

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
SPECIAL MEETING
June 4, 2015**

The West Orange Zoning Board of Adjustment held a special meeting on June 4, 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 May 22, 2015 in accordance with the "Open Public Meetings Act."

Chairman Buechler asked everyone to stand for the Pledge of Allegiance.

Chairman Buechler read the Opening Statement.

PRESENT: Bruce Buechler, Greg Bullock, Deborah Gabry, Philip D. Neuer
Bart Quentzel, Irv Schwarzbaum, William Steinhart,
Mark Sussman,

ABSENT: A. Weiss (excused)

ALSO PRESENT: Paul Grygiel, Consulting Planner
Eric Keller, 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: June 18, 2015 (Regular Meeting) – 8:00 pm
July 16, 2015 (Regular Meeting) – 8:00 pm
August 20, 2015 (Regular Meeting) – 8:00 pm

SWEARING IN

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

APPLICATION

1. ZB-13-15/Quick Chek

Carried from 3/26/15

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.

Chairman Buechler stated that the Planner for the objectors, Ms. Pomeroy, will conclude her testimony.

Jennifer Porter, Esq., attorney for the applicant, approached the podium and stated that when the last meeting ended on March 26, 2015, she did not have a chance to question Ms. Pomeroy.

Chairman Buechler stated for the record that Ms. Pomeroy emailed the Board Members a four (4) page document purporting to be a summary of her testimony before this Board at the last meeting. He said that this document will not be considered by the Board Members or be entered as part of the record.

Elizabeth Pomeroy approached the podium and was sworn under oath.

Ms. Porter asked Ms. Pomeroy how many of the Quick Chek Zoning Board meetings she has been to; she replied four (4).

Ms. Porter asked Ms. Pomeroy how many transcripts from the prior Quick Check meetings she read; she replied five (5) or six (6).

Ms. Porter asked Ms. Pomeroy if she has read all of the Professionals reports; she replied yes.

Ms. Porter asked Ms. Pomeroy how many gas station cases she worked on in the past; she replied three (3).

Ms. Porter asked Ms. Pomeroy if she prepared a list of who she represents since the last meeting; she replied no because some of them are anonymous. Ms. Pomeroy said that the list of who she represents is publically listed and she did not bring a copy of that list.

Ms. Porter asked Ms. Pomeroy if she is aware that the 2010 Master Plan recommended establishing convenience stores in the St. Cloud neighborhood; she replied yes. Ms. Pomeroy said that gas stations were not on that list.

Ms. Porter asked Ms. Pomeroy what zone the property is in; she replied a B-2 zone.

Ms. Porter asked Ms. Pomeroy if multiple uses are permitted in a B-2 zone; she replied yes.

Frank Magaletta, Esq., attorney for an objector, approached the podium and stated that he wanted it to be on record that he was present.

Ms. Porter referred to Exhibit A-15 and asked Ms. Pomeroy to point out the site on the Exhibit; she complied.

Ms. Porter asked Ms. Pomeroy if she thought that the site plan approval should be for the hotel also; she replied yes.

Ms. Porter asked Ms. Pomeroy why site plan approval should also be for the hotel; she said for the parking.

Ms. Porter asked Ms. Pomeroy if the overall site plan shows the hotel; she replied yes. Ms. Pomeroy said that there were no details for the hotel site on the plans.

Ms. Porter stated that they asking for site plan approval for everything to remain the same on the hotel site.

Ms. Porter asked Ms. Pomeroy why she felt that the dumpster was going to be removed; she said that the plans showed fencing around the dumpster and that usually means that it will be removed.

Ms. Porter asked Ms. Pomeroy to state the basis for the testimony she had provided on air quality and asked her if she was an air quality expert; she replied no. Ms. Pomeroy said that she was talking about the air quality in general.

Ms. Porter had no further questions for Ms. Pomeroy.

Chairman Buechler asked if any members of the public had any questions for Ms. Pomeroy; there were none.

Mr. Magaletta had no other witnesses.

