

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
June 21, 2018**

The West Orange Zoning Board of Adjustment held a regular meeting on June 21, 2018 commencing 8:00 PM at 66 Main Street, West Orange, N.J. in Council Chambers.

Chairman Buechler called the meeting to order at approximately 8:00 P.M. It was announced that notification of this meeting was given to the Township Clerk, the West Orange Chronicle and the Star Ledger and posted on the Township Bulletin Board in accordance with the “Senator Byron M. Baer Open Public Meetings Act.”

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

PRESENT: B. Buechler, D. Gabry, D. Nash, P. Neuer,
M. Straker, W. Steinhart, M. Sussman,
A. Weiss

ABSENT: B. Quentzel, F. Sanders [not excused], I. Schwarzbaum

ALSO PRESENT: Paul Grygiel, Acting Planning Director for the Township
James Giurintano, Acting Consulting Engineer for the Township
Peter Ricci, Consulting Architect for the Township
Alice Beirne, Esq., Board Attorney
Rose DeSena, Board Secretary
Harvey Grossman, Esq., Public Advocate

ANNOUNCEMENTS

Future Meetings: July 19, 2018 (regular meeting)
August 16, 2018 (regular meeting)
September 20, 2018 (regular meeting)

Chairman Buechler announced that application **ZB-18-04/350 Pleasant Valley Realty, LLC**, that was scheduled to be heard at this meeting, has requested to be carried over and adjourned to the Zoning Board meeting scheduled for July 19, 2018 at 8:00 pm and no further notice will be required.

MINUTES

May 17, 2018 (regular meeting)

Chairman Buechler stated that the draft minutes from the May 17, 2018 regular meeting were circulated to all of the Board Members.

Chairman Buechler said that Vice Chairman Neuer submitted comments for these minutes and asked if any Board Member had any additional comments.

Mr. Steinhart stated that he would like noted in the minutes that he was present at the May 17, 2018 meeting but left the meeting before testimony was given.

Chairman Buechler asked if there were any other comments; there were none.

Vice Chairman Neuer made a motion to approve the minutes of the May 17, 2018 regular meeting as amended; Ms. Gabry seconded the motion and all were in favor.

VOTE ON A PROFESSIONAL APPOINTMENT

Chairman Buechler asked for a motion to retain Mr. Peter Ricci as the temporary architectural advisor to the Board.

Vice Chairman Neuer made a motion to retain Mr. Ricci as the temporary architectural advisor to the Board; Mr. Steinhart seconded the motion and all were in favor.

SWEARING IN

Paul Grygiel, acting Planning Director for the Township, James Giurintano, acting Consulting Engineer for the Township and Peter Ricci, Consulting Architect for the Township were sworn under oath.

Chairman Buechler stated that, although he was present at the prior meetings for application ZB-18-01/Deutsche Bank Trust Co., c/o the Durkin Firm, he is recusing himself going forward because it was determined after the last meeting that his firm does work for Deutsche bank.

Chairman Buechler stated that Vice Chairman Neuer will be chairing that portion of the meeting.

Chairman Buechler advised Ms. Durkin, attorney for ZB-18-01, that Mr. Sussman is running a few minutes late and that they will wait for him so that there are seven (7) members of the Board that can hear all of the application.

Chairman Buechler stated that they will go off the record until Mr. Sussman arrives.

Mr. Sussman arrived at 8:14pm and Vice Chairman Neuer called the meeting back to order.

APPLICATIONS

- 1. ZB-18-01/Deutsche Bank Trust Co. c/o the Durkin Firm** Carried from 4/19/18
Block: 154; Lot: 131; Zone: R-5
112 Conforti Avenue
Seeking two (2) “c” variances for front and side yard setbacks to install wheelchair access Ramps

EXHIBITS

- A-4 – Letter from Lewis Cohn, Esq., representing Elaine & Michael Cohen, dated June 7, 2018.
- A-5 – Colorized site plan – Sheet A-1 – revision date of 3/16/18.
- A-6 - Colorized site plan – Sheet A-1 – revision date of 6/8/18.
- A-7 – Resolution from the Town Council authorizing the hiring of Peter Ricci as consulting architect adopted on 6/12/18.

