

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
November 20, 2014**

The West Orange Zoning Board of Adjustment held a regular meeting on November 20, 2014 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 November 21, 2013 in accordance with the "Open Public Meetings Act."

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

Alice Beirne, Esq., Board Attorney, read the Opening Statement.

PRESENT: B. Buechler, G. Bullock, D. Gabry, P. Neuer,
B. Quentzel, M. Sussman, A. Weiss

ABSENT: W. Merklinger (excused absence)
W. Steinhart (excused absence)

ALSO PRESENT: Paul Grygiel, Consulting Planner
Eric Keller, Consulting Engineer
Alice Beirne, Esq., Board Attorney
Rose DeSena, Board Secretary
D. Dillon, Audio-Digital Transcription Service

ANNOUNCEMENTS

Future Meetings: December 11, 2014 (Special Meeting) – 8:00 pm
December 18, 2014 (Regular Meeting) – 8:00 pm
January 15, 2015 (Regular Meeting) – 8:00 pm

Chairman Buechler announced that applications ZB-14-11/Nyunt and ZB-14-12/Henry have requested to be carried over to the regular Zoning Board of Adjustment meeting held on December 18, 2014 and that no further notice will be required.

Chairman Buechler announced that there will be a special Zoning Board of Adjustment meeting for ZB-13-15/Quick Chek on Thursday December 11, 2014. He said that this application has been carried over from the last Special Zoning Board meeting that was held on October 30, 2014 and that no further notice will be required.

Chairman Buechler announced that application ZB-14-08/Sai Hira Ram Trust, Inc., scheduled to be heard at this meeting, will be carried over to the regular Zoning Board of Adjustment meeting held on the December 18, 2014 or January 15, 2015. He said that the Board Secretary will review the December agenda and determine which meeting it will be carried over to. Chairman Buechler stated that a new notice will be issued.

DISCUSSION

There was discussion regarding the amendments made to the Zoning Board of Adjustment Rules of Procedure.

Chairman Buechler asked if any of the Board Members had any questions regarding the suggested amendments made by Ms. Gabry, Mr. Neuer and himself; seeing none, Chairman Buechler made a motion to approve the amended Zoning Board of Adjustment Rules of Procedure. Ms. Gabry seconded the motion and all were in favor.

Chairman Buechler asked the Board Secretary to have the amended Zoning Board of Adjustment Rules of Procedure posted on the Township's website in the document library.

MINUTES

Adopt Minutes: October 30, 2014 (special meeting)

Chairman Buechler asked the Board Members if they had any additional comments for the October 30, 2014 special meeting minutes that were submitted to them for review. Seeing none, he asked for a motion to approve the minutes.

Mr. Neuer made a motion to approve the minutes from the October 30, 2014 special Zoning Board of Adjustment meeting as submitted to the Board members; Ms. Gabry seconded the motion and all were in favor.

SWEARING IN

Consulting Planner for the Township, Paul Grygiel, was sworn under oath.

APPLICATIONS

- 1. ZB-14-04/Patin** **Carried over from 11/17/14**
Block: 165.02; Lot: 30; Zone: B-2/R-5
782 Northfield Avenue & 5 Dogwood Road
Seeking a "D" use variance and several "C" variances to construct an addition to an Existing building and construct parking accessory to the existing building on an Adjoining lot.

Chairman Buechler stated for the record that this application was heard on 5/29/14, 8/21/14 and 11/17/14. He said at the last meeting on 11/17/14 the record was closed, public comment was made and all that is left of this hearing is the Board Members' discussion and deliberation.

Chairman Buechler opened the meeting up to the Board Members for discussion.

Mr. Neuer stated that he has respect for Mr. Sullivan and Mr. McDonough but concludes that the applicant has not met its burdens and urges the other Board Members to vote not to approve this application. He said the basic fact is that this application is about adding to an existing property and not creating any new benefit to the community or a vacant lot. Mr. Neuer said that it is about taking a commercial zone and forcing it into a residential zone which is not good planning or zoning. He said that this should have gone before the Township's governing body for re-zoning consideration.

Mr. Neuer noted all of the prior applications for this property. He said that the first application was submitted in 2004 by Mr. Bornstein, who was the owner of the property at that time, proposing to construct a 2400 sq. ft. house on the lot and that application was denied by a vote of 5-1 because the house was too big for the lot. Mr. Neuer said that Mr. Bornstein submitted another application in 2006, proposing a 2000 sq. ft. house --to be built on the lot but he withdrew the application and the Board never considered it. He said that in 2008, Mr. Patin submitted an application that he withdrew and the Board never voted on it and in 2011 Mr. Patin submitted another application proposing a residence with an easement for the lot and the Board dismissed it without prejudice because he failed to provide notice and appear at the scheduled Zoning Board hearing.

