

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
October 15, 2020**

The West Orange Zoning Board of Adjustment held a meeting on October 15, 2020 commencing 8:00 PM utilizing the virtual Zoom platform.

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 asked everyone to stand for the Pledge of Allegiance.

PRESENT: J. Eben, D. Gabry, P. Neuer, B. Quentzel, J. Redwine,
I. Schwarzbaum, W. Steinhart, M. Straker, M. Sussman

ABSENT: A. Weiss (excused)

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

ANNOUNCEMENTS

Future Meetings: November 19, 2020 (regular meeting)
December 17, 2020 (regular meeting)

Chairman Neuer announced that application ZB-20-04/Valley Hill Properties LLC, that was scheduled to be heard at this meeting, has been carried over and adjourned to the Zoning Board regular meeting to be held on 11/19/2020 and that no further notice will be required.

MINUTES September 17, 2020 (regular meeting)

Chairman Neuer stated that the draft minutes from the September 17, 2020 regular meeting were circulated to all of the Board Members.

Chairman Neuer asked if any Board Member had any comments; there were none.

Ms. Gabry moved to approve said minutes and Mr. Steinhart seconded the motion.

All in favor.

Mr. Quentzel was not in attendance at the September 17, 2020 meeting and did not vote on these minutes.

September 24, 2020 (special meeting)

Chairman Neuer stated that the draft minutes from the September 24, 2020 special meeting were circulated to all of the Board Members.

Chairman Neuer asked if any Board Member had any comments; there were none.

Ms. Gabry moved to approve said minutes and Mr. Steinhart seconded the motion.

All were in favor

Mr. Sussman was recused from hearing application ZB-19-10/955 Pleasant Valley Way LLC and was not in attendance at the September 24, 2020 special meeting and also did not vote on these minutes.

SWEARING IN

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

RESOLUTION

1. ZB-20-09/Morris Union Holdings, LLC

Approved on 9/17/202

Block: 155; Lots: 26 & 29; Zone: OR

475 Prospect Avenue

Amended site plan approval with "c" variances to reduce the number of parking spaces by one space for the location of a generator

Ms. Beirne stated for the record that she received the copy of the easement that was required to be submitted to her as a condition of approval.

Chairman Neuer stated that this resolution was circulated to all of the Board Members and that this version included comments from himself.

Chairman Neuer asked if any Board Member had any other comments; there were none.

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

The vote was as follows:

Eben:	Recused	Steinhart:	Yes
Gabry:	Yes	Straker:	-
Quentzel:	-	Sussman:	Yes
Redwine:	Yes	Weiss:	-
Schwarzbaum:	Yes	Chairman Neuer:	Yes

2. ZB-20-02/Odegov

Approved on 9/17/2020

Block: 175.22; Lot: 9; Zone: R-6

48 Sunnyside Road

“c” side yard variance to extend an existing driveway

Chairman Neuer stated that this resolution was circulated to all of the Board Members and that this version included comments from himself.

Chairman Neuer asked if any Board Member had any other comments; there were none.

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

The vote was as follows:

Eben:	Yes	Steinhart:	Yes
Gabry:	Yes	Straker:	-
Quentzel:	-	Sussman:	-
Redwine:	Yes	Weiss:	-
Schwarzbaum:	Yes	Chairman Neuer:	Yes

3. ZB-20-06/Miller

Approved on 9/17/2020

Block: 48; Lot: 11; Zone: R-5

34 Dartmouth Road

Seeking a “c” variance to construct a rear deck

Chairman Neuer stated that this resolution was circulated to all of the Board Members and that this version included comments from himself.

Chairman Neuer asked if any Board Member had any other comments; there were none.

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

The vote was as follows:

Eben:	Yes	Steinhart:	Yes
Gabry:	Yes	Straker:	-
Quentzel:	-	Sussman:	-
Redwine:	Yes	Weiss:	-
Schwarzbaum:	Yes	Chairman Neuer:	Yes

4. ZB-20-08/Master Form Engineering

Approved on 9/17/2020

Block: 176.10; Lot: 10; Zone: R-5

32 Morris Road

Seeking “c” variance for front yard to expand dining room

Chairman Neuer stated that this resolution was circulated to all of the Board Members and that this version included comments from himself.

Chairman Neuer asked if any Board Member had any other comments; there were none.

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

The vote was as follows:

Eben:	Yes	Steinhart:	Yes
Gabry:	Yes	Straker:	-
Quentzel:	-	Sussman:	-
Redwine:	Yes	Weiss:	-
Schwarzbaum:	Yes	Chairman Neuer:	Yes

APPLICATIONS

1. ZB-20-11/Giannetti

Block: 161; Lot: 10; Zone R-5

71 Oak Avenue

Seeking “c” variances to construct an in-ground swimming pool

Joseph and Jennifer Giannetti, applicants, joined the zoom meeting along with Thomas Heath, pool contractor for the applicant.

Mr. & Mrs. Giannetti and Mr. Heath were sworn under oath.

Mr. Giannetti detailed his application stating that they are proposing to maximize their entire back yard because due to the COVID pandemic they cannot travel at this time.

