

**MINUTES  
TOWNSHIP OF WEST ORANGE  
ZONING BOARD OF ADJUSTMENT  
SPECIAL MEETING  
February 26, 2015**

The West Orange Zoning Board of Adjustment held a special meeting on February 26, 2015 commencing 8:00 PM at 66 Main Street, West Orange, N.J. in Council Chambers.

Chairman Buechler 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 February 13, 2015 in accordance with the "Open Public Meetings Act."

Chairman Buechler 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, B. Quentzel,  
W. Steinhart, M. Sussman

**ABSENT:** P. Neuer (excused)  
A. Weiss (excused)

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

**ANNOUNCEMENTS**

**Future Meetings:** March 19, 2015 (Regular Meeting) – 8:00 pm  
April 16, 2015 (Regular Meeting) – 8:00 pm  
May 21, 2015 (Regular Meeting) – 8:00 pm

**SWEARING IN**

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

## APPLICATION(S)

### 1. ZB-13-15/Quick Chek

Carried from 12-11-14

Block: 168; Lot: 26; Zone: B-2

555 Northfield Avenue

Seeking multiple "D" and several "C" variances for site plan and subdivision approvals

For developing a Quick Chek food store with fuel sales.

## EXHIBITS

- A-34 – Sound analysis, prepared by Russell Acoustics dated 10/20/14
- A-35 – Aerial photograph with ambient sound monitoring locations, prepared by Russell Acoustics dated 8/25/15
- A-36 – Graphs depicting ambient sound pressure levels, prepared by Russell Acoustics Dated 7/22/14 & 7/23/14
- A-37 – Graphs depicting ambient sound pressure levels with Quick Chek sound, prepared by Russell Acoustics dated 7/22/14 & 7/23/14
- A-38 – Contour map of sound in area from rooftop equipment, prepared by Russell Acoustics Dated 9/2/14
- A-39 – Contour map of sound in area from rooftop and car care equipment, prepared by Russell Acoustics, dated 9/2/14
- A-40 – Planning Analysis, prepared by John McDonough PP dated 12/17/13
- A-41 – Three page handout, prepared by John McDonough, consisting of an aerial photo and Photographs of the site and surrounding uses
- A-42 – Summary of relief requested, prepared by John McDonough – undated
- A-43 – Public land 500' proximity exhibit, prepared by Bohler Engineering dated 1/5/15
- A-44 – Hand out of public land 500' proximity exhibit
- A-45 – Overlay exhibit, prepared by John McDonough, consisting of five (5) sheets undated
- A-46 – Existing land use & surrounding uses, prepared by John McDonough, consisting of one (1) Sheet undated
- A-47 – Service station location exhibit, prepared by Bohler Engineering dated 1/5/15
- A-48 – Handout of service station location exhibit

Jennifer M. Porter, Esq., attorney for the applicant, approached the podium.

Chairman Buechler stated for the record that he and Ms. Gabry, who were absent at the last special meeting that was held on 12/11/14, read the transcripts from that meeting that were provided to them.

Ms. Porter stated that the applicant last appeared before this Board on December 11, 2014 at a special Zoning Board meeting and that their security expert, environmental expert and architecture provided testimony at that meeting. She detailed the main components of the application stating that the applicant is seeking preliminary and final site plan approval to operate a 24 hour business in accordance to the Township of West Orange's Chapter IV regarding Police regulations.

Ms. Porter presented their sound engineering expert as the first witness.

Norman Dotti approached the podium and was sworn under oath.

Mr. Dotti detailed his educational and professional background as an acoustical engineer and a licensed professional engineer in the State of New Jersey.

Chairman Buechler accepted Mr. Dotti as an expert in acoustical engineering.

Mr. Dotti stated that he is very familiar with the area and visited the site several times and did a sound analysis.

Chairman Buechler asked Mr. Dotti if he submitted a report; he replied yes.

Ms. Porter stated that the sound analysis report, prepared by Russell Acoustics and dated 10/20/14, was submitted to the Board Secretary.

Chairman Buechler stated that the sound analysis prepared by Russell Acoustics dated 10/20/14 was pre-marked as Exhibit A-34 for identification.

