

MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT MEETING
August 17, 2023
8:00 P.M.

The West Orange Zoning Board of Adjustment held a regular meeting on August 17, 2023, commencing at 8:00 PM utilizing the virtual Zoom platform.

Chairperson Philip D. Neuer called the meeting to order at approximately 8:00 PM. 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."

Chairperson Neuer asked everyone to please rise for the Pledge of Allegiance.

Steven K. Warner, Esq., Board Attorney read the opening statement.

ROLL CALL

Present:	William Michael Barbee, Jerome Eben, Philip D. Neuer, Peter Ricci, Peter Scalora, Irv Schwarzbaum, Brent D. Scott, Mark Sussman,
Absent:	Michael Dannemiller, Alice Weiss
Also Present:	Paul Grygiel, Consulting Planner for the Township John Hess, Consulting Engineer for the Township Steven K. Warner, Esq., Board Attorney Diana L. Chandler, Board Secretary

ANNOUNCEMENTS

- Future Meetings:
 - September 21, 2023 (Regular Meeting)
 - September 28, 2023 (Special Meeting)
 - October 19, 2023 (Regular Meeting)
 - November 16, 2023 (Regular Meeting)
- Chairperson Neuer announced a special meeting for **ZB-22-13 MBP Realty/470 Eagle Rock Avenue** scheduled and carried with no further notice to **September 28, 2023**.
- Chairperson Neuer announced that **ZB-22-12 Seton Hall Preparatory School** is carried to the **October 19, 2023, Regular Meeting**.

SWEARING IN

- Township Professional(s) Mr. Paul Grygiel (Consulting Planner) and Mr. John Hess (Consulting Engineer) were sworn under oath.

RESOLUTIONS

Appointment of Board Attorney

Motion: Chairperson Neuer

Second: I. Schwarzbaum

Barbee:	Y	Scott:	-
Dannemiller (Alt. 1)	-	Sussman (Alt. 3):	Y
Eben:	-	Weiss:	-
Ricci:	-	Chairman Neuer:	Y
Scalora (Alt. 2)	Y		
Schwarzbaum:	Y		

After the adoption of this Resolution, Ms. Alice Beirne was acknowledged with a certificate for her 17 years of service and then left the meeting.

APPLICATIONS

1.) ZB-23-02/Robert and Rachel Ciottariello

(Carried from 6/15/2023)

Block: 170; Lot: 15.4; Zone: R-2

606 Mount Pleasant Avenue

Seeking use and bulk variances and minor site plan approval for mix of residential and commercial uses.

PRESENTATION

-Mr. John Dusinger, Esq. entered the record on behalf of applicants Robert and Rachel Ciottariello and gave a brief synopsis of the testimony from the June 15, 2023, Regular Meeting.

-Mr. Robert Ciottariello entered the record, confirmed that he is still under oath, and confirmed that he went forward with the landscaping recommendations of the Board from the previous appearance which he hopes will be approved at the discretion of Mr. Grygiel. He stated that he had this landscaping done as an act of good faith based on the responses he received from the Board at the June 15, 2023, Regular Meeting. Mr. Dusinger and Mr. Ciottariello displayed *Exhibit A1 (Photos- Dated August 16, 2023)* depicting the front of the property and confirmed that the landscaping in the rear has also been cleaned up. Mr. Ciottariello said that when they started working on the landscaping the shed that was located to the south of the existing garage had collapsed as it "rotted out" and has since been removed. Mr. Ciottariello further testified that he enlisted a surveyor to stake the bounds of the proposed storage yard and, using those markers, was able to test the circulation of his business's largest truck and trailer combination. He explained that he believed that there would be more than sufficient space to navigate all of his company's vehicles around the existing garage and through the proposed storage yard.

BOARD QUESTIONS

-J. Eben asked if a storm occurred, and/or if plants were destroyed, could they confirm that the landscaping will be replaced. Mr. Ciottariello confirmed.

-Chairperson Neuer referenced the chain link fence and whether or not privacy slats could be considered along the sides of the environmental center as well as the residential property. Mr. Ciottariello said that it could be considered.

