

MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
MEETING
June 14, 2012

The West Orange Zoning Board of Adjustment held a regular meeting on June 14, 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: Bruce Buechler, Gregory Bullock, Deborah Gabry, Philip Neuer, Bart Quentzel, William Steinhart, Mark Sussman, Alice Weiss

ABSENT: Eric Sacks

ALSO PRESENT: Eric Keller, Consulting Engineer
Board Attorney: Alice Beirne, Esq.
Board Secretary, Rose DeSena
Harvey Grossman, Public Advocate

ANNOUNCEMENTS

Future Meetings: June 18, 2012 (Special Meeting) – 8:00 PM
July 19, 2012 (Regular Meeting) – 8:00 PM
August 16, 2012 (Regular Meeting) – 8:00 PM
September 20, 2012 (Regular Meeting) – 8:00 PM
October 18, 2012 (Regular Meeting) – 8:00 PM

MINUTES

Adopt Minutes: May 24, 2012 Special Meeting

Chairman Neuer asked the Board if they had any comments regarding the minutes from the special meeting on 5/24/12. Seeing none, the Chairman asked for a motion to approve.

Mr. Buechler made a motion to approve the minutes of 5/24/12 and Mr. Sussman seconded.

All were in favor.

Chairman Neuer asked to have it noted for the record that Ms. Gabry was present but not voting.

SWEARING IN

Consulting Engineer for the Township of West Orange, Eric Keller, was sworn under oath.

DISCUSSION

Adopt Zoning Board of Adjustment Annual Report for 2011-2012

Chairman Neuer asked the Board if they had any comments regarding the Zoning Board of Adjustment Annual Report for 2011-2012. He asked the Board Secretary to relay to Ms. Borg that this report does not reflect the amendments that were made to Cambria Suites prior resolution.

Mr. Buechler suggested that page numbers be added to the report. He also questioned some of the older Zoning Board applications that are listed as still pending, specifically the Bell and Longo applications, and wanted to know why. The Board Secretary explained that she is in contact with their attorneys, new submissions were requested and some re-submitted but are still incomplete applications. She also stated that the Bell and Longo applications were in court. Chairman Neuer asked the Board Secretary to send a copy of the Zoning Board application status sheet that he receives to the other Board members.

Ms. Beirne stated that she will send an update regarding the Seton Hall litigation to the Board Secretary so that she can incorporate that into the report.

Mr. Bullock stated that there was a typo on page two. He stated it should be June 2, 2011 to June 30, 2011 and not June 31st.

Chairman Neuer asked the Board Secretary to transmit to Ms. Borg that the report must be updated and that they will review it again at the July 19th meeting.

RESOLUTIONS

- 1. **ZB-10-15A/JF Holding Company, LLC** **Approved extension to 8/31/12**
 Block: 155; Lot: 40.02, 40.03 and 40.04; Zone: P-C/OB-1
 Rooney Circle
 preliminary and final site plan approval with "C" and D" variances
 and a minor subdivision.

It was noted for the record that Mr. Steinhart recused himself.

Chairman Neuer asked if there were any comments regarding this resolution. Seeing none he asked for a motion to adopt. Mr. Sussman made a motion to adopt and Ms. Gabry seconded.

Vote was as follows:

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

2. AUBURN DATA SYSTEMS, LLC **Approved to modify application**
 Request to modify application ZB-12-02

Chairman Neuer asked if there were any comments regarding this resolution. Seeing none he asked for a motion to adopt. Mr. Steinhart made a motion to adopt and Mr. Gabry seconded.

Vote was as follows:

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

3. ZB-11-23/World Class Wireless, LLC **Approved 5/17/12**
 Block: 84.01; Lot: 22.01; Zone: B-2
 12 Marcella Avenue
 Seeking three (3) "D" variances for conditional use, more than one principal use and height to install two (2) wireless dish antennas on an existing tower

Chairman Neuer asked if there were any comments regarding this resolution. Seeing none he asked for a motion to adopt. Mr. Sussman made a motion to adopt and Mr. Steinhart seconded.

Vote was as follows:

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

4. ZB-12-09/56 Undercliff Terrace S. **Approved to build on lot**
 Block: 45.20; Lot: 48; Zone: R-5
 Interpretation of Chapter 25-24.1(d) – buildable lot

Chairman Neuer asked Joseph Vena, Esq., who asked for the interpretation of a "buildable lot", if it would be alright to combine this resolution with the resolution for the interpretation of "story" because they both involve the same property. Mr. Vena agreed to combine them.