Mr. Dotti presented an aerial photograph of the proposed area dated 8/25/14 that detailed the ambient sound monitoring locations.

Chairman Buechler stated that the aerial photograph with the ambient sound monitoring locations that was prepared by Russell Acoustics and dated 8/25/14 was pre-marked as Exhibit A-35 for identification.

Chairman Buechler asked Mr. Dotti if he prepared Exhibit A-35; he replied yes.

Mr. Dotti referred to Exhibit A-35 and pointed out all of the locations that the sound monitoring system was setup. He said that he monitored these locations for several days.

Mr. Dotti presented a graph exhibit depicting ambient sound pressure levels.

Chairman Buechler stated that the graph exhibit, depicting the ambient sound pressure levels, prepared by Russell Acoustics and dated 7/22/14 and 7/23/14 was pre-marked as Exhibit A-36 for identification.

Chairman Buechler asked Mr. Dotti if the school was in session when the sound levels were measured; he replied no.

Chairman Buechler asked Mr. Dotti if the monitoring was done when school was in session would the results be different; he replied yes. Mr. Dotti said that, depending on the time of day, the sound levels would be louder.

Ms. Gabry asked Mr. Dotti if the weather could affect the sound levels; he said weather does not affect the sound levels or come into factor.

Mr. Dotti stated that he measured the ambient existing sound levels for two days. He said that the results were taken from the existing sound levels out there.

Mr. Bullock asked Mr. Dotti to define all of the technical terms the he uses during his testimony.

Mr. Dotti presented a contour map of sound in the area from the rooftop equipment on the proposed building.

Chairman Buechler stated that the contour map of sound in the area from the rooftop equipment, prepared by Russell Acoustic and dated 9/2/14, was pre-marked as Exhibit A-38 for identification.

Chairman Buechler asked Mr. Dotti if Exhibit A-38 is the same as figure 6 in his report and if he prepared it; he replied yes.

Mr. Dotti referred to Exhibit A-38 and stated that he went to a new Quick Chek in Whippany New Jersey where the rooftop equipment is the same make and model of the Quick Chek that is being proposed for this site. He said that he got on the roof and measured the sound emissions of the two air conditioning units and one refrigeration unit.

Chairman Buechler asked Mr. Dotti if the heating and the air conditioning are the same unit; he replied yes.

Mr. Dotti presented a contour map of sound in the area from the rooftop and the car care equipment.

Chairman Buechler stated that the contour map of the sound in the area from the rooftop and the car care equipment, prepared by Russell Acoustics dated 9/2/14, was pre-marked as Exhibit A-39 for identification.

Chairman Buechler asked Mr. Dotti if Exhibit A-39 is the same as figure 7 in his report and if he prepared it; he replied yes.

Mr. Dotti referred to Exhibit A-39 and said that he measured the sound levels of the car vacuum cleaners and the air compressor that are located on the site. He said that the results of all of the levels were under what is allowed by the State.

Mr. Dotti presented graphs depicting the ambient sound pressure levels that included the Quick Chek sounds.

Chairman Buechler stated that the graphs depicting the ambient sound pressure levels that include the Quick Chek sounds, prepared by Russell Acoustics and dated 7/22/14 and 7/23/14, were pre-marked as Exhibit A-37 for identification.

Mr. Steinhart asked Mr. Dotti if the new parking deck across from the proposed site was factored into the ambient sound; he replied no. Mr. Dotti said the parking deck was not there to measure when the sound levels were monitored.

Ms. Porter asked Mr. Dotti to explain ambient sound; he said that ambient sound is what one is presently hearing and then sounds are added.

Mr. Dotti referred to Exhibit A-37 and detailed the levels of the ambient sound. He said the levels are well below the State limit and Quick Chek will not add to the current sounds.

Mr. Steinhart asked Mr. Dotti if the sound levels are different when the leaves are off of the trees; he said that trees have no effect to the sound levels.

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

Chairman Buechler asked if any members of the public had any questions for Mr. Dotti.

Mario Romo approached the podium and stated that he lives at 346 St. Cloud Avenue.

Mr. Romo asked Mr. Dotti if the equipment was running when he measured the sound at the Quick Chek site in Whippany; he replied yes. Mr. Dotti said the mechanical equipment was on.

