

**TOWNSHIP OF WEST ORANGE
PLANNING BOARD
MINUTES
January 4, 2012**

The Township of West Orange Planning Board held a regular meeting on January 4, 2012 at 8:00 P.M., in Council Chambers, 66 Main Street.

Chairman Bagoff 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 January 4, 2012 in accordance with the requirements of the "Open Public Meetings Act".

Chairman Bagoff asked all persons in attendance to stand for the Pledge of Allegiance.

PRESENT: Chairman Bagoff, Joanne Carlucci, Jerome Eben (9:10 P.M.), Tekeste Ghebremicael, Gerald Gurland, Vice Chairman Ben Heller, Lee Klein, Jason Lester, Councilwoman Susan McCartney (8:07 P.M.), Ron Weston

ABSENT: William Wilkes

ALSO PRESENT: Susan Borg, AICP, PP, AIA, Planning Director
Leonard Lepore, Municipal Engineer, Public Works Director
Debbie Dillon Audio Transcription Service, LLC
Patrick Dwyer, Esq., Board Attorney
Robin Miller, Board Secretary

ROLL CALL

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

ADOPT MINUTES

The minutes of the December 7, 2011 Planning Board meeting were unanimously adopted.

ANNOUNCEMENTS

The next regular Planning Board meeting will be held on February 1, 2012 in Council Chambers at 8:00 P.M.

SWEARING IN

Director Borg was sworn in.
Director Lepore was sworn in. (8:11 P.M.)

RESOLUTIONS

PB-11-18/Falcon Associates for South Mountain Realty Associates, LLC

Block: 168; Lot: 27.02, Zone: B-2

563 Northfield Avenue

Preliminary and final site plan with "C" variances to build an addition to existing building.

Resolution to be carried to the February 1, 2012 meeting.

DISCUSSION

Director Borg told the Board all required site plan changes had not yet been completed. The Resolution will be carried to the February 1, 2012 meeting.

PB-11-19T/Taneisha Williams/Headed for the Stars Learning Center

Block: 126; Lot: 1; Zone: B-1

85 Whittlesey Avenue

Preliminary site plan proposal to establish a childcare center.

DISCUSSION

Director Borg told the Board this was an Application a childcare center to be located on Whittlesey Avenue. The Technical Review Sub-Committee reviewed and approved the application with conditions:

- i. Applicant agrees to follow the playground and parking layout as indicated on revised site plan drawing "S1" received by the Planning Board on December 19, 2011;
- ii. Applicant agrees there will be no primary food preparation done on premises. All food will be pre-packaged;
- iii. Applicant agrees that the basement area will be used for utility equipment and storage only; not for occupancy;
- iv. The building owner will be responsible for exterior repairs to the rear of the building;
- v. The signage on the existing apron roof will be approved by the Planning Director;
- vi. There must be two parking spaces reserved for the second floor occupant;
- vii. Applicant agrees to submit a permit package to the Building Department and secure all necessary building permits;
- viii. Applicant shall execute, prior to the issuance of a Certificate of Occupancy, an Affidavit of Compliance certifying that all conditions have been fulfilled as set forth within.

Mr. Weston said the Application had been heard at the December 19, 2011 meeting and approved by the Technical Review Sub-Committee.

Chairman Bagoff called for a vote on the resolution.

The Board voted on the resolution as follows:

Motion: Chairman Bagoff

Second: Mr. Ghebremicael

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

PB-11-21T/Awet Zersenai/Esey Market, LLC

Block: 17; Lot: 2; Zone: B-1

325 Valley Road

Technical site plan to lease space for international grocery store.

DISCUSSION

Mr. Ghebremicael announced he was the owner of the property; he was recused from the meeting and left the council chambers for the duration of the discussion and vote.

Director Borg described the application; she told the Board it was approved with conditions by the Technical Review Sub-Committee; and listed the conditions:

- i. No refuse or recycling will be stored outside except on scheduled refuse and recycling collection days;
- ii. Front stairs painted and missing tiles replaced no later than June 1, 2012;
- iii. Applicant will secure a Certificate of Continued Occupancy prior to store opening;
- iv. Applicant must obtain approval from the Township's Health and Building Departments;
- v. Proposed signage and fascia board treatment to be reviewed and approved by the Planning Director, and a signage permit must be obtained from the Building Department;
- vi. Applicant must obtain approval from Downtown Alliance Director on window display in accordance with Downtown Alliance rules and regulations.

