

MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
July 21, 2016

The West Orange Zoning Board of Adjustment held a regular meeting on July 21, 2016 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 the Star Ledger and posted on the Township Bulletin Board in accordance with the "Open Public Meetings Act."

Chairman Neuer announced that a digital tape recording system is being utilized to record the proceedings of the meeting and instructed the general public on how the audio of the proceedings may be reviewed or obtained.

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

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

PRESENT: B. Buechler, C. Darconte, D. Gabry, D. Nash, P. Neuer,
B. Quentzel, I. Schwarzbaum, W. Steinhart, M. Sussman,
A. Weiss

ABSENT: None

ALSO PRESENT: Paul Grygiel, Township Planner
Eric Keller, Consulting Engineer
Alice Beirne, Esq., Board Attorney
Rose DeSena, Board Secretary
H. Grossman, Esq., Public Advocate

ANNOUNCEMENTS

Future Meetings: August 18, 2016 (regular meeting)
September 15, 2016 (regular meeting)
October 20, 2016 (regular meeting)

MINUTES

Adopt Minutes: June 16, 2016 (regular meeting)

Chairman Neuer stated that he and Vice Chairman Buechler submitted their comments to the Board Secretary for the minutes of the June 16, 2016 regular meeting.

Chairman Neuer asked the Board Members if they had any additional comments for the June 16, 2016 regular meeting that were submitted to them for review; there were none.

Chairman Neuer asked for a motion to approve the minutes of the June 16, 2016 regular meeting.

Vice Chairman Buechler made a motion to approve the minutes of the June 16, 2016 regular meeting; Mr. Schwarzbaum seconded the motion and all were in favor with the exceptions of Mr. DarConte, Ms. Gabry and Ms. Weiss who were present but did not vote on these minutes because they were not present at that meeting.

SWEARING IN

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

APPLICATIONS

- 1. ZB-16-02/Arceo** **Carried from 6/16/16**
Block: 43; Lot: 29; Zone: R-5
70 Lowell Avenue
Seeking a “c” variance for the height of a retaining wall to be constructed in the rear yard.

EXHIBITS

A-2 – Site Plan – revised with a revision date of July 8, 2016

A-3 – Boundary and Elevation Survey dated June 24, 2016

A-4 – Email from the Township’s Construction Official dated June 23, 2016

B-1 – Photo board

B-2 – Photo Board

Daniel Roma, David Oliverous and Samual Arceo approached the podium and were sworn under oath.

Mr. Oliverous stated that Mr. Arceo is the applicant and is his uncle and that he is present to help him with the translation.

Mr. Roma stated that they were last heard at the May 19, 2016 Zoning Board meeting and were required to submit revised drawings.

Mr. Roma presented revised drawings of the site plan with a revision date of July 8, 2016.

Chairman Neuer asked to have the revised site plan marked at Exhibit A-2 for identification.

Mr. Roma referred to Exhibit A-1 and detailed all of the revisions. He stated that they incorporated the comments that the Township Engineer recommended to the plans and extended the wall along the left side of the property towards Lowell Avenue.

Mr. Roma referred to sheet two (2) of Exhibit A-2 and detailed the retaining wall. He said that the retaining wall will go from two (2) feet on one end of the wall to nine (9) feet because of the slope.

Mr. Roma presented the boundary and elevation survey dated June 24, 2016.

Chairman Neuer asked to have the boundary and elevation survey marked as Exhibit A-3 for

identification.

Ms. Gabry noted that the wall on the south side of the property extended over the property line and asked if that structure was going to stay there.

Mr. Oliverous stated that his uncle, Mr. Arceo, spoke to the neighbor and the neighbor said that the wall could stay there.

Chairman Neuer stated that in order for the wall to remain over the property line the applicant must obtain an easement. Mr. Roma said that the applicant will agree to that.

Chairman Neuer asked Mr. Roma how high the retaining wall will be at its highest point; he said 9'4" high. Mr. Roma said that the applicant is also proposing to put a 4' high fence on top of the retaining wall because he wants the rear yard to be safe for his children to play there.

Chairman Neuer asked Mr. Roma if the wall with the fence on top will now be approximately 14' high; he replied yes. Mr. Roma said that it will only be 14' high on the highest end of the wall. He said that the height of the wall is typical in this area because of the slope.

Chairman Neuer asked Mr. Grygiel to define the township ordinance for installing a fence on top of a wall.

Mr. Grygiel stated that solid walls and fences not higher than six (6) feet are permitted in the rear yard and on the side property up to the real line of the applicant's house.

