

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
SEPTEMBER 20, 2012**

The West Orange Zoning Board of Adjustment held a regular meeting on September 20, 2012 at 8:00 PM at 66 Main Street, West Orange, N.J. in Council Chambers.

Chairman Neuer 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 29, 2011 in accordance with the "Open Public Meetings Act."

Chairman Neuer 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, P. Neuer, B. Quentzel,
W. Steinhart, M. Sussman, L. Zaolino

ABSENT: A. Weiss (excused absence)

ALSO PRESENT: P. Grygiel, Consulting Planner/Acting Planning Director
E. Keller, Consulting Engineer
Board Attorney, Alice Beirne, Esq.
Board Secretary, Rose DeSena

ANNOUNCEMENTS

Future Meetings: October 18, 2012 (Regular Meeting) – 8:00 PM
November 8, 2012 (Special Meeting) – 8:00 PM
November 15, 2012 (Regular Meeting) - 8:00 PM
December 20, 2012 (Regular Meeting) – 8:00 PM

MINUTES

Adopt Minutes: August 16, 2012 (Regular Meeting)

Chairman Neuer asked the Board if they had any comments regarding the minutes from the regular Zoning Board meeting held on 8/16/12. Seeing none, the Chairman asked for a motion to approve.

Ms. Gabry made a motion to adopt the minutes as presented; Mr. Buechler seconded the motion.

All were in favor.

OLD BUSINESS

Chairman Neuer began the discussion by noting that there was a gentleman in the room snapping photos. He explained that at the last Zoning Board meeting it was decided that the Rules of Procedures for the Zoning Board of Adjustment, regarding videotaping and still photography, needed to be updated. Chairman Neuer said that Mr. Steinhart suggested that they "catch up with the times" and so a committee was formed, chaired by Mr. Steinhart, to suggest guidelines that would allow still photography.

Chairman Neuer stated that case law says that photography although not a constitutional right is still recognized as a protected right, subject to the establishment of reasonable conditions. He said that the Rules of Procedure currently approves videotaping and this Board is about to approve still photographing and establish guidelines for it.

Chairman Neuer called on Mr. Steinhart to present the Committee's recommendations.

Mr. Steinhart stated that the Committee met and discussed the rewrite of the current policy. He said that they consolidated all recording devices under the definition "recording devices". Mr. Steinhart stated that the Committee set forth guidelines that were deemed appropriate to maintain order at the meetings and read the Committee's recommendations for Rule 5.11 on the Policy on the Use of Recording Devices and read point's a-j as follows:

- a. The use of a recording device requires approval by the Chairperson. Requests for approval shall be made no less than seven (7) days before the scheduled meeting date. Late requests, and requests made on the scheduled meeting date, will be considered by the Chairperson on a case-by-case basis.
- b. Request for approval shall be considered on a first come first serve basis. Such approval shall not be unreasonably withheld.
- c. All recording devices must be silent, and must be small enough that their presence and/or operation do not interfere with the meeting and the Board's proceedings.
- d. The use of flash and/or other means of lighting is prohibited.
- e. No recording device shall interfere with the equipment of the Board's officially designated recording/transcription service and the record/transcript provided by the officially designated recording/transcription service shall be the sole official record of the meeting.
- f. No recording device shall block or interfere with any person's ability to hear and/or see all testimony, exhibits and evidence. Toward this goal, all recording devices shall remain in the third row or further back in the audience and the operator of a recording device shall remain seated while the meeting is in session. If the operator of a recording device wishes to stand while the meeting is in session, they shall be required to stand at the rear of the meeting room behind the last row of seating. An exception shall be granted for an applicant's own stenographer who may be seated in the front row during testimony for said applicant's presentation to the Board.
- g. No recording device shall be placed on any podium or on any other surface within ten (10) feet of where the Board sits or may deliberate.

- h. The Township, this Board and all Members thereof shall not be responsible for any damage to or malfunction of any recording device.
- i. No recording device shall block any aisle or other method of ingress/egress.
- j. No recording device shall be left unattended at any time.