Mr. Neuer said that there have been three applications that dealt with potential uses for this lot and only one of them went to a vote. He said that the applicant has not exhausted the use of the residential lot with zoning relief because the Board deemed the lot buildable at one time in the ZB-04-60 resolution.

Mr. Neuer stated that Mr. McDonough said that this site is a split-zone, but the case is that the split lot single parcel is divided into two pieces; one residential and one commercial. He said that the zone line follows the lot line and that the owner should have gone to the Township's Governing body to change the zone line.

Mr. Neuer stated that this Board is not permitted to approve this application based on net opinions according to the Municipal Land Use Law. He said that there is no promotion of the general welfare and it does nothing to benefit the community.

Mr. Neuer said that the residential lot is being converted into a commercial use. He said that more cars will enter and exit the site if it is a commercial use rather than a single family home.

Mr. Neuer said that the parking, the onsite circulation and ingress and egress is a problem. He said that the applicant is not a good citizen and has not maintained the property. Mr. Neuer said that repairs to the outside of the property should have been taken care of by now.

Mr. Neuer stated that he does not agree with most of Mr. McDonough's reasons to approve this application. He said that Mr. McDonough's testimony was impressive but his report, as a whole, does not pass the requirements.

Mr. Neuer stated that, in regard-s to the traffic testimony, he finds some of the comments and opinions of Mr. Desch cannot be accepted. He said that Mr. Desch stated that he does not expect the offices to be used on a Saturday but Mr. Neuer stated that he does not agree with that.

Mr. Neuer stated that he did not opine for safe and efficient ingress and egress of the property or opine if the proposed vehicle circulation on the site is safe.

Mr. Neuer stated that, in regard to the Architect's testimony, his credibility went out the window when he testified that there was no equipment or employees in the dentist's office. He said that when he went on a site visit he spoke to the dentist and he invited him into his office and showed him his x-ray machine. Mr. Neuer said that the business is a dental implant center and it is difficult to perform dental implants without an assistant.

Mr. Neuer referred to the architectural plans and stated that there is a lot of storage for one part time practice which makes no sense.

Mr. Neuer stated that there were problems with Mr. Meola's plans also. He said sheet two (2) of sheet ten (10) does not include the chiropractor and sheet four (4) states that the dentist office is 1885 sq. ft. which is not a small space.

Mr. Neuer said that twenty seven (27) parking spaces are required; not twenty five (25) and they are providing twenty one (21) parking spaces. He said that testimony regarding-r the parking spaces was not adequate or persuasive.

Mr. Neuer stated that he will vote no and he urges the other Board Members to vote no.

Ms. Weiss stated that Mr. Neuer was articulate and she was originally torn. She said that she did not see anything positive in Mr. McDonough's report and this is not a benefit to the neighborhood or the Town. Ms. Weiss said that the parking spaces the applicant is proposing is unrealistic without even knowing what kind of business will be going into the proposed space and that she will vote no.

Mr. Bullock asked Mr. Neuer if there is any evidence that the applicant went to the Township and tried to get the zoning changed; Chairman Buechler stated that there is nothing in the record that they did.

Mr. Bullock stated that Ms. Fogarty gave powerful comments against the application and paving the lot is not a desirable buffer. He said that he also found the traffic testimony less credible.

Ms. Gabry said that she had many issues with this application. She said that the building is not aesthetically pleasing as it is now and that it will not be more pleasing afterwards. Ms. Gabry said that Mr. Desch was not credible and that the property is not maintained.

Mr. Sussman stated that initially he was in favor of the application but as more evidence came out he became conflicted. He said that Mr. Neuer's comments were comprehensive and with that being said he would vote no.

Mr. Quentzel stated that the traffic study was done off season and traffic is heavier during the summer months. He said that there is not a need for additional office space at this time because they do not have someone to lease it to yet and the Town does not need any more empty office spaces. Mr. Quentzel said that the local people impressed him and that he feels that there will not be enough parking. He said that the applicant can build a house on the empty lot and he will vote no.

Chairman Buechler stated that his biggest concerns are the lack of adequate parking for the proposed addition, the parking lot layout and the ingress and egress from the site. He said that there was no demonstration that there is a need for additional office space.

Chairman Buechler asked for a motion.

Mr. Neuer made a motion to deny this application without prejudice and Chairman Buechler seconded the motion.