Mr. Giannetti stated that they would like to install an in-ground swimming pool along with a raised patio with an outdoor kitchen and a fire pit; he detailed the location of the proposed pool and the size of the patio.

Mr. Giannetti said that they designed the yard for entertainment purposes because they love to entertain friends and family.

Chairman Neuer asked Mr. Giannetti how far the fire pit would be from the trees or bushes; he said a minimum of twenty five (25) feet. He said the fire pit will have a dome and will not be gas or propane fueled.

Mr. Grygiel referred to his review memo dated 9/20/2020 and stated that the application requires two variances; one for lot coverage and one for the eight (8) foot projection of the deck into the back yard.

Mr. Grygiel stated that there is an existing chain link fencing that encloses the rear yard, and extends into the South Mountain Reservation, where a children's playset is located. He said that it does not appear these conditions are proposed to be changed. Mr. Grygiel said that it appears that other properties on the west side of Oak Avenue have similar intrusions into the Reservation.

Chairman Neuer stated that, in regards to the encroachment into the reservation, this is beyond this Board's jurisdiction. He said that it is up to the County to do anything about this if they so choose.

Chairman Neuer advised Mr. Giannetti that he has to provide proof to the Board and meet the positive and negative criteria in order for this Board to approve the "c2" variances.

Chairman Neuer asked Mr. Giannetti if he is using the backyard space for members of his family; he said yes.

Chairman Neuer asked Mr. Giannetti if, due to COVID, outdoor activities are a positive benefit for this use; he said yes.

Chairman Neuer asked Mr. Giannetti if he received any negative comments from any of his neighbors; he said no.

Chairman Neuer asked Mr. Giannetti if there will be any detriments caused to the zone if this application is approved; he said no.

Chairman Neuer asked Mr. Giannetti if the swimming pool will be visible from the sidewalk; he said no.

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

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

Chairman Neuer closed the public portion of the meeting.

Mr. Giannetti asked the Board to approve the application.

There were no comments or discussion from any members of the Board.

There were no comments from any members of the public.

Chairman Neuer asked for a motion; Ms. Gabry made a motion to approve the application and Mr. Eben seconded the motion.

The vote was as follows:

Eben:	Yes	Steinhart:	Yes
Gabry:	Yes	Straker:	-
Quentzel:	Yes	Sussman:	-
Redwine:	Yes	Weiss:	-
Schwarzbaum:	Yes	Chairman Neuer:	Yes

2. ZB-20-10/Meseha

Block: 153.15; Lot: 4; zone: R-6

6 Blackburne Terrace

Seeking "c" variances for fence in front yard on through lot

Mr. Quentzel stated for the record that he lives within 200' of this property and recused himself from hearing this application.

Chairman Neuer asked Mr. Quentzel to turn off his video feed.

Kyrillos and Rhonda Meseha, applicants, joined the virtual meeting and were sworn under oath.

Mr. Meseha detailed the application and stated that they would like to install a PVC privacy fence in their rear yard in order to enclose the back yard for the safety of their sixteen (16) month old son. He said that his property is a through lot with frontage on two streets.

Mr. Meseha stated that because of COVID, they are not comfortable taking their son to a park and would like to utilize their back yard.

Chairman Neuer asked Mr. Meseha if he was to ask him under oath what the reasons for relief are, would he do that; he said yes.

Chairman Neuer entered into the record the two (2) page Reason for Relief summary that was submitted as part of the application.

There were no questions for Mr. Meseha from any of the Board Members.

Mr. Grygiel referred to his review memo dated 9/10/2020 and stated that the application requires approval for a single variance for the location of the fence; he said any rear yard fronting a street is treated as a front yard.

Mr. Meseha stated that the fence and landscaping will be consistent with the neighborhood.

There were no members of the public that had any questions for Mr. Meseha.

There were no comments from any members of the public.

Chairman Neuer closed the public portion of the hearing.

Chairman Neuer stated that this is one of the better applications before this Board. He said that the application satisfied the positive and negative criteria and urged the other Board Members to approve.

Chairman Neuer made a motion to approve the application with no conditions and Mr. Schwarzbaum seconded the motion.

The vote was as follows:

Eben:	Yes	Steinhart:	Yes
Gabry:	Yes	Straker:	-
Quentzel:	Recused	Sussman:	Yes
Redwine:	Yes	Weiss:	-
Schwarzbaum:	Yes	Chairman Neuer:	Yes

3. ZB-20-05/Keith and Mary Beth Russell

Carried from 8/20/2020

Block: 164.08; Lot: 18; Zone: R-4

20 Oak Crest Road

Seeking “b” interpretations and “c” variance approval for a residential property

Steven Tombalakian, attorney for the applicant, and the applicant, Keith and Mary Beth Russell, joined the virtual meeting and detailed the application

Mr. Tombalakian stated that his clients, Keith and Mary Beth Russell, received a property maintenance violation from the Township inspector, Mr. Ordonez in March, 2019.

