

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
SPECIAL MEETING
OCTOBER 28, 2013
8:00 P.M.**

The West Orange Zoning Board of Adjustment held a special meeting on October 28, 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 October 18, 2013 in accordance with the "Open Public Meetings Act."

Chairwoman Gabry asked everyone to stand for the Pledge of Allegiance.

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

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

ABSENT: P. Neuer (excused)
W. Steinhart (excused)

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

ANNOUNCEMENTS

Future Meetings: November 21, 2013 (Regular Meeting) – 8:00 PM
December 19, 2013 (Regular Meeting) – 8:00 PM
January 16, 2014 (Regular Meeting) – 8:00 PM

DISCUSSION

Chairwoman Gabry asked for a motion to adopt the West Orange Zoning Board of Adjustment regular meeting schedule for 2014.

Mr. Buechler made a motion to adopt the 2014 West Orange Zoning Board of Adjustment regular meeting schedule for 2014; Mr. Sussman seconded the motion and all were in favor.

Chairwoman Gabry stated that next on the agenda is an interpretation that was carried over from the last meeting held on October 17, 2013. She said that she was not present at this meeting and it was chaired by Vice Chairman Buechler.

Chairwoman Gabry turned the meeting over to Vice Chairman Buechler.

Vice Chairman Buechler stated that the Board was asked to interpret if a Fitness Center/Gym was defined as a personal service store or as a separate use in a P-C zone because there was no language regarding this in Chapter 25-4 of the Township Ordinance. He said that the Board required additional information and the discussion was tabled and carried over to this meeting.

Vice Chairman Buechler said that since the meeting, Robert Williams, Esq., Paul Grygiel and Alice Beirne provided the Board members with additional information. He said that Mr. Williams' client is proposing to establish a health club in one of the empty spaces in the K-Mart Plaza and has provided the Board with information from the Moscovitz and Lindbloom book clearly stating that a health club is classified as a personal service. Vice Chairman Buechler said that there was a gym in the K-Mart Plaza at one time but there is no record of any Zoning Board approval for it to go there.

Vice Chairman Buechler said that the Township's Zoning Official has also provided the Board with types of personal services that were previously approved in the P-C zone; tailors, beauty shops, nail salons, dry cleaners, barbershops and a yoga studio.

Vice Chairman Buechler suggested that the Board interpret the ordinance to permit a health club/gym/fitness center in a P-C zone. He said that parking issues and massages would be separate issues.

Mr. Bullock stated that he agrees with what was discussed and requests a revision to the Township ordinance addressing health clubs.

Mr. Sussman said that he also agrees with all of the comments so far and that a fitness center in a shopping center is very common.

Mr. Quentzel said that this is strictly an interpretation and the Board should handle it as such and not include Mr. William's client in this discussion.

Vice Chairman Buechler made a motion that the Board approve a resolution that addresses the Township Zoning Official's question regarding Chapter 25-4 defining a personal service, to include a Fitness Center/Health Club/Gym in a P-C zone as a personal service store/studio.

Mr. Sussman seconded the motion.

The vote was as follows:

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

SWEARING IN

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

Chairwoman Gabry resumed her position as Chair of the meeting.

RESOLUTIONS

1. **ZB-13-07/Golda Och Academy** **Approved 10/17/13**
Block: 79; Lot: 21; Zone: R-4
Amended Preliminary and Final Site Plan
Eliminate Condition #3 of resolution dated 12/8/11

Ms. Beirne stated that she highlighted a change in a condition that was suggested by Mr. Neuer and said that she approved it.

Chairwoman Gabry asked if any of the Board members had any other comments regarding the resolution; seeing none

Chairwoman Gabry asked for a motion to approve.

Mr. Sussman made a motion to approve the resolution with the revisions; Mr. Bullock seconded the motion.

The vote was as follows:

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

It was noted for the record that Ms. Weiss and Chairwoman Gabry were present but did not vote and Mr. Buechler was recused.

APPLICATIONS

1. ZB-13-03/Prism Green Assoc. III, LLC

Carried from 10/17/13

Block: 155; Lot: 26.03; Zone: O-R

Rooney Circle

“D” use variance and “C” variances to construct a fitness center.

EXHIBITS

Exhibit A-6a - Photo

Exhibit A-6b - Photo

Exhibit A-6c - Photo

Exhibit A-6d - Photo

Exhibit A-6e - Photo

Exhibit A-7 - Aerial Photo

Frank Regan, Esq., attorney for the applicant, approached the podium. Mr. Regan stated that he will address the issues from last month's meeting. He said that there was a question regarding the height of the adjacent building being compared to the height of the fitness center's proposed height of 60'. He said that the Architect is here to testify that the adjacent building is 52' high.

