

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
October 20, 2016**

The West Orange Zoning Board of Adjustment held a regular meeting on October 20, 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 "Senator Byron M. Baer 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, Acting Planner Director for the Township
Eric Keller, Consulting Engineer
Alice Beirne, Esq., Board Attorney
Rose DeSena, Board Secretary

ANNOUNCEMENTS

Future Meetings: November 17, 2016 (regular meeting)
December 15, 2016 (regular meeting)
January 19, 2017 (regular meeting)

Chairman Neuer announced that application ZB-16-04/Piacenza that was scheduled to be heard at this meeting has been carried over to the November 17, 2016 regular Zoning Board meeting at the request of the applicant.

Chairman Neuer stated that this application started in June and that the applicant was required to submit additional information. He said that the applicant has not resubmitted anything as of this date and this matter has been on the agenda twice after their first hearing in August.

Chairman Neuer stated that he is recommending that if the applicant is not ready at the next meeting on November 17, 2016 he will propose a motion to dismiss the application without prejudice. He stated that it is very difficult to carry a balanced agenda and provide time for other applicants when an applicant does not proceed in an orderly fashion.

Chairman Neuer stated that he has instructed Ms. Beirne to issue a letter to the applicant's attorney explaining that if they do not have their materials submitted to the Board Secretary at least ten days before the November 17, 2016 meeting then the Chairman will propose a motion to dismiss the application without prejudice and they will have to start the process all over again. Chairman Neuer stated that the letter should also instruct the applicant to send copies of all materials directly to Mr. Keller and Mr. Grygiel.

MINUTES

Chairman Neuer stated that he and Vice Chairman Buechler submitted their comments to the Board Secretary for the minutes of the September 15, 2016 regular meeting.

Chairman Neuer asked the Board Members if they had any additional comments; there were none.

Chairman Neuer asked for a motion to approve the minutes of the September 15, 2016 regular meeting.

Vice Chairman Buechler made a motion to approve the minutes of the September 15, 2016; Mr. Steinhart seconded the motion and all were in favor.

It was noted for the record that Ms. Gabry and Mr. Schwarzbaum were present but did not vote on these minutes.

NEW BUSINESS

Adopt: West Orange Zoning Board of Adjustment Regular Meeting Schedule For 2017

Chairman Neuer asked for a motion to adopt the West Orange Zoning Board of Adjustments 2017 regular meeting schedule that was submitted to all Board Members for review.

Vice Chairman Buechler made a motion to adopt the Zoning Board of Adjustments 2017 regular meeting schedule; Ms. Gabry seconded the motion and all were in favor.

SWEARING IN

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

RESOLUTIONS

- | | |
|---|-----------------------------------|
| <p>1. ZB-16-08/Lando
 43 Carteret Street
 Block: 154; Lot: 4; Zone: R-5
 "c" variance for front yard setback for an addition to the front of an existing single family dwelling.</p> | <p>Approved on 8/16/16</p> |
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Chairman Neuer stated that at the last meeting he had asked to have this resolution carried because he had been made aware of some privileged information that concerned him. He said that he conducted an investigation and he did not find sufficient evidence to warrant having the Board reconsider this application.

Chairman Neuer asked for a motion to adopt the resolution.

Ms. Weiss made a motion to adopt the resolution and Mr. Steinhart seconded the motion.

The vote was as follows:

Buechler	-	Schwarzbaum:	-
DarConte:	Yes	Steinhart:	Yes
Gabry:	-	Sussman:	Yes
D. Nash:	-	Weiss:	Yes
Quentzel:	Yes	Chairman Neuer:	Present But Not Voting

APPLICATIONS

- 1. ZB-16-07/The Ice Man of New Jersey, LLC** **Carried from 9/15/16**
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 announced that Ms. Denise Clark is the official transcriber for this application.

Chairman Neuer announced that Ms. Gabry and Mr. Schwarzbaum have read the transcripts from the September 15, 2016 Zoning Board Meeting when this application was last heard and will be eligible to vote on this application.

EXHIBITS

A-6 – Minor Subdivision Map dated, Sheet 2 of 3, revision date of 10/3/16

A-7 – Parking, Loading and Improvements Plan, Sheet SP3, revision date of 10/3/16

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

Mr. Williams stated that he would like to amend the application to include relief for minor site plan approval. He said that the commercial lot use with the upgrades they are proposing require minor site plan approval.

