

**TOWNSHIP OF WEST ORANGE
PLANNING BOARD
MEETING MINUTES
October 1, 2014**

The Township of West Orange Planning Board held a regular meeting on October 1, 2014 at 7:30 P.M. in Council Chambers, 66 Main Street, West Orange, New Jersey.

Chairman Heller called the meeting to order at approximately 7:36 P.M. It was announced that notification of this meeting was given to the Township Clerk, and posted on the Township Bulletin Board on November 21, 2013 in accordance with the requirements of the "Open Public Meetings Act".

PRESENT: Chairman Ben Heller, Robert Bagoff, Joanne Carlucci, Jerome Eben, Tekeste Ghebremicael, Lee Klein, Council President Susan McCartney, Vice Chairman Ron Weston

ABSENT: Gerald Gurland, Jason Lester, William Wilkes II

ALSO PRESENT: Paul Grygiel, AICP, PP, Acting Township Planner, Patrick J. Dwyer, Esq., Board Attorney, Robin Miller, Board Secretary, Kevin Dillon, Jr., Audio-Digital Transcription Service

PLEDGE OF ALLEGIANCE

Chairman Heller requested all persons stand for the Pledge of Allegiance.

ROLL CALL

Robert Bagoff, Joanne Carlucci, Jerome Eben, Tekeste Ghebremicael, Gerald Gurland, Chairman Ben Heller, Lee Klein, Jason Lester, Council President Susan McCartney, Vice Chairman Ron Weston, William Wilkes II

ANNOUNCEMENTS

The next Planning Board regular meeting will be held on November 5, 2014 in Council Chambers at 7:30 P.M.

Per Applicant request, PB-14-06/AutoZone Northeast, Inc. will be carried to the November 5, 2014 regular meeting.

ADOPT MINUTES

The minutes of the August 6, 2014 and the September 3, 2014 regular meetings were unanimously adopted.

SWEARING IN

Paul Grygiel, AICP, PP, Acting Township Planner

RESOLUTIONS

PB-14-15T/Spring Reflexology Spa, Inc.

Block: 154; Lot: 14; Zone: B-2
640-642 Eagle Rock Avenue
Technical Review Application.

DISCUSSION

Mr. Grygiel gave a brief recapitulation of the Technical Review Application for retrofitting an existing retail space to operate a foot-reflexology massage establishment; he said it was a straightforward Application approved without additional conditions by the Technical Review Committee at the September 18, 2014 meeting. Vice Chairman Weston said the building plans did not work; they were not building code compliant; he said he could not endorse the Application; he requested the approval be amended to include conditions that the Applicant submit revised plans to conform with Building Code requirements. Mr. Eben said the architect did not state the occupancy; he said it appeared that the occupancy was approximately 32 people at any one time; if there were more than 25 people, two toilet rooms were required; the parking was insufficient. Mr. Grygiel said representatives from the Health Department and the Building Department were at the Technical Review meeting and had raised issues with the plans; the business would have to pass required inspections before it could open. The Board amended the Resolution for approval with additional conditions:

1. Applicant to submit to the Construction Official revised architectural plans to Building Department;
2. Applicant to conform to all applicable building codes and safety codes.

The Board voted on the Resolution as follows:

Motion: Chairman Heller

Second: Dr. Bagoff

Bagoff: Yes	Carlucci: Yes	Eben: No	Ghebremicael: Yes
Gurland: Absent	Klein: Yes	Lester: Absent	McCartney: Yes
Weston: Yes	Wilkes: Absent	Heller: Yes	

PB-14-16T/Garden Academy, Inc.

Block: 172.23; Lot: 33; Zone: R-4
627 Mt. Pleasant Avenue
Technical Review Application.