Chairman Neuer asked Mr. Arceo if he spoke to his neighbor about removing the tree on his neighbor's property to install the wall; he said yes. Mr. Arceo said that his neighbor said he can remove the tree because the previous owner planted the tree.

Chairman Neuer instructed Mr. Arceo to get a letter from his neighbor that states that he has permission to remove the tree from his neighbor's property.

Vice Chairman Buechler asked Mr. Roma if the fence on top of the retaining wall is an aluminum fence; he replied yes. Mr. Roma said that it is not a privacy fence.

Vice Chairman Buechler asked Mr. Roma if new leaders have to be installed for the proposed seepage pit in the back of the property; he said that they will install new pipe under the leaders that go to the seepage pit.

Ms. Gabry asked Mr. Roma if the blocks on the retaining wall are secure; he said yes. Mr. Roma said that they are interlocking blocks and explained how the wall will be reinforced.

Mr. Keller stated that the retaining wall will require a building permit to ensure that it is secure.

Mr. Quentzel asked Mr. Roma how they are getting the fill; he said they are bringing it in.

Mr. Schwarzbaum asked Mr. Roma if the back of the property will be totally flat now; he replied no. He said that there will be an approximate 5% slope after construction.

Mr. Sussman asked Mr. Roma if the pavers for the walkway along the southerly side of the property line are over the applicant's property line; he replied yes.

Chairman Neuer stated that the pavers that are over the property line is de minimus and an easement is not required for that.

There were no further questions from the Board Members or the Board Professionals.

Chairman Neuer asked if any members of the public had any questions for Mr. Roma.

Dorothy Butler approached the podium and stated that her mother lives at 88 Lawrence Avenue.

Ms. Butler asked Mr. Roma if any portion of the ground was included in the 9' height of the wall; he replied no.

Ms. Butler asked Mr. Roma if the applicant is moving soil in his yard. Mr. Oliverous responded that they are removing debris in the yard. He said that the Mr. Arceo received an email from the Township's Construction Official, Mr. Tracy, which stated that he is approved to remove the debris.

Chairman Neuer asked to have the email from Mr. Tracy dated June 23, 2016 marked as Exhibit A-4 for identification.

Ms. Butler asked Mr. Roma where the debris was disposed of; he said that a contractor took the debris.

Ms. Butler asked Mr. Roma when the screening for the soil erosion will be installed; he said when the application is approved.

Chairman Neuer stated for the record that the Township Engineer, Mr. Lepore, stated in his letter dated May 16, 2016 that a soil erosion and sediment control permit is not required.

Ms. Butler asked Mr. Roma how the applicant intends on building the wall because her mother will not permit the applicant to access her property; he said that they can build the wall from the applicant's property.

Ms. Butler asked Mr. Roma if the applicant removed bushes from her mother's property; he said that the applicant removed some bushes and replanted them. Mr. Roma said that after the applicant had a new survey done for the property he realized that some of the bushes that he removed were on the neighbor's property.

Chairman Neuer stated that if the application is approved there will be a condition stating that the neighbor will not grant access from her property to build the retaining wall and that no additional bushes will be removed.

Ms. Butler presented two photo boards that were marked as Exhibit B-1 and Exhibit B-2 for identification.

Ms. Butler referred to the Exhibits and asked Mr. Roma why the applicant took down the existing 8' retaining wall; he said that it was removed because it was in bad condition.

For the record, Mr. Arceo stated that the old retaining was 7 1/2' and not 8' high.

Ms. Butler asked Mr. Roma how they will prevent water from seeping on to her mother's property; he said that they are proposing to install a seepage pit.

Ms. Butler asked Mr. Roma who is going to be responsible for inspecting the wall to ensure it is done right. Chairman Neuer stated that the township's building department will do the inspection.

Ms. Butler asked Mr. Roma if any of the weep holes in the wall will be pointing to her mother's yard; he replied no.

Christine Scioscia approached the podium and stated that her mother lives at 88 Lawrence Avenue.

Ms. Scioscia asked Mr. Roma where the highest part of the wall will be in relation to 88 Lawrence Avenue; he referred to a photo on Exhibit A-1 showing the location of the proposed wall in relation to 88 Lawrence Avenue. Mr. Roma stated that the wall will not be visible from 88 Lawrence Avenue once the bushes grow.

There were no further questions for Mr. Roma.

Chairman Neuer asked if any members of the public had any comments.

Dorothy Butler approached the podium and was sworn under oath. She stated that her mother, Dora Ricci, lives at 88 Lawrence Avenue and she is concerned with how the 9 1/2' wall with a 4' fence on top of it will impact her mother's property value because it will change the look of her mother's property. Ms. Butler said that she just wants to make sure that the applicant does what he is required to do.

