

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
March 20, 2014**

The West Orange Zoning Board of Adjustment held a regular meeting on March 20, 2014 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, 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, D. Gabry, W. Merklinger, P. Neuer,
B. Quentzel, W. Steinhart, M. Sussman (8:03), A. Weiss

ABSENT: G. Bullock (excused absence)

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

ANNOUNCEMENTS

Future Meetings: March 27, 2014 (Special Meeting) – 8:00 PM
April 17, 2014 (Regular Meeting) – 8:00 PM
May 15, 2014 (Regular Meeting) – 8:00 PM

Chairwoman Gabry announced that application ZB-13-17/Lichtman that was scheduled to be heard at this meeting, has requested to be carried to the May 15, 2014 Zoning Board of Adjustment meeting. She also announced that application ZB-13-13/Alvarez that was scheduled to be heard at this meeting, has requested to be carried to the April 17, 2014 Zoning Board of Adjustment meeting.

Chairwoman Gabry granted both requests and stated that no further notice will be required for either application.

Jennifer Porter, Esq. approached the podium and stated that she is the attorney for the Quick Chek Corp. application that was scheduled to be heard at this meeting. She said that due to the agenda backlog she feels that the application will not be heard tonight and, on behalf of her client, she is asking for an adjournment and requesting a special Zoning Board meeting. In so doing Ms. Porter acknowledged that the statutory period for rendering a decision has been extended and the required form is being signed.

The Board members agreed to hear this application ZB-13-15 for Quick Chek Corp. at a special meeting on April 24, 2014.

Chairwoman Gabry stated for the record that the adjournment is granted and no further notice will be necessary.

MINUTES

Adopt Minutes: February 20, 2014 (Regular Meeting)

Chairwoman Gabry stated for the record that she made an additional correction to the February 20, 2014 minutes today. She noted that applicant's name, Gavilanez, was misspelled in the minutes and had the Board Secretary make the correction.

Chairwoman Gabry asked for a motion to approve the minutes from the regular Zoning Board meeting held on February 20, 2014 as submitted to the Board members with the correction stated on the record.

Mr. Neuer made a motion to approve the minutes; Mr. Buechler seconded the motion and all were in favor.

SWEARING IN

Consulting Planner for the Township, Paul Grygiel and Consulting Engineer for the Township, Eric Keller were sworn under oath.

- Chairwoman Gabry announced that the Township's Consulting Engineer, Eric Keller, was the recipient of the Iron Man award and congratulated him. All members of the Board joined in the congratulatory wishes.

APPLICATION(S)

1. **ZB-13-11/Gavilanez**
Block: 89; Lots: 32, 33; Zone: OB-1
134 Main Street

Carried from 2/20/14

Two "D" use variances and several bulk variances to convert the first floor of an existing two- family dwelling to a beautysalon

EXHIBITS

- A-3 - Colored computer rendering of the proposed improvements to the exterior of house
- O-1 - Resolution ZB-05-13 dated 12/18/2008
- O-2 - Resolution ZB-09-23 dated 4/15/2010
- O-3 - Commercial store front vacancy listing in the Downtown Area - 2 pages

Savino Russoniello Jr., Esq., attorney for the applicant, approached the podium. He said that he would like to call Claud Jones, the architect for the applicant, as his first witness.

Claud Jones approached the podium and was sworn under oath. Mr. Russoniello asked Mr. Jones to indicate his educational background. Mr. Jones stated that he attended Hampton University and has a degree in architecture. He said that he attended the Newark College of Engineering and then continued his education at Hampton University where he got his degree. Mr. Russoniello asked Mr. Jones if he was licensed in the State of New Jersey; he replied yes. Chairwoman Gabry stated that Mr. Jones is accepted as an expert in the field of architecture.

Mr. Jones stated that since the last meeting, he prepared an additional exhibit because there was some concern regarding what the finished building would look like. He said that he created a computer rendering of what the building will look like when the work was completed and described the rendering.