DISCUSSION

Mr. Grygiel gave a brief recapitulation of the Technical Review Application for a school for special needs students to be located in a vacant property that was previously a preschool/daycare. The school taught autistic students, the program was labor intense with a 1-1 student/teacher ratio. In response to questions from the Board, Mr. Grygiel said the age of the students were 2 ½ through high school; the school was properly licensed by the State, it was currently operating in leased space in Maplewood; it had purchased the West Orange property to accommodate a growing student population. Mr. Grygiel was unsure if the building was sprinklered. The Application was for

a reuse of the existing building and grounds; no exterior changes were proposed; all work would be interior. Mr. Grygiel said the Committee had approved the Application at the September 18, 2014 meeting with the following conditions:

1. Applicant to install key lock box emergency access system for use by the West Orange Fire Department;
2. Applicant to obtain signage permit; signage to be approved by the Zoning Official.

The Board voted on the Resolution as follows:

Motion: Chairman Heller

Second: Council President McCartney

Bagoff: Yes	Carlucci: Yes	Eben: Yes	Ghebremicael: Yes
Gurland: Absent	Klein: Yes	Lester: Absent	McCartney: Yes
Weston: Yes	Wilkes: Absent	Heller: Yes	

PB-14-17T/Soledad Day Spa

Block: 152.22; Lot: 1424; Zone: B-1

412 Pleasant Valley Way

Technical Review Application.

DISCUSSION

Mr. Grygiel gave a brief recapitulation of the Technical Review Application for the re-occupancy of an existing commercial space for a skin care personal services business. Mr. Eben asked for clarification regarding interior renovations; Mr. Grygiel said that no interior renovations would be done; the Applicant would be installing business-related equipment only. Representatives of the Health Department and Building Department were present at Technical Review and advised Applicant to conform to all required Health and Building codes; the Committee approved the Application at the September 18, 2014 meeting; there were no additional conditions for approval.

The Board voted on the Resolution as follows:

Motion: Chairman Heller

Second: Dr. Bagoff

Bagoff: Yes	Carlucci: Yes	Eben: No	Ghebremicael: Yes
Gurland: Absent	Klein: Yes	Lester: Absent	McCartney: Yes
Weston: Yes	Wilkes: Absent	Heller: Yes	

PB-14-19T/Daughters of Israel (Hirsch Pavilion)

Block: 171; Lot: 12; Zone: R-2

1155 Pleasant Valley Way

Technical Review Application.

DISCUSSION

Mr. Grygiel gave a brief recapitulation of the Application for interior improvements in excess of \$100,000.00 to existing activity/dining area and nurses' station. The Committee approved the Application at the September 18, 2014 meeting; there were no additional conditions for approval.

The Board voted on the Resolution as follows:

Motion: Chairman Heller

Second: Dr. Bagoff

Bagoff: Yes	Carlucci: Yes	Eben: Yes	Ghebremicael: Yes
Gurland: Absent	Klein: Yes	Lester: Absent	McCartney: Yes
Weston: Yes	Wilkes: Absent	Heller: Yes	

PB-14-20T/Daughters of Israel (Slobodien Pavilion)

Block: 171; Lot: 12; Zone: R-2

1155 Pleasant Valley Way

Technical Review Application.

DISCUSSION

Mr. Grygiel gave a brief recapitulation of the Application for interior improvements in excess of \$100,000.00 to an existing lobby and existing courtyard connecting corridor/hallway addition; the Committee approved the Application at the September 18, 2014 meeting; there were no additional conditions for approval.

The Board voted on the Resolution as follows:

Motion: Chairman Heller

Second: Dr. Bagoff

Bagoff: Yes	Carlucci: Yes	Eben: Yes	Ghebremicael: Yes
Gurland: Absent	Klein: Yes	Lester: Absent	McCartney: Yes
Weston: Yes	Wilkes: Absent	Heller: Yes	

APPLICATIONS

PB-14-18/Millennium Homes/BNE Real Estate Group

Block: 107; Lot: 1.03; Zone: OB-2

1 Boland Drive

Amended Site Plan with "C2" Variance.