Mr. Regan stated that at the last meeting the Board required that Mr. Sparone, who testified as the applicant's expert in Engineering, sign the site plans and have them submitted to the Planning Department before this meeting.

Mr. Buechler asked Mr. Regan if the plans were re-submitted to the Planning Department; he replied yes and said that he delivered them himself.

Lance Blake approached the podium. Chairwoman Gabry said that Mr. Blake will continue under oath as an expert in Architecture.

Mr. Blake stated that he is confirming that the building height on the adjoining lot is 52'.

Chairwoman Gabry asked Mr. Blake if just the center cornice of the proposed building will be 60' high; he replied yes. He said that the height of the rest of the building will be approximately 46-48'.

Mr. Regan asked Mr. Blake to address the height of the letters on the signs on the building. Mr. Blake said the letters on the sign on the front of building are 5' tall and the letters on the sign on the side of the building are 4' tall. He said that all the lettering will comply with the size that is permitted by the Township's ordinance.

Mr. Blake stated that there are sixteen (16) L.A. Fitness Centers in the State of New Jersey and that the majority of them are two story buildings. He said that all of the L.A. Fitness Centers have the "crown" feature that is described as a cornice. Mr. Blake presented photos of other L.A. Fitness Centers. He said that he printed them from the internet and that all of them show the

cornice on the buildings. Chairwoman Gabry asked to have the photos marked as Exhibits A-6a, A-6b, A-6c, A-6d and A-6e for identification.

Mr. Blake stated that the lot size and the size of the building determine if the building will be one or two stories. He said that this particular L.A. Fitness on Rooney Circle is a two story building because they needed the parking. Mr. Blake said that the cornice is consistent with the size of the building and is a signature feature on all of the L.A. Fitness buildings.

Mr. Buechler asked Mr. Blake what hours the illuminated signs will be lit and if they found out how long the illuminated signs are on in the Essex Green Plaza. Mr. Blake said that the signs in the Essex Green Plaza are on 24/7. Mr. Buechler asked Mr. Blake if he witnessed them being on 24/7; he replied no and said that is what he was told.

Mr. Bullock referred to the photos and asked which of these L.A. Fitness Centers are in New Jersey; Mr. Blake said that he did not know. He said that he just wanted the Board to see what all of them look like.

Ms. Weiss advised Mr. Regan to call Shop Rite in Essex Green and ask them if their lights are on all night; Mr. Regan said he will find out.

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

Chairwoman Gabry asked if any members of the public had any questions for Mr. Blake; seeing none Mr. Regan called his next witness.

Joseph Sparone approached the podium. Chairwoman Gabry said that Mr. Sparone will continue under oath as an expert in Engineering.

Mr. Sparone stated that there was a question at the last meeting regarding the height of the light poles. He said that the light poles in the Essex Green Plaza are 30' high and the light poles in the adjacent office building parking lot are 25' high.

Chairwoman Gabry asked Mr. Sparone how high the existing light poles on the actual site along Rooney Circle are; he said that he did not know but would measure them. Mr. Sparone said that the one light pole in the middle of the site is 25' high.

Mr. Sparone stated that the lights will remain on all night long for security reasons.

Mr. Buechler asked Mr. Sparone if every light in Essex Green Plaza is on all night long; Mr. Sparone said that he did not know.

Mr. Regan said that he will have an answer for the Board as to how long the lights remain on in the Essex Green Plaza.

Mr. Quentzel asked Mr. Sparone what type of lighting they are proposing; he said it will be the same lights that are out there today.

Mr. Buechler asked Mr. Sparone if he signed the site plans; he replied yes. Mr. Buechler asked Mr. Sparone if they were submitted to the Planning Department; he replied yes.

Chairwoman Gabry asked Mr. Regan what the specific hours of operation will be; he replied 6am to 12am but may possibly open as early as 5am. Mr. Regan said that the applicant will confirm the hours of operation.

Mr. Regan stated that the applicant will comply with the Township's Fire Code Official and Engineer's recommendations. He said that if the Board approves the application, they will change the plans to comply. Mr. Buechler said that before the resolution is adopted the applicant must have the plans in at least ten (10) days before the next meeting so that the Engineer can review the plans.