Mr. Weston and Councilwoman McCartney advised the Board they attended the Technical Review Sub-Committee meeting and approved the application with conditions.

Chairman Bagoff called for a vote on the resolution.

The Board voted on the resolution as follows:

Motion: Chairman Bagoff

Second: Mr. Weston

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

APPLICATION

PB-11-04/John Galante

Block: 177.5; Lot: 6; Zone: R-5

739 Prospect Avenue

Minor subdivision with six (6) variances.

Applicant has requested the application be carried to the February 1, 2012 meeting.

DISCUSSION

Chairman Bagoff announced the Applicant had requested the Application be carried to the February 1, 2012 meeting, and would not be heard this night.

PB-11-22T/Apple Nine Hospitality Ownership, Inc. /Courtyard Marriott

Block: 155; Lot: 40.01; Zone: B-2

8 Rooney Circle

Technical site plan for interior renovations and restaurant modifications.

Resolution to be adopted upon technical application approval.

DISCUSSION

Director Borg said this Technical Review Application was being heard tonight because the Applicant did not appear at the December 19, 2011 Technical Review Sub-Committee meeting.

Mr. Michael Boyle, General Manager, Courtyard West Orange and Mr. Ryan Hilliard, Construction Manager, Land-Ron, Inc. were sworn in.

Director Borg said the Applicant did not have counsel present; she did not believe the Application could be heard without counsel. Mr. Dwyer advised that it was not necessary for the Applicant to have an attorney present; the Board could proceed with the Application. Chairman Bagoff asked Mr. Boyle if he would like counsel; Mr. Boyle declined. Upon Mr. Dwyer's inquiry, the Planning Board Secretary advised the Board that Amy Kramer, Senior Paralegal, Apple REIT Companies had drafted the proposed Resolution.

Mr. Boyle described the Application to the Board. Renovations were being made to the public areas and guestrooms consisting of new finishes, furniture and millwork. The existing buffet area was being converted to bistro bar. The new bistro bar was for in-house guests use only; it was not planned for general public use.

Director Borg said the Health Department had reviewed the Application and the Applicant must follow all Health Department requirements as a condition of approval. Director Borg discussed her Planner's Report recommendations regarding landscaping and the removal of the temporary storage containers. She suggested that as an additional condition of approval, a landscaping plan indicating shrubbery and evergreens be submitted prior to the issuance of construction permits. Mr. Boyle stated he would submit a landscaping plan the next day (January 5, 2012).

There were no questions from the Public Advocate.

There were no questions from the Public.

The Board voted on the application as follows:

Motion: Chairman Bagoff

Second: Councilwoman McCartney

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

The Board voted on the resolution as follows:

Motion: Chairman Bagoff

Second: Councilwoman McCartney

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

DISCUSSION

1. Revising Chapter 25 Land Use Regulations (Director Borg and Director Lepore)

Director Borg began the discussion by referring to the table of regulations. She said the document was very important; the Board needed to review it in detail. She requested the Board determine if any additional standards should be included; whether more strict standards be proposed than those currently outlined in the revised document.

Director Borg recapped the Planning Board discussion at the November meeting regarding the changes to the height ordinance; the Township has always had a very conservative definition; current ordinance for the height of a building is the measurement from its highest elevation to the lowest elevation of the land immediately adjacent to the building. She said the new draft version changes the language to read the height of a building shall mean the vertical distance measured from the mean elevation of the finished grade adjacent to the building foundation to the highest point of the roof. The elevation of the land shall be determined by the topography.

Mr. Weston asked if there had been any further discussions regarding changes to the height ordinance. Councilwoman McCartney said changes would affect the height of buildings in the R-1 and R-2 zones, the new definition will allow for greater height.

Mr. Weston said that the current height ordinance in West Orange had a strict definition; he asked if the Board believed the height definition should be changed to relax the requirements. The Board discussed the proposed change was consistent with height ordinances in other municipalities.