Mr. Steinhart stated that the idea was to allow recording devices without interfering with Board activities or the public being able to see or hear testimony of the case.

Chairman Neuer asked if any Committee member did not want one of the conditions that Mr. Steinhart read. Ms. Zaolino stated that she is not in favor of any requirement for advance approvals.

Mr. Sussman stated that he felt that the Board is in its purview to limit the number of devices which would eliminate the potential to disrupt the hearing. Advance notice will help to control this aspect.

Mr. Steinhart read a memo from Chairman Neuer that listed his suggestions. The suggestions were that each requestor must agree to be bound by the provisions of Rule 5.11 in conducting their activities during the Zoning Board meetings, that the location be moved back to the fifth row and not the third row and that with regard to item h, that it should read The Township and all Members of the Zoning Board shall not be responsible for any damage to or malfunction of any recording device.

Ms. Zaolino stated that she had a problem with the location being moved back to the fifth row; Mr. Steinhart and Mr. Sussman stated that they did not have a problem with that.

Mr. Steinhart stated that he is in agreement with the Chairman's suggestions and recommends that they are incorporated into the Committee's conclusion.

Chairman Neuer asked if there were any other comments from the Committee. Mr. Sussman stated that he is fine with the Chairman's suggestions. Ms. Zaolino stated that she does not disagree with any of the Chairman's suggestions except for the location being moved back to the fifth row.

Mr. Steinhart stated that Chairman Neuer offered another suggestion requiring the videographer or photographer to deliver electronic versions of the recordings and photos to the Board Secretary within one week so that they may be made available to the general public upon request.

Mr. Steinhart stated that, although he understands the greater purpose of everyone having access to it, he does not agree that it should be a condition to turn it over. Chairman Neuer stated that it would be a copy and not the original; Mr. Steinhart said that he understands that.

Mr. Sussman stated that if they are required to turn it over, how would the public access it; would they have to go to the Board secretary's office to view it? Ms. Zaolino stated that this is unenforceable and that it is their personal property.

Chairman Neuer stated that they would be asked to turn over a copy of what they recorded at the meeting; not the original copy. He explained that this is not intended to impose a hardship upon them; it is just so the end product can be seen by the general public. Chairman Neuer also stated

that it does not say that they **must** provide a copy and if the Committee is opposed, then the Board must vote on it.

Mr. Steinhart said that if the New York Times came to take a photo, would they be required to turn over a copy of the photograph. Chairman Neuer said yes; why not. Mr. Sussman said is there any validity in considering how they look at a member of the press as opposed to a member of the public. Chairman Neuer said that, in the two cases that he read, he did not see any difference in public and press.

Mr. Steinhart stated that he does not have any experience in working with the media but it is his opinion that they would not turn it over.

Chairman Neuer stated that Ms. Zaolino is not in favor of moving back to the fifth row but is in favor of the third row. He said that she is not in favor of prior approval and is against the photographer delivering a copy of the photo or video.

Chairman Neuer asked for a motion to adopt the amendment.

Mr. Buechler stated that he has some changes and noted them to the Board. He said in paragraph a his suggestions are: to change it to 7 calendar days and that the requests may be granted or denied by the Chairperson on a case by case basis; paragraph f he suggests including: that an exception may be granted for an applicant's own stenographer who may be seated in the front row during testimony for said applicant's presentation to the Board, if permission for the stenographer is granted by the chairperson at the meeting; paragraph g he suggests that it read: any recording device shall be placed on any podium or any other surface in the fourth row or further back from where the zoning Board sits or may deliberate; paragraph h he suggests that it read: the Township, the Zoning Board and members of the Zoning Board shall not be held responsible for any damage to or malfunction of any recording device.

Mr. Buechler said that he also suggests adding paragraph k stating that the Board and the Township will not guarantee the provision of any electrical supply for their recording equipment. He also stated that to require any person to provide a copy of a photo or video to the Secretary is a little overboard and goes a little too far.

Mr. Quentzel said that he agrees that they should have a copy of the photo or video in case there is any editing done by the person recording it. He said that the copy would become part of the file and not the proceedings.

