mr. Kidd said the lot coverage would increase from 195,005 square feet to 195,765 square feet; it was from 66.42% to 66.68% where 50% was allowed.

Mr. Gurland, referring to Exhibit A-1, (Drawing A1.0 Site Plan and Project Information), identified the line from the generator to the building and asked to where did the conduit lead go. Mr. Kidd said it went to the basement. Mr. Gurland inquired if the generator was moved, would the lead have to be longer. Mr. Kidd said it had to be 25 feet away from the fresh air intakes. Mr. Gurland stated he was concerned that the generator and HVAC would be in the front of the building; and stated he had a real problem with the location of the units. Mr. Kidd said the building technically had two front yards according to the ordinance; one fronting Old Short Hills Road, the other on

Hansen Road. The proposed generator would be in the yard facing Hansen Road; it was the best location on the site for servicing the dialysis center. Again referring to Exhibit A-1, Mr. Gurland said he had a problem understanding the 200 foot boundary line advising neighboring property owners; he asked if the 200 foot boundary originated at the outside of the building. Mr. Kidd answered the 200 feet was indicated from the property boundary line, not the outside of the building. Regarding the interior renovation, Mr. Gurland inquired if the plan incorporated access for a staff member in a wheel chair; did the law require compliance. Mr. Dwyer answered it was a building code issue, not a zoning issue.

There were no questions for Mr. Kidd from the Public Advocate or the Public.

Daniel Bloch, P.P., Maser Consulting, P.A., was sworn in, stated his credentials, and was accepted by the Board to be an expert witness in planning. Mr. Galacio asked Mr. Bloch to testify regarding the requested variances. Referring to Exhibit A-5, (Aerial Photos), Mr. Bloch described the site's surrounding area. He said the Application required two bulk variances: one for lot coverage, the other for fence height. It was his opinion that the five tests used to grant the variances were met; the improvements were to an existing medical office use and the proposed improvements would further the purposes of the zone; promote the appropriate use of land, public safety and welfare. The generator would be located twenty-five feet from the building; there would be adequate light and open space; ensuring clean air going in to the building. The generator would be screened by a fence and located approximately one-hundred feet from Hansen Road; the visual impact would be minimal because it would be overshadowed by the existing five-story building. He opined the Application advanced the goals and objectives of the Township's Master Plan; to properly locate a commercial service and maintain compatibility with adjacent land uses. The proposed use did not conflict with the welfare of neighboring municipalities; it would take advantage of its proximity to St. Barnabas Hospital; it would help promote growth in area health care industry.

Chairman Bagoff interjected that the generator was the issue. Mr. Galacio said that Mr. Kidd had testified that for this type of business the DCA required the generator.

Mr. Eben said he did not take issue with Mr. Bloch's testimony there would not be substantial visual impairment to the area; to be fair there are two front yards to the property; his issue was that subsequent Applicants would want front yard generators. Mr. Bloch said the issue was about this Application; this Application was unique because this was technically not a front yard. The generator would be located in the second front yard. The main entrance to the building was in the rear of the building where the parking lot was located. It was his opinion this was not the front of the building. Mr. Eben said it was a front yard; the Applicant was asking for a front yard variance. Mr. Eben said that another problem with the plan was that no landscaping was indicated. Mr. Galacio said the building owner could testify regarding landscape maintenance.

Councilwoman McCartney voiced concern the Board would be setting a precedent by granting the variance to locate the generator in the front yard; additionally, she said that at the Technical Review meeting the need for additional landscaping was discussed with the Applicant to help screen the fence.

Chairman Bagoff asked if it was possible to move the generator to another site; he was concerned that the homes and St. Barnabas would be impacted by the generator. Mr. Bloch said that garden apartments were approximately 300 feet away from the generator.

Chairman Bagoff asked Mr. Grygiel if the dialysis center was a permitted use for the zone. Mr. Grygiel answered in the affirmative; he added that as such, law mandated the generator.

There were no questions for Mr. Bloch from the Public Advocate or the Public.

Mr. Klein asked Mr. Kidd to give the height of the generator; Mr. Galacio answered it was approximately twelve feet tall; the whole point of the generator was to deal with a natural disaster. Moving the generator to the side would mean removing a line of mature trees.

Councilwoman McCartney asked if it would be possible to screen the generator with a chain link fence and landscaping. Mr. Galacio said the Applicant would be willing to work with the Township on landscaping.

