

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

The West Orange Zoning Board of Adjustment held a regular meeting on November 21, 2013 commencing 8:00 PM at 66 Main Street, West Orange, N.J. in Council Chambers.

Chairwoman Gabry 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."

Chairwoman Gabry 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, A. Weiss (8:07)

ABSENT: W. Steinhart (excused)

ALSO PRESENT: Paul Grygiel, Consulting Planner
Board Attorney, Alice Beirne, Esq.
Board Secretary, Rose DeSena
D. Dillon, Audio-Digital Transcription Service

ANNOUNCEMENTS

Future Meetings: December 19, 2013 (Regular Meeting) -- 8:00 PM
January 16, 2014 (Regular Meeting) - 8:00 PM
February 20, 2014 (Regular Meeting) - 8:00 PM

MINUTES

Adopt Minutes: October 17, 2013 (Regular Meeting)

Chairwoman Gabry asked for a motion to approve the minutes from the regular Zoning Board meeting held on October 17, 2013 as submitted to the Board members.

Vice Chairman Buechler made a motion to approve the minutes; Mr. Sussman seconded the motion and all were in favor.

It was noted for the record that Chairwoman Gabry was not present at the 10/17/13 meeting and did not vote on these minutes.

Adopt Minutes: October 28, 2013 (Special Meeting).

Chairwoman Gabry asked for a motion to approve the minutes from the special Zoning Board meeting held on October 28, 2013 as submitted to the Board members.

Vice Chairman Buechler made a motion to approve the minutes; Mr. Quentzel seconded the motion and all were in favor.

It was noted for the record that Mr. Neuer was present but did not vote on these minutes.

SWEARING IN

Consulting Planner for the Township, Paul Grygiel was sworn under oath.

APPLICATION(S)

1. ZB-13-09/Heart to Heart Home Care

Carried from 10/17/13

Block: 45.01; Lot: 14; Zone: R-5

28 Devon Drive

"C" side yard variance to install a handicapped ramp at a Group Home.

EXHIBITS

0-4 - Eleven pages consisting of fourteen photographs

A-6 - Revised plan dated 11/2/13

Chairwoman Gabry noted for the record that this application is a continuation from the regular Zoning Board meeting held on October 17, 2013. She stated that she was not present at this meeting and turned the Chair over to Vice Chairman Buechler.

Vice Chairman Buechler noted that they will continue with public comment from the last meeting.

Candace Pryor Brown approached the podium stating that she lives at 27 Devon Drive. Vice Chairman Buechler stated for the record that Ms. Brown will continue under oath. Ms. Brown stated that she would like to finish her comments from the last meeting. She said that she has witnessed the employees parking on the lawn and has new evidence. Ms. Brown presented fourteen photographs. Vice Chairman Buechler asked Ms. Brown if she took the photos herself and would she testify that they are accurate; she replied yes. Vice Chairman Buechler asked to have the fourteen photographs marked as Exhibit 0-4 for identification.

Joseph Vena, Esq., attorney for the applicant, approached the podium. Mr. Vena stated for the record that this application is for a variance for a handicap ramp in a side yard. He said that he does not want the Board to take into consideration any testimony for parking.

Vice Chairman Buechler told Mr. Vena that this is his opinion and advised him to save his comments for his summation.

Vice Chairman Buechler asked Ms. Brown if there would still be several cars at the residence if the ramp was not there; she replied yes.

Vice Chairman Buechler asked if any other member of the public had any comments.

Sandra Adams approached the podium. Vice Chairman Buechler advised Ms. Adams that she spoke at the last meeting and that she is finished. Ms. Adams said that something has happened since the last meeting that she would like to comment on. Vice Chairman Buechler said that they give the members of the public one chance to speak but he will allow her to speak again at the end of public comment.

Ingrid Pais approached the podium and was sworn under oath. Ms. Pais stated that she lives at 3 Mountain Way South and said that everyone has to abide by the same rules. She said that she cannot put anything up without prior approval, but yet the ramp as been up since April before it was approved. Ms. Pais said that she cannot park on the street illegally but yet the employee's park on the street illegally. She said that her issue is that this residence is not a group home. Mr. Vena said that he objects to that statement. He said that this is a group home that is licensed by the State of New Jersey and that a copy of the license was submitted with the application package. Mr. Neuer advised the Vice Chairman to tell Mr. Vena to wait and comment after the testimony.

Vice Chairman Buechler asked Mr. Pais to continue with her testimony. Ms. Pais said that group homes have a right to be in the community but this is like a nursing home because the residents are patients that require 24 hr. constant care. She said that this will set a precedence as to what can and cannot go in the community. Ms. Pais urged the Board to listen to the residents.