Mr. Bullock stated that many of the businesses in the Essex Green Plaza have security lighting but it is turned off at a certain time. He said that he is worried about their lights being on all night long and that it will not comply with what Essex Green Plaza does. Mr. Sparone stated that they are proposing to keep their lights on for security reasons.

Chairwoman Gabry asked if the existing light poles on the site are staying or will they be replacing them with box lights. Mr. Sparone said that they will be replaced and the poles will be 25' high.

Chairwoman Gabry asked Mr. Sparone if the light poles should be lower than 25' because the actual site is at a higher grade; Mr. Sparone said that the site is almost even to the adjacent site and that there is not a huge elevation difference between the two.

Mr. Grygiel stated that is no data regarding the grade for the proposed site. He said that Rooney Circle slopes down but the parking area of the site is flat and the street elevation is higher so it is basically a wash.

Mr. Regan asked Mr. Sparone if it was possible to go with a lower pole based on the design; Mr. Sparone said that he would have to look at it but they could not have anything lower than a 20' high light pole.

Mr. Buechler said that, as a rule, the Board likes the lights to be between 18' to 20' for general developments.

Mr. Grossman asked Mr. Sparone if they have some type of independent backup power in case of a local blackout; Mr. Sparone said that he did not know because that is an operational issue.

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

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

Mr. Sussman asked Mr. Regan if he is going to have a witness testifying to the operational issues; Mr. Regan said that, based on the plans, there is no proposal for any emergency power backup. He said that whatever the code requires the applicant will comply.

Mr. Regan stated that, other than talking to the tenants, they cannot confirm if the lights are on 24/7 in the Essex Green Plaza unless they personally sit there all night long.

Mr. Regan called his next witness.

Craig W. Peregoy approached the podium and was sworn under oath. Mr. Peregoy detailed his educational and professional background as a licensed Professional Engineer in the State of New Jersey. He said that he is also a licensed Professional Traffic Engineer and has testified before many Boards on similar projects. Chairwoman Gabry accepted Mr. Peregoy as an expert in traffic engineering.

Mr. Peregoy stated that he personally took counts at the site between the hours of 7am – 9am, 4 pm – 6 pm and on the Saturday shopping hours of 12 pm – 2 pm. He said that he collected a lot of data over the past 3 – 4 years and his analysis is based on the peak hours. Mr. Peregoy stated that Rooney Circle operates at a Level of Service D and Marion Drive at a Level of Service C. He said that the proposed traffic that the fitness center will generate during the morning peak hours will be 68 trips, 171 trips during the evening hours and 132 trips on a Saturday. Mr. Peregoy said that the projected traffic generated would be 466 trips and that included traffic for the adjoining office building.

Mr. Peregoy said that he took an analysis for both the fitness center going in and the fitness center not going in and it still operated at a Level of Service D. He said that his Traffic Impact Analysis determined that there will be no impact on the site.

Ms. Weiss asked Mr. Peregoy how many cars utilize Marion Drive; Mr. Peregoy said that the traffic is much heavier along Prospect Avenue and there were approximately 100 – 200 vehicles leaving Marion Drive.

Mr. Quentzel asked Mr. Peregoy if one way in and one way out of the driveway is enough for the site; he replied yes. He said that the adjoining office building also has an access driveway.

Mr. Buechler asked Mr. Peregoy if he saw any problem with the proposed traffic circulation pattern under the building; he replied no.

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

Chairwoman Gabry asked if any members of the public had any questions for Mr. Peregoy; seeing none Mr. Regan called his next witness.

Joseph H. Burgis approached the podium and was sworn under oath. Mr. Burgis detailed his educational and professional background as a Professional Planner licensed in the State of New

Jersey. He stated that he has testified before this Zoning Board many times. Chairwoman Gabry accepted Mr. Burgis as an expert in Professional Planning.

Mr. Buechler asked Mr. Burgis if his August 27, 2013 report supersedes the April report; he replied yes.

Mr. Burgis stated that he is going to focus on the Township's 1989 Master Plan, the 2004 Master Plan Reexamination Report, the 2010 Master Plan update and the criteria.

Mr. Burgis referred to page 6 of his report and presented a larger aerial photo of the site. Chairwoman Gabry asked to have the aerial photo marked as Exhibit A-7 for identification.

Mr. Buechler asked Mr. Burgis if this was the same photo on page 6 from his report; Mr. Burgis replied yes. He said that the Exhibit shows a little more of the photo than the one in his report. Mr. Burgis said that it was slightly altered to fit on the page. He said that the photo was taken from Google and that he marked the boundary around the property.