Mr. Galacio concluded his testimony; he summarized the testimony presented for the Application and listed the variances requested: Section 25.7.1, Lot Coverage; 50% permitted; 66.4% existing; 66.7% proposed. Section 25-8.4(d), "If a property owner desire to exceed the six feet limitation, the property owner shall apply to the Planning Board for Technical Review. Application proposed an eleven feet fence.

The Public Advocate and the Public had no comments regarding the Application.

The Board deliberated on the Application.

Mr. Eben opined the Application was a great use for the property; however, he did not believe the testimony of Mr. Kidd proved granting variance relief for the fence.

Harvey Grossman, Public Advocate, requested to comment on the Application. He said he agreed with Mr. Eben regarding the fence. He opined the Applicant submit a fence and landscaping plan.

Chairman Bagoff asked Mr. Dwyer if as a condition of Approval, the Resolution would indicate the time when fuel trucks could refuel; and time the generator could be tested.

Mr. Heller recommended arborvitaes, ("Green Giants"), of eight to ten feet height be planted five feet on center to landscape and screen the fence.

Mr. Gurland asked if it would be possible to have the generator be sunken in to a low-grade pit. Mr. Kidd answered that the manufacturer did not recommend lowering the generator; mainly because of maintenance and the possibility of flooding during heavy storms. He said that extensive grading would be required.

Chairman Bagoff said that based on testimony, the generator would be required by the DCA. The testimony concluded that the proposed plan was the best solution; it would be screened; it would not be an issue visually.

Conditions:

1. The Applicant shall comply with all applicable Township, County, State and Federal laws, ordinances, regulations and directives, including without limitation, obtaining all applicable local, state and federal approvals and/or permits. Without limitation of the foregoing, prior to the signing of the approved site plans, and prior to the commencement of any land disturbance or construction, the Applicant shall submit to this Board, with a copy to the Board Engineer, proof that it has obtained all required governmental approvals.
2. If another governmental entity or agency grants a waiver or variance affecting the plans and/or exhibits submitted by the Applicant, this approval or the conditions attached to it, then the Applicant shall re-apply to this Board respecting the same and this Board shall have the right to view that issue as it relates to this approval and these conditions and modify and amend same, if appropriate.

3. In the event that any other required regulatory approval conflicts with the terms and conditions hereof, or materially alters the same, or the terms and conditions hereof are materially altered by any change in applicable law or regulation other than those municipal regulations for which change is prohibited by the Municipal Land Use Law (MLUL), or in the event Applicant or its successors or assigns construct or attempt to construct any improvement in conflict with or in violation of the terms of this approval, the Board hereby reserves the right to withdraw, amend or supplant the instant approval.
4. All construction, use and development of the property shall be in conformance with the plans approved herein, all representations of the Applicant and its witnesses during the public hearing, all exhibits introduced by the Applicant, and all terms and conditions of this resolution.
5. The Applicant shall pay all outstanding taxes, tax liens, application fees and technical review fees, as well as any inspection fees that may be required hereunder. The Applicant shall pay any additional fees or escrow deposits which may be due and owing within thirty (30) days of notification or this approval shall be deemed withdrawn.
6. All notes included in the approved plans, including notes required by this Resolution, shall be deemed conditions of approval having the same force and effect as conditions expressly set forth in this Resolution.
7. In order to reduce noise impact from the generator it may not be refilled or tested before 8 a.m. or after 7 p.m.
8. Applicant to provide arborvitae 8 to 10 ft. in height and 5 feet on center around the generator enclosure, except the gate, to screen it from sight.
9. All of the conditions in this Resolution will be included on the final plans submitted to the Township.

Chairman Bagoff called for a vote on the Application.

The Board voted on the Application as follows:

Motion: Chairman Bagoff

Second: Mr. Ghebremicael

Carlucci:	Y	Eben:	N	Ghebremicael:	Y
Gurland:	N	Heller:	Y	Klein:	Y
Lester:	-	McCartney:	Y	Weston:	-
Wilkes II:	Y	Bagoff:	Y		

DISCUSSIONS

Complete Streets Policy. (Jerry Fried, Former Mayor, Township of Montclair)

Mr. Fried introduced himself to the Board; he said he was the former Mayor of the Township of Montclair; he was an advocate for the Complete Street policies. The Complete Street Policy said that roadwork plans should include accessibility to all users including bicycles and pedestrians. Mr. Fried said that usually a municipality would adopt the policy in the form of a Resolution. The goal would be to have the Planning Board make a recommendation to the governing body. Mr. Fried gave a brief PowerPoint presentation entitled, "Top Ten Reasons to Adopt a Complete Streets Policy". Included in the presentation were the "5 "E"s of Complete Streets: Engineering, Education, Enforcement, Encouragement, Evaluation. Mr. Fried detailed the plan; he mentioned several municipalities that had adopted the Complete Street Policy, including the Township of Montclair. Detailing Montclair's South Park Street Promenade, Mr. Fried said the Promenade would host outdoor concerts and outdoor cafes; making it more pedestrian friendly.