Vice Chairman Buechler asked Ms. Butler if she grew up in the house on Lawrence Avenue; she replied yes.

Vice Chairman Buechler asked Ms. Butler if there was always a retaining wall there; she said

that there was a smaller retaining wall along a property on Florence Avenue.

Ms. Weiss asked Ms. Butler if she felt that the 4' fence placed on top of the retaining wall will be unappealing; she replied yes.

Ms. Gabry stated that if the applicant does not put a retaining wall along the back of his property there will be erosion.

Ms. Butler said that the applicant testified to bringing in dirt and raising the grade of the slope. She said the prior owner only had grass in the rear yard and there was never erosion.

Mr. Schwarzbaum asked Ms. Butler how high the bushes are along the proposed wall; she said three (3) feet.

Mr. Schwarzbaum said that if trees were planted in that area it could hide the wall.

Ms. Butler said that it is not only about aesthetics.

Mr. Schwarzbaum asked Mr. Grygiel if arborvitae trees were planted there would it cover the wall; he said yes. Mr. Grygiel said that arborvitae is the typical tree used for a buffer.

Chairman Neuer advised Mr. Schwarzbaum that if he wanted to suggest that as a condition, the trees would have to be planted on the neighbor's property and they would have to agree to that.

There were no further comments from the public and Chairman Neuer closed the public hearing. Chairman Neuer asked for a motion.

Vice Chairman Buechler made a motion to approve the application with the following conditions:

1. Applicant must submit a copy of an executed easement for the retaining wall to be

- constructed on the southerly side prior to the resolution.
2. Applicant must use clean fill
 3. Seepage pit will be moved to the center of the back yard and revised plans must be submitted showing that and the PVC piping being installed to connect the seepage pit with the downspouts or the leaders, as applicable
 4. Soil erosion materials required on all sides
 5. Wall will be one (1) foot from the property line – surveyor required to come out and mark the property
 6. Applicant must use a licensed contractor.
 7. No weep holes along the wall facing 88 Lawrence Avenue
 8. The wall must be built according to the plans
 9. Applicant must replace the bushes he removed from the neighbor's property

Ms. Gabry seconded the motion to approve the application and added two conditions:

10. Letter from the applicant's neighbor stating that the applicant can remove the tree that is on their property
11. The applicant cannot access the neighbor's property at 88 Lowell Avenue to construct the wall

Chairman Neuer called for the vote.

Mr. DarConte stated that the issue is not the retaining wall; he said the dirt that the applicant brought in created an issue and then it required a wall. Mr. DarConte said that is the issue.

Mr. Quentzel said he is concerned about the safety of the children playing in the yard and he feels that planting trees along the wall will help the aesthetics.

Mr. Schwarzbaum encouraged the applicant to talk to the neighbors at 88 Lowell Avenue and put up arborvitae.

The vote was as follows:

Buechler	Yes	Schwarzbaum:	Yes
DarConte:	No	Steinhart:	Yes
Gabry:	Yes	Sussman:	-
D. Nash:	-	Weiss:	No
Quentzel:	Yes	Chairman Neuer:	-

Chairman Neuer urged the applicant to follow the resolution and to make sure he gets all of the required inspections.

*Note from Board Secretary – Exhibits B-1 and B-2 were marked for identification and not admitted as evidence therefore Ms. Beirne returned the Exhibits to the objector.

Chairman Neuer called for a recess at 9:22 pm.

Chairman Neuer resumed the meeting at 9:34 pm.

- 2. ZB-16-05/Seton Hall Preparatory School Carried from 6/16/16**
Block 82.01; Lot: 1; Zone: R-1
700 Prospect Avenue
Amended Site Plan
Seeking a “d” variance for the expansion of a non-conforming use and bulk variances.

EXHIBITS

A-6 – Landscape Plan dated 4/19/16

A-7 – Revised Utility & Grading Plan dated 7/5/16

Ms. Gabry and Mr. DarConte were recused from hearing this application and stepped off of the dais.

Chairman Neuer stated for the record that Ms. Denise Clark is the official transcriber for this application.

Robert Williams, Esq., attorney for the applicant, approached the podium.

Mr. Williams stated that this application was last heard at the Zoning Board meeting held on June 16, 2016 and, at that time, they rested their case.

Mr. Williams stated that they received a technical review memo from Mr. Keller dated July 14, 2016 and the applicant will comply with all of the comment in this memo.

Chairman Neuer asked Mr. Keller if he had any further questions for Mr. Williams; he said they were minor in nature and he will address all of them directly with the applicant. Mr. Keller stated that all of the revised plans are to be submitted with his comments incorporated into them.