Mr. Bullock said that Mr. Quentzel has raised a good point and he used the Seton Hall application hearing as an example. He said that the person who videotaped that hearing did get prior approval but he always wondered what he intended to do with the video. Mr. Bullock said that he was very uncomfortable with that person videotaping that hearing and that he thinks that providing a copy is a good idea. He said that the Board must maintain some control.

Ms. Zaolino said that she understands but stated that the Zoning Board is a public body and they cannot control what people do.

Chairman Neuer said that the purpose of this is to create openness and give any member of the public the opportunity to view it.

Mr. Buechler stated that the copy cannot be part of the file because it was not presented by the applicant, the objector or the Board.

Chairman Neuer asked for a motion for the adoption of the amendment, with the Board agreeing to change paragraph h from the 5th row to the 4th row and with the suggestions made by Mr. Buechler.

Mr. Steinhart made a motion for the adoption of the amendment to the Rules of Procedure of the Zoning Board of Adjustment; Mr. Sussman seconded the motion.

The vote was as follows:

Buechler:	Yes	Sussman:	Yes
Bullock:	Yes	Weiss:	-
Gabry:	Yes	Zaolino:	No*
Quentzel:	Yes	Chairman Neuer	Yes
Steinhart:	Yes		

*Vote allowed by Chairman Neuer as a courtesy due to Ms. Zaolino having served on this committee.

There was no motion made regarding providing copies of the photos/video to the Board Secretary.

DISCUSSION

- Chairman Neuer stated that the Board had received a copy of the “land swap” deed for Cambria Suites that was filed with the Essex County Registrar’s Office. He noted that they were in compliance with the requirements of the approvals that were granted by the Zoning Board.

*Note for the record that Mr. Steinhart was recused from hearing this application.

- Chairman Neuer stated that Robert Williams, Esq. has requested special Zoning Board meetings for the following applications:
 1. ZB-08-37/Seton Hall Prep application
 2. ZB-12-20/First Hartford Realty Corp./Designated Agent for CVS application

The Board selected Thursday, October 11, 2012 as the special meeting date for the Seton Hall application.

It was noted by Mr. Keller that Seton Hall was required to resubmit revised plans for this application.

The Chairman asked the Board Secretary to reach out to Mr. Williams to see if they could notice and have the plans resubmitted by that date. Mr. Buechler said that if Mr. Williams is not able to, then to advise the Board right away.

Chairman Neuer asked the Board Secretary to send a blast email to all of the Board

members to confirm.

The Board selected Thursday, November 8, 2012 as the special meeting date for the CVS application. Chairman Neuer asked the Board Secretary to confirm this date with Mr. Williams also.

- Chairman Neuer asked the Board members if they reviewed the West Orange Zoning Board of Adjustment Regular Meeting Schedule for 2013 and if any member had a problem with any of the dates. Seeing none, The Chairman asked for a motion to adopt the West Orange Zoning Board of Adjustment Regular Meeting Schedule for 2013.

Mr. Buechler made a motion to adopt and Ms. Gabry seconded the motion.

All were in favor.

SWEARING IN

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

RESOLUTIONS

1. **ZB-12-08/617 Mt. Pleasant Avenue Assoc., LLC** **Approved 8/16/12**
Block: 170; Lot: 15.05; Zone: R-2
612 Mt. Pleasant Avenue
Preliminary and Final Site Plan Approval with "D" variances
for height and "C" variances to establish a veterinary hospital

Chairman Neuer stated that there were two revisions of this resolution and asked if any Board member had any comments. Mr. Buechler stated that one of his comments was not incorporated and referred to page 10, condition 1 regarding the hours of operation. Ms. Beirne stated that she changed it to read that the hours of operation will be limited to, Monday through Friday, 8:30 a.m. to 7:00 pm, three days a week, with two weekday late days up to 8:30 p.m., Saturday morning hours only, no Sunday Hours and no late night emergencies after 7:00 p.m.