Chairman Neuer accepted Mr. Williams’ request to amend the application to include relief for minor site plan approval.

Chairman Neuer stated that not one single sheet of the plans that were submitted to the Board was labeled “site plan”. Mr. Williams stated that if the application is approved they will submit new plans that include “site plan” on them.

Mr. Williams detailed the application stating that the applicant is proposing to sub-divide the lot into two lots; one residential and one commercial. He said that no other changes are being proposed to the site.

Mr. Williams stated that at the last hearing on September 15, 2016 the Zoning Board heard testimony from J. Michael Petry who was accepted by the Board as an expert in Professional Planning and Engineering.

Mr. Williams stated that Mr. Keller requested updates to the site. He said that revisions were made to the site plan and Mr. Petry will base his testimony on those revisions at this meeting.

Mr. Williams called Mr. Petry and asked him to go through what improvements they are proposing to the site.

J. Michael Petry, engineer for the applicant, approached the podium.

Mr. Williams stated that Mr. Petry was sworn in at the last meeting and will continue his testimony under oath.

Chairman Neuer asked Mr. Williams if the applicant applied for a certificate from the Township administrative officer certifying that the structure existed before the current Township ordinance.

Mr. Williams stated that the owner of the site was issued a certificate of continued occupancy from the Township.

Chairman Neuer said that a certificate of continued occupancy does not prove that the structure was built before the ordinance. He said that the statute clearly states the above.

Mr. Williams said that the owner went to the town and told them that he was purchasing the property and they issued a certificate of continued occupancy. He said that it was recognized at that time as a non-conforming use. Mr. Williams said that they also went back in the tax files and it has always been a commercial use.

Chairman Neuer stated that there is a statute that requires the applicant to apply for a certificate that certifies the structure existed before the current Township ordinance. He said that the Board is going to reserve their decision until the end of the hearing as to whether the applicant must obtain that certificate.

Mr. Petry presented the minor sub-division map, with a revision date of 10/3/16 that was pre-marked as Exhibit A-6 for identification and the parking, loading and improvement plan, with a revision date of 10/3/16 that was pre-marked as Exhibit A-7 for identification.

Mr. Petry stated that if the application is approved then the proceeds from the sale of the residential property will allow the applicant to make the improvements to the site.

Vice Chairman Buechler asked Mr. Petry if the owner will only do the improvements to the site if he sells the two family house; he said yes. Mr. Petry said that the owner will either refinance the two family home or sell it.

Chairman Neuer asked Mr. Petry if his testimony is that no improvements will be made if the application is denied or if the owner does not sell the house or refinance it; he replied yes.

Ms. Gabry asked Mr. Petry if there is a contract that says the improvements to the site will be made subject to the approval of this application; he said not that he does not have any such information.

Mr. Petry referred to Exhibit A-7 and detailed the proposed improvements. He said that they will be installing curb lines, landscaping and adding a keyless pad at the entry door. Mr. Petry stated that the loading area has enough room and is in compliance with the Township ordinance. He said that the impervious coverage on the property will be reduced and that the parking arrangements will remain the same.

Chairman Neuer asked Mr. Petry if they are proposing a handicap parking space; he said no. Mr. Petry stated that in parking lots of less than twenty (20) parking spaces a handicap space is not required.

Chairman Neuer asked Mr. Petry if the business has walk-in purchasers; he said he does not know.

Chairman Neuer asked Mr. Keller if the business has walk-in purchasers, are they required to have a handicap parking space; Mr. Keller said that he always thought they would need one handicap parking space.

Ms. Weiss stated that the four (4) parking spaces that are in the lot are very close to the building; she said that any one of those spots provide easy access to the store.

Mr. Williams stated that they testified at the first meeting that they are a delivery business.

Vice Chairman Buechler asked Mr. Petry if the lots would be in conformance after the subdivision; he replied no.

Vice Chairman Buechler asked Mr. Petry if the residential property could utilize any of the parking spaces on the site; he replied no.

Vice Chairman Buechler asked Mr. Petry who owns the greenspace on the site; he said it is part of the commercial property.