Mr. Burgis detailed the site noting that it does not have any frontage on Rooney Circle. He said that there is an access easement from the adjacent property through a 10' strip of land.

Mr. Burgis detailed the surrounding area and the other uses in the area. He said that the proposed use of a fitness center feeds off of the other uses in the area.

Mr. Burgis detailed the proposed building coverage and the building height. He said that the applicant is proposing 199 onsite parking spaces plus 30 offsite parking spaces. Mr. Burgis said that this is consistent with the Township's Master Plan, serves the purpose identified in the Master Plans and maintains a balance of land uses in the 2010 re-exam.

Mr. Burgis stated that the fitness center is not a permitted use in the O-R zone and requires a "D" variance. He said that they also require a "D" variance for the building height.

Mr. Burgis stated that the applicant is seeking bulk variances for lot area, building setbacks, building and impervious coverage, parking setback, number of parking and loading spaces, parking on an adjoining lot, steep slope disturbance and signage.

Mr. Burgis listed the special reasons that support and justify this use and stated that the use fits in. He detailed the negative and positive criteria and said that granting these variances will not result in any substantial detriment to the area.

Mr. Burgis said that the added height of the building does not affect the area adversely; he said that it screens the unsightly Public Service sub-station facility behind the site.

Mr. Burgis stated that the applicant is proposing a 345 sq. feet sign and a 220 sq. ft. and only one sign is permitted. Mr. Buechler asked Mr. Burgis if the applicant is considering a free standing sign on Prospect Avenue; he said that he does not know.

Mr. Buechler asked Mr. Burgis how they will deal with deliveries because no loading dock is being proposed. He asked if the deliveries will be made through the front door; Mr. Burgis said yes. He said that these facilities do not have tractor trailers making deliveries that they use step vans.

Mr. Russo stated that there was testimony at the last meeting that step vans are used for their deliveries. Mr. Buechler said that they testified to box trucks making their deliveries; not step vans. He said that box trucks could vary in size and some are very large.

Chairwoman Gabry referred to Mr. Burgis' report and said that it refers to the strip of land as 5' and not 10'. Mr. Regan stated, for the record, that the strip of land is 10'.

Mr. Russo referred to #13 of the Omland Engineering review dated May 21, 2013 regarding the solid waste enclosure as an accessory structure. He asked Mr. Burgis to verify that it does not require any setback relief. Mr. Burgis stated that the solid waste structure has the 5' required setback and it does not need a variance.

Mr. Bullock asked Mr. Burgis if they could reduce the sq. footage of the large 345 sq. ft. sign. Mr. Burgis said that that it is important to note the relationship of the sign to the size of the wall it is on. He said that signs do not look appropriate on the wall if you drop down the size.

Mr. Grygiel stated that Mr. Burgis raised a valid point. He said that the Township ordinance does not account for building size and he thinks that the size of the sign is appropriate here for visibility.

Mr. Buechler asked how many deliveries they are anticipating a week; Mr. Burgis replied one and based his answer on his experience with other fitness centers.

Mr. Buechler asked Mr. Burgis if the other health clubs he has experience with have swimming pools; he replied no. Mr. Buechler said that he feels that health clubs that have swimming pools require more maintenance and have more deliveries per week.

There were no further questions from the Board of the Professionals.

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

Chairwoman Gabry called for a recess at 9:39 pm.

Chairwoman Gabry resumed the meeting at 9:50 pm

Mr. Regan stated that he has no more witnesses and made his closing comments.

Chairwoman Gabry asked if any members of the public had any comments; seeing none

Chairwoman Gabry closed the public meeting.

Chairwoman Gabry asked the Board members if they had any comments.

Mr. Merklinger stated that the site is vacant and that it is an excellent location for the fitness center. He recommended that the Board vote in favor of the application.

Mr. Bullock said that this is an overall good application and is a good addition to the Essex Green Plaza. He said that he has some concerns regarding the lighting and the signage but supports it.

Mr. Sussman said that he agrees with Mr. Bullock and thinks it is an overall good application. He said that the site is well suited for this use and it is consistent with a shopping center. Mr. Sussman said that he has some concerns with the lighting but he is satisfied and supports it.

Ms. Weiss said that she agrees with her fellow Board members. She said that she normally hates large signs but realizes that it is necessary. Mr. Weiss said that if other Board members have a concern about the lighting they should bring it up and have the applicant address the concerns. She said that she is in support of the application.