Councilwoman McCartney wanted to know how the proposed change affected the steep slope ordinance; the proposed change would not take in to account the various grades. Director Lepore and the Board discussed the steep slope ordinance as it related to the

height ordinance. Director Lepore said that the steep slope ordinance had not been relaxed; that since its adoption, there had been few related applications; he referenced the Forfar application as an example.

Director Lepore told the Board that some of the most important changes proposed to Chapter 25 dealt with disturbing property on steep slope; the requirements of the Table of District Regulations discussing formula; he discussed wetlands being an example of certain lands the could not be counted as lot area.

The Board discussed the definition of a natural feature. The ordinance does not address how a property arrived at its current condition - whatever the current condition of a property, then that condition is what the ordinance is based on. The burden of proof was on the applicant.

Director Borg said the steep slope ordinance was to stay in Chapter 25. The Board discussed that as long as the steep slope ordinance was to be adhered, they could be in agreement with the revised height ordinance.

Director Borg told the Board that they would have an additional opportunity to make specific comments regarding the changes to the Chapter 25 revisions after the document was presented to the Township Council.

Councilwoman McCartney mentioned professional home office space on county roads. In the current economic times should the criteria for home office use be relaxed.

The Board decided to continue to review the draft of the proposed revisions to Chapter 25 and email Director Borg with any questions. There will be further discussion at the next Planning Board meeting.

2. Compassionate Use Medical Marijuana Act (Patrick Dwyer, Esq.)

Chairman Bagoff said that Mr. Dwyer would speak with the Board regarding his document entitled "Land Use Issues are Latest Obstacle to New Jersey's Medical Marijuana Program" (see attached). Chairman Bagoff said it was important for the Board to take a pro-active approach to the issue; the Board should keep in mind that the Medical Marijuana Program was a sign of the times. Chairman Bagoff said it would be a good idea to discuss the matter and advise the Township Council; potential dispensaries should be restricted to certain zones according to the Township's zone plan; and to ensure the dispensaries stay within the guidelines of the law.

Director Borg said an operator wanting to open a dispensary has already approached the Township; the operator has not yet presented a valid state license.

Mr. Dwyer told the Board that opening a dispensary is a land-use issue. Operators are looking for space in municipalities. Mr. Dwyer advised the Board that marijuana is an illegal substance at the federal level; there have been instances of federal prosecution of medical marijuana.

Chairman Bagoff suggested the Board look to how the issue was being addressed in other towns. The Board discussed the location of a dispensary's proximity to houses of worship, schools, parks and day care centers.

Mr. Harvey Grossman, Public Advocate, said medical marijuana is an interesting and controversial issue. He said that since pharmacies dispense controlled-substance pharmaceuticals, medical marijuana should also be dispensed by pharmacies.

Mr. Weston suggested consulting the Zoning Ordinance Review Committee for their opinion regarding the subject.

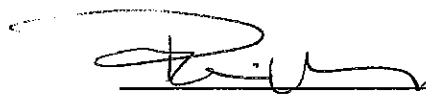
3. Environmental Commission (Councilwoman McCartney)

Councilwoman McCartney and the Board discussed whether the Planning Board could act as the Township's Environmental Commission. Councilwoman McCartney said that without a functioning Environmental Commission, the Township was unable to qualify for certain grants. It was determined that by law, the Planning Board could not function in the capacity of the Township's Environmental Commission, but would rather advocate and recommend to the Mayor and Township Council that an active Committee be appointed. The Board directed Mr. Dwyer to compose a Resolution to the Mayor and Township Council to recommend the appointment of an active Environmental Commission.

Mr. Gurland told the Board that the Historic Preservation Commission would make a presentation at the April Planning Board meeting to discuss how the Commission operates and proposed revisions to its functions.

MEETING ADJOURNED at approximately 9:34 P.M.