Chairman Neuer asked Mr. Petry if the residential property requires a handicap parking space under law; he replied no.

Mr. Schwarzbaum asked Mr. Petry if anyone who lives in the house owns a vehicle; he said he does not know.

Mr. Petry stated that he will address all of the comments in Mr. Keller's memo dated October 12, 2016 that have not been satisfied.

Item #1 - Mr. Petry stated that there are no restrictions on the property.

Chairman Neuer stated for the record that the applicant has agreed to comply with Item #1. He said that they will add to the survey that there are no easements or restrictions on the property and the designation of new lot numbers is to be affirmed with the tax assessor's office as a condition.

Item #4 – Mr. Petry stated that he will discuss the waivers later in the meeting.

Item #5 – The driveway and parking will be for commercial use only.

Item #6 – Mr. Petry gave testimony regarding the loading operations.

Chairman Neuer asked Mr. Petry how the driveway will be delineated; he referred to Exhibit A-7 and said that the plans show striping.

Chairman Neuer asked Mr. Petry if the drive aisle will be delineated; Mr. Keller stated that the striping delineates the drive aisle.

Item #9 – Mr. Petry stated that they can add spot shots on the residential lot and add it on the revised plan.

Item #10 – Mr. Petry stated that they will not be able to do any paving until April 2017; he said paving is not done during the colder months. Mr. Petry said that it was placed on the plan so that the Board would understand that there may be a delay. He said that they will provide landscaping on lot 20 as a condition of approval.

Item #11 – Mr. Petry stated that they will not store anything in the trucks parked outside on the site.

Chairman Neuer asked Mr. Petry if he wanted to amend the application to reflect that; he replied yes.

Mr. Petry addressed the requested waivers and stated that they provided landscaping plans. He said the following remaining requested waivers are still valid:

- 5' sidewalks between the residential and commercial buildings
- Curbing around the parking area
- Screening of parking area
- Angle parking with 24' aisle width
- 50' entry and exit from parking area
- Requirement for one (1) tree for each ten (10) parking stalls
- Environmental Impact Analysis

Item #15 – Mr. Petry stated that the existing sign on the street will be removed and not replaced.

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

There were no questions for Mr. Petry from members of the public.

Mr. Williams stated that Mr. Petry will give his Planning testimony.

Mr. Petry detailed his planner's report that was revised on October 6, 2016 and submitted to the Board Members and the Board Professionals.

Mr. Petry stated that the application submitted is for Minor Subdivision approval. He said that the site is located within an R-T zone that includes a two family home and a commercial business and the owner would like to separate the two uses.

Mr. Petry stated that the application requires a "D2" variance because the home is a permitted use in this zone but the existing commercial use is non-conforming. He said that the application also requires several bulk variances.

Chairman Neuer asked Mr. Petry how many of the required variances are existing and how many are new; he said there are seventeen (17) existing variances and eleven (11) new variances. Mr. Petry said there is a total of twenty eight (28) variances that are required for this application.

Vice Chairman Buechler asked Mr. Petry how the town would benefit from taking one non-conforming use and making it into two non-conforming uses; he said that there are two uses there today and when they sub-divide the property there will still be two. Mr. Petry said all the applicant is asking to do is draw an invisible line between the two uses.

Chairman Neuer said that the court case Grundlehner v Dangler, 29 NJ at 263 that Mr. Petry cited in his report had no basis on this application. He said that this case supports the proposition that a Zoning Board of Adjustment should not approve an application based upon financial benefit to the owner; he said that an approval must support and show the benefit for the Town.

Mr. Steinhart asked Mr. Petry what proposed improvements will benefit the neighborhood and the town; he said new curbing and paving of the parking lot and landscaping the site.

Vice Chairman Buechler stated for the record that Mr. Petry's report also noted that the applicant

was seeking to separate two uses in order to create a “saleable” residential lot.

Mr. Petry detailed the negative and positive criteria and stated that the sizes of the lots in the neighborhood were comparable to this site. He said that the variances can be granted without any substantial detriment to the neighborhood or impair the zoning ordinance.

Mr. Petry said that the improvements to the site will enhance the neighborhood and that the owner is bringing the site further into conformity with this neighborhood.

There were no further questions for Mr. Petry from the Board Professionals.

There were no questions for Mr. Petry from any members of the public.