Chairman Neuer stated that this resolution will be carried over to the June 18, 2012 special meeting for adoption.

- 5. ZB-12-06/Communication Infrastructure Referred to the Planning Board**
Block: 84.01; Lot: 22; Zone: B-2
10 Marcella Avenue
“D” variance for more than one use to install four (4) commercial dish antennas on an existing tower

Chairman Neuer noted that this resolution will be carried over to the June 18, 2012 special meeting for adoption.

INTERPRETATION

ZB-12-09/56 Undercliff Terrace S.
Block: 45.20; Lot: 48; Zone: R-5
Interpretation of Chapter 25-4b – definition of “story”

EXHIBITS

A-1 – 5 page document with attachments dated 5/31/12

DISCUSSION

Mr. Jonathan Kantor approached the podium and was sworn under oath. Chairman Neuer explained that Mr. Kantor was here requesting an interpretation of Chapter 25-4b that defines a “story”. He said that Mr. Kantor is asking for the Board to interpret whether he will need a height variance for a home that he is building that has a walk out basement. Chairman Neuer stated that an ordinance was just adopted on first reading by the Township Council, defining “story”, changing the definition from horizontal to vertical. Chairman Neuer asked Mr. Kantor if he can wait until the Township Council adopts this ordinance; Mr. Kantor said he could not wait.

Chairman Neuer referred to a five page document with attachments, dated 5/31/12, that was submitted to the Board on behalf of the applicant. He asked Mr. Kantor to identify the document and then if he was to ask him to read this report, would he testify that it was accurate; Mr. Kantor replied yes. Chairman Neuer asked to have the 5 page document with attachments marked as Exhibit A-1.

Mr. Kantor referred to architectural plans which he has personally prepared. He stated that there are only two issues here; the amount of exposed foundation and the grade that is exposed. Mr. Kantor said that his plans show the basement at 28% distance from the grade. He said that the Board always dealt with horizontal and not vertical. Mr. Kantor said that if a basement was more than 12’ at any point they had to come before the Zoning Board. He said that his lot slopes from front to back so they have to have a walk out basement. Mr. Kantor stated that, years ago, a variance was never needed for this.

There were no questions for Mr. Kantor and the Chairman closed the public hearing.

Mr. Buechler stated that Mr. Kantor did a nice job on his submission. He stated that he has been sitting on the Zoning Board for 14 years and he has consistently viewed this in a fashion contrary to how Mr. Kantor wants to read it. Mr. Buechler stated that there is currently a Township ordinance, that the Council is close to adopting, that will change it from horizontal to vertical. Mr. Buechler suggested that there is a grey area and said that if the ordinance is not passed, then they should not set a precedent. He stated that the Board should consider the facts of Mr. Kantor's application and decide if he is entitled to the requested relief in lieu of a variance. Mr. Buechler suggested that if the Board agrees to issue the interpretation based on these facts that this decision would not apply to any other application and asked Ms. Beirne if this would be legal. Ms. Beirne stated that the ordinance says what it says and she is not comfortable with this. Mr. Buechler asked Ms. Beirne her legal opinion; is it vertical or horizontal he asked her. Ms. Beirne replied horizontal. Chairman Neuer asked Ms. Beirne if the Board could interpret it just for this application. Ms. Beirne stated that she would like the Board to explain why they want to make it applicable to just this application; Chairman Neuer stated that the Board already did explain its reasoning in connection with the prior determination on this application. This applicant is in a hardship position and requiring a full variance hearing when there is an ordinance pending which makes this issue moot would be arbitrary. The proviso is that this interpretation is limited to these facts, this property and the pending ordinance.

Mr. Buechler referenced the Nordan application. He said that the developer was requesting variances for several homes being built with walk out basements, due to a change of terrain, and this Board granted all of those variances. Mr. Buechler stated that Mr. Kantor is asking for an interpretation and he wants to make this applicable only to this application.

Mr. Sussman said that what Mr. Buechler is proposing is reasonable and noted that the Council is considering changing the ordinance. There was a motion by Mr. Buechler to interpret this application based on the specific facts that were presented to this Board and solely for this application requested by the applicant. Ms. Gabry seconded the motion.

The vote was as follows:

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

APPLICATION

ZB-12-03/DEKAB, LLC

Carried from 5/17/12

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.

