

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
August 15, 2013**

The West Orange Zoning Board of Adjustment held a regular meeting on August 15, 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
Patrick J. Dwyer, Esq., Board Attorney, read the Opening Statement.

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

ABSENT:

ALSO PRESENT: Elizabeth Leheny, Consulting Planner
F. Russo, Consulting Engineer
Board Attorney, Patrick J. Dwyer, Esq.
Board Secretary, Rose DeSena
D. Dillon, Audio-Digital Transcription Service

REORGANIZATION SWEARING IN OF VICE CHAIRMAN

Bruce Buechler took the oath of office for Vice Chairman of the Zoning Board of Adjustment.

ANNOUNCEMENTS

Future Meetings: September 12, 2013 (Regular Meeting) – 8:00 PM
October 17, 2013 (Regular Meeting) – 8:00 PM
November 21, 2013 (Regular Meeting) – 8:00 PM

MINUTES

Adopt Minutes: June 20, 2013 (Regular Meeting)

Mr. Neuer made a motion to approve the minutes as submitted to the Board Members; Mr. Buechler seconded the motion. All were in favor to approve the minutes of the regular meeting held on June 20, 2013.

It was noted for the record that Ms. Weiss and Mr. Merklinger were not present at this meeting and did not vote.

Adopt Minutes: July 18, 2013 (Regular Meeting)

Mr. Neuer made a motion to approve the minutes as submitted to the Board Members; Mr. Steinhart seconded the motion. All were in favor to approve the minutes of the regular meeting held on July 18, 2013.

It was noted that Mr. Buechler was not present at this meeting and did not vote.

SWEARING IN

Consulting Engineer, Frank Russo and Consulting Planner for the Township, Elizabeth Leheny were sworn under oath.

RESOLUTIONS

1. **ZB-12-24/West Orange Animal Hospital** **Approved 7/18/13**
Block: 158.03; Lot: 102.07; Zone: R-3
360 Northfield Avenue
“D” variance for the expansion of non conforming use with bulk variances

Chairwoman Gabry asked if the Board reviewed this resolution and if any Member had any comments; seeing none the Chairwoman asked for a motion to approve.

Mr. Neuer made a motion to approve; Mr. Bullock seconded the motion.

The vote was as follows:

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

Joseph Vena, Esq. approached the podium. Mr. Vena stated that he is the attorney for application ZB-13-09, Heart to Heart Home Care, scheduled to be heard last on the agenda tonight. Mr. Vena said that the application will probably not be heard tonight because of the busy agenda, and requested that it be adjourned until the next meeting.

Chairwoman Gabry announced that if any members of the public were at this meeting for application ZB-13-09 for Heart to Heart Home Care that it will be carried to the next Zoning Board meeting held on September 12, 2013. She also noted, for the record, that no further notice will be required.

APPLICATIONS

1. ZB-13-07/Golda Och

Carried from 7/18/13

Block: 79; Lot: 21; Zone: R-4

122 Gregory Avenue

Amended site plan approval to adjust the curb line on Gregory Avenue

EXHIBITS

A-1 – Site Plans revision date 6/11/13

A-2 – Proposed Curb Sketch dated 2/26/13

A-3 – Traffic Evaluation prepared by Harold K. Maltz of Hamal Associates dated 4/1/13

A-4 – Traffic Evaluation prepared by Harold K. Maltz of Hamal Associates dated 1/25/13

A-5 – County of Essex Planning Board amended site plan approval letter dated 7/25/13

A-6 – Proposed Traffic Circulation Plan dated 9/8/11

Joseph Vena, Esq., attorney for the applicant, approached the podium.

Mr. Buechler asked Mr. Vena who the current Chairman of the Golda Och Academy was; Mr. Vena replied Sheryl Pearlstein. Mr. Buechler stated that he was recused from hearing this application in 2011 because the then president of the school was a partner in Mr. Buechler's law firm. Mr. Buechler responded that he has no affiliation with the present Chairperson or President of the Academy and that some of the partners in his law firm send their children to the school. Mr. Buechler asked Mr. Vena if there would be an issue with him hearing this application. Mr. Vena checked with his client and responded that he does not have an objection to Mr. Buechler hearing the application. He said that the Board Attorney should make that determination.

Mr. Dwyer asked Mr. Buechler if he had any direct involvement or financial involvement with the school; Mr. Buechler replied no. Mr. Dwyer determined that Mr. Buechler would not be precluded from hearing this application.