Chairman Neuer called for a recess at 9:37 pm.

Chairman Neuer resumed the meeting at 9:47 pm.

Chairman Neuer opened the floor up for questions from the Board Members.

Mr. Schwarzbaum asked Mr. Petry, in regards to the improvements being made, if the benefits to the community outweigh the financial benefits; he said that the improvements being made are beneficial to the lots.

Mr. Sussman asked Mr. Petry if his testimony is that by making two non-conforming lots from one non-conforming lot will make the site more aesthetic plus the owner would have financial benefit; he said that is one way of describing it.

Mr. DarConte asked Mr. Petry if they could curb the parking spaces; he said no. Mr. Petry said that they are proposing a gate at the driveway entrance and that a gate would not open over the curb.

Chairman Neuer advised Mr. DarConte that he could impose a condition upon approval that the applicant install a slide gate and provide landscaping in that area.

Mr. Steinhart asked Mr. Petry if, in his opinion, the sub-division did cause a negative impact would it be measurable to the surrounding neighborhood; he said that he does not think so.

Mr. Steinhart asked Mr. Petry if this mitigates the current negative impacts of this property; he said that any improvements benefit a property.

Mr. Steinhart asked Mr. Petry if his testimony is that this will make a positive impact on the neighborhood; he replied yes.

Chairman Neuer asked Mr. Petry if zoning should be accomplished by zoning and not variances according to the Land Use Law; he replied yes.

Mr. Williams called his next witness.

Tom Critella approached the podium and was sworn under oath. He stated that his wife is the applicant and he is the general manager of the business.

Mr. Critella stated that the business is basically a wholesale business but they do get walk-in

business occasionally.

Mr. Critella gave some background as to how the business was obtained by his family. He said that they have made some improvements to the site but the residential property needs a lot of work. Mr. Critella stated that they were denied insurance because of the two uses on the property. He said that his mortgage company said that if they "slid" the business over to one lot they would give him a mortgage for the residential property so that they could do the repairs.

Mr. Williams asked Mr. Critella to explain how they load the trucks for the business; he said that they back the truck up to the loading dock and the ice comes down from a conveyor belt on to the truck. He said that the ice business slows down during the colder months and from now until March they will run only one van.

Mr. Schwarzbaum asked Mr. Critella if he knew that the business was a non-conforming use when they purchased it; he replied yes.

Mr. Critella stated that he is trying to get a second mortgage to put a new roof on the house and do some repairs. He said that he is estimating that he will need approximately \$50,000 to put a roof and siding on the house. Mr. Critella stated that it was not his intention to sell the house.

Chairman Neuer asked Mr. Critella if he applied for a line of credit from his other investments; he replied no.

There were no questions for Mr. Critella from the Board Members or the Board Professionals.

There were no questions for Mr. Critella from any members of the public.

Mr. Williams summed up and stated that this is a very unusual application. He said what exists today will be upgraded if approved but if not, it will still be there tomorrow.

Chairman Neuer closed the public hearing.

Chairman Neuer asked if any members of the public had any comments; seeing none the Chairman opened up the meeting for comments from the Board Members.

Ms. Weiss stated that from a zoning aspect the application might not be perfect but the benefits outweigh the detriments. She said she agrees with Mr. Williams's summation.

Mr. Quentzel said that he also agrees with what Mr. Williams said and with Ms. Weiss. He said nothing is going to change between today and tomorrow and by approving this application there will now be two clean lots.

Mr. Steinhart said that there is no down side to this and he urges the other Board Members to vote yes.

Ms. Gabry said that she will approve this application but she would like the work done quickly; she said the property should be cleaned up immediately.

Mr. DarConte stated that this neighborhood is not visually appealing and that this would benefit the neighborhood.

Mr. Sussman said he also agrees that the property should be cleaned up right away.

Mr. Schwarzbaum stated that he disagrees. He said that cleanliness of a property is not contingent on granting a variance. Mr. Schwarzbaum said that there is no logic to this and the applicant has an obligation to clean up the property regardless. He said that he would not approve this.

Ms. Nash stated that she agrees with Mr. Schwarzbaum.

Chairman Neuer stated that he echoes Mr. Schwarzbaum’s commentary. He said that he has not heard one reason why the property has not been maintained since the applicant purchased it. Chairman Neuer said that this is a self-created hardship because they chose not to get a home inspection when they purchased the property.