Mr. Neuer asked Mr. Grygiel if there is a parking requirement for a group home; Mr. Grygiel said that it has the same bulk standards for a residence. He said that he believes that the MLUL exempts a group home from the parking standards but they are not allowed to park on the lawn.

Gail Frowley approached the podium and was sworn under oath. She stated that she lives at 36 Jessica Way in South Orange. Ms. Frowley asked if Mr. Rosenberg is a franchisee of the Heart to Heart Home Care or if he is the owner. Mr. Vena stated that this is not relevant and said that Mr. Rosenberg is licensed in the State of New Jersey to operate a group home.

Vice Chairman Buechler said that Mr. Rosenberg owns ten (10) percent of the company and that it is owned by many people.

Mr. Rosenberg approached the podium and continued under oath from the last meeting. Vice Chairman Buechler asked Mr. Rosenberg if he is a franchisee; he replied no.

Hanna Mori approached the podium and was sworn under oath. Ms. Mori stated that she lives at 24 Devon Drive and is making her comments on behalf of her parents who own the home at that address. She said that the group home has been very intrusive on the neighborhood and that they are opposed to it. Mr. Vena asked Ms. Mori if the issue is aesthetics because of the cars parked on the front lawn and garbage; she replied yes. Mr. Vena asked Ms. Mori if she can see the handicap ramp from her house; she replied yes.

Mark Brown approached the podium and was sworn under oath. Mr. Brown stated that he lives at 27 Devon Drive and that his concern is the fire drills that take place day and night at the home. He said that there is a strobe light outside the house that blinks and the alarm sounds wakes up the neighbors. Mr. Brown said the drills go on at random times during the day and night and that

it is not acceptable. Vice Chairman Buechler asked Mr. Brown how often the fire drills happen; he said he has witnessed it four or five times. He said that one time it was very early in the morning but most of the time it is very late in the evening. Mr. Brown said that sometimes they require an ambulance or a fire truck at the home and they cannot get all the way down the street because of the way the cars are parked outside of the house. Vice Chairman Buechler asked Mr. Brown how many cars are parked outside of the house at one time; he said that sometimes there are two or three cars parked outside. Mr. Brown said that the cars do not park in the driveway.

Vice Chairman Buechler allowed Ms. Adams to comment again and said that she will continue under oath. Sandra Adams approached the podium and stated that she lives at 26 Devon Drive. Ms. Adams said that she witnessed a fire drill at 7pm on the Friday night that just passed. She said that she watched as they tried to get the patients out of the house from the ramp, Ms. Adams said that they got the first patient out but had difficulty getting the second patient out on to the ramp in the wheelchair. She said that when they tried to get the patient back into the house, from the ramp, they could not get the wheelchair back into the side door. Ms. Adams said that they had to wheel the patient through the front door to get him back into the house. She said that it was a very unsuccessful drill.

Vice Chairman Buechler asked if there were any other members of the public who wanted to comment; seeing none the Vice Chairman closed public comment.

Mr. Versa stated that he is recalling Mr. Marucci to answer questions that were raised at the last meeting regarding the height of the ramp.

Mr. Grygiel stated that he has the answer to the question that Mr. Neuer raised earlier regarding the parking requirements for the group home. He said that community residences have the same parking requirements as single family dwellings. Mr. Grygiel said that residential parking standards apply according to the number of bedrooms in the home. He said that one garage space is required and they can also park in the driveway.

Anthony Marucci, Professional Planner for the applicant, approached the podium. Mr. Versa said that Mr. Marucci is still under oath and will answer questions regarding the elevations of the ramp. Mr. Marucci presented a revised plan of the enlarged handicap ramp dated 1112/13. Vice Chairman Beechler asked to have the revised plan with a revision date of 1112113 marked as Exhibit A-6 for identification.

Mr. Vena stated that the revised plans do not show any changes to the plans that were submitted with the application. He said that they were revised to show the additional information that the Board requested regarding the height of the ramp.

Mr. Marucci referred to the revised plan and stated that the ramp is ground level and detailed the different heights of the ramp at different levels. He referred to the hedges along the ramp stating that the hedges buffer the ramp. Mr. Marucci also noted that the platform has to be wider so that a wheelchair can turn.

Mr. Vena stated that, at the last meeting, there was mention about installing a fence along-side the ramp and he asked Mr. Marucci to comment on that. Mr. Marucci said that a fence could be installed along the 25' length of the ramp but another option would be to install wooden lattice along the railing of the ramp. He said that the wooden lattice would take the place of a fence.