Chairwoman Gabry asked to have the rendering marked as Exhibit A-3 for identification.

Mr. Neuer asked if the color of exterior of the house in the exhibit was true to color; Mr. Jones said that the color is as close as he could get it to the manufacturer's color.

Chairwoman Gabry asked if any members of the Board or the Professionals had any further questions for Mr. Jones; there were none.

Chairwoman Gabry asked if any members of the public had any questions for Mr. Jones.

David Owen, Esq. approached the podium and asked Mr. Jones if there were any changes to the elevations or the interior layout of the building; he replied no.

There were no further questions for Mr. Jones.

Chairwoman Gabry said that she had a question regarding the number of employees at the salon. Mr. Neuer said that his notes stated that the applicant testified that there will be no more than

four (4) employees at one time. Mr. Buechler said that his notes stated that the applicant testified that there will be two (2) employees at one time plus herself.

Mr. Russoniello called the applicant, Laura Gavilanez. Ms. Gavilanez approached the podium.

Chairwoman Gabry noted for the record that Ms. Gavilanez was sworn in at the last meeting and will continue under oath.

Chairwoman Gabry asked Ms. Gavilanez the number of employees in the business; she replied her mother and two other employees. She said there will be a maximum of four employees at any one time.

Mr. Neuer asked Ms. Gavilanez if they will have a maximum of four employees during the holidays, too; she replied yes.

Chairwoman Gabry asked Mr. Russoniello if approved would they accept the condition of no more than four employees at one time; he replied yes.

Mr. Sussman asked Ms. Gavilanez if she works as the receptionist, would that make it five employees; she replied yes.

Chairwoman Gabry asked Ms. Gavilanez if she was going to install a washer and dryer in the basement; she said if the Board allows her to she will. Mr. Neuer asked Ms. Gavilanez if she would like to include that in her application; she replied yes.

Mr. Neuer asked Ms. Gavilanez if all employee parking will be off-site or on the street; she said that there will be no employee parking on the site.

Mr. Russoniello stated that Mr. O'Reilly has committed to renting four parking spaces to Ms. Gavilanez on his property. He said with the three parking spaces on her property that would make seven parking spaces.

Mr. Neuer stated that the Board would like to see an easement and a contract for the rental of the parking spaces from Mr. O'Reilly. Mr. Russoniello said that the easement has been prepared, and he personally spoke to Mr. O'Reilly who said that he would rent four parking spaces to the applicant.

Chairwoman Gabry asked Mr. Russoniello if the applicant decided to use a pervious material on the surface of the driveway when paving it; he said that the Engineer, Mr. Marucci, will talk about that.

Chairwoman Gabry asked Mr. Russoniello if the applicant will agree to replace the front sidewalk and curb as recommended by the Township Engineer, Mr. Lepore; he replied yes.

Chairwoman Gabry asked Mr. Grygiel if the trash container requires a variance; he replied yes. Mr. Grygiel said that the plans were amended to include that.

Mr. Grygiel stated that in regard to the off-site parking being required for employee parking, there is no way to permit that without a variance. Mr. Russoniello said that he will amend the application to also include the variance for that.

Chairwoman Gabry asked if any members of the Board or the Professionals had any further questions for Ms. Gavilanez; there were none.

Chairwoman Gabry asked if any members of the public had any questions for Ms. Gavilanez.

David Owen approached the podium and asked Ms. Gavilanez how much of the basement will be utilized as additional square footage to the project; Mr. Russoniello said that Mr. Marucci will answer that question.

Mr. Owen referred to prior resolutions of approval for 130-132 Main Street and said the property was approved for several uses which included allowing parking spaces for nearby residents. He said that because the property is not zoned for retail parking, Mr. O'Reilly would have to come back before the Zoning Board to request that on his property.

There were no further questions for Ms. Gavilanez from the members of the public.

Mr. Russoniello called the applicant's Engineer, Anthony Marucci, to the podium.