Elizabeth Durkin, attorney for the applicant, approached the podium and detailed the application.

Vice Chairman Neuer read, on record, rule 5.11 of the Zoning Board’s Rules of Procedure regarding the use of recording devices. He stated that the applicant has made a request to record at the meeting tonight and that the request has been granted.

Vice Chairman Neuer noted for the record that the official transcript for this meeting will be provided by Linda Bottone-Morano of Michele Quick Reporting who was provided by the applicant.

Vice Chairman Neuer addressed Ms. Durkin and asked her if the reporter will provide a copy of the transcript to the Board; she replied yes.

Ms. Durkin stated that she would like to put on record that at the last meeting a resident in the audience attempted to record the hearing on her cell phone and the Chairman asked her to delete it. She said that this was in violation of the Common Law of New Jersey regarding recording devices.

Vice Chairman Neuer stated that he is not going to respond to that comment and said that everyone is in agreement with the manner in which recordings may take place at this meeting.

Vice Chairman Neuer stated that Ms. Nash and Mr. Steinhart were not present at the April 19th and the May 17th meetings and that they have listened to the audio or read the transcript from those meetings. He said that the Board Secretary has copies of their certifications on file and both Members are eligible to vote on this application.

Ms. Durkin said that her first order of business is that she is making a motion to ask Vice Chairman Neuer to recuse himself due to a disqualifying conflict. She said that Kevin Pellon, architect for the applicant, claimed that after the May meeting Vice Chairman Neuer approached him and had a conversation with him that was directly related to testimony Mr. Pellon gave

before the Board.

Ms. Durkin also commented about how she felt about Chairman Buechler now recusing himself due to a conflict with his law firm after the way he conducted himself at the April and May meetings.

Ms. Durkin asked Mr. Pellon to approach.

Mr. Pellon was sworn in and read a statement that he prepared regarding his encounter with Vice Chairman Neuer after the May 17th meeting.

Vice-Chairman Neuer stated that it would be inappropriate for him to rule on Ms. Durkin's motion and asked Ms. Beirne to make a decision as to whether he should recuse himself.

Ms. Beirne stated that she asked Ms. Durkin to provide her with the factual basis for Mr. Pellon's complaint which she could not provide.

Ms. Beirne stated that she would like Vice Chairman Neuer to address the allegations stated by Mr. Pellon and place something on record regarding his version of the incident.

Vice Chairman Neuer was sworn under oath and testified that he did not address any of the substance of Mr. Pellon's testimony other than the accusation that he was not being compassionate towards the applicant.

Ms. Beirne asked Vice Chairman Neuer if he felt that he could impartially judge this application knowing what Mr. Pellon had said; he said yes.

Ms. Durkin proceeded to ask Vice Chairman Neuer questions regarding the encounter he had with Mr. Pellon after the May meeting.

Ms. Beirne stated that she did not find the incident to be disqualifying because the conversation was not about the substance of the application.

Ms. Beirne ruled that Vice Chairman Neuer would not be disqualified from participating in this matter.

Ms. Durkin disagreed with Ms. Beirne's ruling and stated on record that Vice Chairman Neuer has a disqualifying conflict.

Ms. Durkin stated that the Board could make a motion for Vice Chairman Neuer to step down.

Ms. Beirne asked if any Board Member wanted to make a motion to have Vice Chairman Neuer step down; there was no motion made by any of the Board Members.

Ms. Weiss noted on record how she felt about this matter and asked that the case continue.

Vice Chairman Neuer stated that the Board received communication from the attorney for Elaine and Michael Cohen who appeared in objection to the application and read the letter on record.

Ms. Durkin said that she does not have any recollection of anyone making an appearance as an objector on record and objected to the letter.

Vice Chairman Neuer stated that the letter will be placed into a file and not entered as evidence; Ms. Durkin stated that she would like the letter marked as Exhibit A-4 because it was read into the record.