EXHIBITS

A-1: Sheet CS101 – Site Plan, signed by Leonard D. Savino, PE, Langan Engineering and Environmental Services, Inc., dated August 15, 2014.

DISCUSSION

Mr. Klein requested he be recused from hearing the Application; it was so noted by Chairman Heller; Mr. Klein left the Board dais at approximately 7:56 P.M.

Stephen A. Geffner, Esq., Schenck Price Smith & King, LLP, attorney for the Applicant, addressed the Board; he said the Applicant was seeking a c(2) variance for the removal of two parking spaces for the installation of an emergency stand-by generator; the existing dumpster would be relocated to the existing loading area. Mr. Geffner said prior site plan approval had granted a variance for the number of parking spaces; 500 spaces were required, the previous approval for granted variance relief for 400 spaces. Subsequently four spaces were donated to the Oskar Schindler Performing

Arts Center, and two more spaces had been converted to handicapped parking; there were presently 394 parking spaces; the proposal would reduce the number of parking spaces to 392.

Matthew T. Murello, PE, President, Lewis S. Goodfriend & Associates, was sworn in, stated his credentials, and was accepted by the Board to be an expert engineer in acoustics and noise control. Mr. Murello advised the Board he had prepared the Emergency Generator Sound Evaluation dated August 15, 2014. He stated he had evaluated the impact of the proposed generator on the south and southwest sides of the property. Mr. Murello said he had made a site visit on August 13, 2014 during the middle of the day; he described the existing noise conditions; the noise was dominated by the highway traffic on Route 280; he had calculated the sound level to be approximately 57 dB(A). He had also evaluated the existing ambient sound pressure levels of the operation of the proposed generator and concluded the proposed generator would produce sound pressure levels that met the daytime limits of the NJDEP noise regulation for all surrounding properties which was at or below 53 dB(A) at the closest residential property lines. Mr. Murello advised the Board that during the time of an emergency, the generator was exempt from the NJDEP noise regulations. He told the Board that when installed; the Applicant would test run the generator for approximately 15-20 minutes, once a week, and one-half hour, once yearly.

Vice Chairman Weston stated that any routine maintenance should be done during weekday daytime hours; Mr. Geffner said the Applicant would accept it as a condition of approval. Vice Chairman Weston asked if the generator would be used at any time other than during an emergency; Mr. Murello said that other than running it for routine testing and maintenance, the generator would only be used in the case of an emergency power outage.

In response to inquiry from Mr. Eben, Mr. Murello confirmed the generator would only be used during an emergency or during routine testing for a period of up to one-half hour maximum.

Dr. Bagoff asked if any screening of the generator was proposed to decrease the noise; Mr. Murello said that there was an acoustic screen provided by the manufacturer; the majority of residential houses were located on the opposite side of property; the office building shielded the generator from residential homes. In response to inquiry from Dr. Bagoff, Mr. Murello said the generator was diesel type.

The Public Advocate and the Public had no questions for Mr. Murello.

Paul Faris, Director of Operations, Colliers International, was sworn in; he stated he was the Building Manager for One Boland Drive. Mr. Faris said that Wolff and Samson currently occupied 86% of the building and was negotiating to lease the remainder of the building by December 2015; Wolff and Samson had requested the installation of the stand-by generator; it was part of the lease agreement. In response to questions from Mr. Geffner, Mr. Faris stated he was familiar with the type of generator to be installed; he confirmed it was a diesel fuel generator; fuel delivery would occur during normal daytime business hours.

In response to questions from Board members Mr. Eben, Vice Chairman Weston, Dr. Bagoff and Council President McCartney, Mr. Faris said the diesel tank would be located under the generator unit; it was part of the enclosure. There was ample room for trucks to make fuel deliveries; fuel deliveries would be during normal business hours; concrete bollards would be installed to protect

the unit from a potential car or truck impact; and the dumpster would be relocated to the area of the existing loading dock and would be screened.