Chairwoman Gabry stated for the record that Mr. Marucci was qualified as an expert in the fields of engineering and professional planning and was also sworn in at the last meeting and will continue under oath.

Mr. Russoniello asked Mr. Marucci to detail the special reasons for the positive criteria. Mr. Marucci said that establishing this business in the Downtown will help other businesses in the area to thrive. He said that the purpose of the West Orange Downtown Alliance is to promote and enhance businesses and that the Township's governing body has declared Main Street for businesses. He said that the applicant will be improving the building by bringing it up to code.

Mr. Neuer asked Mr. Marucci if they will be adding sprinklers to the building; he replied no. He said that they are improving the building to ensure that it is safe. Mr. Marucci said that the site is suitable for this business because it is on a County road that has bus stops which allow public access to the site.

Alice Weiss asked Mr. Marucci why the West Orange Downtown Alliance did not think this application was favorable. Mr. Marucci said they had some concerns. Mr. Neuer said that their report is not part of the record; it was submitted without testimony.

Mr. Merklinger said that the beautysalon is currently on Washington Street and is almost in Orange. He said that the applicant wanted to be on Main Street.

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

Chairwoman Gabry asked if any members of the public had any questions for Mr. Marucci.

David Owen approached the podium and asked Mr. Marucci if he was familiar with the current location of the beautysalon; he replied yes.

Mr. Owen asked Mr. Marucci if the beautysalon is permitted in the zone that the beautysalon is currently located in; he replied yes.

Mr. Owen asked Mr. Marucci how much square footage in the basement will be utilized for a washer and dryer and how much of the basement would become square footage of the salon; Mr. Marucci said that he will defer that question to the architect.

Chairwoman Gabry asked Mr. Russoniello if the residential tenants will be able to use the washers and dryers; he replied no.

Mr. Russoniello stated that the Applicant's case in chief was concluded.

David Owen, Esq. attorney for an objector approached the podium and called his first witness.

Paul N. Ricci approached the podium and was sworn under oath. Mr. Ricci detailed his educational and professional background as a licensed Professional Planner in the State of New Jersey.

Chairwoman Gabry accepted Mr. Ricci as an expert in professional planning.

Mr. Ricci stated that he reviewed the applicant's property two times during snow storms and visited the site again today. He said that he had also reviewed the Township's Master Plan and the Master Plan Update, resolutions ZB-05-13 and ZB-09-23 for 130-132 Main Street and the applicant's site plan and architectural plans.

Mr. Ricci presented adopted resolutions ZB-05-13 and ZB-09-23 and an email from the Township's Downtown Alliance Director, Megan Brill that was dated 3-11-14.

Chairwoman Gabry asked to have resolution ZB-15-13 marked as Exhibit O-1, resolution ZB-09-23 marked as Exhibit O-2 and the email from Megan Brill marked as Exhibit O-3 for identification only.

Mr. Ricci stated that he was asked to evaluate this application and he listed all of the variances in the application that are being requested. He said that a variance for off-site parking is also required because the property is in an OB-1 and not in a B-1 zone where that is allowed.

Mr. Buechler asked Mr. Ricci if, in his opinion, another variance for this application is required for minimum lot area; he replied yes

Mr. Ricci referred to the side yard variance being requested and stated that the applicant is proposing 1.17'x0.2', not 1.17'x2.0'; Mr. Grygiel agreed with Mr. Ricci and said that was an error on his report.

Mr. Ricci said to prove the positive criteria for a "D" variance the location of the proposed use must benefit the general welfare of the community. He said that there are forty-six (46) vacant properties in the Downtown area and some of vacant spaces were beauty care and nail salons. Mr. Neuer stated for the record that the witness does not have first-hand knowledge of this information.

Mr. Ricci stated that the application does not meet ten out of the twelve bulk uses and listed what they were. He said that this site was not intended for this use and is not appropriate.

Mr. Ricci detailed what the other uses in the area were and said that there is no other personal service use in the OB-1 zone.

Mr. Ricci detailed the negative criteria and said that there are more appropriate places to put this business.