Joseph Vena, Esq., attorney for the applicant, approached the podium. He stated that several years ago, the applicant was granted approval to establish a medical building and detailed those

approvals. Mr. Vena then began detailing what the applicant is currently proposing. He said that they would like to purchase a property that is an adjacent lot to provide more parking and make the property more aesthetically pleasing. Mr. Vena stated that the applicant is also proposing to create a small pharmacy on the first floor of the existing building.

Mr. Buechler asked Mr. Vena if the building, that the Board previously approved, was completed. Mr. Vena stated that the front sidewalks were not finished but this work will be completed after the new driveway is finished. Mr. Keller stated that the curb cuts were also not completed. Mr. Vena said that this will be corrected. Chairman Neuer stated that the resolution was adopted on 10/16/08 and that all conditions should have been completed by now. He suggested that Mr. Vena put his client on a time clock.

Mr. Buechler stated that, according to the ownership list that was submitted, it appears ownership has changed. Mr. Vena stated that ownership of the medical building is the same. Mr. Buechler referred to page 2 of the prior resolution and said that there were only four names of people who had 10% interest. He stated that Ifeekhar Kadri is now listed as a shareholder and asked when that changed. Chairman Neuer stated that this Board was told, at the hearing in 2008, that the building is owned by all of the Doctors that will be practicing there. He said that this gave the Board comfort knowing that the property will be maintained. Mr. Vena stated that Dr. Ifeekhar Kadri is listed as an owner in this current application and it is obvious that there is a mistake and asked to amend it.

Dr. Ifeekhar Kadri approached the podium and was sworn under oath. He stated that his name was misspelled in the original resolution. Chairman Neuer asked Dr. Kadri who Mahad was and he stated that Mahad is his son. Mr. Vena stated that Dr. Kadri is the owner and not Mahad and said that he will amend page two of the application. He stated that all four shareholders are doctors except for Khan. Mr. Vena said that Khan is not a doctor; he is an architect. Mr. Buechler told Mr. Vena that if he did not review this application before it was submitted to the Board then it is garbage because the names are all wrong. He said that the first application stated that all four owners were doctors and will be practicing medicine in the building. Mr. Buechler told Mr. Vena that now he says that one of the owners is an architect. Mr. Buechler asked who Samina Khan is and Mr. Vena stated that she is a doctor and her husband, Gul Khan, is one of the owners. Mr. Vena stated that Gul Khan is an architect and married to a doctor who practices medicine in the building. Mr. Buechler asked who Shreelah Deen was and Mr. Vena stated that she is a doctor and practices there. Mr. Buechler asked Mr. Vena if they were all the same owners in 10/08 and Mr. Vena replied yes.

Mr. Buechler asked Mr. Vena if it was true that he represented to the Board in 10/08 that all the owners were doctors practicing in the building and read from page 2 of the resolution. Mr. Vena stated that it was incorrect and asked if it would make a difference if all the owners are doctors. Mr. Buechler said that this about the applicant's credibility and with all of these mistakes, in all good conscience, he cannot approve the application.

Ms. Weiss stated that the applicant should not be penalized for the mistakes made in the application. She said that the doctors are practicing there and now there is an architect as an owner. Ms. Gabry asked if the architect works out of that building and Mr. Vena replied no.

Mr. Buechler referred to page 8 of the current application and asked Dr. Kadri if that was his signature. Mr. Vena stated that he signed as attorney for the applicant and that he is signing on behalf of Ahmad. Ms. Gabry stated that Ahmad is not an owner. Chairman Neuer told Mr. Vena that when he signs an application on behalf of the applicant he should sign his own name and state it is on behalf of the applicant. Mr. Vena stated that this is something that can easily be amended and said that he is amending the application as DEKAB and signs it as DEKAB, LLC by Joseph Vena, Esq., their attorney.

Chairman Neuer stated that he is a little confused and referred to page 9 of the prior resolution, condition number 13. He said that this condition states that if an owner of the LLC wishes to practice then they will need a lease agreement. He said that, other than the wife of one of the owners, there are only four leases. Chairman Neuer stated that the prior resolution also limits it to only two doctors practicing at a time.

Mr. Buechler asked Mr. Vena if this application is granted, will there be a lease for the pharmacy; Mr. Vena replied yes. Mr. Buechler said that the Board would have to change the resolution then.

Ms. Weiss stated that one important condition in this resolution was that they agreed not to use the upstairs of the building.