Vice Chairman Buechler asked Mr. Marucci if the ramp is wide enough to take a wheelchair up and down it; Mr. Marucci said that the ramp meets the requirements of a handicap ramp.

Mr. Quentzel stated that the Board is concerned about safety and asked Mr. Marucci if they can get a person in a wheelchair out of the house from the ramp. Mr. Marucci said that the Township's Construction Official will determine if it is safe when he inspects it. Vice Chairman Buechler stated that if the Construction Official goes out and determines that the ramp is not up to code then they will have to take it down.

Mr. Vena asked Mr. Marucci which is more beneficial the fence or the lattice. Mr. Marucci said that he would rather see them install the lattice because the lattice is away from the hedges and they can continue to grow. He said that a fence or the lattice would both work to screen the ramp.

Vice Chairman Buechler asked Mr. Marucci if they attach the lattice to the ramp would it bring the height over 6' and if so then they would need another variance; he replied yes. Mr. Marucci said that it would be like an 8' fence and they would need a variance for the height. Vice Chairman Buechler explained that if they install 2' lattice on top of the railing of the ramp the height would now be 8'. Mr. Marucci said that he is proposing lattice from the bottom of the ramp to cover the ramp.

Ms. Weiss stated that the applicant should have photos explaining what Mr. Marucci is proposing.

Mr. Quentzel asked Mr. Marucci if he thought that the driveway should be widened so that the employees do not park on the grass; he replied yes. Mr. Quentzel said, for the record, that he is in favor of widening the driveway.

Mr. Neuer asked Mr. Marucci where the primary egress is; he replied the front door. Mr. Neuer asked Mr. Marucci once they exit then where do they go; he replied in the driveway. Mr. Neuer said that people are exiting to a driveway where there are sometimes 2 or 3 cars parked in the driveway and asked Mr. Marucci if he thought that is a safe egress for handicap people. Mr. Marucci said that it is safe for them to exit if only one car is parked in the driveway but it would be difficult if two cars were parked in the driveway. He said that is why he recommends widening the driveway.

Mr. Neuer asked Mr. Marucci if an ambulance arrives, how do they get the gurney in and out of the property; he said from the driveway but he would recommend making the walkway wider. Mr. Marucci said that the gurney would go through the front because it cannot make it in the side door. He said that the ramp is for wheelchairs and it cannot accommodate a gurney.

Mr. Neuer asked Mr. Marucci to explain how the gurney would enter into house. Mr. Marucci said that he did not go in the house and does not know if the gurney can accommodate the patients in the house.

Mr. Sussman asked Mr. Marucci how they would get the lattice in there because the ramp is so close to the property line; Mr. Marucci said that lattice is very thin and they would attach it to the side of the railing. Mr. Sussman said that he thinks the lattice is flimsy.

Mr. Sussman asked Mr. Marucci what a group home is; Mr. Marucci said that people with different disabilities are placed in a home so that they can have a home environment.

Mr. Bullock stated that there are no sidewalks on this property and asked Mr. Marucci if they ran a walkway out to the street, would they need a sidewalk to accommodate a wheelchair or a gurney. Mr. Marucci said that they can just run a walkway up to the street and not a public sidewalk.

Mr. Merklinger said that he would recommend that they continue the ramp right out to the street so that everyone can get in and out safely.

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

Vice Chairman Buechler asked if any members of the public had any questions for Mr. Marucci; there were none.

Mr. Vena stated that Mr. Neuer raised a question about access from the garage and that his client has an email from the State of New Jersey regarding this. Mr. Vena recalled Mr. Rosenberg and stated that he will continue under oath. Mr. Vena asked Mr. Rosenberg to read the email regarding the handicap ramp in the garage. Mr. Rosenberg stated that he received the email on 5/11/13 from the State of New Jersey Department of Community Affairs regarding the home on Devon Drive. The email stated that the State preferred the egresses to be from the sides of the house and that was partially the reason why they could not use the garage.

Mr. Neuer asked Mr. Rosenberg to describe the residents in the house. Mr. Rosenberg said they are young adults from the ages 21-65 years old.

Ms. Weiss asked Mr. Rosenberg how often he goes to the group home; he said as often as necessary. Mr. Rosenberg said that in the beginning he would go more than once a week.

Ms. Weiss asked Mr. Rosenberg to explain the condition of the property; he said that hurricane Sandy damaged the lawn and it took a long time for the grass to grow.