Minutes adopted February 1, 2012



Robin Miller, Planning Board Secretary

****THE NEXT REGULAR MEETING OF THE PLANNING BOARD WILL BE
MARCH 7, 2012 AT 8:00 P.M. IN COUNCIL CHAMBERS ****

Land Use Issues Are Latest Obstacle to New Jersey's Medical Marijuana Program

Opponents Finding Different Ways to Say "NIMBY"

New Jersey passed the Compassionate Use Medical Marijuana Act nearly two years ago on January 9, 2010 but so far not a single dispensary has opened. Critics say the delay has been caused by the Christie administration's opposition to the legislation. Recent events indicate that the opposition is softening as steps have been taken to implement the program. Yet even as the rules for *How* the program will operate are resolved a new question is taking its place – *Where?*

Initially it was believed that the Department of Health and Senior Services ("DHSS") failure to adopt regulations to implement the Act was evidence of the administration's foot-dragging. That ended when DHSS recently announced it has finalized the rules and published them for enactment. And on December 5, 2011 Governor Christie appointed John O'Brien the new Director of the program. Mr. O'Brien is a former NJ State Police Assistant Bureau Chief and an expert in criminal records. His law enforcement background is no doubt intended to ensure the integrity of an undertaking which will require ongoing licensing and background checks for all those involved.

With New Jersey finally moving toward putting its medical marijuana program into operation municipalities now face a new concern – where should this use be located? Three towns have recently confronted the issue with differing results.

In October, 2011, the Zoning Board in Maple Shade, NJ was approached by Compassionate Care, one of six growers/distributors selected by DHSS to be the initial providers. The Board was asked whether a medical marijuana dispensary was a permitted use in the Business Development zone. The zone permits "professional, medical and business offices" and "retail sales." The Board decided that the dispensary was neither a medical office, because there would be no supporting medical staff, nor a typical retail store, because the product being sold was too "highly restrictive and regulated." It concluded that the use was inconsistent with the permitted uses in the zone and would therefore not be allowed without a zoning variance.

Montclair, NJ reached the opposite conclusion in November, 2011. When approached by Greenleaf Compassion Center, another DHSS approved provider, town officials determined that a medical marijuana dispensary was no different than a retail store similar to a pharmacy. Greenleaf was told that its proposed dispensary in a storefront in the Central Business District was a permitted use which could open without need of further zoning board approval.

When Upper Freehold, NJ was faced with applications by a grower/distributor to set up cultivation sites in December, 2011 it decided to pass an ordinance to prevent

issuance of zoning permits for any use prohibited by federal law. Marijuana is still a controlled substance under U.S. Code but the federal government has largely chosen not to prosecute in the 15 states which allow medical marijuana, except in California where lax standards have made the drug too readily available. If upheld, Upper Freehold's ordinance will enable individual municipalities to bootstrap their opposition to the federal ban and prevent grow sites and dispensaries from locating within their borders.

In addition to the battle over where the dispensaries will be located the growers/distributors also face opposition when searching for a place to cultivate their crop. Greenleaf told Montclair officials that their grow site would be located several miles away in an undisclosed town in Sussex County. Compassionate Care told Maple Shade that they intended to grow the plants elsewhere in Westhampton, NJ. Since grow sites are separate from dispensary sites the providers end up needing two separate zoning approvals to operate.

Land use issues were inevitable given the controversial nature of the law and New Jersey did little to smooth the way. The DHSS regulations practically invite NIMBY concerns by allowing municipalities to enact "reasonable" ordinances to restrict what the Act calls "alternative treatment centers." In order to pre-empt such concerns the Act could have awarded the use special treatment to override local zoning restrictions. It's been done before. Municipal Land Use Law §66.6 declares that child care centers licensed by DHSS are a permitted use in all nonresidential districts. Another tactic would have been for the legislature to add the use to the roster of "inherently beneficial" uses recited in MLUL §4. Inherently beneficial uses receive special treatment in variance applications because they serve the public good and promote the general welfare. Failure to take either of these steps made it easier for towns like Maple Shade to say that a dispensary should not be located in a retail business zone.

Because the Act allows municipalities to pass reasonable restrictions regarding the use it is expected that towns will begin to adopt ordinances to regulate it, such as excluding it in residential zones or requiring minimum distances from schools and churches. All of these attempts to reconcile the use will be for nothing, however, if Upper Freehold's ban is upheld. If each municipality has the option of excluding grow sites and dispensaries the program's statewide availability will be jeopardized. And if Upper Freehold's can thwart New Jersey's medical marijuana program, then the State's efforts to relieve the suffering of terminally ill patients will be at risk. For now it appears that New Jersey's courts and legislative bodies will be sorting through these emerging land use issues for the foreseeable future.

Dated: December 31, 2011

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