Mr. Fried said that Essex County had become the County with the fastest growing adoption of Complete Street policies. He concluded the PowerPoint presentation with a list of the top ten reasons to adopt the policy:

1. Helps Guide Staff Long-Term
2. Reduces Solo Car Trips
3. Prioritizes Health/Safety Over Speed
4. Facilitates "Aging in Place"
5. Reduces Residential Property Taxes
6. Increases Property Values
7. Increases Civic Engagement and Community Vitality
8. Becoming an Early Adopter NOW Pays Benefits
9. Consistency with NJDOT Policy Gets You a Check
10. Easier and Cheaper Now Than In The Future

He opined it would be beneficial for West Orange to get a policy on its books.

The Board discussed the Presentation.

Mr. Eben stated Mr. Fried had made a good presentation; he said he had recently made a presentation to the Township Council on Healthy Communities.

Mr. Heller inquired if there were sample recommendations from other municipalities that Mr. Fried would be able to provide the Board. Mr. Fried said he would provide the Board with copies of recommendations from Glen Ridge, Morristown, Essex County and the State of New Jersey.

Councilwoman McCartney said she supported gathering additional information to review.

Mr. Klein mentioned he had taken a course on the Complete Streets Policy.

Chairman Bagoff recommended to the Board that within the next six months, additional information be compiled to review and make a recommendation to the Township Council by the end of the year; and to include the Complete Streets Policy in the next Master Plan Re-examination.

Recommendation to Township Council regarding potential zoning changes to streamline standby generator installation. (Paul Grygiel, Patrick J. Dwyer, Esq.)

Chairman Bagoff advised the Board he had asked Mr. Grygiel and Mr. Dwyer to re-introduce the discussion for recommendation to Township Council regarding the generator class to accessory use. He said the function of the Planning Board was to help the community; the Planning Board recommendation to change the stand-by generator ordinance would in no way take away the rights of a condominium association or the individual homeowners. The recommendation was not frivolous; the goal was for life safety, health and welfare. a function of the governing body.

Mr. Gurland said that after the last discussion regarding zoning changes to streamline the standby generator installation; his association was concerned about the rights of the individual homeowners. He read a written statement from his associations POA President.

Mr. Klein said he would like to hear the recommendation details from the Building Department and PSE&G.

Councilwoman McCartney inquired as to what were the recommendations.

Mr. Grygiel said there were two simple changes; the primary objective was to enable generator installation adjacent to clubhouses or other common facilities, and but

provide some direction to individual unit owners seeking to install standby generators. The recommendations included:

1. Add a definition for "emergency standby power generator";
2. Amend the definition of "lot coverage" to exclude the land area covered by an emergency standby power generator from the calculation;
3. Amend the Table of District Regulations – Part A: Permitted Uses to list a stand-by generator as a permitted accessory use in all zones;
4. Amend Section 25-8.1a, which prohibits accessory uses from being located within any minimum required front yard or side yard, to allow an emergency standby power generator to be located in a side yard as long as it meets certain standards;
5. Add a new Section 25-8.2f to Section 25-8.2, which regulates yard encroachments, to allow an emergency standby power generator to encroach in a side yard or rear yard as long as it meets certain standards;
6. Create a new Section 25-9.11 providing location requirements and other standards for emergency standby power generators;
7. Amend Section 25-10.2 regulating Planned Residential Developments to permit emergency standby power generators within said developments and to exclude emergency standby power generators from the calculation of impervious coverage.

Mr. Grygiel said that at this point, the Board needed to clarify what was required for a site plan.

The Board was unable to make a determination; it was decided to continue the discussion at the next Planning Board meeting.

MEETING ADJOURNED at approximately 9:58 P.M.

Minutes adopted June 5, 2013



Robin Miller, Planning Board Secretary
Township of West Orange

****THE NEXT REGULAR MEETING OF THE PLANNING BOARD WILL BE
TUESDAY JULY 9, 2013 AT 7:30 P.M. IN COUNCIL CHAMBERS****