Mr. Ricci said there are concerns with the driveway and detailed what he experienced when he visited the site. He said that the driveway was too narrow to accommodate two-way traffic and that there was poor visibility coming out of the driveway with cars parked on the street.

Mr. Ricci said that there was no testimony regarding traffic and that he would like to know the level of activity. He said that he also feels the demand for parking is greater than the testimony presented.

Mr. Ricci said that according to the Township's Master Plan re-evaluation, no personal service use is allowed in an OB-1 zone.

Mr. Ricci said that this application does not meet the "D" variance criteria according to his planning evaluation and does not represent a better zoning alternative. He said that he personally feels that it is not an appropriate place for a beauty salon.

Mr. Neuer asked Mr. Ricci if he did a survey on the number of beauty salons in the downtown; he said no just the number of vacant properties. Mr. Ricci said that he does not know if there is a need for a beauty salon in the downtown, he said that his testimony is based on the multiple beauty and nail salons in the downtown area of most communities.

Mr. Quentzel stated that a new salon is not moving into the downtown, he said an existing salon is moving to a new location. He asked Mr. Ricci if he thinks that the building will be better looking after the renovations; he replied no. Mr. Quentzel asked Mr. Ricci if he considered the renovations to be a substantial change to the existing building; he replied yes. Mr. Ricci said that the changes to the building exudes a strictly commercial feel and is a different look.

Mr. Neuer asked Mr. Ricci if his testimony is that there is no special reason to grant this approval; he replied no.

Mr. Neuer asked Mr. Ricci if he is aware that there are businesses on the first floor and residents on the second floor of some of the other properties in this area; he replied yes.

Mr. Neuer asked Mr. Ricci if he did a survey about how many there are; he said no because it is not relevant. Mr. Ricci said that this would be the first personal service use in this area.

Mr. Neuer asked Mr. Ricci if his observance of the driveway difficulties was when there was snow on the ground; he said no that he also observed the driveway today.

Mr. Merklinger stated that a driveway is not a roadway and asked Mr. Ricci if the other houses in the immediate area have driveways; he said that he did not observe any.

Mr. Merklinger asked Mr. Ricci if he considers a driveway between the applicant's property and the property to the south a one-way driveway; he replied yes.

Mr. Grossman asked Mr. Ricci how many parking spaces he thought should be allowed; he said the Township ordinance allows 6.3 spaces but he thinks functionally they would need more.

Mr. Neuer asked Mr. Ricci if he did an analysis of shared parking; he replied no.

Mr. Russoniello cited the permitted uses in the OB-1 zone and asked Mr. Ricci if he saw any of these uses in this zone; Mr. Ricci listed all of the properties he saw in the immediate area starting from the limousine business to the Edison Historical Park.

Mr. Russoniello asked Mr. Ricci if the residential homes were one or two family; he replied two family.

Mr. Russoniello asked Mr. Ricci if there were legal non-conforming uses in the area; he replied yes.

Mr. Russoniello asked Mr. Ricci if most of the uses on this block pre-date the Township's zoning ordinance and are non-conforming; he replied yes.

Mr. Russoniello asked Mr. Ricci if this zone has many non-conforming structures and uses on this block; he replied yes.

Mr. Russoniello asked Mr. Ricci if he thought the zone has been impaired already; Mr. Ricci said that the area cannot handle any more non-conforming uses because the zone is over-built.

Mr. Russoniello asked whether a 962 sq. foot beautysalon will have a big impact on this zone. Mr. Ricci did not respond. He asked Mr. Ricci if the O'Reilly driveway is legal because the variance has already been approved by this Board; he replied yes it is a legal non-conforming driveway.

Mr. Russoniello asked Mr. Ricci if he heard testimony that most of the beautysalon's clients walk to the business and asked him if that changes his opinion about the site's vehicular activity; he said that is not his only concern about the vehicular activity.

Chairwoman Gabry called for a recess at 9:37 pm.

Chairwoman Gabry resumed the meeting at 9:50 pm.