Chairman Neuer stated that there were certain requirements that the applicant did not meet; the revised plans were due ten (10) days before the hearing and they were submitted on Tuesday of this week. He said that Mr. Keller took the time to review them and issue a report the next day. Chairman Neuer stated that on pages one and two of Mr. Keller's report, there were some items that should have been on the plans and asked if the resolution should be held up because of this. Mr. Keller stated that he recommends changing condition 6 in the resolution to reflect that no final plans for construction permits will be signed until the plans incorporate the additional variances requested.

Chairman Neuer asked for a motion to approve this resolution with the added condition that was recommended by Mr. Keller.

Mr. Sussman made a motion to approve; Mr. Buechler seconded the motion.

The vote was as follows:

Buechler:	Yes	Sussman:	Yes
Bullock:	Yes	Weiss:	-
Gabry:	Yes	Zaolino:	-
Quentzel:	-	Chairman Neuer	Yes
Steinhart:	Yes		

APPLICATION

1. **ZB-12-03/DEKAB, LLC** **Carried from 7/19/12**
Block: 18; Lots: 27 & 29; Zone: R-M
372 Valley Road
Seeking a "D" variance for use and three (3) "C" variances for parking, lot coverage and signage.

EXHIBITS

- A-1 - Site Plan revised 7/2/12
A-2 – Site and Area Description (2 pages)

Joseph Vena, Esq, attorney for the applicant, approached the podium. He began by listing the names of the owners of DEKAB, LLC and spelled their names for the record.

Mr. Vena briefly detailed the application and what occurred at the last meeting on 6/14/12. He stated that, since then, the applicant has eliminated the use of the second floor of the building as a conference room which was being proposed at the last meeting. He said that they have decided to keep the original use that was approved for that area. Chairman Neuer clarified by stating that the second floor was limited to storage only.

Mr. Vena stated that the only change will be to the interior. He said that the applicant is requesting a use variance for establishing a small pharmacy on the first floor, within what is now a storage area, and noted that revised plans were submitted.

Mr. Vena stated that the applicant is proposing to purchase and demolish a residence that borders the property for the purpose of increasing parking. He said that they will also be installing a free standing sign.

Mr. Vena called his first witness.

Nassir Alnukahtar approached the podium and was sworn under oath. Mr. Alnukahtar detailed his educational and professional background as a licensed architect in the State of New Jersey. Chairman Neuer accepted his credentials as an expert witness in the field of architecture.

Mr. Vena began addressing the conditions of the prior resolution ZB-08-10. He asked Mr. Alnukahtar if there will be sufficient storage in the building with the loss of storage space on the first floor; Mr. Alnukahtar replied yes that they will still have 1054 sq. ft. of storage. Chairman Neuer questioned how there could be the same amount of storage if they are putting a pharmacy in that area now. Mr. Buechler stated that there will not be any storage on the first floor; 685 sq. feet is the new pharmacy and the remaining sq. footage is the staircase. He asked Mr. Alnukahtar if they wanted to modify that condition of the prior resolution; he replied yes.

Chairman Neuer asked Mr. Alnukahtar how he based his opinion about the second floor storage area being enough. Mr. Keller stated that there is no set standard regarding required storage space for a medical practice.

Chairman Neuer asked Mr. Keller if the irrigation system has been addressed and if it was shown on the plans. Mr. Alnukahtar showed Mr. Keller where it was on the plans; Mr. Keller replied yes, it was on the plans.

Mr. Vena noted that the sidewalk in the front of the property will be replaced as conditioned in the prior resolution.

Mr. Vena stated that they will prohibit employees from parking onsite and that it will be used strictly for patients only. Chairman Neuer asked if they would accept that as a condition; Mr. Vena replied yes. Mr. Buechler stated that the prior resolution stated that as a condition and Mr. Vena said that he was just responding to a comment made by Mr. Keller.

Mr. Vena referred to condition 15, regarding the entrance to the second floor being labeled for employee use or storage use, and condition 16, regarding the entrance to the 1,054 sq. ft. on the first floor being labeled for storage use only. He said that those two conditions will no longer be valid if the pharmacy is approved on the first floor and requested that they be modified.

