

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
March 16, 2017**

The West Orange Zoning Board of Adjustment held a regular meeting on March 16, 2017 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, D. Nash, P. Neuer, B. Quentzel,
F. Sanders, I. Schwarzbaum, W. Steinhart,
M. Straker, M. Sussman, A. Weiss

ABSENT: D. Gabry (excused absence)

ALSO PRESENT: Paul Grygiel, Acting Planning Director for the Township
Alice Beirne, Esq., Board Attorney
Rose DeSena, Board Secretary

ANNOUNCEMENTS

Future Meetings: April 20, 2017 (regular meeting)
May 18, 2017 (regular meeting)
June 15, 2017 (regular meeting)

Chairman Neuer announced that the applicant for application ZB-16-17/New Cingular Wireless PCS, LLC (AT&T) that was scheduled to be heard at this meeting has requested to be carried over to the next Zoning Board meeting to be held on April 20, 2017; the request was granted and no further notice will be required.

ANNUAL REPORT

Adopt: Zoning Board of Adjustment Annual Report – 2016

Chairman Neuer asked for a motion to adopt the Zoning Board of Adjustment's 2016 Annual Report

Vice Chairman Buechler made a motion to adopt the Zoning Board of Adjustment 2016 Annual Report; Chairman Neuer seconded the motion and all were in favor.

MINUTES February 16, 2017 (regular meeting)

Chairman Neuer stated that the draft minutes from the February 16, 2017 were circulated to all of the Board Members.

Chairman Neuer said that he submitted his comments for these minutes and asked if any Board Member had any additional comments; there were none.

Chairman Neuer made a motion to approve the minutes of the February 16, 2017 meeting; Mr. Sussman seconded the motion and all were in favor.

It was noted for the record that Mr. Schwarzbaum and Mr. Steinhart were not present at the February 16th meeting and did not vote on these minutes.

SWEARING IN

Paul Grygiel, acting Planning Director for the Township was sworn under oath.

RESOLUTIONS

1. ZB-16-04/Piacenza

Denied 2/16/17

Block: 172.25; Lot: 12; Zone: R-4

14 Manger Road

“d” variance for establishing a home day care business

Chairman Neuer stated that this application was a denial.

Chairman Neuer stated that this resolution was circulated to all of the Board Members and asked if any Board Member had any comments; there were none.

Chairman Neuer asked for a motion to adopt the resolution.

Mr. Sussman made a motion to adopt the resolution as submitted and Chairman Neuer seconded the motion.

The vote was as follows:

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

**2. ZB-16-16/Image Resources Group
on behalf of Macy's Backstage**

Approved 2/16/17

Block: 155.21 & 155; Lots: 40 & 40.03; Zone: P-C

495 Prospect Avenue

Seeking two "c" variances to install an additional façade sign

Chairman Neuer stated that this resolution was circulated to all of the Board Members and asked if any Board Member had any comments; there were none.

Chairman Neuer asked for a motion to adopt the resolution as submitted.

Vice Chairman Buechler made a motion to adopt the resolution as submitted and Mr. Sussman seconded the motion.

The vote was as follows:

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

3. ZB-16-15/Public Service Electric & Gas Co.

Approved 2/16/17

325 Mt. Pleasant Avenue

Block: 155; Lot: 26.01; Zone: O-R

"d" variance for electrical and civil upgrades to the West Orange PSE&G

Chairman Neuer stated that this resolution was circulated to all of the Board Members and asked if any Board Member had any comments; there were none.

Chairman Neuer asked for a motion to adopt the resolution as submitted.

Mr. Quentzel made a motion to adopt the resolution as submitted and Mr. Sussman seconded the motion.

The vote was as follows:

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

APPLICATIONS

1. ZB-16-06/Zamora

Carried from 2/16/17

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

43 Park Terrace

“c” variances for rear and side yard setbacks

EXHIBITS

A-1 – Colored photo of the addition

A-2 – Zoning Information and Area Calculation Chart

A-3 – Aerial map of the street – Google Maps

Louis Zamora approached the podium and was sworn under oath.

Louis Zamora stated that his father, Victor Zamora, is the applicant and he will be speaking on behalf of his father because of a language barrier.

Louis Zamora stated that his father is seeking approval for rear and side setbacks for an addition that he built on the house.