Mr. Vena began detailing the application stating that the applicant is requesting to amend the Board's resolution of approval for the Golda Och Academy expansion that was approved in 2011. He said that one of the conditions of approval required widening Gregory Avenue which

required the relocation of two PSE&G utility poles located along Gregory Avenue at the easterly curb line. He said that his witnesses are here tonight to testify as to why the amendment of this condition is necessary.

Mr. Vena called his first witness.

Scott Baird approached the podium and was sworn under oath. Mr. Baird stated that he is the project manager for the addition and detailed his educational and professional background in business and construction management. Mr. Baird presented the proposed curb sketch. Chairwoman Gabry noted for the record that the proposed curb sketch, dated 2/16/13, was pre-marked as Exhibit A-2 for identification. Mr. Baird outlined the relocation of the curb based upon the original approval in 2011. He said that the existing utility poles would have to be relocated because they are in the way and would end up in the roadway. Mr. Vena asked Mr. Baird if he spoke to Public Service Electric and Gas Company about relocating the utility poles. Mr. Baird said that they met with a supervisor from PSE&G to discuss the relocation of the poles and they were told that it is not possible to move the poles laterally. He said that they were told that this would stretch out the utility lines and cause them to shift which would force the other utility poles to tip. Mr. Baird said that PSE&G determined that it was not feasible to relocate the utility poles.

Mr. Neuer asked Mr. Baird if PSE&G gave them a written analysis of what was determined; Mr. Baird replied no.

Mr. Neuer asked Mr. Baird if PSE&G concluded that moving the utility poles laterally could not be done or just that it was not feasible; Mr. Baird said that they concluded that it was not feasible. He said that the two utility poles are 200' apart and they cannot stretch them.

Mr. Buechler asked Mr. Vena if the pole line was accurate on the proposed curb sketch exhibit; Mr. Vena said that the exhibit is the original proposal. Mr. Buechler said that the exhibit is marked proposed but it is not clear what is currently being proposed. Mr. Vena said that the Engineer will present the new curb line proposal when he testifies.

Mr. Bullock asked Mr. Baird if they requested something in writing from PSE&G regarding their conclusion. Mr. Baird said that they did request something in writing but PSE&G refused to give them documentation; they would only say that this is their findings.

Mr. Buechler stated that this is basically hearsay and is an issue as far as he is concerned.

Mr. Quentzel asked Mr. Baird if there would be a cost to have the utility poles moved. Mr. Baird said that there is a significant cost to have them moved.

Mr. Neuer asked how much would it cost; Mr. Baird said it would cost hundreds of thousands of dollars to move the two utility poles if it was feasible.

Mr. Neuer asked Mr. Baird if this problem could be resolved by having the lines put underground and did they discuss that option with PSE&G. Mr. Baird said that PSE&G did not want to incur that expense at this time.

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

Chairwoman Gabry asked if there were any members of the public who had any questions for Mr. Baird; seeing none Mr. Baird was excused.

Mr. Vena called his next witness.

Kevin G. Page approached the podium and was sworn under oath. Mr. Page detailed his educational and professional background as a Professional Engineer licensed in the State of New Jersey. Chairwoman Gabry accepted Mr. Page as an expert in Professional Engineering.

Mr. Page presented the site plans. Chairwoman Gabry noted for the record that the site plans, with the revision date of 6/11/13, was pre-marked as Exhibit A-1 for identification.

Mr. Neuer asked Mr. Page if he prepared the stacking plans; Mr. Page replied no. He said that he consulted with their traffic expert, Mr. Maltz, for the stacking plans.

Mr. Page referred to the site plans, detailing why they originally proposed to widen Gregory Avenue due to the stacking of cars on to Gregory Avenue. He said the stacking was a result of the old way the children were being dropped off at the school. Mr. Page said that, in 2011, the applicant proposed to widen Gregory Avenue because this is what was approved in original application in 2003 and they just carried it over. He said that it is not really needed and was not required by anyone. Mr. Page stated that when they saw the cost to re-locate the existing utility poles would be tens of thousands of dollars, they took a second look. He said when they submitted the revised plans to Eric Keller he suggested that they increase the radius of the driveway and make it smoother if they are not going to widen Gregory Avenue.

Mr. Buechler asked Mr. Page if the stacking of the cars on Gregory Avenue is now alleviated. Mr. Page replied yes and said that they do not have the peak concentration of traffic now due to the revised traffic circulation pattern. Mr. Buechler asked Mr. Page if that was his personal knowledge and asked if he physically sat there to witness it; Mr. Page said no, that is what he heard from their traffic expert, Harold Maltz.