Mr. Vena asked the Board if they will require a fence to be installed along the property line. He said that the applicant prefers not to install one between commercial properties. Mr. Buechler told Mr. Vena that the applicant presented a fence to the Board. Mr. Keller said that he questioned the applicant about the fence. He said he told them if they want to keep cars out then they should put it up but if not, then there was no need to install a fence. Mr. Vena said that the applicant will abide by the decision of the Board. Mr. Keller said that he does not think a fence is needed between two commercial properties; he said that he thinks landscaping will suffice.

Mr. Vena stated that he is going to let the applicant's Planner address the free standing sign.

Mr. Keller stated that the current plans show walls on the second floor. Mr. Alnukahtar said that the walls were built for separate storage.

Mr. Vena said that the application being presented tonight, with the new plans, reduces the number of variances from nine to five. He said that this application is less intense than the application they originally submitted.

Chairman Neuer asked Mr. Vena which four variances are being eliminated. Mr. Vena said that the driveway aisle will not need a variance because they are proposing 11' and 12' is required; the driveway width will be 11' and 14' is required; the parking space size will be 9'x 18' and 10'x18' is required, except for the compact car spaces and the curb at the parking space will be 9" from the fence and 5" is required.

Chairman Neuer called for a recess at 9:30 pm.

Chairman Neuer resumed the meeting at 9:42 pm.

Mr. Vincenzo Pappano approached the podium. Chairman Neuer stated that Mr. Pappano is the applicant for application ZB-12-15 which is third on the agenda to be heard this evening. He said that it is probable that the Board will not hear this application tonight and asked Mr. Pappano if he would like to have his application carried; Mr. Pappano said yes. The Chairman announced that application ZB-12-15 will be carried to the Zoning Board meeting on 10/18/12 and that no further notice is necessary.

Mr. Alnukahtar presented the site plan drawings, sheets T1, T2, T3, and T4 with a revision date of 7/2/12. Chairman Neuer asked to have them marked for identification as Exhibit A-1.

Mr. Alnukahtar began detailing the plans and the variances that they are requesting. He stated that 37 parking spaces are required and they will be providing 21 onsite parking spaces.

Mr. Alnukahtar noted that 11 onsite parking spaces were approved with the original application. He said that this application proposes purchasing a residence to create more parking and, if approved, 10 more spaces will be provided.

Chairman Neuer asked Mr. Alnukahtar if they still had seven parking permits in the Municipal Parking Lot; he replied yes.

Chairman Neuer asked Mr. Alnukahtar how many parking spaces were required with the last application; Mr. Alnukahtar replied 37. Mr. Keller explained how they determine the number of parking spaces that are needed. He said that, according to the Town ordinance, it is based on the sq. footage of the building and not the number of employees.

Chairman Neuer asked Mr. Keller if only one handicap spot is required; Mr. Keller said yes because there are fewer than 25 parking spaces. Mr. Grygiel stated that the Town ordinance bases it on the number of spaces in the parking lot. Mr. Buechler stated that, due to the nature of their business, he would think they need at least two handicap spots. Mr. Alnukahtar stated that

they can provide two handicap parking spaces and make them the two spaces closest to the building. This was agreed to on behalf of the applicant as a condition if approval is granted.

Chairman Neuer stated that he did not see the height of the light posts on the plans; Mr. Almukhtar noted where it was on the plans. Chairman Neuer asked if the fixture is going to be placed on top of the pole; Mr. Almukhtar replied yes. Mr. Almukhtar said that the pole is 12' and the fixture is 2'. He explained that the mounting height is at the level of the lens which is at 12'.

Mr. Almukhtar detailed the sign stating that it will require two variances; one for the height and one for the location. Mr. Almukhtar stated that the placement of the sign is required to be 15' from the property line and that they were originally proposing to place it 6" from the property line. He said that they would now like to move it to the middle of the 15' wide island that is located between parking spot #11 and the property line. Mr. Almukhtar said that, with this change, the sign will now be 7' from the property line. Mr. Buechler asked Mr. Almukhtar if the sign would interfere with the line of sight; Mr. Almukhtar replied no. Mr. Buechler asked if the sign would be behind or in front of the stop line; Mr. Almukhtar said it will be behind the stop line in the middle of the aisle. Mr. Buechler asked how many feet the sign will be from the property lines; Mr. Almukhtar said that it will be 2' from the front property line and 7' from the side property line.