Mr. Williams stated that the applicant is requesting to amend the application to include two free standing signs. He said that one of the old signs was destroyed and the other is in poor condition. He then stated that the two proposed signs are somewhat larger. Mr. Williams also said that they published and mailed notices of this meeting and the proposed amendments because they upgraded the signage.

Chairman Neuer stated that the application was deemed amended and this is a minor amendment.

Mr. Williams called the engineer to testify.

Charles J. Stewart approached the podium and was sworn under oath.

Mr. Williams stated that Mr. Williams was accepted by the Board as an expert in Engineering at the last meeting.

Mr. Stewart presented an amended detailed utility and grading plan with a revision date of 7/5/16 that was marked as Exhibit A-7.

Mr. Williams asked Mr. Stewart if everything highlighted on Exhibit A-7 are the changes; he replied yes. Mr. Stewart said that everything highlighted in pink is the original and everything highlighted in yellow was added to the list of changes.

Mr. Stewart stated that the original sign that they were previously approved for was destroyed and needs to be replaced. He said now they are proposing to put up two different signs.

Vice Chairman Buechler asked Mr. Stewart how the sign was destroyed; he said it was destroyed in a wind storm.

Mr. Stewart detailed the sign and said that they are proposing to place one sign at 600 Prospect Avenue and one sign at 700 Prospect Avenue.

Mr. Stewart stated that the sign that was destroyed was 8' tall and 3 1/2' wide.

Chairman Neuer asked Mr. Stewart if they are proposing to make the sign shorter and wider than the one that was destroyed; he replied yes.

Mr. Williams stated that the proposed signage mirrors the sign that exists in front of the Seton Hall Prep main school building located on Northfield Avenue.

Chairman Neuer asked if any Board Members or Board Professionals had any questions for Mr. Stewart; there were none.

Chairman Neuer asked if any members of the public had any questions for Mr. Stewart.

Lawrence Svetviles approached the podium and stated that he lives at 699 Prospect Avenue.

Mr. Svetviles asked Mr. Stewart how the signs will be secured differently and what locations the signs will be at; he said one sign will be located at the entrance of 600 Prospect Avenue and the

other sign will be located at the original location at 700 Prospect Avenue. Mr. Stewart said that the new signs will be secured on a masonry base; the existing sign that was damaged was on a free standing post.

Mr. Svetviles asked Mr. Stewart if the signs are billboard size. Chairman Neuer responded and stated that a billboard sign is larger in size and contain advertising for businesses not located at the property where the sign is located. The Chairman that the proposed signs do not contain advertising and are smaller than a standard billboard.

Chairman Neuer asked Mr. Stewart if there are any graphics or animation on the signs; he replied no.

There were no further questions.

Chairman Neuer asked if any members of the public had any comments.

Robert Rashkes approached the podium and was sworn under oath.

Mr. Rashkes stated that he lives at 35 Oak Crest Road and expressed his concerns about pedestrian safety. He said he would like Seton Hall to install sidewalks in front of their Prospect Avenue sites.

Sally Malanga approached the podium and was sworn under oath.

Ms. Malanga stated that she lives at 57 Ridge Road and said she is concerned about why Seton Hall is back before this Board again after twenty two hearings and asked what the Board Members thoughts were on creating stricter enforcement. She said that she is also concerned with noise issues.

Lawrence Svetviles approached the podium and was sworn under oath. Mr. Svetviles said that he lives at 699 Prospect Avenue and stated why he was originally and still is against this project.

Marty Berman approached the podium and was sworn under oath. Mr. Berman stated that he lives at 59 Cobane Terrace and teaches at Seton Hall. He spoke in defense of the project stating

that the athletic fields were needed.

Ronnie Strell approached the podium and was sworn under oath. Mr. Strell stated that Seton Hall cut down all of the trees on the site and that they did not abide by what they agreed to.

There were no further comments and Chairman Neuer closed public comment.

Mr. Williams summed up and stated that all of the amendments were upgrades. He asked the Board to vote affirmative on this application.

Chairman Neuer declared the record closed.

Chairman Neuer stated that the Seton Hall hearings always draw a crowd. He said that the Zoning Board Members are volunteers who work hard for the community to try to get it right. Chairman Neuer said that the Board takes these matters very seriously and questioned how many people actually go to the Board Secretary's office to look at the application package and the plans.

Chairman Neuer said that, at the last meeting, he was a little critical about the work Seton Hall did without approvals; he said that the applicant made nineteen (19) changes, some already completed, and that tonight the Board will vote on what changes they will approve despite having already been made by the applicant.

