

**MINUTES  
TOWNSHIP OF WEST ORANGE  
ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING  
March 21, 2013**

The West Orange Zoning Board of Adjustment held a regular meeting on March 21, 2013 commencing 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 21, 2012 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, W. Merklinger, P. Neuer,  
B. Quentzel, M. Sussman (8:05 pm), A. Weiss (8:33 pm)

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

**ALSO PRESENT:** P. Grygiel, Consulting Planner/Acting Planning Director  
Board Attorney, Alice Beirne, Esq.  
Board Secretary, Rose DeSena  
Harvey Grossman, Public Advocate

**ANNOUNCEMENTS**

Chairman Neuer announced that Mr. Merklinger has notified him that he cannot attend the Zoning Board meeting on April 18, 2013 and his absence will be marked as an excused absence.

The Chairman announced that he received a letter from Mayor Parisi notifying him that Leigh Ann Zaolino has verbally resigned her position as an alternate member of the Zoning Board of Adjustment effective immediately. Her resignation has been accepted.

**Future Meetings:** April 18, 2013 (Regular Meeting) - 8:00 PM  
May 23, 2013 (Regular Meeting) - 8:00 PM  
June 20, 2013 (Regular Meeting) - 8:00 PM

**MINUTES**

**Adopt Minutes:** March 7, 2013 (Special Meeting)

Chairman Neuer asked if there were any suggested revisions or changes to the minutes as submitted. The Chairman then called for a motion to approve the minutes of the special meeting held on March 7, 2013 as submitted. Vice Chairwoman Gabry made a motion to approve the minutes as submitted; Mr. Buechler seconded the motion. All were in favor to approve the minutes of the special meeting held on March 7, 2013 as submitted.

### **SWEARING IN**

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

### **APPLICATION**

**1. ZB-12-01/Singh**

**Carried from 2/21/13**

Block: 21; Lot: 18; Zone: R-T

61 Riggs Place

“C” variances for front, side and rear setbacks for enclosing a front porch and adding a room to the rear of the house.

### **EXHIBITS**

A-3 – Site plan with a revision date of 3/8/13 (replaced Exhibit A-1)

### **DISCUSSION**

Chairman Neuer stated that this application was carried over from the last Zoning Board meeting that was held on 2/21/13 and asked Ms. Singh to approach.

Nazeema Singh approached the podium. Chairman Neuer stated that Ms. Singh will continue under oath from the last meeting.

Dave Singh also approached the podium and was sworn under oath.

Chairman Neuer stated that Ms. Singh submitted a revised plan and asked if the Architect who prepared the plan was present at this meeting; she replied yes.

David Jablonka approached the podium. Chairman Neuer stated that Mr. Jablonka was sworn in at the last meeting and will continue his testimony under oath.

Mr. Jablonka presented a revised site plan with a revision date of 3/8/13. Chairman Neuer asked Mr. Jablonka if this replaces the site plan that was marked as Exhibit A-1 at the last meeting; he replied yes. The Chairman noted for the record that the site plan with a revision date of 3/8/13 will replace Exhibit A-1 and asked to have it marked as Exhibit A-3 for identification.

Mr. Jablonka detailed the revisions made to the plans and also noted the updated zoning table on the plans. He said that the applicant will remove one of the sheds in the rear of the property and the other shed will remain which will require another "C" variance. Chairman Neuer asked if the applicant wanted to amend the application asking for the additional variance; Ms. Singh replied yes. The Chairman stated that the request for the amendment is granted.

Chairman Neuer asked Mr. Grygiel if he reviewed the revised plans; he replied yes. Mr. Grygiel stated that if the existing conditions remain then the applicant will be below the maximum impervious coverage that is allowed and will not require a variance.

Mr. Quentzel noted that the plans show that the Bilko doors were removed from the basement and asked if there were any other egresses from the basement; Mr. Jablonka replied no and said that a second egress is not required by the Township's ordinance. Mr. Grygiel agreed that a second egress is not required as long as no one is sleeping in the basement.

Chairman Neuer stated that, because there is no egress, no one will be permitted to sleep in the basement and asked if the applicant will accept that as a condition if the application is approved; Ms. Singh replied yes.

Chairman Neuer asked Ms. Singh if she hired an Engineer to perform an inspection of the work that was done without permits as the Board required; she replied yes. The Chairman asked Ms. Singh if the Engineer was present at the meeting to testify; she replied yes.

Meier Lieblich approached the podium and was sworn under oath. Mr. Lieblich detailed his educational and professional background as a licensed professional Engineer in the States of New Jersey and New York.