Chairman Neuer questioned the brick base of the sign, asking Mr. Almukhtar if it was 4' high. Mr. Almukhtar replied yes but said that they are lowering it.

Mr. Vena stated that if the application is approved that they will submit the new sign plan. Chairman Neuer stated that if he does not have testimony that says the new sign placement is safe then he will vote no. Mr. Vena stated that they will keep the sign where it is on the plans now.

Mr. Buechler asked if the sign, at this location, will interfere with the line of sight and Mr. Almukhtar replied no. He said that the sight triangles, for the sign placement at this location, are listed on the plans.

Mr. Buechler asked Mr. Keller if he concurs with Mr. Almukhtar and asked if he thought that there were any safety issues with the sign placement at this location; Mr. Keller said that he does not believe it will be a safety issue.

Mr. Buechler asked Mr. Almukhtar what the speed limit on Valley Road; he replied 25 mph. Mr. Buechler asked Mr. Almukhtar how many feet a car would need to stop if they are going the speed limit; Mr. Almukhtar said he did not know.

Chairman Neuer told Mr. Vena that he will need to provide testimony as to why they need the sign because the sign is prohibited.

Mr. Almukhtar presented photos. Chairman Neuer asked Mr. Almukhtar who took the photos; he replied that he did. Chairman Neuer asked Mr. Almukhtar when he approximately took these

photos; he said that he took the photos during the spring. Chairman Neuer asked what source the aerial photos came from; Mr. Almukhtar said they were from Google Earth.

Chairman Neuer noted for the record that the photos were not to scale.

Chairman Neuer asked Mr. Almukhtar why they are placing the pharmacy in the back of the building. Mr. Almukhtar said that there are other offices in the front of the building and they would have to relocate the bathrooms if they put the pharmacy there.

There were no more questions from the Board for Mr. Almukhtar.

Mr. Keller noted that, the parking space size is now in conformance with the Zoning ordinance but the cover sheet still lists it as a variance. Mr. Almukhtar said that this was overlooked and that there is no variance for the parking space size.

Chairman Neuer asked if any members of the public had any questions for Mr. Almukhtar; seeing none Mr. Vena called his next witness.

George Wheatle Williams approached the podium and was sworn under oath. Mr. Williams detailed his educational and professional experience stating that he was a practicing Planner licensed in the State of New Jersey for 20 years. He said that he has testified before many Boards and served as a Municipal Board Planner. Chairman Neuer accepted Mr. Williams as an expert in the field of Professional Planning.

Mr. Williams stated that he has reviewed the Township's Master Plan, the Municipal Land Use Law, all of the reports in this application and has visited the site many times. He said that this application is meant to perfect their original one and bring it further into conformity with the Municipal code.

Mr. Williams detailed the application and what they are proposing. He stated that he reviewed the Township's Master Plan regarding the Valley Road corridor and that this application supports that policy which is to maintain and improve that area.

Chairman Neuer asked Mr. Williams if the original improvements did that; he replied yes. Mr. Williams said that this application will improve the area even more by demolishing a vacant property.

Mr. Williams stated that this project will promote employment, encourage economic development and revitalize the area. He stated that these improvements will also benefit the patients.

At approximately 10:14 pm Chairman Neuer asked Mr. Vena if Mr. Bell, his other client that is on the agenda to be heard at this meeting, wanted to be excused or choose to wait it out. Mr. Vena stated that his client wants to wait it out.

Mr. Williams presented six (6) photos of the site and one aerial photo. Chairman Neuer asked Mr. Williams if he prepared the photos and Mr. Williams said yes; he said that he took them in April of this year. Mr. Williams also stated that Google Earth was the source of the aerial view. Chairman Neuer asked to have the site and area description photos marked as Exhibit A-2 for identification.

Mr. Williams began detailing the photos and reiterated the fact that, by the applicant demolishing the house, it will improve the site.