Mr. Buechler asked Mr. Page if it would be too costly to move the utility poles; Mr. Page replied yes. Mr. Buechler said that the last witness, Mr. Baird, said the cost was not the reason for them not wanting to widen Gregory Avenue. Mr. Page said that he is testifying that it is the cost. Mr. Buechler asked Mr. Page if moving the utility poles is feasible; he replied yes. Mr. Buechler stated that cost is not relevant to the Board's decision. He said that Mr. Baird testified that it would cost hundreds of thousands of dollars to relocate the utility poles and that Mr. Page said it would cost tens of thousands of dollars. He asked Mr. Page what the cost would be to relocate the utility poles; Mr. Page said it would probably cost hundreds of thousands of dollars.

Mr. Neuer asked Mr. Page if he testified at the meeting on October 24, 2011; Mr. Page replied yes.

Mr. Neuer asked Mr. Page if anything has changed since then; Mr. Page said yes that the Project Managers have changed. He said that they met with PSE&G about moving the utility poles and were told that it is not an easy issue and a significant cost. Mr. Neuer asked Mr. Page if he was there when they met with PSE&G; he replied no.

Mr. Neuer said that this Board needs to see something significant in writing. He asked if anyone went to the utility company in 2011, because there is no practical difference since now and then; Mr. Page replied no.

Mr. Page stated that the original drawings in the 2003 application were modified in the 2011 application and that they anticipated that they would still widen Gregory Avenue. He said that the cars parking on Gregory Avenue was a problem then and that they do not have that problem now because of the revised traffic circulation pattern.

Mr. Neuer stated that Mr. Page said that it was necessary to widen Gregory Avenue in 2003 and in 2011. Mr. Page said the question is if the widening is necessary and they do not think it is now.

Chairwoman Gabry asked what would happen if the demographics change in the future; Mr. Vena said that their traffic expert, Mr. Maltz, will address that question.

Ms. Weiss stated that she would like to move forward and see if the plan works for this approval.

Mr. Sussman asked Mr. Page if they are proposing to leave the curb cut the way it is or is there an alternative. Mr. Page said that the plan is to leave the curbing on Gregory Avenue as is and increase the radius so that people heading north on Gregory Avenue can pull into the driveway easier. He said that it would be a smoother turn into the driveway. Mr. Page said that the driveway will remain the same; two lanes in and two lanes out.

Mr. Buechler asked Mr. Page if there is a no left hand turn when you come out of the driveway; Mr. Page replied yes but said that he does not know if it will remain that way.

Mr. Page stated that he never knows what the cost to move a utility pole will be until it goes out for bid. He said the demographics in 2003, provided by Mr. Maltz, determined that the widening of Gregory Avenue was necessary. Mr. Page said that the internal geometry changed in 2011 but he did not go back and ask if Gregory Avenue had to be widened; he said he just let it remain the same and never checked the cost to move the utility poles.

Mr. Buechler stated that Mr. Baird testified that it was not feasible and had nothing to do with the cost.

Mr. Neuer said that he is trying to figure out who should have been responsible to find out the cost to move the utility poles. He said the reason to change a condition of a resolution because it would be too expensive to move the utility poles is not a good one.

Mr. Buechler read Mr. Page's testimony from the 2011 adopted resolution. He said that in 2011 they needed to widen Gregory Avenue and now they said that they do not need to. Mr. Buechler said that it is difficult to believe the testimony.

Mr. Russo said that, based on his experience, the cost to relocate a utility pole is very expensive.

Mr. Buechler said that they did not do their homework before they came here tonight. He said that they opted not to have PSE&G here to testify and that their testimony is inconsistent.

Mr. Neuer asked Mr. Page if they knew what the traffic light would cost; he replied that they do know approximately what it would cost. Mr. Neuer said that they took the effort to find out what the traffic light would cost but not the cost to move the utility poles.

Mr. Russo asked Mr. Vena if they received anything from Essex County regarding the proposed plan to not widen Gregory Avenue; Mr. Vena said that he submitted the proposed package to them and they approved it.

Mr. Buechler referred to the Proposed Traffic Circulation Plan that was submitted with the application package. Chairwoman Gabry noted for the record that the Proposed Traffic Circulation Plan dated September 11, 2013 was pre-marked as Exhibit A-6 for identification. Mr. Buechler asked Mr. Page to explain what he was looking at in that diagram; Mr. Page said that Mr. Maltz will answer that question.