Chairman Neuer stated that twenty eight (28) variances is very meaningful and that the purpose of the Zoning Board is to uphold the zoning ordinance. He said that the business will continue to operate and the applicant can collect rent even if the application is not approved.

Chairman Neuer said that the Urban case was cited in Mr. Petry’s report but that case has no basis on this application. He said numerous Superior Court decisions do not favor the expansion of two non-conforming uses. Chairman Neuer said that, according to Land Use Law, better zoning is the basis for an approval and receiving money is not better zoning. He said that the Zoning Board must uphold the zoning ordinance and that he urges his fellow Board Members to vote no.

Chairman Neuer asked for a motion.

Vice Chairman Buechler made a motion to deny the application; he said that the applicant did not meet the “D” variance criteria.

Chairman Neuer seconded the motion to deny the application.

The vote was as follows:

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

The vote was 3 – 4; the motion did not carry.

Ms. Weiss stated that she would like to make a motion to approve the application with the following conditions:

- Landscaping on entire site
- Survey to show no easements or restrictions
- Add spot shots on the residential lot
- Provide screening on the southerly side of the property
- Change the driveway gate to a slide gate
- Cleanup of the site to be done in a short period of time

- Pave the driveway as soon as possible
- No storage inside of the trucks or on the outside of the building

Ms. Gabry seconded the motion to approve.

The vote was as follows:

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

Motion did not carry; the vote was 4 to 3. The “d” variance application requires a 5 affirmative vote. Therefore, the application was denied.

2. ZB-16-09/Birnboim

Carried from 9/15/16

Block: 154.17; Lot: 140; Zone: R-5

10 Dockery Drive

“c” variance for a front yard setback to expand the width of an existing front landing.

Judy Birnboim approached the podium along with her architect, Lawrence Quirk, and they were both sworn under oath.

Mr. Quirk detailed his professional background as a licensed architect in the State of New Jersey.

Chairman Neuer accepted Mr. Quirk as an expert in architecture.

Mr. Quirk detailed the application stating that they are proposing to remove the existing landing in the front of the home and expand it.

Mr. Quirk said that the current landing is non-conforming; he said it currently measures 5’ x 5’ and was grandfathered in. He said that the applicant is requesting to keep the existing 5’ depth of the landing and expand the width.

Chairman Neuer asked Ms. Birnboim if any of her neighbors commented on this; she replied no.

There were no questions for Mr. Quirk or Ms. Birnboim from the Board Members of the Board Professionals.

There were no members of the public present to ask any questions.

Chairman Neuer asked for a motion.

Vice Chairman Buechler made a motion to approve the application and Chairman Neuer seconded the motion.

The vote was as follows:

Buechler	Yes	Schwarzbaum:	-
DarConte:	Yes	Steinhart:	Yes
Gabry:	Yes	Sussman:	Yes
D. Nash:	-	Weiss:	Yes
Quentzel:	-	Chairman Neuer:	Yes

3. ZB-16-06/Zamora

Carried from 9/15/16

Block: 113.01; Lot: 69 & 70; Zone: R-T

43 Park Terrace

“c” variances for rear and side yard setbacks

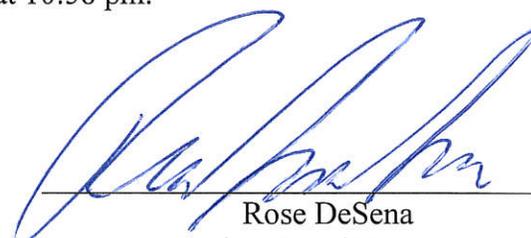
Chairman Neuer asked the applicant to approach the podium.

Chairman Neuer noted the time was 10:55 pm and explained that the Zoning Board meetings end promptly at 11:00 pm. He advised the applicants that they will be carried over to the next Zoning Board meeting held on November 17, 2016 and that no further notice will be necessary.

Chairman Neuer asked the applicants to sign the form with the Board Secretary giving their consent to a continuance.

The meeting was adjourned by Chairman Neuer at 10:58 pm.

Adopted: November 17, 2016

 11/18/16
Rose DeSena
Zoning Board Secretary