Mr. Grygiel asked if loading area had enough room for the dumpster; Mr. Faris said the loading dock had enough room for two trucks; it would be able to accommodate the relocated dumpster.

The Public Advocate and the Public had no questions for Mr. Faris.

William G. Lothian, P.E., Langan Engineering and Environmental Services, Inc. was sworn in, stated his credentials, and was accepted by the Board to be an expert in civil engineering. In response to inquiry from Mr. Geffner for the requested parking variance, Mr. Lothian said the generator installation would remove two parking spaces to reduce the total number of spaces from 394 to 392. He said the generator would be located in the lower parking area that was not usually occupied; there was ample on-site parking, the loss of two spaces would not be missed. In response to inquiry from Council President McCartney, Mr. Lothian said the building was currently fully occupied and had ample parking; there was no plan to increase the size of the building so there would not be a need for additional parking in the future.

The Township professionals, Public Advocate and the Public had no questions for Mr. Lothian.

The Board, Township professionals, Public Advocate and Public had no comments on the Application.

Conditions:

1. The Applicant shall comply with all applicable Township, County, State and Federal laws, ordinances, regulations and directives, including without limitation, obtaining all applicable local, state and federal approvals and/or permits. Without limitation of the foregoing, prior to the signing of the approved site plans, and prior to the commencement of any land disturbance or construction, the Applicant shall submit to this Board, with a copy to the Board Engineer, proof that it has obtained all required governmental approvals.
2. If another governmental entity or agency grants a waiver or variance affecting the plans and/or exhibits submitted by the Applicant, this approval or the conditions attached to it, then the Applicant shall re-apply to this Board respecting the same and this Board shall have the right to view that issue as it relates to this approval and these conditions and modify and amend same, if appropriate.
3. In the event that any other required regulatory approval conflicts with the terms and conditions hereof, or materially alters the same, or the terms and conditions hereof are materially altered by any change in applicable law or regulation other than those municipal regulations for which change is prohibited by the Municipal Land Use Law (MLUL), or in the event Applicant or its successors or assigns construct or attempt to construct any improvement in conflict with or in violation of the terms of this approval, the Board hereby reserves the right to withdraw, amend or supplant the instant approval.
4. All construction, use and development of the property shall be in conformance with the plans approved herein, all representations of the Applicant and its witnesses during the

public hearing, all exhibits introduced by the Applicant, and all terms and conditions of this resolution.

5. The Applicant shall pay all outstanding taxes, tax liens, application fees and technical review fees, as well as any inspection fees that may be required hereunder. The Applicant shall pay any additional fees or escrow deposits which may be due and owing within thirty (30) days of notification or this approval shall be deemed withdrawn.
6. All notes included in the approved plans, including notes required by this Resolution, shall be deemed conditions of approval having the same force and effect as conditions expressly set forth in this Resolution.
7. The generator will only be tested and/or started and run to ensure it is operable during weekday daytime hours.
8. The generator will only be used to supply power in the event of an electrical power outage, and will not be used for "peak-shaving" or for selling power to any third party.
9. After the generator is installed, the noise levels it generates will be tested and if they exceed the maximum limits, then the generator will be further buffered to bring it into compliance.
10. The loading area where the trash will now be put shall be screened.

The Board voted on the Application as follows:

Motion: Chairman Heller

Second: Dr. Bagoff

Bagoff: Yes	Carlucci: Yes	Eben: Yes	Ghebremicael: Yes
Gurland: Absent	Klein: Recused	Lester: Absent	McCartney: Yes
Weston: Yes	Wilkes: Absent	Heller: Yes	

Mr. Klein rejoined the dais at approximately 8:24 P.M.

ORDINANCE UNDER REVIEW

Ordinance #2424-14 - An Ordinance Amending Chapter 25, Section 9.12 of the Revised General Ordinances of the Township of West Orange (Hours of Operation for Businesses Operating in Residential Zones in the Township of West Orange).