Louis Zamora detailed his culture and stated that they have a very large family. He said that the house was lacking a large family room where his large family could gather so his father expanded the existing living room and made it a large family room.

Louis Zamora said that their architect and surveyor will be testifying at this meeting and he called his first witness.

Patryk Hirsz approached the podium and was sworn under oath. He detailed his educational and professional background as an architect licensed in the State of New Jersey and Commonwealth of Pennsylvania and said that he has worked on similar projects

Chairman Neuer asked Mr. Hirsz if his licenses were current; he replied yes.

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

Mr. Hirsz presented a color photo of the addition that was marked as Exhibit A-1 for identification.

Vice Chairman Buechler asked if the addition was built to Mr. Hirsz specifications; Mr. Hirsz replied no.

Vice Chairman Buechler asked Mr. Hirsz if an architect can testify to the structure; he replied yes.

Mr. Hirsz stated that he could not see the existing footings under the addition or examine them to determine if proper footings were installed so he is proposing that new footings be put in.

Vice Chairman Buechler asked Mr. Hirsz how new footings can be put in; he said that they will put new footings in between the existing footings.

Mr. Hirsz stated that the addition was constructed over an existing deck that was an older structure.

Chairman Neuer asked Mr. Hirsz if he examined the addition; he said yes and the applicant will correct all of the deficiencies.

Chairman Neuer asked Mr. Hirsz what is going to hide the footings; he said lattice.

Mr. Hirsz presented a zoning information and area calculation chart that was marked as Exhibit A-2 for identification.

Mr. Hirsz referred to Exhibit A-2 and detailed the zoning requirements. He stated that the addition was built on the east side of the house on top of an old raised deck. Mr. Hirsz said that the addition is the same measurement as the deck, it follows the house line and added volume and living space to the house.

Mr. Hirsz presented an aerial view of the street that he printed from Google Maps in January 2017 which was marked as Exhibit A-3 for identification.

Vice Chairman Buechler referred to Exhibit A-3 and asked Mr. Hirsz what the structure in the rear of the house was; he said it is a shed.

Vice Chairman Buechler stated that according to the Township Ordinance any accessory structure must be five (5) feet from the property line.

Louis Zamora stated that when his father purchased the house there was a shed there and his father replaced it with a new shed.

Vice Chairman Buechler stated for the record that the shed is non-conforming.

Mr. Sussman asked Louis Zamora if his father put a new shed up in the exact spot as the old one and was it the same size; he said yes.

Chairman Neuer referred to Exhibit A-3 and asked Louis Zamora what the roof structure from the house to the shed was; he said his father removed it.

Mr. Sussman asked Louis Zamora who built the roof structure; he said his father did.

Chairman Neuer stated for the record that the Google Map photo did not accurately depict what is currently there.

Mr. Hirsz stated that the aerial photo was to show the houses near the applicant's house and that all of them have additions.

Mr. Hirsz stated that he could not access the remainder of the structure because it was finished.

Vice Chairman Buechler asked Mr. Hirsz if the applicant got permits, would there have been inspections as the work was being done; he said yes.

Chairman Neuer stated for the record that if the Board does approve the application, the Township's Building Department will have to open the walls and inspect the work that has been completed.

Vice Chairman Buechler stated that there was testimony at the last meeting that the contractor that did the work was not licensed; Louis Zamora said that his father did the work himself and he is a painter.

Mr. Hirsz continued with his testimony and said that the current standards would not even allow a house to be built on this site.

Chairman Neuer asked Mr. Hirsz if the addition could be "flipped"; he said no.

Vice Chairman Buechler stated for the record that when the applicant purchased the home in 2006 he knew it was a small lot.

Louis Zamora called his next witness.

Mihir Shah approached the podium and was sworn under oath.

Mr. Shah detailed his professional background as a civil land surveyor licensed in the State of New Jersey.

Mr. Shah stated that he conducted a survey of the property on January 5, 2017.

Mr. Grygiel stated that the survey that was submitted with the application in May 2017 shows a shed adjacent to the west property line. He said that the current survey that Mr. Shah conducted in January does not show the shed in the same location that the old survey shows it.

Chairman Neuer asked Mr. Shah if he went there and surveyed the property; he replied yes.

Vice Chairman Buechler asked Louis Zamora if the survey from 2006 is the survey they received when they purchased the house; he said yes and that his father can answer the questions about the shed.