Chairman Neuer asked Mr. Vena to issue an amended application form amending the conditions from the prior application's resolution. Mr. Buechler stated that the reason they have to amend it is because if no one is here many years later someone will understand the resolution. The Chairman also stated that if the application is being filed subject to approval on the same site, the law states that you have to seek relief from the prior conditions.

Mr. Vena stated that, aside from the names on the LLC, the application does not indicate that the applicant is proposing to increase parking. He said that they are proposing to change the reconfiguration on the second floor and seeking a variance for a second use as a pharmacy. Mr. Vena stated that if the application is granted, those will supersede what was previously approved.

Chairman Neuer stated that it is not fair that this Board has to tell you what conditions require an amendment. He asked Mr. Vena if he is asking to be relieved of condition #1 of the prior resolution and Mr. Vena said obviously yes. Chairman Neuer stated that it was not included in your current application. Mr. Buechler said that the point of notice is that people know what is being proposed. He said there are items that are not there in the notice. Mr. Vena said that he did not consider the second floor would be a variance. Chairman Neuer said that it is not a variance; it would be an amendment seeking relief from a previously imposed condition.

Chairman Neuer stated that the Board will require Mr. Vena to submit a letter with all of the conditions that they want changed. He asked Ms. Beirne if a new notice is required and she replied no. Chairman Neuer said that the Board requires a supplement to the Planner's report noting the changes.

Chairman Neuer stated that the next Zoning Board of Adjustment hearing is on July 19th and that this application will be continued then. He stated that no further notice is required. Chairman Neuer stated that the applicant must also submit an amendment that shows correct ownership.

DISCUSSION

Mr. Howard Davis, Esq., attorney for 617 Mt. Pleasant Avenue Assoc., LLC, approached the podium. He stated that his applicant is last on the agenda and he does not feel that they will get a chance to be heard tonight.

Mr. Davis said that his dilemma is that the architect for his applicant resides in Boston, even though he is licensed in the State of New Jersey. He said that it is very costly for the applicant to have him fly in for the meeting on July 19th and there may be a chance that he will not get to testify because they will be second on the agenda for that meeting. Mr. Davis asked if they could be first on the agenda for the Zoning Board meeting scheduled for August 16th.

Chairman Neuer stated that the application for 617 Mt. Pleasant Avenue Assoc., LLC is being carried to August 16th and no further notice will be necessary.

Chairman Neuer recessed the meeting at 9:19 pm.

The meeting resumed at 9:36 pm.

APPLICATION

ZB-12-07/B'nai Shalom

Block: 152.23; Lot: 3; Zone: R-5

110 Woodland Avenue

Seeking a "C" variance for a rear yard setback for expanding the kitchen, adding a deck and a two story addition

EXHIBITS

- A-1 Existing floor plans
- A-2 Existing exterior elevations
- A-3 Proposed front & rear elevations
- A-4 Proposed left side and right side elevations
- A-5 Proposed upper level floor plan with deck
- A-6 Proposed lower level floor plan with deck
- A-7 Photo Board

DISCUSSION

Mr. Robert Williams, Esq., attorney for the applicant, approached the podium. Mr. Williams detailed the application stating that the applicant is asking for a variance for a rear yard set-back in an R-5 zone. Mr. Williams stated that they are proposing to renovate an existing home to accommodate their new Rabbi.

Chairman Neuer stated that he read the proposal submitted by Howard Coopersmith and the first paragraph stated that there is an existing non conforming setback of 22.4' and asked Mr. Williams if this was correct. Mr. Williams said yes that was correct. He said that the area is a very small area at the rear of the building and it will increase the length.

Mr. Howard Coopersmith approached the podium and was sworn under oath. Mr. Coopersmith detailed his educational and professional background. He stated that he has a bachelor degree in architecture, is a licensed architect in the State of New Jersey for 20 years and has testified before Boards as a professional architect many times. Chairman Neuer accepted his credentials as an expert witness in the field of architecture.

Mr. Coopersmith presented the existing floor plans. Chairman Neuer noted that the existing floor plans were pre-marked as Exhibit A-1. Mr. Coopersmith began detailing the plans. He said that the existing house is a bi-level and does not have a basement. He described the lower level saying that there is a one car garage, a family room, a utility room, a full bathroom and a play room. Mr. Coopersmith detailed the existing upper level stating that there is a dining room, living room, kitchen, full bathroom and three bedrooms. He also stated that there is an existing deck on this level with no stairs.