Chairman Buechler stated that this portion of the meeting is for public comment and that each person will have five (5) minutes to speak. He said that when you approach, please state your name and address and you will be sworn in. Chairman Buechler also said that you will be subject to cross examination if you make a public comment.

Charlotte Wescott approached the podium and was sworn under oath. She stated that she lives at 346 St. Cloud Avenue and gave testimony as to why she is opposed to this application.

Chairman Buechler asked Ms. Porter if she wanted to cross examine Ms. Wescott; she replied no.

Mario Romo approached the podium and was sworn under oath. He stated that he lives at 346 St. Cloud Avenue and gave testimony as to why he is opposed to this application.

Chairman Buechler asked Ms. Porter if she wanted to cross examine Mr. Romo; she replied no.

Adam Goldman approached the podium and was sworn under oath. He stated that he lives at 40 Ferris Drive and gave testimony as to why he is opposed to this application.

Mr. Goldman presented copies of a document from the National Fire Protection Agency and asked if he could pass them around to the Board Members.

Chairman Buechler asked Mr. Goldman if he took those photos or prepared the document; he replied no.

Chairman Buechler stated that the Board could not accept the documents into evidence because he did not prepare the document or take the photos.

Ms. Porter asked Mr. Goldman if the document from the National Fire Protection Agency was for gas stations or service stations; he said that they use the term service station.

Vice Chairman Neuer advised Mr. Goldman not to testify on anything that is beyond his knowledge.

Deborah Russ approached the podium and was sworn under oath. She stated that she lives at 19 Old Salem Road and gave testimony as to why she is opposed to this application.

Chairman Buechler asked Ms. Porter if she wanted to cross examine Ms. Russ; she replied no.

Ellen Blake approached the podium and was sworn under oath. She stated that she lives at 45 Lenox Terrace and gave testimony as to why she is opposed to this application.

Chairman Buechler asked Ms. Porter if she wanted to cross examine Ms. Blake; she replied no.

Ivonne Ferrer approached the podium and was sworn under oath. She stated that she lives at 19 Arverne Road and gave testimony as to why she is opposed to this application.

Chairman Buechler asked Ms. Porter if she wanted to cross examine Ms. Ferrer; she replied no.

Robert Rashkes approached the podium and was sworn under oath. He stated that he lives at 35 Oak Crest Road and gave testimony as to why he is opposed to this application.

Chairman Buechler asked Ms. Porter if she wanted to cross examine Mr. Rashkes; she replied no.

Robert Blake approached the podium and was sworn under oath. He stated that he lives at 45 Lenox Terrace and gave testimony as to why he is opposed to this application.

Ms. Porter asked Mr. Blake if he was aware that the police regulate the hours of operation; he replied no.

Suzanne Robinson approached the podium and was sworn under oath. She stated that she lives at 34 Dogwood Drive and gave testimony as to why she is opposed to this application.

Ms. Porter asked Ms. Robinson if she was aware that the original application that was filed was signed by Cecelia Grabowski; she replied no.

Scott Lopez approached the podium and was sworn under oath. He stated that he lives at 304 St. Cloud Avenue and gave testimony as to why he is opposed to this application.

Chairman Buechler asked Ms. Porter if she wanted to cross examine Mr. Lopez; she replied no.

Satya Arya approached the podium and was sworn under oath. He stated that he lives at 581 Northfield Avenue and gave testimony as to why he is opposed to this application.

Chairman Buechler asked Mr. Arya if he lives at 581 Northfield Avenue; he said no that he rents the space. Mr. Arya said that he owns and operates a convenience store at that address.

Chairman Buechler asked Ms. Porter if she wanted to cross examine Mr. Arya; she replied no.

Stephen J. Christiano, Esq. approached the podium and was sworn under oath. He stated that he is the attorney for the West Orange Board of Education and is here testifying on behalf of that Board and gave testimony as to why they are opposed to this application. Mr. Christiano said that some of the Board of Education's concerns are environmental and that Quick Chek will be open 24 hours.