Mr. Sussman asked Mr. Lieblich if he ever testified before any Boards of this nature; Mr. Lieblich said no. He said that he has only testified in New York's Supreme Court and has never testified in New Jersey. Chairman Neuer accepted Mr. Lieblich as an expert witness in the field of Engineering.

Chairman Neuer asked Mr. Lieblich if he inspected the work that was done at the applicant's home; Mr. Lieblich replied yes. Chairman Neuer asked Mr. Lieblich to explain his findings.

Mr. Lieblich said that he performed a visual inspection. He said he did not make any holes in the walls and does not know what is inside of them. Chairman Neuer noted for the record that Mr. Lieblich could not testify as to what the electrical and the plumbing was like inside of the walls. Mr. Lieblich stated that some of the beams and headers are missing. Chairman Neuer asked Mr. Lieblich if these were structural elements; he replied yes. Mr. Lieblich said that the walls appeared to be excessively high for the studs but all of this can be corrected. Chairman Neuer asked Mr. Lieblich if the work appeared to be structurally sound; he replied yes.

Mr. Bullock asked Mr. Lieblich which wall appeared to be high; Mr. Lieblich said that the wall in the mud room is 12' high and needs to be addressed.

Mr. Bullock asked Mr. Lieblich which header is missing; Mr. Lieblich said the header between the kitchen and family room.

Ms. Gabry asked Mr. Lieblich if the house is safe for occupancy; Mr. Lieblich said that it should be corrected right away. Chairman Neuer asked Mr. Leiblich to estimate the time frame for the corrections to be made; he replied that they should be made within a week or two weeks.

Mr. Buechler asked Mr. Lieblich if he saw any concerns with the sitting area in the front of the house; Mr. Lieblich said that the floor bounces too much. Mr. Buechler asked Mr. Leiblich to explain what that means; he said that it must be fixed.

Ms. Gabry asked Mr. Lieblich what is above the kitchen area; Mr. Lieblich replied there is nothing above that area. He said that the second floor extends to where the oven is in the kitchen and from that point to the rear of the house is one story.

Mr. Quentzel noted that the windows were removed between the living room and the sitting area and asked Mr. Leiblich if that created any structural issues; he replied no.

Chairman Neuer asked if there were any further questions for Mr. Lieblich by Members of the Board or its professionals; seeing none.

Chairman Neuer asked if any members of the public had any questions for Mr. Lieblich; seeing none the witness was excused.

Chairman Neuer asked Mr. Singh if he did the work in his house; he replied yes.

Chairman Neuer asked Mr. Singh what kind of work he does; Mr. Singh said he is a Network Engineer.

Chairman Neuer asked Mr. Singh what kind of experience he has in the construction of homes; Mr. Singh said when he was younger he was a carpenter's helper and does side jobs.

Chairman Neuer asked Mr. Singh who designed this project; Mr. Singh said him and his father.

Chairman Neuer told Mr. Singh that the Board's concern is for the safety of his family. He said that they are going to have to open up the walls so that the electrical and plumbing can be inspected and that there is still more work to be done. Mr. Singh said that he will not be doing the work himself this time.

Chairman Neuer asked if there were any questions for Mr. Singh by Members of the Board or its professionals; seeing none.

Chairman Neuer asked if any members of the public had any questions for Mr. Singh; seeing none.

The Chairman closed the record for this hearing and opened the floor for discussion.

Mr. Buechler stated that he would recommend that the approval of this application is contingent upon the Township going out and inspecting the inside of the walls to make sure the electrical is safe. He said that this is the applicants' fault because they should have known that they needed a permit.

Ms. Gabry suggested that the inspections are done before the work is done. Mr. Buechler said that he and Ms. Gabry are saying the same thing. He said that the applicant should have a contractor there to close the wall once the wall is opened for inspection.

Chairman Neuer recommended that they reaffirm the approval of the variances with strict compliance and also require that the Township Engineer go through the issues raised by the applicants' Engineer. The Chairman also said that he will require a condition that Mr. Singh does not do any of the work and that they hire a licensed Contractor because the Board is concerned about their safety.

Chairman Neuer made a motion that the application for the approval of the variances, and not site plan approval, be granted subject to the following conditions:

The Township Building Inspector is to perform the inspections to all of the systems in the building; the applicant's Engineer will accompany the Township Engineer on the inspection; the applicant will retain the services of a licensed contractor and that there will not be a bedroom in the basement.

Mr. Buechler said that he has concerns with the structural integrity and that a strict time period should be required to get the work done. He said that he would like to recommend, as a condition, that from the time the resolution is adopted at the April 18<sup>th</sup> meeting the applicant will have 90 days to get the work inspected by the Building Department and the Township Engineer. Mr. Buechler said that if there is a problem and this is not done in 90 days, the applicant must come back to this Board. He suggested that the applicant start looking for a licensed contractor now so that the work can be done in April.