The vote was as follows:

Bullock:	Yes to Deny	Steinhart:	-
Gabry:	Yes to Deny	Sussman:	Yes to Deny
Merklinger:	-	Weiss:	Yes to Deny
Neuer:	Yes to Deny	Chairman Buechler:	Yes to Deny
Quentzel:	Yes to Deny		

Chairman Buechler noted for the record that Mr. Bullock is excusing himself from the remainder of the meeting.

Chairman Buechler asked applicant, Mr. Franco, to approach the podium.

Hugo Franco approached the podium.

Chairman Buechler asked Mr. Franco if he came to a resolution with his neighbors; he replied yes and said he would put up a fence.

Chairman Buechler asked Mr. Franco if the neighbor agreed; he replied yes.

Chairman Buechler asked Mr. Franco if he has the agreement in writing; he replied no.

Chairman Buechler told Mr. Franco the Board would continue with this after the next application is heard.

2. ZB-14-00/Wang

Carried from 10/23/14

Block: 161; Lot: 30; Zone: R-5

7 Oak Avenue

Seeking three "C" variances for the expansion of an existing kitchen and the construction of an accessory structure in the rear of the house

EXHIBITS

A-4 – Sheets A-1 and A-2 with a revision date of 11/4/14

A-5 - Overlay

Peter Wang approached the podium and was sworn under oath.

Chairman Buechler stated that this application was last heard on June 19, 2014 and was adjourned from the September 18, 2014 meeting because the applicant's architect could not attend that meeting.

Chairman Buechler asked Mr. Wang if his architect was present; he replied yes.

Matthew G. Evans approached the podium and was sworn under oath. Mr. Evans detailed his professional and educational background as a licensed Planner and an Architect in the State of New Jersey. He said that he will be testifying as both a Professional Planner and an Architect for the applicant.

Chairman Buechler accepted Mr. Evans as an expert in Professional Planning and Architecture.

Mr. Evans presented sheet A-1 and A-2 of the architectural plans.

Chairman Buechler asked to have sheet A-1 and sheet A-2 of the architectural plans, with a revision date of 11/4/14, marked as Exhibit A-4 for identification.

Mr. Evans referred to sheet A-1 of Exhibit A-4 and began detailing the existing conditions of the property and the floor plans. He then referred to sheet A-2 and detailed the proposed exterior elevations and the first and second floor plans. Mr. Evans said that additional living space, a

new kitchen and a new front entry is being proposed. He said that the house is currently a single story and a second level is also being proposed.

Chairman Buechler asked Mr. Evans if the driveway slopes; he replied yes.

Chairman Buechler asked Mr. Evans if the second story will overhang; he replied yes.

Chairman Buechler asked Mr. Evans if there is a reason why two separate offices are being proposed, one on the first floor and one on the second floor, or if it is an additional bedroom and the word "office" is just being added to it; he said that space will be a study or a dressing area. Mr. Evans said that another bedroom is not necessary.

Ms. Weiss stated that the office on the second floor could be considered a bedroom because it has a closet. She said that basically, there are four (4) bedrooms upstairs.

Chairman Buechler asked Mr. Evans what the square footage of the house will be after the addition; he said approximately 4500 sq. ft. of living space.

Chairman Buechler stated that the basement has a bedroom and 850 sq. ft. of living space. He said that the total square footage of living space of the house is 5350 sq. ft. including the basement.

Chairman Buechler asked Mr. Grygiel if the rear of the house would be considered a three (3) story building when 2.5 stories is allowed; he said that the revised plans show the three (3) stories in the rear of the house and his revised report included an additional variance for the number of stories.

Chairman Buechler asked Mr. Evans how many people live in the house; he said that the applicant will answer that question.

Ms. Gabry asked Mr. Evans if the front entrance will be eliminated when they reposition the walkway or will there be two front entrances; he said that the door that goes to the kitchen will be a service entrance and the other will be the main entrance.

Mr. Evans continued his testimony and detailed the front elevations and what materials will be used on the exterior of the building. He said that there will not be any changes to the right side of the house or to the basement.

Chairman Buechler asked Mr. Evans if the street is a cul-de-sac; he replied yes.

Mr. Evans presented a small handout of an overlay site showing the survey of the property and a house that is adjacent to the property.

Chairman Buechler asked to have the overlay site marked as A-5 for identification.

Mr. Evans referred to Exhibit A-5 and stated that one variance is required for the front yard setback because of the house that is adjacent to the property.

Chairman Buechler asked Mr. Wang if they can deem this hearing as the first hearing. He said that it would be as if they never had a hearing on June 19, 2014. Mr. Wang replied yes.