Mr. Dwyer asked Mr. Page what the land use goal was initially to widen Gregory Avenue; Mr. Page said that Mr. Maltz will answer that question.

Mr. Buechler asked Mr. Page if they considered widening Gregory Avenue across the street; Mr. Page said no because it would not have been a good engineering design.

Mr. Vena stated that his traffic expert will present testimony as to why it is not necessary to widen Gregory Avenue because they have satisfied the safety concerns.

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

Chairwoman Gabry asked if there were any members of the public who had any questions for Mr. Page; seeing none Mr. Page was excused.

Mr. Vena called his next witness.

Harold K. Maltz approached the podium and was sworn under oath. Mr. Maltz detailed his educational and professional background as a Professional Engineer licensed in the States of

New Jersey, New York and Pennsylvania in Civil Engineering and Transportation. Chairwoman Gabry accepted Mr. Maltz as a Professional Traffic Expert.

Mr. Vena asked Mr. Maltz if there was not a utility pole situation, is the plan being proposed this evening any different than the plan that was approved in 2011; Mr. Maltz replied yes. He said that they are proposing to increase the driveway width from 20 feet to 30 feet and eliminate the widening of Gregory Avenue which is related to the relocation of the utility poles.

Mr. Vena asked Mr. Maltz to explain why it is not necessary to widen Gregory Avenue. Mr. Maltz stated that the new traffic circulation design allows more cars to be stacked onsite and eliminates the stacking of cars on Gregory Avenue. He said that in 2011 there was only a single line of stacked vehicles along the access drive towards Gregory Avenue and now they are proposing to incorporate a double line. Mr. Maltz said that previously the total number of cars queued onsite was 31 and 4 cars on Gregory Avenue and with the new design you can queue 50 cars onsite with no cars on Gregory Avenue. He also stated that student enrollment is currently down and that his traffic study in 2011 was performed when the student enrollment was higher. Mr. Maltz said that lower student enrollment results in less cars.

Mr. Neuer asked Mr. Maltz who designed the double stacking of cars in tonight's proposal. Mr. Maltz said that Mr. Page scaled the plan and that he provided his comments and corrections to that plan.

Mr. Neuer asked Mr. Maltz if anything prevented this design from being proposed in 2011; Mr. Maltz replied no. He said that they could have done it at that time also.

Mr. Buechler asked Mr. Maltz if there is a "no left turn between 2 and 4pm on school days" sign currently posted when exiting on to Gregory Avenue. Mr. Maltz replied yes and stated that there are people who make that left turn going south on Gregory Avenue even though the sign is there.

Mr. Buechler said that he is concerned about increased student enrollment in the future.

Mr. Buechler asked Mr. Maltz how many students they calculated per car; Mr. Maltz said 1.76 students per car per average.

Mr. Bullock stated that there is a lot of congestion on Gregory Avenue in the morning even though Mr. Maltz testified that it is worse in the afternoon. He asked Mr. Maltz whether or not widening Gregory Avenue will affect the traffic coming in both directions; Mr. Maltz replied no.

Mr. Merklinger asked Mr. Maltz why they are enlarging the school if enrollment is down. Mr. Maltz said that the new building improves the condition of the existing rooms and what they offer inside of the school.

Chairwoman Gabry called for a recess at 9:43 pm.

Chairwoman Gabry resumed the meeting at 9:55 pm.

Frank Regan, Esq. approached the podium stating that he is the attorney for application ZB-13-03/Prism Green Associates scheduled on the agenda to be heard tonight. Mr. Regan said that he is anticipating that this application will not be heard this evening and requested to have it carried over to the regular Zoning Board meeting on September 12, 2013.

Chairwoman Gabry approved Mr. Regan's request and announced that if any members of the public were at this meeting for application ZB-13-03 Prism Green Associates that it will be carried to the next Zoning Board meeting held on September 12, 2013. She also noted, for the record, that no further notice will be required.

Mr. Vena approached the podium.

Mr. Neuer referred to section C of the current Zoning Board application submitted and asked Mr. Vena why there is no mention of the 2003 Zoning Board application. Mr. Vena asked to amend the current application to include the resolution from the 2003 application. Chairwoman Gabry approved Mr. Vena's request to amend the application and instructed Mr. Vena to supply a copy of the adopted resolution, for the 2003 application, to the Board Secretary.