The Chairman stated that all exhibits introduced by the applicants are admitted into evidence.

Ms. Gabry seconded the motion made by the Chairman.

The vote was as follows:

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

The Chairman noted for the record that Board Member Alice Weiss took her place at the dais at 8:50 pm.

2. **ZB-12-20/First Hartford Realty Corp.,** Carried from 3/7/13  
**Designated Agent for CVS**  
Block: 153.16; Lot: 1-6 & 24-27  
265 Prospect Avenue  
“D” Use variance & “C” variances for building a CVS Pharmacy

## **DISCUSSION**

Robert Williams, Esq. approached the podium and detailed his perceptions of what transpired at the last meeting concerned with this application held on 3/7/13. He said that the applicant is now seeking to amend the application from a dual drive thru to a single drive thru. Mr. Williams stated that they would like to reserve the right to return to the Board in the future, if need be, for the dual drive thru.

Mr. Buechler said that if the application is approved they must submit revised drawings; Mr. Williams agreed to that.

Chairman Neuer granted the amendment and said that the plans must be revised to a single drive thru lane if the application is approved.

Mr. Williams stated that at the last meeting the applicant’s Planner, Peter Steck, testified before the Board. He said that Mr. Steck referred to his planning evaluation report, which was marked as Exhibit A-36 for identification, which constituted the basis of his testimony.

Mr. Williams re-called Peter Steck.

Mr. Steck approached the podium. Chairman Neuer said that Mr. Steck having sworn at the last meeting will continue under oath. Mr. Steck acknowledged that fact.

The Chairman referred to page 1 of Mr. Steck’s report noting, for the record, that this Board is not the West Orange Board of Adjustment. He said the correct title of this Board is the West Orange Zoning Board of Adjustment.

Chairman Neuer asked if any members of the Board had any questions for Mr. Steck.

Ms. Weiss said that they were discussing the Livingston CVS at the last meeting and asked Mr. Steck if he verified the hours of operation of that store. Mr. Steck said that he does not know but the representative of CVS who is present may have that information.

Ms. Weiss asked Mr. Williams if Livingston allows stores to be open 24 hours; Mr. Williams replied no but said that West Orange does allow it.

Chairman Neuer stated that there is nothing in the Township ordinance that prohibits 24 hour operations but, because the applicant is seeking a "D" variance, this Board has the ability to impose conditions.

Chairman Neuer said that the variances requested that are listed in table one of Mr. Steck's report is amended. He said that Exhibit A-37 will be changed from a dual drive thru lane to a single drive thru lane.

Chairman Neuer said that even though there is no mention of consultations between customers and a pharmacist on page 6 of Mr. Steck's report, regarding the drive thru lane, the Board can limit the drive thru for drop off and pick up of prescriptions only.

Chairman Neuer asked if there were any further questions from Members of the Board and its professionals for Mr. Steck; there were none.

Chairman Neuer asked if there were any members of the public that had any questions for Mr. Steck; there were none.

Mr. Williams stated that he has no further witnesses.

Chairman Neuer stated that Exhibit A-2 has been replaced with Exhibit A-2a and noted that Exhibit A-37 was amended. All exhibits presented on behalf of the applicant were entered into evidence.

Chairman Neuer asked if any member of the public had any comments or wanted to provide testimony.

Marlon Lewis of 10 Woodhull Avenue approached the podium and was sworn under oath. Mr. Lewis said that his concern is the driveway exit on Woodhull Avenue. He said that testimony was provided that the Woodhull Avenue driveway would be mostly for exiting and he thinks that this driveway will become problematic. Mr. Lewis said that he believes that it will make it difficult for the people who live on that street to get into the roadway system.

Chairman Neuer asked Mr. Lewis if there is another way out of Woodhull Avenue; Mr. Lewis replied yes.

The Chairman asked if there were any other members of the public that had any comments; seeing none.

The Chairman closed the public portion of the meeting.

Mr. Williams thanked the Board members and all witnesses who had testified. He also thanked Mr. Keller for all of the time that he spent meeting with the applicant's Engineers.

Mr. Williams said that he shares the concern that Pals Cabin will close but said that times change and that this will be an enhancement to the Township and a convenience to the community. He

asked that the Board approve the variances requested and also approve the recommendation for the tree removal and the soil removal permit.

Chairman Neuer opened the floor to discussion by the Board members.