Chairwoman Gabry asked if any members of the public had any questions for Mr. Ricci; there were none.

Mr. Owen called his next witness, Megan Brill.

Megan Brill approached the podium and was sworn under oath. Ms. Brill stated that she is the Executive Director of the Downtown Alliance.

Mr. Owen referred to Exhibit O-3, a store front vacancy list for the West Orange Downtown area, and asked Ms. Brill if this document was prepared by her; she replied yes.

Mr. Owen asked Ms. Brill if the store front vacancy list is current; she replied yes.

Mr. Owen asked Ms. Brill how many vacancies in the downtown; she replied forty six.

Mr. Owen asked Ms. Brill how many store front salons there are in the downtown; she replied seven are hair and nail salons.

Ms. Brill stated that the Downtown Alliance objects to the application because there are residential homes in that area.

There were no questions for Ms. Brill from the Board or the Professionals.

There were no questions for Ms. Brill from the members of the public.

Mr. Owen stated that he had no further witnesses or evidence to present.

Chairwoman Gabry stated that the hearing was now open to any members of the public who wanted to offer evidence or make a statement, under oath.

Richard E. Koehler approached the podium and was sworn under oath. Mr. Koehler stated that he lives at 136 Main Street and his property borders the proposed site and he is not in favor of this application. He said the applicant's property slopes and it carries a lot of water on its east border. Mr. Koehler stated that Mr. O'Reilly has not installed any drainage system yet on the east side of his property, as he is required to do as a condition of a resolution of approval by this Board, and that the residents had to build retaining walls in the rear of their property to prevent flooding. He said that his property is lower than the proposed site and he gets a lot of water from

134 Main Street and had to make adjustments to his property to prevent the water from flooding his basement. Mr. Koehler said that he feels that when the snow is plowed to the north-west side of that property, he will receive the run-off.

Mr. Koehler gave a very lengthy synopsis of the history of the area detailing how and when the neighborhood started to change. He cited the existing parking problems in the neighborhood and who lives on the first, second and third floor of the applicant's property along with the number of automobiles the residents and visitors own.

Robert Gazsik approached the podium and was sworn under oath. He stated that he lives at 131 Main Street and said that he thinks the application should be denied. Mr. Gazsik said that that it is a small piece of property and that taxis are often parked in the driveway and block traffic in the driveway. He said that this is the only business in the neighborhood that will be on the first floor of a home. Mr. Gazsik cited the parking problems in the neighborhood and said that once they pave the new parking area he is afraid of the run-off from the water. Mr. Gazsik said that he would like to keep the little bit of the residential character that is left of the neighborhood.

Mr. Owen approached the podium and summed up. He stated that his clients have nothing against the applicant and that they just wish that they relocate the beauty salon into into a zone that permits it. Mr. Owen said that thebeautysalon is inappropriate for the property and that residential properties do not need anything further to infringe on their residential character. He said that he feels that the business will easily generate up to sixteen employees and that they did not meet the burden of proof for the use and bulk variances. Mr. Owen said that there is too little onsite parking, no open space and that there is no proof that the property is suitable for this use. He said that he feels that thebeautysalon will create a detriment to this area.

Mr. Owen stated that he is requesting that the Board deny this application.

Mr. Russoniello approached the podium and summed up. He stated that the site does have suitability because it is the only house on that block that has a driveway. Mr. Russoniello noted the improvements that will be made to the house and said that the applicant should be able to use their own property for their business. He said that this application has nothing to do with the backlash of the O'Reilly property and reminded the Board that most of the traffic is walk-in.

Harvey Grossman, Esq., the West Orange Public Advocate approached the podium and said that the primary problem is inadequate off-street parking. He said he is sympathetic to the applicant but the area has a genuine parking problem and there is not sufficient onsite parking. Mr. Grossman said that it is not in the public interest to grant this application.

Chairwoman Gabry closed the hearing.

Ms. Weiss said that she agrees with the parking issues and that the negative outweighs the benefits. She said that she would deny this application if she had a vote.