Mr. Coopersmith presented the existing exterior elevations. Chairman Neuer noted that the existing exterior elevations plans were pre-marked as Exhibit A-2, A-3 and A-4. Mr. Coopersmith began detailing the exterior elevations of the house.

Mr. Coopersmith presented the proposed lower level floor plan. Chairman Neuer noted that the proposed lower level floor plan was pre-marked as Exhibit A-6. Mr. Coopersmith began detailing what was being proposed at the lower level. Mr. Coopersmith said that there will be no expansion at the ground level of the house. He stated that where the one car garage is now, they will add a two car garage. Ms. Gabry asked if the portico in the rear of the house is being removed and Mr. Williams replied no.

Mr. Sussman noted that on the existing floor plans there was no mention of the covered patio. Mr. Williams asked Mr. Coopersmith if they are proposing to change the entrance of the garage from the side of the house to the front of the house and Mr. Coopersmith replied yes.

Mr. Williams stated that they are not seeking any variances with what they are showing you; only the build-out of the deck will need a variance.

Mr. Coopersmith presented the proposed upper level floor plan with the deck. Chairman Neuer noted that the proposed upper level floor plans with a deck have been pre-marked as Exhibit A-5. Mr. Coopersmith said that at the second level they will be expanding an existing deck and adding a new master bedroom suite on the easterly side above the garage. He stated that the kitchen and

dining room will be expanded at the rear of the house. Mr. Coopersmith said that the Rabbi has four children and they frequently have people over for dinner and the existing area is small. Mr. Buechler questioned the kitchen being on the second floor and Mr. Coopersmith explained that it is a bi-level house.

Mr. Williams asked Mr. Coopersmith if they are proposing a new deck and he replied yes. Mr. Buechler asked why there is a need for such a large deck. Mr. Coopersmith stated that the Rabbi entertains outside and needs the room for his guests. He said that the Rabbi also uses the deck for the Sukkot holiday.

Chairman Neuer asked for clarification asking if the Temple is in the rear yard because Ms. Borg's report stated that it is a wooded area in the rear. Mr. Williams stated that it is all Synagogue property in the rear.

Mr. Buechler asked who lived there previously and Mr. Williams stated that there was a tenant who rented the house. Ms. Weiss stated that a Rabbi did live there many years ago.

Mr. Williams stated that Township Engineer, Mr. Lepore, issued a letter confirming that a permit was issued to the applicant's engineer by the NJDEP. He stated that a permit was required because they are doing construction at the rear of the house that is within 50 ft. of the riparian buffer.

Mr. Williams stated that the present plans for upgrading the facility include matching the existing siding on the house on the new construction so that it blends. He said that, depending on the Synagogue's budget, they may possibly re-side the house. Mr. Williams stated that the roof will also be replaced.

Ms. Gabry stated that the portico appears to be in disrepair. Mr. Williams stated that it will be repaired. Chairman Neuer said that repairing the portico will be a condition.

Mr. Sussman questioned the setback and asked if it was measured from the deck or the structure of the house. Mr. Williams said the setback is from the deck.

There were no questions for Mr. Coopersmith from the Board or members of the public. No members of the public wished to present comments or testimony; the public hearing was closed by the Chairman.

The Chairman asked if any Board members had any comments. Ms. Weiss stated that she likes the fact that they are keeping the trees and recommends that the Board approve the Application.

Mr. Bullock asked Mr. Keller if he was satisfied with Township Engineer Lepore's report regarding the stream. Mr. Keller said that the applicant's engineer received the permits from DEP and he is satisfied. He said that the Board can make this a condition.

Mr. Bullock questioned Mr. Keller about the safety valve in the sewer. Mr. Keller suggested that the applicant install a check valve on the sewer line so sewage does not back up into the house.

Mr. Buechler made a motion to approve with the following conditions:

Applicant must comply with the DEP permit dated 6/7/12; Applicant is require to put a check valve on the sewer line to prevent back up of sewage; Applicant must make repairs to the portico; The exterior of the house must be the same color and style to match the existing house; Construction will require replacing the roof; Applicant must take all efforts to preserve the trees along the eastern side of the house where the new garage is going.

Chairman Neuer stated that if the roof shingles contain asbestos then they must be disposed of at the proper facility.

Mr. Bullock seconded the motion.


The vote was as follows:

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

ADJOURNMENT

The meeting was adjourned by Chairman Neuer at 10:03 pm.

June 14, 2012



Rose DeSena
Zoning Board Secretary