PROFESSIONALS QUESTIONS

-Mr. Grygiel agreed to approve Landscape Architecture after the plans have been submitted.

-Mr. Hess asked for the turning plans to be on the plans for parking in the rear. Mr. Ciottariello agreed.

NO PUBLIC QUESTIONS

-Redirect by Mr. Dusinberre led to him asking Mr. Ciottariello if he was willing to install privacy slats along the recycling center and the residential property. Mr. Ciottariello said yes.

PRESENTATION

- Mr. Anthony Marucci, Engineer entered the record, confirmed that he is still under oath and that his licenses have not changed since his last appearance before the Board. Mr. Marucci gave a brief synopsis of his previous testimony on June 15, 2023.

- In this regard, he testified that:

- the proposed concrete storage bins had been shifted from 10' away to 12' away from the southern boundaries of the two (2) residential properties situated to the east of the Property;
- the Applicants now propose to install an additional row of arborvitae trees north of the proposed concrete bins;
- the plans had been revised to show five (5) 35' long parking stalls that can efficiently accommodate Mr. Ciottariello's landscaping business's vehicles;
- the 17% sloped area would be flattened and supported with a small retaining wall;
- the Applicants now propose an underground drywell system to further mitigate any potential for stormwater runoff;
- the revised plans now include landscaping, fence, and gate details.

- Mr. Marucci addressed the applicable comments raised in the CME Review (Dated - August 10, 2023) and Planning Review (dated – August 4, 2023).

-Mr. Dusinberre asked if the vehicles would be able to make a left-hand turn after reducing the steep slope. Mr. Marucci answered in the affirmative and that he would turn in the requested plans to Mr. Hess' office.

-Mr. Dusinberre asked about the increase in impervious coverage. Mr. Marucci said that increasing the impervious coverage will be based on the most recent submission of plans.

-Mr. Marucci testified that the applicant is willing to waive the Traffic Report.

-Mr. Marucci testified that the applicant will comply with the installation of drywells.

-Mr. Marucci also testified that the applicant is willing to have soil testing occur as a condition of approval.

NO BOARD QUESTIONS

PROFESSIONALS QUESTIONS

-Mr. Hess asked about how agreeable the applicant is to soil testing. Mr. Marucci said that the applicant is agreeable.

-Mr. Grygiel asked about the noise of the bins loading and unloading. Mr. Marucci asked to defer to the applicant as he was unsure of the frequency of unloading/loading of materials.

NO PUBLIC QUESTIONS

-Redirect by Mr. Dusinberre brought Mr. Ciottariello back on the record. Mr. Ciottariello testified about loading up with materials taking place in the morning and afternoon with the noise of such being less than five (5) minutes in total each time.

PRESENTATION

-Mr. Peter Steck, Planner, entered the record, was sworn under oath, and was accepted as an expert in the field of Planning.

-Mr. Dusinberre asked Mr. Steck to comment on the increase in impervious coverage. In response, he stated that it is being handled by the applicant handling it and it is not visible from the street.

-Mr. Steck testified referencing his Planning Report (Dated- February 9, 2023) with a display of photos, graphs, and a description of each. He testified stating that the current use of this property is not particularly suited for what it is classified as. He described the negative criteria of this application site being as visual (residential lot shielded by fencing) and landscaping (with activities in the rear of the property such as a plant nursery with no public policing)

- Mr. Steck opined that the Applicants have satisfied the positive criteria for both items of (d)(1) use variance relief. In this regard, he opined that the Property is particularly suited both for the proposed landscaping storage yard use and for the two proposed (2) principal uses because:

- the proposed landscaping storage yard use is relatively consistent with similar surrounding existing uses in the neighborhood, most notably the existing adjacent Township Environmental Center;
- the proposed landscaping storage yard use is relatively consistent with permitted uses in the R-2 Zone, most notably nurseries and greenhouses; and
- the composition of the Property, by way of the location of the existing dwelling towards its front and the location of the proposed landscaping storage yard towards its rear, sufficiently supports the co-location of the two (2) proposed principal uses of the Property.