DISCUSSION

Mr. Grygiel told the Board the Council had recently introduced the Ordinance for First Reading. Per Municipal Land Use Law, the Ordinance was referred to the Planning Board for review and recommendation to determine its consistency with the Master Plan. Currently, Chapter 25 Zoning Ordinance did not regulate business hours of operation; Police Ordinance, Chapter 4.9, regulated them. Mr. Grygiel gave a recapitulation of the Ordinance to limit the hours of operation earlier than 6:00 A.M. and after 12:00 A.M., retail and other businesses in residential zones and within 200 feet of residential zones. The Ordinance described the types of businesses to be affected. Mr.

Grygiel said the Ordinance would affect all new businesses going forward that were not already in operation.

The Board discussed the proposed Ordinance. Mr. Klein asked if adopted, would an Applicant be able to appear before the Board if they wanted to operate extended hours, would it be a waiver or variance; what would happen to a new business that purchased an existing business. Mr. Dwyer said the current Police Ordinance 4.9 checklist required site plan approval; if it became part of Chapter 25, then it would be considered a variance. Council President McCartney voiced concern that some businesses had liquor licenses that permitted them to be open until 2:00 A.M. Dr. Bagoff opined those existing businesses would be "grandfathered". Mr. Grygiel said the limitation of the Ordinance was in a residential zone or within 200 feet of a residential zone. Council President McCartney and Mr. Klein both stated that almost every commercial zone was within 200 feet of a residential zone. Mr. Eben questioned why the Ordinance was necessary; he opined that 4.9 was clearly defined. Dr. Bagoff opined the Board should define whether relief to the Ordinance was a waiver or a variance; he also voiced concern regarding Section g of the proposed Ordinance; he inquired what would happen if the approval process for a temporary license took longer than anticipated. Mr. Dwyer said if the Ordinance was in Chapter 25, a request for relief would be a variance. Council President McCartney stated the Board had recently streamlined the Zoning Ordinance and was currently working to streamline the Technical Review process; she opined she was not comfortable with a new business restriction that would require an Applicant to seek additional variance relief. Vice Chairman Weston opined that MLUL clearly defined variances; the Board should not define variances; the proposed Ordinance was extremely prohibitive for hours of operation; he opined changing it from 12 A.M. – 6:00 A.M. to 1:00 A.M. -5:00 A.M. Mr. Dwyer said he and Mr. Grygiel had discussed whether the hours of operation be considered part of land use law at all; should it remain Police Ordinance. Mr. Eben said the existing Police Ordinance was regarding hours of operation; the proposed Ordinance was regarding land use, which one would take precedence. Mr. Klein voiced concern that as a necessary function for operating, some businesses had early morning deliveries and employees on premises to set up operations for the day that would be affected by the Ordinance. Council President McCartney opined Section h of the proposed Ordinance was a clear redundancy of Police Ordinance 4.9; she questioned the necessity of having two ordinances. Mr. Ghebremicael voiced concern about Section c; he opined hours of delivery not be curtailed, it would create hardship for some businesses.

Councilman Jerry Guarino, 10 Belgrade Terrace, advised the Board he had worked on the Ordinance after speaking with the Mayor; he opined it was necessary to address the issue. He said he realized the Township was obliged to be business friendly; but to keep the flavor of a bedroom community in those areas zoned residential, regulations for development were needed. He acknowledged the (draft) Ordinance needed to be reviewed and revised. He gave a brief overview of the Ordinance, clarified some issues raised by the Board, and asked the Board for guidance.

Dr. Bagoff opined the draft was a great first step; he suggested that with input from the Board, the Ordinance be redrafted and reviewed again at the next Board meeting. He asked if the Chamber of Commerce and Downtown Alliance had been contacted for input. He suggested the formation of an ad-hoc committee. Vice Chairman Weston suggested a better limit to hours of operation would be 1 A.M. to 5:00 A.M.; he voiced concern that too limited hours of operation might deter businesses from the community. Mr. Eben suggested that some members of the Board work with the Council to redraft the Ordinance. President McCartney opined it was a good idea to take a pro-

active approach to commercial development adjacent to residential zones; she voiced concern that the Ordinance was redundant and needed to be further reviewed before action.