Vice Chairman Buechler stated that at the meeting held on June 16, 2016 his concern was with some of the work that was already constructed. He said that there are two changes that he will not approve; the batting cages and shot-put re-location. Vice Chairman Buechler said that he will recommend that the applicant move the shotput and the batting cages back to the original locations that this Board approved. He said that there was no real explanation as to who was responsible or was in charge of this. Vice Chairman Buechler said that this Board has no enforcement authority and that they can only make recommendations to the Mayor and Town Council.

Vice Chairman Buechler stated that he recommends that the Board approve this application with the exception of the batting cages and the shotput and that they are to be put back where they

were originally designed to be.

Mr. Quentzel stated that there are times when construction is started that they may realize that there is a better way of doing things. He said that he does not think the new location of the batting cages and shotput will change the plan and he thinks that they should remain where they are and not be put back.

Mr. Steinhart said that he would appreciate if members of the public took the time to read the data in the file because some of their testimony misrepresents the facts and misinforms the public if they do not learn the file.

Vice Chairman Buechler said that he disagrees with Mr. Quentzel. He said that if the Board does not draw a line when an applicant comes before them for site plan approval, then they are encouraging them to just go ahead and do whatever they want. Vice Chairman Buechler stated that the Board needs to be cautious; he said the applicant gave no acceptable reason why the batting cages and shot-put area were relocated.

Mr. Schwarzbaum stated that he is concerned about applicants not building according to approved plans. He said that he did not hear any members of the public objecting specifically to the batting cages and shot-put being relocated and rather than moving them back he recommends stronger fines. Mr. Schwarzbaum stated that he would like to propose, to the town, financial penalties and would vote to approve the application.

Mr. Steinhart stated that initially he disagreed with what Vice Chairman Buechler said and agreed with Mr. Quentzel but after some thought he concurs with Vice Chairman Buechler because it is symbolic of "do not do it again".

Chairman Neuer stated that he is going to urge the Board Members to approve all but the batting cages and shotput relocation and that the Board take a separate vote for those two items. He said that the original resolution they approved five (5) years ago had sixty one (61) conditions; the Board did not put a rubber stamp on the original proposal.

Chairman Neuer stated that, in real estate development, he has experienced that there are times when once the work begins what they originally had on paper does not work and changes have to be made.

Chairman Neuer said that he believes that if the applicant came back before this Board and presented a good reason why the batting cages and shotput area had to be relocated this Board would have approved the changes.

Chairman Neuer stated that this Board is not the enforcement agency and does not have the authority to issue summonses.

Chairman Neuer made a motion to approve the application excluding the batting cages and shotput area location; he said that the Board will take a separate vote for those two items.

Mr. Schwarzbaum seconded the motion to approve the application excluding the relocation of the batting cages and shotput area which will be a separate vote.

The vote was as follows:

Buechler	No	Schwarzbaum:	Yes
DarConte:	Recused	Steinhart:	Yes
Gabry:	Recused	Sussman:	Yes
D. Nash:	Yes	Weiss:	-
Quentzel:	Yes	Chairman Neuer:	Yes

*Note for the record that Vice Chairman Buechler stated that he voted no because of the bifurcation of the application.

Chairman Neuer said his next motion is to approve those portions of the application that seeks approval for the new location of the batting cages and shotput area.

Mr. Steinhart seconded the motion to approve the new location of the batting cages and shotput area.

The vote was as follows:

Buechler	No	Schwarzbaum:	Yes
DarConte:	Recused	Steinhart:	No
Gabry:	Recused	Sussman:	No
D. Nash:	Yes	Weiss:	-
Quentzel:	Yes	Chairman Neuer:	Yes

Chairman Neuer noted that the resolution will reflect all of the comments in Mr. Keller's memo dated July 14, 2016 as conditions of approval.

3. ZB-16-07/The Ice Man of New Jersey, LLC

Block: 117; Lot: 26; Zone: R-T

40 Columbia Street

Seeking "d" and "c" variances and minor subdivision approval to create two lots where there are two existing principal uses on one lot.

Chairman Neuer noted for the record that the Zoning Board meetings end promptly at 11:00 pm and asked Mr. Williams if he would like to proceed.

Robert Williams stated that his client would like to be carried over to the regular Zoning Board meeting held on September 15, 2016 because of the time.

Chairman Neuer announced that this application will be carried over to the regular Zoning Board meeting held on September 15, 2016 and that no further notice will be required.

The meeting was adjourned by Chairman Neuer at 10:38 pm.

Adopted: August 18, 2016

A handwritten signature in blue ink, which appears to read "Rose DeSena", followed by the date "8/19/16". The signature is written over a horizontal line.

Rose DeSena

Zoning Board Secretary