Mr. Romo asked Mr. Dotti what time of day did he measure the sound at the Quick Chek site in Whippany; he replied 10 am to 12 pm.

Mr. Romo asked Mr. Dotti if the vacuum and the air compressor could be heard from the baseball field sixty (60) feet away; he said sometimes. Mr. Dotti said that sound has to be a certain volume to hear it. He said that with ambient sound, you cannot hear the quieter sounds over the louder sounds.

Anthony Juliano approached the podium and stated that he lives at 115 Fairview Avenue.

Mr. Juliano asked Mr. Dotti if he had to make adjustments to the sounds he measured at the Quick Chek site in Whippany for this specific site; he replied yes and detailed how it was calculated.

Mr. Juliano asked Mr. Dotti what was figured into his calculations. Mr. Dotti explained what was figured into his calculations. (Technical terms were used.)

Mr. Juliano asked Mr. Dotti to explain the decibels in sound; he explained the decibels in sound. (Technical terms were used.)

Mr. Juliano asked Mr. Dotti if cars and trucks starting their engines up on the site was added into his calculations; he replied no. Mr. Dotti said that cars or trucks starting their engines are exempted from State regulations.

Robert Murro approached the podium and stated that he lives at 406 St. Cloud Avenue.

Mr. Murro asked Mr. Dotti to explain what point the 500' from the school was measured from; he said it was measured from the Quick Chek to the closest point to the school.

Mr. Russo asked Mr. Dotti if the distance from the sound source and a barrier have an impact on noise; he replied yes.

Mr. Russo asked Mr. Dotti if there is any type of barrier that would make a difference in the sound; he replied no. Mr. Dotti said that they are under the State regulations and they do not need a sound barrier.

Mr. Russo asked Mr. Dotti how tall a sound barrier would have to be to make a difference in the sound; he said at least twenty four (24) feet high.

Frank Magaletta, Esq. approached the podium. Mr. Magaletta stated that he is here on behalf of the Northfield B.P. gas station.

Mr. Magaletta asked Mr. Dotti if a vehicle coming in and out of the proposed site is regulated; he said no.

Mr. Magaletta asked Mr. Dotti if a truck picking up garbage is regulated; he said a truck picking up garbage is not counted into the regulations.

Robert Rashkes approached the podium and stated that he lives at 35 Oak Crest Road.

Mr. Rashkes asked Mr. Dotti if people on the baseball field could hear one another talking over the noise; he replied yes.

There were no further questions for Mr. Dotti.

Ms. Porter called her next witness.

John McDonough approached the podium and was sworn under oath. Mr. McDonough detailed his educational and professional background as a Professional Planner licensed in the State of New Jersey. He said that he has testified before this Board many times,

Chairman Buechler accepted Mr. McDonough as an expert in Professional Planning.

Mr. McDonough stated that he is very familiar with the site and performed a planning analysis in 2013.

Mr. McDonough presented his planning analysis, dated 12/17/13, to the Board Members.

Chairman Buechler stated that Mr. McDonough's planning analysis, dated 12/17/13, was pre-marked as Exhibit A-40 for identification.

Mr. McDonough presented a three (3) page handout consisting of an aerial photo and photographs of the site and surrounding uses.

Chairman Buechler stated that the three (3) page handout consisting of an aerial photo and photographs of the site and surrounding uses was pre-marked as Exhibit A-41 for identification.

Mr. McDonough referred to Exhibit A-41 and said that the aerial photo on page one (1) was downloaded from Bing. He said that he took the photos on pages two (2) and three (3) himself. He detailed the surrounding land uses and streets in the photos and all of the surrounding properties.

Mr. McDonough referred to Exhibit A-40 and stated that the hotel will retain that use and replace the vacant restaurant with a Quick Chek convenience store that offers fuel. He said that the convenience store is a permitted use in that zone.

Mr. McDonough stated that the applicant is looking to revitalize the property. He said that there could be a lot more stores built on this site but they are only putting one store on the site.

Mr. McDonough stated that the property is underutilized and provides parking for approximately one hundred (100) cars. He said that they are proposing a new well-kept building and will be offering fresh food, dairy items, baked goods and coffee along with other items. Mr. McDonough stated that this is not a fast food restaurant.