Ms. Weiss asked Mr. Rosenberg what he has done to address the issue regarding cars being parked all over; he said that he has spoken to the staff and told them to park legally or they would get a ticket. Mr. Rosenberg said that he has not heard any complaints from the neighbors since that time.

Ms. Weiss asked Mr. Rosenberg what would happen to the group home if the variance is denied; Vice Chairman Buechler said that they would have to remove the ramp and that the State of New Jersey addresses what happens after that.

Ms. Weiss asked Mr. Rosenberg if he had any personal contact with the neighbors; he replied yes. Mr. Rosenberg said that the staff also reached out to the neighbors. He said that he had a barbeque on the block and invited the neighbors because he wants to be a good neighbor.

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

Vice Chairman Buechler asked if any members of the public had any questions for Mr. Rosenberg.

Sandra Adams approached the podium and stated that she lives at 26 Devon Drive. She asked Mr. Rosenberg when he had any contact with her; he said that Yvette Hall reached out to her. Ms. Adams said that no one has reached out to her.

Ms. Adams asked Mr. Rosenberg if he was aware of the letter she sent him about the parking; he replied yes.

Ms. Adams asked Mr. Rosenberg how often they are required to have fire drills; he said once a month or once a quarter. He said that every shift must have a documented fire drill and he advised the staff to do them early morning.

Candace Pryor Brown approached the podium and stated that she lives at 27 Devon Drive. She asked Mr. Rosenberg why the staff told the police that the neighbors were liars; he said that he was not aware of that.

Mr. Merklinger asked Mr. Rosenberg if any of the residents are disabled veterans; he replied no.

There were no further questions for Mr. Rosenberg. Vice Chairman Buechler asked Mr. Vena if he would like to sum up.

Mr. Vena stated that this application is for the granting of a variance. He said that if a stairway is allowed in a side yard then a ramp should be allowed because it is an accommodation to a disabled person for a stairway. Mr. Vena said that he is asking the Board to interpret if the ramp should be permitted.

Vice Chairman Buechler said that the applicant originally sought a variance and that the Board will hear it as a variance. He said this is how the Board will deal with it.

Mr. Vena said that the applicant is seeking a variance for the side yard. He said that the ramp is not visible to anyone except if someone is in Ms. Adams side yard or looking out her window. Mr. Vena said the parking is a police issue and the issue regarding the gurney not being able to get in and out is not an issue because they were issued a Certificate of Occupancy by the

Township. He said that the ramp is not a detriment and that you cannot put the ramp at any other location. Mr. Vena said that the house is too narrow and that is why they need the variance. He said that he is very concerned about the comments from the neighbors but Ms. Adams is the only property owner that would have any effect from the ramp. Mr. Vena said that this is the same as a family living in the house that has many cars that have to be maneuvered at times.

Mr. Vena said he is asking the Board to approve this application with conditions such as widening the driveway, put in pathways and putting up a fence. He said that the ramp is required by the State of New Jersey and that it is for safety. Mr. Vena said that the applicant did not know he needed a permit to build the ramp. He said that he hired an architect and a builder that did not advise him and that once he found out that he needed a permit, he came right to Town Hall to get it. Mr. Vena asked the Board to just consider if the applicant is entitled to the variance.

Vice Chairman Buechler called for a recess at 9:35 pm.

Vice Chairman Buechler resumed the meeting at 9:43 pm.

Vice Chairman Buechler opened the meeting for deliberation. He stated that it is always better to ask for permission rather than forgiveness, as Mr. Neuer always says.

Vice Chairman Buechler asked Mr. Grygiel, in his opinion, what the Board should focus and base their opinion on regarding this application. Mr. Grygiel said that the application before the Board is for a side yard variance, the plans focus only on the ramp and that the Board should focus only on the ramp and the testimony regarding it. He said that the applicant must prove the positive criteria and that the Board needs to be convinced. Mr. Grygiel said that the negative criteria must also be met. He said that all the discussion regarding the driveway and parking issues are not part of the application today and that is not what is before this Board.

Vice Chairman Buechler asked Mr. Grygiel if the applicant must prove the negative criteria because they have a Certificate of Occupancy that was issued by the Township. Mr. Grygiel said that every variance needs to address the negative and positive criteria.

Mr. Quentzel asked Mr. Grygiel if it would be permissible to have the applicant install a sidewalk; Mr. Grygiel said that he would recommend that the Board see what they are proposing. Vice Chairman Buechler said that the Board could make it a condition. Mr. Grygiel said that he disagrees because this application is limited to a side yard variance for a ramp. He said that sick people are living in the home and the ramp is for getting them in and out of the house. He said that the Board should not turn a blind eye to the reason for the ramp. Mr. Grygiel also said that he is not saying that they should not take the other things into account; he said that all he is saying is that this is not the issue before this Board.