Harvey Grossman, Public Advocate; he opined that the Ordinance as written would not work due to the types of businesses that currently operated in areas adjacent to residential zones; he stated he was concerned about the Ordinance definition of a retail business; he opined movie theatre and fueling station be added.

Councilman Joe Krakoviak, 20 Grandview Avenue, voiced concern that while an existing 24-hour business would not be impacted, it might be when they wanted to sell. He also said it would be important to clarify the definition of being open for business. He opined it was important to look at the existing commercial zones to be impacted by the Ordinance. Council President McCartney opined it had been determined that the Ordinance would affect every commercial zone. Mr. Eben concurred.

The Board recommended the Council not advance the Ordinance on Second Reading until it was further researched, developed, and refined; and an Ad-Hoc Committee be formed to assist the Council in drafting the Ordinance. The Committee to include members of the Council, Planning Board, Chamber of Commerce, Downtown Alliance, Police Department and others.

The Board voted on the Recommendation as follows:

Motion: Dr. Bagoff

Second: Vice Chairman Weston

Bagoff: Yes	Carlucci: Yes	Eben: Yes	Ghebremicael: Yes
Gurland: Absent	Klein: Yes	Lester: Absent	McCartney: Yes
Weston: Yes	Wilkes: Absent	Heller: Yes	

DISCUSSIONS

Stand-by Generators

Dr. Bagoff addressed the Board; he stated that with the proliferation of stand-by generators in the Township, a list of businesses with generators be made available to Township officials to assist members of the public in time of emergency. Council President McCartney opined that a list was available to the Office of Emergency Management. Vice Chairman Weston said that all generators required permits; the Building Department would have the information.

Recent Ordinances

Council President McCartney advised the Board the Council had recently adopted the following Ordinances:

2417-14 – An Ordinance Requiring The Installation Of A Key Lock Box Emergency Access System For Use By The West Orange Fire Department During An Emergency Or Any Other Action Deemed Necessary By The West Orange Fire Department And Adding Section 4 To Chapter 18 Of The Municipal Code Of The Township Of West Orange.

2418-14 – An Ordinance Requiring The Installation Of A Fire Department Connection Indicator Light For Use By The West Orange Fire Department And Adding Section 5 To Chapter 18 Of The Municipal Code Of The Township Of West Orange.

Technical Review Subcommittee Ordinance and Application Process
Carried from the September 3, 2014 regular meeting.


DISCUSSION

Chairman Heller asked Mr. Grygiel if he had received any comments from the Board regarding the draft document for proposed changes to the Technical Review Procedures. Mr. Grygiel said he had not received any comments. He gave a brief recapitulation of his memorandum dated October 3, 2014, as well as the attached draft recommendation. The recommendation included making the process more user-friendly; creating an informational flow-chart; eliminating the current Technical Review Committee, to be replaced by a Site Plan Review Advisory Board as permitted by the Municipal Land Use Law; provide standards for when site plan approval was required; define "major" and "minor" site plans; and require review of all major site plan applications to both the Planning Board and Zoning Board of Adjustment.

The Board discussed the changes to the Technical Review to include elimination of \$100,000.00 improvements threshold and inclusion of Zoning Board applications to site plan review process. It was determined that the final draft would be ready for Board review and recommendation at the November meeting.

MEETING ADJOURNED at approximately 9:50 P.M.

Minutes adopted December 3, 2014



Robin Miller, Planning Board Secretary
Township of West Orange

**THE NEXT REGULAR MEETING OF THE PLANNING BOARD WILL BE
WEDNESDAY JANUARY 7, 2015 AT 7:30 P.M. IN COUNCIL CHAMBERS**