- Mr. Steck also opined that the Applicants have satisfied the "substantial detriment" prong of the negative criteria for the requested items of (d)(1) use variance relief because:

- the proposed landscaping storage yard use will be well screened from the view of neighbors via the placement of the existing dwelling, the topography of the Property, proposed landscape screening, and proposed fencing;

- the impact of the proposed landscaping storage yard use would carry no detriment to surrounding properties greater than that posed by the existing adjacent Environmental Center;
 - the proposed storage bins, fencing, and landscaping would effectively mitigate any physical impacts to surrounding properties; and
 - the anticipated hours of operation and scope of activity of the proposed landscaping storage yard use, both on a daily and seasonal basis, are relatively modest in intensity and so pose minimal impact to surrounding sites.
- Mr. Steck opined that the Applicants have satisfied the "substantial impairment" of the negative criteria for the requested items of (d)(1) use variance relief because although the R-2 Zone is primarily a residential zone, the proposed landscaping storage yard use is consistent with uses that are permitted in the Zone, specifically greenhouses and nurseries.
- Mr. Steck also opined that, while, under the requirements of the Ordinance, landscaping storage yards are not permitted uses in the R-2 Zone and no more than one (1) principal use is permitted on any lot, granting the requested (d)(1) use variances here could be reconciled with the fact that this is a unique circumstance wherein there is a high degree of non-conformity amongst uses within the surrounding neighborhood and the proposed uses of the Property matches the character of those non-conforming uses.
- Mr. Steck opined that the Applicants have satisfied the positive criteria required for the grant of their requested (c)(2) bulk variances because they have demonstrated that the proposal promotes the purposes of the Municipal Land Use Law. He said that the proposal constitutes an appropriate use of land, in a manner that promotes the general welfare, because it will result in an overall enhancement to the Property, in terms of aesthetics and efficiency, thereby also enhancing the character of the surrounding neighborhood. He also opined that the proposal provides sufficient space in an appropriate location for both commercial and residential use because the Property's configuration effectively enables the lot to support both proposed principal uses and such uses are relatively consistent with other uses in the surrounding neighborhood and the R-2 Zone. Mr. Steck also opined that these benefits substantially outweigh the relatively modest detriments associated with the proposed excess impervious coverage and lack of parking area paving, curbing, and markings.
- Mr. Steck opined that the Applicants have satisfied the "substantial detriment" prong of the negative criteria for (c)(2) bulk variance relief because:
- the proposed excess impervious coverage can be mostly attributed to the laying of crushed stone throughout the Property, which, despite being considered impervious ground cover, still allows stormwater to penetrate into the earth instead of running off onto surrounding properties;
 - the Applicants propose to install an underground drywell system, which will further mitigate the potential for stormwater to runoff onto surrounding properties; and
 - the proposed parking area that is the subject of the requested bulk variance relief will not be open to the public and be effectively screened to surrounding properties by landscaping and fencing.
- Mr. Steck opined that the Applicant has satisfied the "substantial impairment" of the negative criteria for (c)(2) bulk variance relief, because:

- the intent of the Ordinance's impervious coverage limitations would not be substantially impaired because most of the proposed and existing impervious coverage is attributed to crushed stone, which still allows for sufficient stormwater penetration into the earth, and because the Applicants would be installing a drywell, which will further mitigate any runoff potential;
- the intent of the Ordinance's parking area paving, curbing, and marking requirements would not be impaired because the proposed parking area at issue will not be used by members of the public and will be effectively screened by way of proposed landscaping and fencing.

BOARD QUESTIONS

-Chairperson Neuer asked about the new variance existing condition extended for turning movements for the rear of the yard. Mr. Steck said that it would be submitted upon approval of the application.

PROFESSIONALS QUESTIONS

-Mr. Grygiel asked about the environmental center and its use. Mr. Steck said that it is for public municipal use with a conservation overlay.

-No questions from Mr. Hess.