Vice Chairman Buechler stated for the record that Chairwoman Gabry and Ms. Weiss will not be voting on this application.

Mr. Merklinger said that he views the ramp at that side door as an extension of the stairs that were originally there. He said that the parking issues and fire drills are irrelevant and that they are based on feeling. Mr. Merklinger asked the neighbors to look into their hearts and advised the homeowner to meet the conditions. He said that he votes in favor of this application with the condition that the applicant extend the walkway out to the street. Mr. Merklinger said that fire drills are for safety reasons and that everyone should be happy that they are practicing safety. He said that he would not suggest the lattice along the ramp and reiterated the fact that the variance that they are seeking has nothing to do with the parking.

Mr. Bullock stated that he is a member of another advisory group for a group home in West Orange and that he listens very carefully to the logic. He said that the group homes he sits on the Board for never have fire drills at 11:00 pm and that the neighbor's comments cannot be brushed aside. Mr. Bullock said that he sees problems with this application and, with what Mr. Grygiel said is before this Board, he will have to vote no.

Mr. Sussman said that he is concerned with the impact this has on the neighbors such as the parking and the fire drills. He said that he would like to see the fire drills restricted and that he will listen to what the other Board members have to say before he decides how to vote.

Mr. Neuer said that personal feelings do not take precedence and that it is the obligation of the applicant to establish his case. He said on that factor alone the Board cannot approve this application because it is defective. Mr. Neuer said that the applicant is a for-profit entity that bought the property not knowing if they can use it and built the ramp. He said they never should have bought the property. Mr. Neuer said that he finds it difficult to believe that the applicant did not know that they did not need a permit to build a ramp. He said that the house is too narrow and that they are taking sick people and putting them in life threatening situations. Mr. Neuer said that Mr. Marucci testified that the egress is not safe if two cars are parked in the driveway. He read the definition of a group home from the 2013 edition of the New Jersey Zoning and Land Use Administration written by William M. Cox and Stuart R. Keonig which said that a group home has children as residents. Mr. Neuer said that there are no children in this group home. He said that as a group home this application fails because it is not a group home. Mr. Neuer said the definition under the statute does not apply to this application. He said that safety and public health are not being met in this application. Mr. Neuer said that Mr. Marucci was required to satisfy the negative criteria and he did not. He said that there is not a drawing of the widening of the driveway or a walkway and that it is the applicant's responsibility to show the Board those drawings. Mr. Neuer said that he will vote no and urge the other Board members to vote no.

Mr. Quentzel said that the applicant did not consider any other alternatives for the ramp and they just based it on what the State of New Jersey told them. He said that the ramp could have been built on the other side of the house. Mr. Quentzel said that he is abstaining from voting on this application.

Vice Chairman Buechler said that the ramp was already built and that the application has other issues that impact the neighborhood. He said that the parking issues and the cars parked on the front lawn are valid but the ambulance issue is not valid according to the photos that were

submitted. The Vice Chairman said that he agrees that the ramp functions as stairs and that it is difficult to see. He said that Mr. Vena should have brought back documents from the State of New Jersey instead of having Mr. Rosenberg read an email from them, but he did not. Vice Chairman Buechler said that there are ways to approve this if the applicant fixed the defects. He said that the Board would need to see drawings and measurements for the walkway or the widening of the driveway. The Vice Chairman said that the applicant demonstrated a hardship but it is not this Boards domain to second guess the State of New Jersey as to whom the occupants in this home are. He said that if the ramp is removed then maybe the State can place different type of people in the house. Vice Chairman Buechler said that the applicant has not met the negative criteria and that he would suggest coming back at a different date after meeting with the neighbors with something that is acceptable.

Vice Chairman Buechler asked for a motion; Mr. Neuer made a motion to deny for reasons he stated and in reference to the statute.

Vice Chairman Buechler said that the resolution will state what the Board said and that if the applicant wants to come back the Board will consider it. Mr. Neuer disagreed and said that if the applicant wants to come back the Board will not advise them what to do but they must make changes.

Mr. Sussman seconded the motion to deny.

The vote was as follows:

Buechler:	Yes to deny	Steinhart:	
Bullock:	Yes to deny	Sussman:	Yes to deny
Merklinger:	No to deny	Weiss:	
Neuer:	Yes to deny	Chairwoman Gabry:	
Quentzel:	Abstained		