Chairman Buechler asked Mr. Christiano why the 24 hours of operation would have an impact on the school; he said that the school has night activities.

Mr. Bullock asked Mr. Christiano if the Board of Education had an official meeting at which a resolution was adopted authorizing him to appear at this meeting to object to this application; he said that the Board of Education directed him to come to this meeting.

Vice Chairman Neuer asked Mr. Christiano if there was a meeting; he said that they formally asked him to appear at a school board meeting and that the majority of the Board Members wanted him to appear at this meeting.

Ms. Porter asked Mr. Christiano if he read any of the transcripts from the prior meetings regarding testimony given on air quality or environmental; he replied no.

Ms. Porter asked Mr. Christiano if any of the Board Members asked him not to be at this meeting; he replied no.

Anthony Juliano approached the podium and was sworn under oath. He stated that he lives at 115 Fairview Avenue and gave testimony as to why he is opposed to this application.

Chairman Buechler asked Ms. Porter if she wanted to cross examine Mr. Juliano; she replied no.

Barry Geltzeiler approached the podium and was sworn under oath. He stated that he lives at 118 Old Indian Road and gave testimony as to why he is opposed to this application.

Chairman Buechler called for a recess at 9:35 pm.

Chairman Buechler resumed the meeting at 9:45 pm.

Sonia Cohenson approached the podium and was sworn under oath. She stated that she lives at 322 St. Cloud Avenue and gave testimony as to why she is opposed to this application.

Chairman Buechler asked Ms. Porter if she wanted to cross examine Ms. Cohenson; she replied no.

Rosary Morelli approached the podium and was sworn under oath. She stated that she lives at 22 Ralph Road and gave testimony as to why she is opposed to this application.

Chairman Buechler asked Ms. Porter if she wanted to cross examine Ms. Morelli; she replied no.

Mariel Clemensen approached the podium and was sworn under oath. She stated that she lives at 4 Cherrywood Circle and asked Chairman Buechler if she could present a petition with signatures of people that could not attend this meeting and were opposed to this application. Chairman Buechler stated that this Board does not accept petitions from anyone and said that she can testify for herself. Ms. Clemenson gave testimony as to why she is opposed to this application.

Chairman Buechler asked Ms. Porter if she wanted to cross examine Ms. Clemensen; she replied no.

Chairman Buechler asked if there were any other members of the public who wanted to comment; seeing none, the Chairman closed public comment.

Harvey Grossman approached the podium and stated that if this application is approved he would like to recommend that, because there are three gas stations within one mile of each other, that the Board consider reducing the number of pumping stations. He said that he has an obligation as the Public Advocate to protect this community and scaling back the application will scale back the problems. Mr. Grossman said that the issue of the fencing came up between the site and Stagg Field. He recommended that the Board establish a standard for Quick Chek and, as a condition, they fix the fence up to that standard.

Chairman Buechler asked Ms. Porter if she had a rebuttal testimony; she replied no.

Ms. Porter presented a list of the Exhibits and requested that the Board move all of the Exhibits into Evidence.

Chairman Buechler noted that there were inaccuracies in Mr. McDonough's report because it was written over a year ago and it would not be allowed in evidence.

Chairman Buechler referred to the Exhibit list and stated that the Exhibit numbers are off and advised Ms. Porter to go over Ms. Dillon's Exhibit list and make the corrections.

Mr. Magaletta requested that Exhibit O-2 be moved into evidence. Ms. Porter objected on the basis of credibility and stated that he report was not submitted ten (10) days prior to the hearing date.

Chairman Buechler stated that Exhibit O-2 will not be entered into evidence.

Mr. Magaletta approached and gave his closing argument. He said that as a procedural point, in 1986 the lots were to be consolidated into one lot and, for that alone, the application is insufficient.

Mr. Magaletta said he objects to this plan because the site is inappropriate for the variances being sought. He said the site cannot accommodate the use and the burden of proof is on the applicant.