Mr. Quentzel said that the lighting should be consistent with the neighbors' lighting and that he has no problem with the lights being on 24/7 because there are no neighbors to bother. He said that it is a great site for this use and he is in favor.

Mr. Buechler said that the applicant met the criteria for the "C" and "D" variances but he recommends restrictions. He recommended that they limit deliveries between the hours of 9 a.m. and 5 p.m. Ms. Weiss stated that she is not in favor of putting a limit on the time of deliveries. Mr. Buechler said that this Board has done that before especially where a truck has limited space to drive through.

Mr. Buechler said that before the Board does vote he would like to know that the exact hours of operation are; Mr. Regan said 5 a.m. to 12 am.

Mr. Buechler said that there will be no food service on site, the transformer must be screened according to PSE&G regulations and the lights turned off, or at least 1/3 of the lights turned off, by 12:30 am. He said that he recommends that they do not burn all night long in order to conserve energy. Mr. Buechler asked Mr. Grygiel if the chain link fence with slats in it is sufficient for around the dumpster; he said that was fine.

Mr. Buechler stated that the applicant's request to waive the digitizing fee for the plans is approved per Mr. Grygiel, as long as they submit the final plans digitized according to the Township's specifications.

Mr. Buechler said that all of the revised plans must be submitted ten (10) days prior to the resolution being adopted at the December meeting.

Mr. Regan said that he may have concerns about limiting the hours of delivery between 9 a.m. and 5 p.m. because those are the peak hours.

Mr. Buechler referred to the fire escape leading down stairs to the emergency stairwell and asked the applicant if they could put a door there as an alternative means of egress; the applicant agreed.

Mr. Regan said that there is a door on the side of the building near the electrical room that they would propose as an alternative means for deliveries. He said that it would not be for all deliveries; it would just be another means for deliveries.

Mr. Merklinger asked Mr. Buechler if he is saying that they cannot have any deliveries before 9 a.m. when they open at 5 a.m.? He said that he is suggesting that deliveries are made at the side door during peak hours.

Mr. Buechler said that he will recommend deliveries made between 7 a.m. and 9 a.m. are made in the side door and deliveries made between 5 p.m. and 8 p.m. are in the side door.

Mr. Grygiel wanted to clarify and said that his testimony was that there is no requirement in the Township ordinance for a gym to have three loading spaces.

Ms. Weiss said that she does not feel it is necessary to restrict the time of deliveries.

Mr. Quentzel asked Mr. Regan if they have a specific number of deliveries; he replied no.

Mr. Regan said that no other L.A. Fitness Center requires loading spaces.

Mr. Diaz approached and asked if he could ask a question; Mr. Buechler replied no and said that the meeting is closed.

Ms. Beirne said to have a straw vote regarding limiting the times of deliveries as a condition.

Ms. Weiss voted no to limit the times of deliveries as a condition.

Mr. Quentzel voted no to limit the times of deliveries as a condition.

Mr. Merklinger voted not to restrict the size of the truck or to limit the times of deliveries as a condition.

Mr. Bullock said no to restricting the size of the truck or to limit the times of deliveries.

Mr. Sussman voted no to restrict the size of the truck and yes to limit the time of the deliveries.

Ms. Gabry voted no to restrict the size of the truck and yes to regulate the time of deliveries.

Ms. Beirne said that the vote is in favor of no restrictions regarding the time of deliveries or the size of the delivery truck.

Chairwoman Gabry stated that she is in favor of the application but is less than impressed with some of the witnesses.

Chairwoman Gabry asked for a motion from the Board.

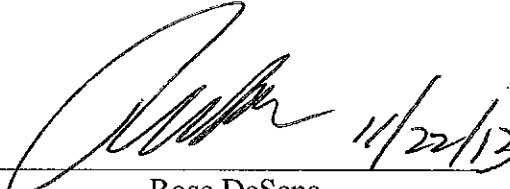
Ms Weiss made a motion to approve Zoning Board application ZB-13-03 with conditions suggested by Mr. Buechler; Mr. Bullock seconded the motion.

The vote was as follows:

Buechler:	No	Steinhart:	-
Bullock:	Yes	Sussman:	Yes
Merklinger:	Yes	Weiss:	Yes
Neuer:	-	Chairwoman Gabry:	Yes
Quentzel:	Yes		

The meeting was adjourned 10:46 pm

Adopted: November 21, 2013

 11/22/13

Rose DeSena
Zoning Board Secretary