Ms. Durkin called her first witness.

Charles Stewart approached the podium and was sworn under oath. Vice-Chairman Neuer stated that Mr. Stewart had been qualified at the May 17th meeting as an expert in engineering.

Mr. Stewart stated that he visited the site and viewed the plans. He presented Sheet 1 of 1 of the plan that was titled "Map Showing Proposed Ramps and Walks" dated 3/15/18 that was marked as Exhibit A-5 for identification.

Mr. Stewart referred to Exhibit A-5 and detailed where the ramp was originally being proposed and where it is currently being proposed. He stated that he took topographic measurements of the property to confirm the existing elevations and explained how he came up with the current ramp configuration.

Mr. Stewart addressed all of the comments in the technical review memo from Bowman Consulting dated June 19, 2018 and went through them item by item.

Mr. Stewart stated that he believes that the configuration that was designed is appropriate for this particular site.

Vice Chairman Neuer asked Mr. Stewart if his drawing should prevail over the architectural drawing; he replied yes.

Ms. Gabry referred to Exhibit A-5 regarding one section of the proposed rear ramp and asked Mr. Stewart if that was a turning section; he replied yes.

Vice Chairman Neuer asked Mr. Stewart why they are not proposing a 5' x 5' turning section instead of the 3' x 3' turning section; he said that they are trying to keep it de minimis and that size is adequate for Ethan.

The following members of the public had questions for Mr. Stewart:

- Nancy Warshowsky residing at 45 Dogwood Road.
- Frank Grosso residing at 430 Main Street
- Lee Saal residing at 47 Carteret Street

There were no further questions for Mr. Stewart.

Vice Chairman Neuer asked Ms. Warner, whose application was scheduled to be heard at this meeting, to approach.

Ms. Warner stated that she lives at 9 Knollwood Drive and is the applicant for ZB-18-03.

Vice Chairman Neuer advised Ms. Warner that it was very unlikely that her application was going to be heard and asked her if she would like her application to be carried over to the next meeting; she replied yes.

Vice Chairman Neuer stated for the record that application ZB-18-03/Warner will be adjourned to the next meeting held on July 19th at 8:00 pm. He said that no further notice will be required.

Vice Chairman Neuer called for a recess at 9:15 pm.

Vice Chairman Neuer resumed the meeting at 9:30 pm.

Ms. Durkin called her next witness.

Kevin Pellon approached the podium and stated that he has been previously sworn in at the April meeting and was accepted as the architect for the applicant.

Mr. Pellon presented sheet A-1 of the site plan with a revision date of 6/8/18 that was marked as Exhibit A-6 for identification.

Mr. Pellon referred to Exhibit A-6 and detailed the revisions made to the site; he said that the revised ramp design in the rear does not require a variance and Ethan will now have access to the rear yard.

Ms. Weiss asked Mr. Pellon if the ramps will be made of wood; he said yes but they will consider vinyl if that is something preferred but it would stand out more.

Mr. Sussman asked Mr. Pellon if they are proposing wood ramp with wood railings or wood ramp with vinyl railings; he said wood and wood.

Vice Chairman Neuer asked Mr. Pellon to detail how the snow will be removed from the ramp; he responded.

Vice Chairman Neuer asked Mr. Pellon if there would be room for landscaping between the sidewalk and the ramp in the front of the house; he said that although there is space he thinks that landscaping would actually draw attention to the ramp.

Vice Chairman Neuer asked Mr. Pellon if in his professional opinion the ramp as presently designed provides safe and efficient ingress and egress for the handicapped individual. Mr.

Pellon responded affirmatively.

Vice Chairman Neuer asked Mr. Ricci if he had any questions for Mr. Pellon.

Ms. Durkin asked Vice Chairman Neuer why the Board retained a consulting architect on a simple application as this one.

Vice Chairman Neuer said that the design of the ramp may not be acceptable to the Township's Building Department and that it is always good to have a second set of eyes.