Mr. Magaletta said there will be an impact on the hotel specifically because it will change the ways of the ingress and egress and also the number and quality of the variances will intensify the use of the hotel lot. He said that their traffic expert did not talk about pedestrian safety as they walk from the front to the back of the hotel; he said there is no buffer for anyone walking.

Mr. Magaletta stated that he considers the reduction of the hotel property a change of use and this site cannot accommodate the use. He said that there are no other stores in the area which are open 24 hours per day, just mom and pop stores, and this will change the character of neighborhood.

Chairman Buechler stated that there is a McDonalds down the street.

Mr. Magaletta stated that this proposal goes against the Township's Master Plan and that it will drive other businesses out of business.

Mr. Magaletta said that he respectfully asks the Board Members to deny this application.

Ms. Porter approached and gave her closing argument stating that this application has evolved significantly.

Ms. Porter said that relief is warranted and should be granted because the applicant provided extensive data from their operations, real estate, safety and security, traffic, sound and planning experts. She said that testimony was presented to address the comments and concerns of the Board Members and the general public. Ms. Porter said that the objectors have only presented testimony from one professional.

Ms. Porter said that the fuel pumps have been a component of Quick Chek stores for the past fifteen (15) years and the business is family owned and not franchised. She said that the gas

operations will meet and exceed the Federal Government, EPA and the New Jersey State requirements.

Ms. Porter said that the applicant made changes to the proposal per the concerns and suggestions made by the Board Members and the Board Professionals and detailed all of the safety features that are being incorporated into the proposal and what the testimony of the traffic expert. She said that the use does not change the existing traffic patterns and no objector presented a traffic expert to testify.

Ms. Porter stated that the applicant presented seven (7) years of crime data for Quick Chek stores when only five (5) years were requested. She said that they also provided incident reports for all of the Quick Chek stores in Essex County as requested by the Board.

Ms. Porter said that their air quality expert provided testimony that there will be no adverse effects to the air quality and their sound expert provided testimony that the noise levels will comply with the New Jersey regulations and will be well below those requirements.

Ms. Porter detailed what their Planner testified to and said that this application requires a "d" (3) variance and not a "d" (1) variance. She said that this is a conditional use variance and is allowed in the zone under certain conditions.

Ms. Porter stated that the hotel has been operating within these boundaries for the past thirty six (36) years and there is no change.

Ms. Porter said that the positive and negative criteria has been met and there will be no detriment to the zoning.

Ms. Porter requested that the Board Members vote to approve this application.

Chairman Buechler stated that the closing arguments are concluded and declared the hearing closed.

Chairman Buechler noted the time and said that the Zoning Board meetings end promptly at 11:00 pm. He said that he is recommending that this application be carried over to the June 18th regular meeting so that the Board has more time to vote because eleven (11) minutes is not enough time.

Chairman Buechler stated for the record that this meeting will be carried over to the Zoning Boards regular meeting held on June 18, 2015. He said it will be the first application on the agenda and that the Board Members will just vote on it.

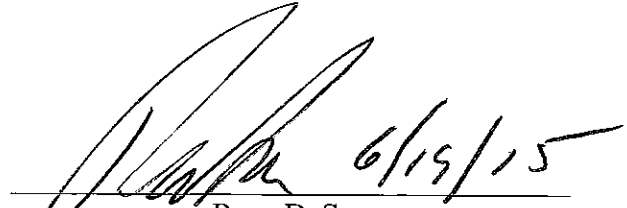
Chairman Buechler said that no further notice will be necessary.

Ms. Sussman stated for the record that he was absent at the March 26, 2015 meeting and signed the form provided to him by the Board Secretary confirming that he read the transcripts from that meeting.

Chairman Buechler and Vice Chairman Neuer commended the general public on how they conducted themselves during all of the hearings.

The meeting was adjourned by Chairman Buechler at 10:54 pm.

Adopted: June 18, 2015



Rose DeSena
Zoning Board Secretary