Mr. Williams detailed the positive criteria for the Use variance. He said that the pharmacy will allow a location to serve the needs of the patients who utilize the facility and that people that live in the immediate vicinity can walk to the pharmacy.

Chairman Neuer asked Mr. Williams how many patients the doctors see at this location in a day; Mr. Williams said that he did not know.

Ms. Zaolino said that she didn't know how they could determine the number of parking spaces they would need when they did not know how many patients are seen in a day.

Chairman Neuer asked if the applicant would accept a condition that prohibits people, who come to solely use the pharmacy, parking in the parking lot; Mr. Vena said they will answer that later.

Chairman Neuer asked Mr. Williams where the closest pharmacy is to the site; Mr. Williams said that there is a Rite Aid Pharmacy at the corner of Main Street and Valley Road. Chairman Neuer asked Mr. Williams if he thought that this pharmacy serves the needs of the walk-able community; Mr. Williams replied yes.

Chairman Neuer noted the time and asked Mr. Bell if he wanted to leave stating that the Board will not get to him this evening; Mr. Bell said yes.

Chairman Neuer noted for the record that application ZB-12-10/Harvey Bell will be carried to the next Zoning Board meeting on October 18th 2012 and no further notice is necessary.

Mr. Sussman asked Mr. Williams who will operate the pharmacy; Mr. Williams said a stand-alone pharmacist will operate it.

Chairman Neuer asked Mr. Vena if he noticed for the other "D" variance for the pharmacy not being permitted in that zone; Mr. Vena said that they only noticed for the second principle use variance. Mr. Vena said that if the Board feels it is significant, then they will re-notice for that variance.

Chairman Neuer stated that since the applicant did not notice the "D" variance for the pharmacy not being permitted in that zone then they must re-notice for that variance.

Mr. Williams asked the Board if he can continue and the Chairman said yes.

Mr. Williams continued detailing the positive criteria stating that the pharmacy will be "invisible" because it will be located inside of the building. There was some discussion regarding the public being able to see the pharmacy and Mr. Williams said that they will know there is a pharmacy inside of the building by the sign outside.

Chairman Neuer noted for the record that he did not accept Mr. William's comment about the pharmacy being invisible.

Mr. Vena stated that Mr. Williams will not be at the Zoning Board meeting on 10/18/12. Chairman Neuer stated that if they come back with a new Planner then they will need to submit a new Planners report.

Mr. Williams detailed the positive criteria for the parking variance. He said that the applicant has seven (7) parking permits in the Municipal lot and, although 37 parking spaces are required, they are moving closer to conformity by proposing 21 spaces with this application.

Mr. Williams stated that the layout will enhance the site and make it more aesthetically pleasing.

Mr. Williams stated that although the sign is not allowed, due to the size and depth of the lot, a sign is needed. He said that the sign must be located on the southern lot line, close enough to Valley Road, so that it is identified. Mr. Williams stated that the applicant will conform to Ms. Borg's suggestions regarding the height of the sign.

Mr. Vena asked Mr. Williams if he thought the Board should approve this application based on the facts he provided in his testimony. Mr. Buechler stated that Mr. Williams is not qualified to answer that question.

Chairman Neuer asked Mr. Williams if there was anything in the Master Plan that says that two uses on a site are permitted; Mr. Williams replied no. Chairman Neuer told Mr. Williams that, based on his answer to that question, his statement regarding the application being consistent with the Master Plan was questionable.

Chairman Neuer referred to a case that Mr. Williams cited in his report regarding a proposed pharmacy being an accessory to a principle use. The Chairman told Mr. Williams that if he is going to cite a case then he should list the book and page number of the case cited.

Chairman Neuer noted the time and advised the members of the public that this Board adjourns at 11:00 pm. He announced that this application will be carried over to the next regular Zoning Board Meeting on October 18, 2012 and that no further notice is necessary.

Mr. Vena stated that Mr. Williams will not be at that meeting and that he requested to be placed first on the agenda.

ADJOURNMENT

The meeting was adjourned by Chairman Neuer at 11:03 pm.

October 18, 2012


Rose DeSena
Zoning Board Secretary