Mr. McDonough stated that the fuel component will be state of the art. He said that the fueling area will contain eight (8) dispenser pumps under a canopy.

Mr. McDonough stated that additional improvements will include new paving, new utilities, new signage, new lighting and new landscaping.

Mr. McDonough detailed the access into the site stating that there will be a signalized full access driveway off Northfield Avenue and a driveway for right turn egress onto Northfield Avenue.

Mr. McDonough presented a handout of all of the variances being requested.

Chairman Buechler stated that the handout labeled "summary of relief requested" was pre-marked as Exhibit A-42 for identification.

Mr. McDonough referred to Exhibit A-42 and detailed all of the variances being requested. He said the conditional use variance required is a D3 variance, not a D1 variance, which is subject to a lesser standard. Mr. McDonough then cited a case law that reinforced the lesser standard for the "D3" conditional use variance.

Mr. McDonough detailed the positive criteria stating that the applicant is redeveloping a vacant site which provides the convenience of a one stop shop. He said that the amount of time that it takes to fuel up your car is the same amount of time it will take someone to shop.

Chairman Buechler asked Mr. McDonough if, in his opinion, it is a good idea to leave a car at the gas pump while going into the store; he said that this does work based on his personal observations.

Mr. McDonough stated that having fuel, food and lodging all on one site is positive. He said that according to Nielson Group Data, 82% of gas components in the United States have convenience stores.

Mr. Bullock asked Mr. McDonough if he has that data for New Jersey; he replied no.

Chairman Buechler called for a recess at 9:39 pm.

Chairman Buechler resumed the meeting at 9:48 pm.

Mr. McDonough continued his testimony stating that availability of alternate sites is not a reason for denial by itself only and cited a case law.

Mr. McDonough stated that there has been a question regarding alternate sites for the Quick Chek. He presented a public land 500' proximity exhibit board that was prepared by Bohler Engineering with his supervision and dated 1/5/15

Chairman Buechler stated that the public land 500' proximity exhibit board, prepared by Bohler Engineering dated 1/5/15, was pre-marked as Exhibit A-43 for identification.

Mr. McDonough presented a hand out of the public land 500' proximity exhibit that was prepared by Bohler Engineering with his supervision and dated 1/15/15.

Chairman Buechler stated that the hand out of the public land 500' proximity exhibit that was prepared by Bohler Engineering and dated 1/15/15 was pre-marked as Exhibit A-44 for identification.

Chairman Buechler stated for the record that Exhibit A-44 is a handout of Exhibit A-43 and was marked separately.

Mr. Sussman referred to Exhibit A-43 and asked Mr. McDonough if the darker red is the 500' buffer; he replied yes.

There was discussion regarding Exhibit A-43 and its exactness according to the Township's ordinance regarding public land.



Mr. McDonough presented five (5) sheets of a permitted use overlay exhibit board and a hand out of the five (5) sheet permitted use overlay exhibit. He stated that this exhibit was prepared in his office under his supervision.

Chairman Buechler stated that the hand out of the five (5) sheet overlay exhibit of permitted uses was pre-marked as Exhibit A-45 for identification and the five (5) sheets of a permitted use overlay exhibit was pre-marked as Exhibit A-46 for identification.

Mr. McDonough referred to Exhibit A-46 and detailed the existing land uses and surrounding uses. He said that this information was taken from the State DEP data base. Mr. McDonough stated that the potential fueling stations are in green and that Quick Chek is looking for one acre minimum. He said that there are very few locations in town that they could put a Quick Chek on and the only viable site was the Essex Green Shopping Plaza.

Mr. Sussman stated that all of the golf courses in the Township are considered commercial properties.

Mr. Sussman asked Mr. McDonough if there was any site that they could combine with another site to make it an acre; he said that he did not know. Mr. McDonough said he did not go through that analysis. He said that they are just trying to establish a foundation that they are limited to where they can put a Quick Chek.

Mr. McDonough stated that almost every gas station in the Township is non-conforming and within 500' of a public building and presented a service station location exhibit board and a hand out of all of the service station locations in the Township.