Mr. Vena asked Mr. Maltz if the plan being proposed tonight is safer and more practical than the original plan approved in 2003; Mr. Maltz replied yes.

Mr. Vena asked Mr. Maltz if not widening Gregory Avenue along with the increase of the onsite stacking of cars is a better plan than the 2003 plan; Mr. Maltz replied yes.

Mr. Buechler asked Mr. Maltz if they will be striping the lanes; Mr. Maltz replied no.

Chairwoman Gabry asked Mr. Maltz if they will still have staff members outside; Mr. Maltz said that they will have the same staffing outside and they are not changing the loading operation.

Mr. Neuer asked Mr. Maltz what the genesis of this application is; Mr. Maltz said it is the moving of the poles.

Mr. Neuer asked Mr. Maltz if he approved the widening of Gregory Avenue in 2011; Mr. Maltz replied yes.

Mr. Neuer asked Mr. Maltz if he is testifying that the current plan is safer and better than the 2011 plan; Mr. Maltz replied yes because you can now put more cars on site.

Mr. Neuer asked Mr. Maltz if there is any other reason this plan is safer or more efficient besides being able to stack more cars on site; Mr. Maltz replied no.

Mr. Neuer asked Mr. Maltz if they could have presented this in 2011; Mr. Maltz replied yes.

Mr. Neuer stated that Mr. Page testified that it was not his responsibility to find out the cost of relocating the utility poles and asked whose responsibility it was. Mr. Maltz said that it was not his responsibility either and that he does not get involved in construction related issues.

Mr. Sussman stated that he is concerned about the lanes not being striped; Mr. Maltz said that Mr. Page can testify to that issue. He said that staff members supervise the traffic circulation and he believes it is safe.

Mr. Neuer asked Mr. Maltz what hours the staff members supervise the traffic circulation; Mr. Maltz said that they supervise during the dismissal period.

Mr. Neuer asked Mr. Maltz if there is a capacity for a fourth lane for buses; Mr. Maltz replied no.

Mr. Neuer stated that the condition in the prior 2011 resolution did not mention anything about a traffic director at Gregory Avenue. He said that safe ingress and egress is dependent on having a traffic director at Gregory Avenue. Mr. Neuer said that the condition in the 2003 approval mentions two staff members outside supervising traffic, and he is suggesting a third staff member in the driveway at Gregory Avenue.

Mr. Maltz presented a supplemental report from the Essex County Planning Board dated 7/25/13. Chairwoman Gabry noted for the record that the supplemental letter dated 7/25/13 from the Essex County Planning Board has been pre-marked as Exhibit A-5 for identification. Mr. Maltz stated that in this letter the County is requesting a follow up inspection after all of the work is completed. He said that the applicant is agreeing to do whatever the County requires. Mr. Neuer stated that if the County determines that the utility poles have to be relocated and Gregory Avenue widened, then the applicant will comply.

Mr. Buechler asked Mr. Vena what legal basis they are here for that meets the legal standards for seeking a change in the condition. He said that the Board needs the conclusion of law for the resolution. Mr. Vena asked Mr. Maltz if the stacking of the cars will improve safe ingress and egress and traffic patterns on Gregory Avenue; Mr. Maltz replied yes.

Mr. Neuer said that nothing has changed since 2011 and there is no reason that it could not have been done at that time.

Mr. Sussman asked Mr. Maltz if there is no physical change to the property and the only difference is that the double stacking of cars onsite will prevent the cars from spilling out to Gregory Avenue; Mr. Maltz replied yes.

Mr. Sussman asked Mr. Page to explain Exhibit A-6, the traffic circulation plan. Mr. Page stated that this Exhibit is just a sketch to show how many cars can be stacked. He said that the site plan shows the striping lines that were approved in 2011. Mr. Page said that he is going to recommend that they stripe the lanes before school starts even if the top coat is not finished.

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

Chairwoman Gabry asked if there were any members of the public who had any questions for Mr. Maltz; seeing none Mr. Maltz was excused.

Mr. Vena stated that there were no further witnesses.

Chairwoman Gabry asked the applicant for ZB-13-05/Nicolas to approach; Naomi Nicolas approached the podium. Chairwoman Gabry noted the time and informed Ms. Nicolas that her application would not be heard tonight and said that the application will have to be carried over to the next meeting on September 12, 2013 because the Zoning Board meetings do not go past 11:00 pm. Ms. Nicolas asked why she was not informed about this earlier tonight and expressed her displeasure. Chairwoman Gabry apologized and said that the Board had all intentions of hearing this application tonight and unfortunately the application that was scheduled before them is running longer than anticipated.