Mr. Quentzel said that he is in favor of mom and pop businesses. He said that the applicant wants to make a better facility and improve the aesthetics of the building. He said that there is no

current parking and that they are putting in three parking spots and will lease parking spaces from Mr. O'Reilly to get additional parking. Mr. Quentzel said that he feels the need for parking is not as great as they make it out to be because the customers walk to the salon. He said that Mr. Koehler should have taken action against Mr. O'Reilly. Mr. Quentzel said that he suggests, as a condition of approval, using pervious materials when paving the new parking area and some kind of appropriate drainage that would take some of the problems away from the Koehler property. He said that he is in favor of this application.

Mr. Merklinger said that he agrees with Mr. Quentzel and that it is an aesthetically pleasing building. He said that you will not solve the parking on Main Street with one application and it is not fair to the applicant. Mr. Merklinger said that he will recommend, as a condition of approval, that they maintain the property and acquire an easement from Mr. O'Reilly. He said that he will vote to approve the application.

Mr. Sussman said that he is torn on this application. He said that he thinks parking is a problem and the site is not suitable for a beauty salon. Mr. Sussman said he will vote to deny the application.

Mr. Steinhart said that he has sympathy for the applicant and for the neighbors. He said that he has listened to the Planners for both the Applicant and the Objector and is in far more disagreement with the applicant's Planner's testimony rather than the objector's Planner's testimony. Mr. Steinhart said he did not hear enough sufficient evidence to re-zone the property and he is not in favor of the application.

Mr. Neuer said he has mixed emotions about this application. He said that this Zoning Board is a statutory body pursuant to and must act in accordance with the Municipal Land Use Law. Mr. Neuer said that this is the Zoning Board of Adjustment and if an adjustment to the specific provision of the ordinance is appropriate then the Board votes to approve. He said that he will vote yes to approve this application. Mr. Neuer said that he is proud that residents want to stay in this town. He said that the clients walk or take a bus to the site because they have a long term relationship with the applicant. Mr. Neuer said that a month-to-month lease under which the business currently operates is not secure and that his vote is based on what he feels is good for this community. He said that he does not want to see the Town lose another taxpayer and he will vote yes.

Chairwoman Gabry said that it is her opinion that a beauty salon does not serve the general welfare and will have a detrimental effect on the neighborhood. She stated that she is not convinced by the Applicant's testimony or the Applicant's experts since it was inconsistent and contradictory. Chairwoman Gabry stated she will vote to deny.

Mr. Buechler said that he will move to deny this application. He said that the applicant did not meet the positive or negative criteria and that when this Board votes, it is not just on the application before them; he said that the variance runs with the land.

Mr. Steinhart seconded the motion to deny.

The vote was as follows:

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

2. ZB-13-19/ Amanuel Ethiopian Orthodox Tewahedo Church Carried from 2/20/14

Block: 11; Lot: 17; Zone: R-M

15 Dean Street

“D” variance for conditional use and several “C” variances for the conversion
Of an existing commercial garage into a House of Worship.

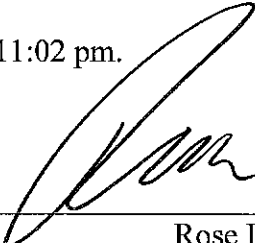
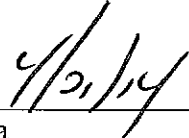
Chairwoman Gabry noted the time and stated that all meetings of this Board end promptly at 11:00 pm. She asked the attorney for ZB-13-19 to approach.

Joseph Vena, Esq. approached the podium and requested to be carried to the next Zoning Board meeting on April 17, 2014. He also requested to be the first application on the agenda.

Chairwoman Gabry noted that there will be another new application before him, and he will be second on the agenda. She said that no further notice will be necessary.

The meeting was adjourned by Chairwoman Gabry at 11:02 pm.

Adopted: April 17, 2014

Rose DeSena
Zoning Board Secretary