Chairman Buechler stated that the service station location exhibit board that was prepared by Bohler Engineering dated 1/5/15 was pre-marked as Exhibit A-47 for identification and the hand out of the service station location exhibit prepared by Bohler Engineering dated 1/5/15 was pre-marked as Exhibit A-48 for identification.

Chairman Buechler asked Mr. McDonough if he knows when these gas stations were built; he replied no. Chairman Buechler stated that they may have been around many years before the Township Ordinance was in existence.

Chairman Buechler stated that the BP gas station site is much smaller than the site that Quick Chek is proposing and only gets tanker trucks and not delivery trucks.

Mr. Steinhart asked Mr. McDonough if a Quick Chek has been developed on a site with less than one acre; he replied no. Mr. McDonough state that this will be a nicer, newer facility.

Mr. McDonough continued his testimony. He said there are no detriments and that all of the concerns that were expressed have been addressed by the applicant.

Mr. McDonough said that this will not alter the character of the neighborhood and it advances the Township's Master Plan which is to encourage redevelopment. He said that this is a

complimentary land use and the revitalization of a dead space. Mr. McDonough stated that they will be making the site greener and the buffer bigger.

Mr. McDonough stated that, from a planning standpoint, this is a good application and the positive criteria outweighs the negative criteria.

Mr. McDonough cited brand new case law, an Exxon gas station vs Livingston, NJ, regarding proximity and said that they looked specifically at conditions.

Chairman Buechler asked Mr. McDonough to send Ms. Beirne all of the cases he quoted in his testimony this evening.

Ms. Porter asked Mr. McDonough if there were any deviations; he said none that are detrimental.

Mr. Bullock asked Mr. McDonough to explain the Exxon gas station case that he quoted; he said that they challenged the ordinance regarding the proximity of a fuel station having to be 500' from public land. Mr. McDonough said they went after the ordinance's validity.

Mr. Grygiel asked Mr. McDonough if he stated that the restaurant use was developed since 1950; he replied yes.

Mr. Grygiel asked Mr. McDonough if his testimony regarding the site being ten (10) times more than the minimum lot area required was for one lot or both lots; he replied both lots.

Mr. Grygiel asked Mr. McDonough to explain what he meant when he said there could be many more signs on the site because of the lot size; he said he was referring to the free standing sign.

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

Chairman Buechler asked if any members of the public had any questions for Mr. McDonough.

Anthony Juliano approached the podium and stated that he lives at 115 Fairview Avenue.

Mr. Juliano asked Mr. McDonough, besides the South Plainfield Quick Chek site that he compared to this site, has he studied any of the other Quick Chek sites; he replied yes.

Mr. Juliano asked Mr. McDonough if the case he cited, regarding the proximity of a gas station to a public place, was a school; he replied no.

Mr. Juliano asked Mr. McDonough if he ever testified to opposition to a Quick Chek; he replied no. Mr. McDonough said that he has never been to a bad Quick Chek.

Robert Murro approached the podium and stated that he lives at 406 St. Cloud Avenue.

Mr. Murro asked Mr. McDonough how one more car or truck in a bigger facility doing bigger business would not affect the environment; he said he is not the environmental expert.

Joel Goldstein approached the podium and stated that he lives at 299 St. Cloud Avenue. Mr. Goldstein asked Mr. McDonough if they ever considered the site on Pleasant Valley Way next to the United Rent All as an alternate site for the Quick Chek; he replied no.

Robert Rashkes approached the podium and stated that he lives at 35 Oak Crest Road.

Mr. Rashkes asked Mr. McDonough if he knew that Stagg Field is owned by the Township and not the Board of Education; he replied no.

Chairman Buechler noted the time was 10:54 pm and stated that the meetings end at precisely at 11:00 pm.

Chairman Buechler stated that Mr. McDonough will return at the next meeting.

Chairman Buechler asked if any opposition will have any witnesses; Mr. Magaletta replied yes.

Chairman Buechler stated for the record that this meeting will be carried over to 3/26/15 and no further notice will be necessary.

The meeting was adjourned by Chairman Buechler at 10:59 pm.

Adopted: March 21, 2015

  
Rose DeSena  
Zoning Board Secretary