Mr. Quentzel said that Essex County should have to approve the soil removal. Mr. Williams said that West Orange has to approve it because they have their own soil removal program.

Chairman Neuer stated that this Board's approval is subject to all applicable Essex County approvals.

Ms. Weiss made a recommendation that the Board approve this application. She said that she would prefer that the drive thru close by midnight and open at 7am. Ms. Weiss said that she also has some concerns about the Woodhull Avenue driveway. She suggested that if the application is approved and that driveway does not work out that the applicant must come back to this Board.

Ms. Gabry said that the Board spoke earlier about putting up a "local traffic only" sign and this might help Mr. Lewis' concerns. She also said that she would rather see a CVS store there than an abandoned site.

Mr. Sussman said that he is also in favor of this application because it is a benefit to the Township. He said that he is concerned about the issues that Mr. Lewis raised and asked if it would be possible to move the driveway back a short distance or have another driveway on Prospect Avenue remain open.

Chairman Neuer said that the driveway on Woodhull Avenue cannot be relocated according to testimony from the Traffic Engineer. He also said that to propose another driveway remaining open on Prospect Avenue is not feasible at this time. The Chairman stated that testimony was presented that ingress and egress was safe and efficient; the Board should not attempt to re-design the project.

Ms. Weiss said that the Engineer stated that it would be safer closing the two driveways on Prospect Avenue.

Mr. Bullock said that he agrees with Mr. Sussman and Ms. Weiss and thinks that Mr. Lewis' concern is valid.

Mr. Merklinger also suggests that the Board approve this application and said that he does not see any problem with a 24 hr. / 7 days a week drive thru.

Mr. Buechler said that he thinks it is a positive step reducing it to one drive thru. He said he has some concerns with some of the lighting in the back of the store and he would vote in favor of limiting the single drive thru from 7am – 12 midnight.

Chairman Neuer said that CVS is very convenient. He said that a customer can call in an order for a prescription and pick it up without getting out of their car. The Chairman said that he is not in favor of limiting the hours of the drive thru. He said that the applicant has eliminated one of the drive thru lanes and that the Board should not impose limited hours of operation as a condition.

Chairman Neuer presented a motion to approve the application, as amended, with the following conditions:

Subject to one drive thru lane; revised plans are to be submitted by 4/8/13 which is ten days prior to the next meeting date of 4/18/13 when the resolution will be voted on; all deliveries are to be made between 7am and noon; restrict all truck deliveries to the loading zone; install an exit sign, a local traffic only sign and left hand turn sign on Woodhull Avenue; final plans to include the model number of the compactor; the compactor will run only during daytime hours between 9am-5pm and otherwise in accordance with the Township ordinance; applicant must notify the resident at 277 Prospect Avenue that they are closing the curb cut on Prospect Avenue and that the neighbors will not be able to use that parking space any longer and there will be no grant of an easement; a copy of the letter sent to the resident at 277 Prospect Avenue must be sent to the Board secretary; all approvals are subject to all applicable Essex County approvals and soil conservation approval; applicant agrees to comply with the letter report submitted to the Board by the Township Forester.

This approval is further subject to the conditions stated in Mr. Keller's letter dated 3/1/13: The depressed curb on Prospect Avenue must be added to the plans; curb cut to be closed shall be depicted on the plans; sign drawings must be revised to show how far the sign section extends outward from the face of the wall.

Chairman Neuer asked Mr. Keller if there were any other conditions he would recommend; Mr. Keller suggested the following conditions:

The consolidation of the lots; payment of an escrow fee for review of the application; and preparation of an Engineer's estimate for the purpose of calculating and then paying the engineering escrow.

Chairman Neuer asked the Board members, by show of hands, who would be in favor of limiting the drive thru hours. Mr. Buechler and Ms. Weiss were in favor; Ms. Gabry, Mr. Merklinger, Mr. Quentzel, Mr. Sussman and Chairman Neuer were opposed. The Chairman said that limiting the hours of the drive thru will not be a condition in this proposed motion.

Ms. Gabry seconded the Chairman's motion to approve the application with the conditions as stated.

The vote was as follows:

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

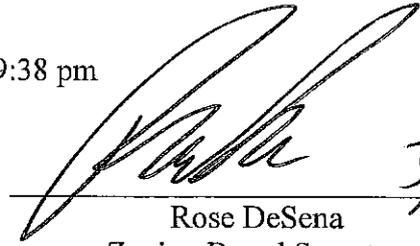
The vote was as follows:

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

**ADJOURNMENT**

The meeting was adjourned by Chairman Neuer at 9:38 pm

Adopted: May 23, 2013

 5/24/13  
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Rose DeSena  
Zoning Board Secretary