Ms. Weiss referred to Mr. Grygiel's report regarding the applicant's driveway encroaching eleven (11) feet into the Essex County Reservation and asked Mr. Evans to comment on that; he stated that the driveway and the fence are existing conditions.

Chairman Buechler asked Mr. Evans if the applicant provided notice to the County; he replied yes.

Mr. Wang stated that the driveway and the fence were like that when he purchased the house.

Mr. Neuer stated that he does not know if that portion of the Reservation was purchased with Green Acres funding and the County would not know that. He said that Mr. Wang would have to research that.

Mr. Wang said that he has an old survey dated 1980 that shows the driveway was like that at that time.

Mr. Neuer told Mr. Wang that if there is an encroachment he would have to deal with two levels of government; the County and the State of New Jersey. He said that the application includes land that he does not own. Mr. Neuer said that this Board can approve the application subject to having the portion of the driveway that is encroaching removed.

Mr. Quentzel said that it looks like the retaining walls are encroaching also.

Chairman Buechler asked Mr. Evans if the impervious coverage was calculated by the property line; he replied yes.

Chairman Buechler asked Mr. Evans if in his opinion as a Professional Planner and Architect, the Board can approve an application for a pre-existing, non-conforming use; he said that he cannot make that decision but said that he has been involved in cases that had pre-existing conditions and encroachments.

Ms. Gabry stated that the encroachment would probably require a separate approval. She said that there is a website for Green Acres and it would list if the Reservation was Green Acres.

Mr. Neuer asked Mr. Wang if he had an attorney when he purchased the house; he replied no. Mr. Wang said he used a title company.

Mr. Neuer stated that the Board can approve the application subject to title; he said if it is encroaching the applicant will have to remove the part of the driveway that is encroaching.

Mr. Neuer asked Mr. Evans if the applicant will agree to that; he said that the part of the driveway that is encroaching could be removed or the applicant can come to some agreement with the County.

Mr. Neuer suggested that the applicant try to negotiate with the County to get the appropriate approval. He said that approval for Green Acres from the State may take a year.

Mr. Evans asked Chairman Buechler when the County took possession of the Reservation; he said that the County had possession of the Reservation forever.

Mr. Neuer stated that this would have showed up in the title and asked Mr. Wang to get a copy of the title and the survey he received when he purchased the land.

Ms. Gabry asked Mr. Wang if he currently lives in the house; he replied no. Mr. Wang said that there is only one bedroom in the house and he has a wife and two children. He said that he rents the house out periodically.

Ms. Weiss asked Mr. Wang if he plans on living there; he replied yes.

Mr. Neuer asked Mr. Wang if the basement is finished with a bedroom; he said that he does not know if it is a bedroom and does not intend on using it as a bedroom.

Chairman Buechler asked Mr. Wang if there is any ingress or egress from the basement; he replied yes. Mr. Wang said there is a garage door and a sliding door.

Mr. Neuer said that the plan can be modified to show the basement as a recreation room and the Board can make it a condition.

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

Chairman Buechler resumed the meeting at 9:37 pm.

Mr. Evans listed all of the variances that are required and justified the need for the variances. He said that the front of the house would still appear as a two story home and the side and rear of the house would appear as a three story home. Mr. Evans said that this would not create a negative impact on the neighborhood.

Chairman Buechler asked Mr. Evans if the height was measured from the highest to the lowest spot; he said the height was measured from the lowest spot on the grade of the house and the highest from the rear of the house.

Mr. Grygiel said the height is measured from the average grade to the highest point; he said the Township Ordinance was changed regarding this. He said that worst case scenario it cannot exceed 35' and the house is in compliance with height.

Mr. Evans said there will be a 3.9% increase in lot coverage and the greenhouse will be 175 sq. ft.

Mr. Neuer asked Mr. Evans what the height of the greenhouse will be; he said they are proposing 18'9" and the top of the grade to the top of the roof will be 15'.

Chairman Buechler asked Mr. Evans if the greenhouse is on top of the retaining wall; he said that it is shown on the plans like that now but it will be built in accordance with the Township's code.

Mr. Evans stated that there only variance required for the greenhouse is for the height.

Mr. Neuer asked Mr. Wang to explain why the greenhouse needs to be so high; he said that the greenhouse is for his wife. Mr. Wang said that his wife suffers from depression and working in the greenhouse doing gardening is her "medicine".