Victor Zamora approached the podium and was sworn under oath.

Chairman Neuer asked Victor Zamora if a shed was on the left hand side of the property when he purchase the property in 2006; he said it was not a shed it was a small container.

Vice Chairman Buechler asked Victor Zamora if he put the shed up after he purchased the house; he said yes.

Chairman Neuer stated for the record that there was not a shed in the right hand corner of the property on the 2006 survey.

There were no further questions from the Board Members, the Board Professionals or members of the public.

Chairman Neuer asked if any members of the public had any comments; there were none.

Chairman Neuer declared the public portion of the hearing closed.

Chairman Neuer stated that the applicant never received permission to build the addition and some portion of the structure is going to have to be opened for inspection. He said that the Board will make their decision based on the law.

Mr. Sussman stated that the Board should consider approving the application with conditions that the building department will go in and open the walls to inspect all of the mechanicals and the structure.

Chairman Neuer asked Louis Zamora about the fines from the building department that were incurred; he said that the building department said they do not have to worry about the fines.

Mr. Sussman said that the applicant will have to decide what to do with the shed in the rear corner of the property. He said they may have to remove it or ask for an additional variance.

Ms. Beirne said the applicant can amend the application to include the variance for the shed.

Mr. Steinhart asked Louis Zamora if the shed can be moved; he said yes.

Vice Chairman Buechler stated that he questions if the applicant presented enough testimony to justify the approval of the two variances, let alone the additional variance for the shed. He said that Victor Zamora continually built things on the property that are in violation. Vice Chairman Buechler said that the applicant has not met the criteria or presented enough evidence and that the applicant should have known better.

Vice Chairman Buechler said that the applicant should have brought an Engineer to this meeting to testify that he inspected the structure to see if the work was done properly.

Chairman Neuer asked Mr. Grygiel to explain the requirements necessary to grant a "c" variance.

Mr. Grygiel said that the requirements for a "c"1 variance would be for a hardship such as the physical condition of the property and a "c" 2 variance would be for the advancement of the zone plan and that the benefits should outweigh the detriments.

Mr. Steinhart stated that he does not feel that because Victor Zamora was supposed to know that he needed permits to do the addition that it would be a reason for the Board to deny the application.

Chairman Neuer stated that this was a self-created hardship. He said that an addition with a bathroom is not minor construction and they should have known that they needed permits and that the Board does not know if the addition is safe

Chairman Neuer said that there are inconsistencies in the testimonies and that he is not comfortable with the credibility of what the Board heard in testimony.

Chairman Neuer stated that he is going to vote no.

Mr. Schwarzbaum questioned if the Board would have granted permission to build the addition if the applicant came to them before building it. He said that the addition was not detrimental to the community and had it not been built without permits and they came before this Board it would have normally been approved.

Mr. Schwarzbaum said that the Board can give them the approval predicated on getting all of the inspections done by the building department and have them determine if they are in compliance or if the applicant has to tear it down.

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

Vice Chairman Buechler made a motion to deny the application based on the reasons he stated during the discussion.

Chairman Neuer seconded the motion to deny the application.

The vote was as follows:

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

The vote was 3 to 3 and did not carry.

Mr. Sussman said he would like to make a motion to approve the application with the following conditions:

- The Township's building department will inspect all mechanicals, the structure and the footings of the addition.
- The applicant will be required to obtain all building permits.
- The applicant will have to resolve all violations.
- The applicant will be required to bring the shed into compliance.

Mr. Steinhart seconded the motion to approve with said conditions.

The vote was as follows:

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

The vote was 3 to 3 and did not carry; the application was denied.

Ms. Weiss asked Chairman Neuer if the Board could give the applicant the opportunity to come back with a professional engineer; he said that once the Board makes a decision they cannot hear it again.

Chairman Neuer called for a recess at 9:39 pm.

Chairman Neuer resumed the meeting at 9:51 pm.

2. ZB-16-11/Facey

Carried from 2/16/17

Block: 85.03; Lot: 8; Zone: R-5

233 Mt. Pleasant Avenue

“D” variance to repurpose an existing garage to be utilized as a den

Kenneth Brown, attorney for the applicant, approached the podium.