Mr. Tombalakian stated that his client appeared in the Municipal court in January, 2020 and resolved some of the property maintenance issues but there are still zoning issues on the property. He said a variance for lot coverage is required according to Ms. Adams, Township’s Zoning Official.

Mr. Tombalakian stated that Mr. Russell is a collector of antique vehicles and a year ago, he had those vehicles parked on his property.

Mr. Tombalakian said that Mr. Russell also has five (5) drivers in his house and those vehicles were also parked on the property.

Mr. Tombalakian said that currently Mr. Russell has three cars parked in the driveway and no vehicles parked in the garage; He said that all of the other vehicles are stored elsewhere.

Mr. Tombalakian said that Mr. Russell also had a trailer stored on the property but it has been removed now.

Mr. Tombalakian asked for an interpretation of Chapter 25 ordinances 25-12.3, 25-12.4 and 25-12.5 and do they apply to the Russell's property which the building has been in existence before January 1978 which pre-dated the ordinances.

Mr. Tombalakian also asked what a commercial vehicle is under the town ordinance. He said that Mr. Russell was cited for keeping commercial vehicles on his property and none of Mr. Russell's vehicles were ever used for a commercial purpose and were not registered as commercial vehicles. Mr. Tombalakian said all of the vehicles are personal vehicles owned by Mr. Russell.

Mr. Tombalakian asked the Board to also interpret the maximum parking area in a residential district regarding no more than thirty (30) percent shall be used for parking. He asked, does this even apply to the Russell's property?

Chairman Neuer stated that he has not heard any testimony regarding what existed on the property in 1951 and what the property was being used for in 1978; he said the use is not a protected prior non-conforming use.

Chairman Neuer said that the use under review is for the parking of the vehicles and not the use of the single family house; he said the exception does not apply to the parking.

Chairman Neuer stated that this Board cannot define what a commercial vehicle is; he said that is a legal question.

Chairman Neuer also advised Mr. Tombalakian that he will have to prove to the Municipal Judge that the vehicles are not used for commercial reasons.

Mr. Eben said that he agrees with Chairman Neuer; he said that he would also like information from the applicant that shows when the Zoning Official said that they could pave without a permit.

Chairman Neuer stated that all the Board is considering now is the interpretation of the Ordinance.

There were no further questions for Mr. or Mrs. Russell from any of the Board Members.

Chairman Neuer asked Mr. Grygiel to state his view on the ordinance.

Mr. Grygiel stated that his review memo, dated 6/23/2020, outlines his thinking on this issue.

Mr. Grygiel said, regarding the number of vehicles, there are limits on where not to park in the ordinance and that the property is well over the lot coverage permitted.

There were no further questions for Mr. and Mrs. Russell from any of the Board Members, the Board Professionals or any members of the public.

Chairman Neuer closed the hearing in respect to the interpretation.

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

Chairman Neuer made a motion to deny the request by the applicant to interpret chapter 25-12.5 of the Land Use Ordinance regarding the applicant's use of the property and Ms. Gabry seconded the motion to deny.

The vote was as follows:

Eben:	Yes to deny	Steinhart:	Yes to deny
Gabry:	Yes to deny	Straker:	-
Quentzel:	Yes to deny	Sussman:	-
Redwine:	Yes to deny	Weiss:	-
Schwarzbaum:	Yes to deny	Chairman Neuer:	Yes to deny

Chairman Neuer stated for the record that the request by the applicant to interpret Chapter 25-12.5 of the Land Use Ordinance regarding the use of the property is denied.

Chairman Neuer asked Mr. Tombalakian to proceed.

Mr. Tombalakian stated that the applicant is requesting a variance for lot coverage; he said the lot is undersized and the driveway with the pavers cause the lot to exceed forty (40) percent. Mr. Tombalakian said that removing the barrier will become problematic and that the driveway has been in that condition for fifteen (15) years.

Mr. Tombalakian said that the applicant is asking for the variance to reduce some of the existing coverage and that by granting this variance it will not cause any detriment to the zone; he said that he believes that the variance can be granted and the property can remain less non-conforming.

Mr. Tombalakian stated that the owners only have five (5) cars parked on the site which are their personal vehicles.

Mr. Tombalakian said that they cannot utilize the existing garage because of the height; he said that the garage was built in 1951 and all of the vehicles are SUV's and do not fit in the garage.

Mr. Eben asked Mr. Russell if there was any filling of the land that made the garage height lower; he said no. Mr. Russell said that the garage was like that when he purchased the home.

Chairman Neuer asked Mr. Tombalakian how much area the five (5) cars take up square footage wise; he said approximately one thousand (1000) square feet.

Chairman Neuer asked Mr. Tombalakian how much of that impacts the side and front yard; he said he would have to come up with a drawing to provide the Board with the calculations to deal with the coverage issue.

Chairman Neuer stated that the parking area issues of this application will be carried over to the Zoning Board's regular meeting held on December 17, 2020 and that no further notice will be required.

The meeting was adjourned by Chairman Neuer at 9:42 pm.

Adopted: November 19, 2020



Rose DeSena, Board Secretary