Mr. Neuer asked Mr. Wang why the greenhouse has to be that high; he said that the greenhouse has to be that height because there is a lot of shade in the corner of the property where it will go. He said that if the greenhouse is too low, the light will not be able to come through and his wife needs daylight to control her depression. Mr. Wang said that the gardening helps his wife with her depression.

Mr. Neuer asked Mr. Wang is there is a house on the property line near the greenhouse; he said that there is a substantial distance from the neighbor's house and the greenhouse. Mr. Wang said the distance is at least 60'.

Chairman Buechler asked Mr. Wang why they need 5000 sq. ft. of living space for four (4) people; he said that his daughter has a boyfriend and his son has a girlfriend and his parents will live there too. Mr. Wang said that they need the kitchen to be isolated from the bedrooms because Chinese cooking needs proper ventilation in the kitchen due to the fumes. He said that the current rooms are small and they need the space for their everyday life. Mr. Wang also said that they do not sleep in a basement.

There were no further questions for Mr. Wang or Mr. Evans from the Board Members of the Professionals.

Chairman Buechler asked if any members of the public had any questions for Mr. Wang or Mr. Evans; seeing none Chairman Buechler closed the hearing and opened the meeting up for discussion.

Mr. Neuer stated that he is going to recommend approval of the application because the constraints on the property do not have a negative impact on the zoning ordinance. He said that from the front of the property it appears as two stories and three stories are apparent if you are in the rear of the house. Mr. Neuer said that the greenhouse is necessary due to his wife's medical issues and he is sensitive to the form of depression that is due to lack of sunlight. Mr. Neuer said that because the greenhouse is for a medicinal purpose and will be in the rear of the house, it will not be a detriment to the zoning plan.

Mr. Neuer stated that he recommends approval of the application subject to the applicant doing a full investigation that would satisfy this Board. He said that Mr. Wang will have to deliver a copy of the title insurance policy in effect and a copy of the original survey to Ms. Beirne and if it is an encroachment into the reservation and not Green Acres restrictions he must negotiate with the County to grant an easement or remove that portion of the driveway. Mr. Neuer said that if it is subject to Green Acres restrictions then he should remove the portion of the driveway that is encroaching. He said that he will recommend that the basement will not be used as a bedroom and the office on the second floor will not be used as a bedroom as conditions of the approval.

Chairman Buechler stated that he will recommend as a condition of approval that once the house is constructed all of the materials on the exterior must match.

Chairman Buechler instructed Mr. Wang to submit the title policy and survey to Ms. Beirne by December 2, 2014.

Ms. Gabry stated that Mr. Wang should submit the survey from 1979 and the survey from 2011.

Ms. Gabry seconded the motion made by Mr. Neuer to approve the application.

The vote was as follows:

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

3. ZB-14-10/Franco

Carried from 10/23/14

Block: 176.25; Lot: 10; Zone: R-4

24 Ferris Drive

Seeking four (4) variances for installing an above ground swimming pool

Hugo Franco approached the podium and was sworn under oath.

Chairman Buechler stated for the record that he was at Mr. Franco's house the other day. He said that Mr. Franco already built the backyard retaining walls and the deck and is seeking approval after the fact. Chairman Buechler said that this Board cannot legally approve the application without the consent of the property owner, Dr. Blank, whose property part of the retaining wall is on.

Chairman Buechler asked Mr. Franco if he has a written agreement with Dr. Blank; he replied no.

Chairman Buechler asked Mr. Franco if he made arrangements with his other neighbor regarding the deck; he replied no.

Chairman Buechler stated that the Board has no choice but to adjourn this matter and advised Mr. Franco that if he wants to proceed tonight the Board will deny the application.

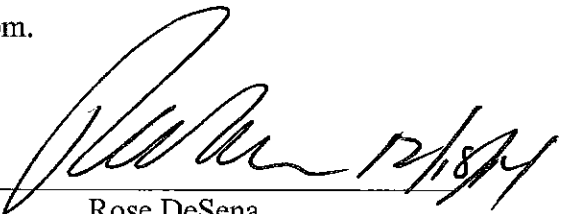
Chairman Buechler asked Mr. Franco if he would like to adjourn until the December 18, 2014 regular meeting or the January 15, 2015 regular meeting; he said he would prefer to be adjourned until the January 15, 2015 meeting because he would like to check with his attorney.

Chairman Buechler stated for the record that this application will be carried over to the January 15, 2015 and that no further notice will be necessary.

Chairman Buechler advised Mr. Franco to bring the two written agreements with his neighbors with him to the January 15th meeting.

The meeting was adjourned by Chairman Buechler at 10:23 pm.

Adopted: December 18, 2014



Rose DeSena
Zoning Board Secretary