Chairwoman Gabry noted for the record that application ZB-13-05 for Nicolas will be carried over to the next regular Zoning Board meeting held on September 12, 2013 and that no further notice will be necessary.

Chairwoman Gabry asked Mr. Vena if he would like to sum up.

Mr. Vena approached the podium and stated that the plan being proposed tonight is a better operating plan and provides safe ingress and egress. Mr. Vena said that the applicant has already received Essex County approval and because school starts in three weeks they would prefer not to have any disruptions when opening the school. He said that there are no variances required and asked the Board to approve this application tonight. Mr. Vena asked the Board if they would also memorialize the resolution at the meeting tonight.

Chairwoman Gabry declared the hearing closed and asked if any of the Board members had any comments.

Mr. Merklinger stated that the applicant is lacking documentation from PSE&G, regarding the relocation of the utility poles, and he would like to see something in writing from them.

Mr. Bullock likened this application to a three headed monster and said that two of the heads were not good. He said that Mr. Maltz's testimony was credible and for that reason he will support it tonight.

Mr. Steinhart stated that, from a practical stand point, approving this application makes sense to him based on Mr. Maltz's testimony. He said, other than any legal issues with this application, the practical side of it is acceptable.

Mr. Neuer said that he is not sure if he knows what to vote; he said that the attorney in him says no. He said that the applicant failed to research the price of relocating the utility poles. Mr. Neuer said that the Zoning Board is created by the MLUL and must comply with the Statute.. He said that he has not seen sufficient credible testimony and the applicant has nothing in writing from PSE&G regarding the relocation of the utility poles. Mr. Neuer said that the change of circumstance has not been satisfied by this applicant, and he feels the four lane concept that they are presenting is not safe. He said that if he did vote yes it would be because he feels pity for the applicant.

Ms. Weiss said that she is interested in a safe plan and the applicant has provided the Board with that. She said there are ways to make things work and they came up with an alternate plan that is safe and efficient. Ms. Weiss said that the witnesses were not great but she feels it is a good plan and that is all that counts.

Mr. Quentzel said that the once they finish construction, Essex County will have a study done and whatever they have to do should be a condition in this Board's resolution.

Mr. Sussman stated that he is on the fence about this application. He said that physically, the conditions have not changed. He said if there is a reason, by law, to grant the relief then it should be left to the legal experts.

Mr. Buechler read from the New Jersey Zoning & Land Use Administration book written by William Cox and Stuart R. Koenig regarding the standard for seeking modification for the lifting of a condition, i.e., a change in circumstances. He said that the testimony from the first witness was inconsistent, and that in 2011 both Mr. Page and Mr. Maltz testified that Gregory Avenue had to be widened. Mr. Buechler said that this Board should have a traffic expert determine if the new traffic circulation plan is safe; not the applicant's professional traffic expert. He said that there is no factual basis from the applicant for the approval of this application. Mr. Buechler said that he finds it hard to believe that the utility pole relocation just "popped up" and no one knew about it. He said that there are too many unanswered questions and, intellectually, he just does not get it.

Mr. Buechler asked the Board's Counsel if what the applicant has provided tonight meets the MLUL criteria. Mr. Dwyer stated that there has been a change of circumstances and the proposed traffic circulation plan is better. He said that the queuing of the cars also makes sense.

Chairwoman Gabry said that she feels that there is not enough evidence and credible testimony to approve this modification. She said that she is not in favor of this application.

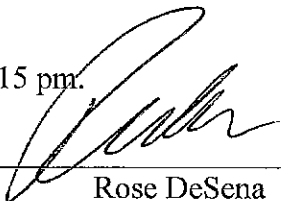
Mr. Buechler suggested that the applicant adjourn this matter and come back before this Board in October with a representative from PSE&G or they have the option to have the Board vote on the application tonight.

Mr. Neuer said that the applicant could also submit a new application. Mr. Dwyer said that he does not think the issue should be conclusive.

After some discussion with his client, Mr. Vena asked to have this application carried to the October 17, 2013 regular Zoning Board meeting.

The meeting was adjourned by Chairwoman Gabry at 11:15 pm.

Adopted: September 12, 2013

 9/13/13

Rose DeSena
Zoning Board Secretary