Mr. Brown stated that his client innocently purchased their home where the garage was converted into a living room/den. He said that his clients had no idea there was any zoning violation even after they went to Town Hall and were granted a certificate of continued occupancy.

Mr. Brown stated that the solution for the problem is granting a “d” use variance; to permit the den/living room to remain instead of the garage.

Mr. Brown stated that the property is suitable for the use; the structure is residential and the neighborhood is residential. He said that the conversion is not an eyesore and is not causing any substantial detriment to the ordinance or the residential use. Mr. Brown said that the conversion is hidden in the rear of the property and his client does not park their two cars in the front of the house.

Mr. Brown stated that there is no other location on the site to put a garage because there is not enough room. He said it is an undue hardship and if the Board votes to tear down the living room and build a garage, it would be a major construction and landscaping project because of the incline of the property.

Chairman Neuer asked Mr. Brown if he has any witnesses because everything he said, as the attorney for the applicant, is argument and not testimony.

Mr. Brown said he does not have any witnesses but what he says should prove his case; he said that he would have to subpoena the original owner.

Mr. Brown said that the town granted his client the certificate of continued occupancy and acted in good faith.

Vice Chairman Buechler asked Mr. Brown if he had any case law that could justify the Board granting the variance; he replied no.

Vice Chairman Buechler stated that the Town has an ordinance that says you cannot convert a garage into living space.

Mr. Brown stated that the certificate of continued occupancy was issued by the town when his client purchase the house.

Chairman Neuer said that, as the attorney for the applicant, he cannot testify; he can only argue.

Mr. Brown asked if he could adjourn so that they can bring a professional expert to testify; Chairman Neuer advised Mr. Brown that this is his case and he can do what is best for his client.

Mr. Brown asked if he could consult with his client.

Chairman Neuer stated that Jeffrey Kantowitz, Esq. and Peter Steck, P.P. are present for an objector.

Chairman Neuer stated for the record that this application does not require a "d" variance; he said the application requires a "c" variance for parking.

Chairman Neuer asked Mr. Brown if he would like to amend the application; he replied yes.

Mr. Brown asked if this application could be carried over to the May 18, 2017 regular Zoning Board meeting.

Chairman Neuer asked Mr. Kantowitz if he would be available on May 18, 2017; Mr. Kantowitz approached the podium and stated that he is involved with another case in Sussex County but he will make every effort to be here.

Chairman Neuer stated that this application will be carried over to the May 18, 2017 meeting, subject to Mr. Kantowitz's availability or to the June 15, 2017 meeting.

Ms. Beirne stated for the record that the notice did not state what type of variance was required for this application but, in her opinion, it is sufficient.

Mr. Kantowitz stated that the notice should state what variance is required.

Chairman Neuer advised Mr. Brown to notice for the May 18, 2017 meeting.

3. ZB-16-14/Sumrak

Carried from 2/16/17

Block: 159.09; Lot: 33.03; Zone: OB-1

421 Northfield Avenue

"c" variance to install a 6' privacy fence in the front of the property

Joshua Sumrak, applicant, approached the podium and was sworn under oath.

Ms. Beirne stated that the date on the notice was 2016 and asked Mr. Sumrak if he wanted to amend the notice to read 2017; he replied yes.

Chairman Neuer advised Mr. Sumrak that his neighbor, Sandra Mukete, is one of his clients. He said that she never talked to him about this application and asked Mr. Sumrak if he wanted him to step down; he replied no.

Mr. Sumrak detailed his application stating that he considers the front of his house the back of his house because of the unique location of his property. He said that he started putting up a fence unaware that he needed a permit.

Mr. Sumrak said that they installed a six (6) foot fence in the front of the house because there is a dangerous drop at the front of the property and it would be for safety reasons.

Mr. Sussman stated that the survey shows an easement and asked Mr. Sumrak what it was; he said that he thinks the easement is if the town needs to do maintenance there but he is not sure.

Ms. Weiss asked Mr. Sumrak if any of the neighbors said they were opposed; he said no.

There were no further questions for Mr. Sumrak.

There were no members of the public present for public comment.

Chairman Neuer declared the public portion of the hearing closed and asked for a motion.

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

The vote was as follows:

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

The meeting was adjourned by Chairman Neuer at 11:01 pm.

Adopted: April 20, 2017



Rose DeSena

Zoning Board Secretary