Ms. Durkin said that they still have to submit construction plans to the Building Department and they will review those plans. She said that there was never a conversation from this Board during any of the meetings regarding retaining a consulting architect and this is against the Sunshine Law and Open Public Meetings Act.

Ms. Durkin asked Vice Chairman Neuer how Mr. Ricci was retained; he said by the Township Council.

Ms. Beirne stated that the Town Council approved the funds to retain Mr. Ricci because the Board had many questions of architectural nature.

Ms. Durkin presented the adopted Resolution from the Township Council and asked to have it marked as Exhibit A-7 for identification.

There was some discussion between Ms. Durkin and Ms. Weiss regarding when and why the Board discussed the need for a consulting architect.

Ms. Durkin questioned if there ever was another residential Zoning Board application for a handicap ramp where the services of an architect was retained by the Board; Ms. Beirne replied and stated that she could not answer that at this time.

Ms. Durkin stated for the record that she objects to the Board hiring Mr. Ricci as an architect because it was not done on record at a public meeting.

Vice Chairman Neuer stated that in order to move this matter forward he will withdraw his questions for Mr. Ricci.

The following members of the public had questions for Mr. Pellon:

- Nancy Warshowsky residing at 45 Dogwood Road
- Pastor Doug Adams residing at 9 Westover Terrace.
- Ronan Barak residing at 25 Mountain Drive.

Ms. Durkin called her next witness.

John McDonough approached the podium and was sworn under oath. Mr. McDonough detailed

his professional background as a Professional Planner licensed in the State of New Jersey.

Vice Chairman Neuer accepted Mr. McDonough as an expert in Professional Planning.

Mr. McDonough stated that the applicant is proposing to install a handicap ramp which requires one front yard "c" variance. He detailed what is required for encroachment in the front yard per Township ordinance and stated that this application is a text book "c2" application. Mr. McDonough stated that the need for the ramp is lifesaving so that the applicant can have safe accessibility to his house.

Mr. McDonough detailed the positive and negative criteria and stated that he believes that they have met the criteria with no detriment to the zone plan.

There were no questions for Mr. McDonough from the Board Members, the Board Professionals or any members of the public.

Vice Chairman Neuer opened the meeting for public comment.

The following members of the public approached the podium, were sworn under oath and presented testimony:

- Pastor Doug Adams residing at 9 Westover Terrace
- Lee Saal residing at 47 Carteret Street
- Ronen Barak residing at 25 Mountain Drive
- Joanne DeSimone residing at 3 Edgewood Avenue
- Joe Krakoviak residing at Grand View Avenue
- Rosary Morelli residing on Ralph Road
- Ross Clark residing at 12 Saddle Ridge Drive, Lebanon, New Jersey
- Nancy Warshowsky residing at 45 Dogwood Road
- Samantha Klein residing at 43 Fitzrandolph
- Stephanie Roman, Ethan Roman's mother

Ms. Durkin summed up and stated that all words have been said and she asked the Board to grant the variance being requested.

Vice Chairman Neuer stated that the Board is bound by legislation and, as the Zoning Board of Adjustment, they are here to adjust the zone requirements to specific pieces of property as may be required. He stated that the members of this board are citizens of this municipality who have a sworn duty to uphold the law and to apply it.

Vice Chairman Neuer stated that this case has presented certain difficulties and, because of this, they sought assistance from experts which resulted in much better revised plans.

Vice Chairman Neuer moved to approve the application with a condition that the ramp be removed at the time any person who is not wheelchair-bound no longer resides at the property.

Ms. Gabry seconded the motion to approve with said condition.

The vote was as follows:

Gabry:	Yes	Schwarzbaum:	-
D. Nash:	Yes	Steinhart:	Yes
Vice Chairman Neuer	Yes	Straker:	Yes
Quentzel:	-	Sussman:	Yes
Sanders:	-	Weiss:	Yes
		Chairman Buechler:	Recused

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

Adopted: July 19, 2018


Rose DeSena
Zoning Board Secretary