NO PUBLIC QUESTIONS

PUBLIC COMMENT

-Mr. Robert Rashkes (35 Oak Crest Road) confirmed that he does not live within 200 feet of the property, was sworn under oath, and asked the applicant to consider installing sidewalks because of the Vision 0 task force and the need, in his opinion, for pedestrian routes to be created.

-Ms. Joyce Rudin (Woodland Avenue) confirmed that she does not live within 200 feet of the property, was sworn under oath, and urged the Board to deny this application based on her personal experience of living near a landscaping company herself and the disruption that it has brought to her home life.

CONDITIONS

- The Applicants shall comply with the comments and recommendations raised in Board Engineer Hess's, memorandum pertaining to the application, last revised August 10, 2023, to the extent not already satisfied or otherwise applicable;
- The Applicants shall comply with the comments and recommendations raised in the Planner's review memorandum (Dated - August 4, 2023).
- The hours of operation of the landscaping business are 7:30 A.M. - 6:00 P.M., Mondays through Fridays; 8:00 A.M. - 4:00 P.M. on Saturdays; and closed on Sundays;

- Both proposed principal uses may exist on the Property only so long as the single-family dwelling thereon is occupied by either the owner of the Property or business operating thereon, or an employee of the owner of the Property or the business operating thereon;
- No pesticides shall be maintained or bulk gas be stored
- No maintenance of vehicles shall be permitted on the Property, save for minor repairs;
- The landscaping installed following the June 15, 2023 Regular Meeting is to be inspected and approved by the Consulting Planner, prior to the adoption of any Resolution of Approval;
- The Applicants will replace any landscaping on the Property that may be destroyed for a period of three (3) years;
- The Applicant will revise the Site Plan to detail turning radii around the existing garage and within the proposed landscape storage yard area;
- The Applicants will install privacy slats on the proposed fencing, where fencing faces a residential property;
- The Applicants shall work in good faith with the Consulting Engineer to ensure the sufficiency and compliance of the proposed stormwater management system,
- Conditions are to be printed on the Site Plan Drawings to be submitted for signatures by the required municipal officials.

Motion: Chairperson Neuer

Second: P. Ricci

Barbee:	Y	Scott:	Y
Dannemiller (Alt. 1)	-	Sussman (Alt. 3):	-
Eben:	Y	Weiss:	-
Ricci:	Y	Chairman Neuer:	Y
Scalora (Alt. 2)	Y		
Schwarzbaum:	Y		

BREAK 9:26 PM – 9:40 PM (Chairperson Neuer confirmed quorum of Board Members return.)

2.) ZB-23-06/Daughters of Israel Geriatric Services Urban Renewal, Inc.

Block: 165; Lot: 16; Zone: R-2

748-750 Northfield Avenue

Seeking “c” variances for new freestanding sign

PRESENTATION

- Mr. Jay Rice entered the record and Mr. Warner confirmed his noticing was sufficient.
- Mr. Harold Colton-Max entered the record, was sworn under oath, and explained the contents of the application being for a new sign and confirmation to replace the tree at the entrance.

BOARD QUESTIONS

- Mr. W.M. Barbee asked who deemed the tree unhealthy. Mr. Colton-Max referenced Mr. S. Majewski's letter stating such.
- Mr. B.D. Scott said that he did not want to take down a healthy tree and suggested replacing it with shrubbery. Mr. Colton-Max answered that it is not part of their plan, but thanked him for the suggestion.
- Mr. I. Schwarzbaum asked if the tree trunk was blocking the view of people driving. Mr. Colton-Max said yes.

NO PROFESSIONALS QUESTIONS

PUBLIC QUESTIONS

- Ms. Zasah Khademi (4 Dawes Ave.) asked if residents have complained about the colors of the sign. Mr. Colton-Max answered no.
- Mr. Kevin Malanga (Ridge Road) asked if Mr. Colton-Max knew what "Suckers on the trunk of a tree" means. Mr. Colton-Max said no.
- Mr. Malanga asked if he knew who owned the tree. Mr. Colton-Max said that he assumed that Daughters of Israel Geriatric Services Urban Renewal, Inc. does.
- Mr. Robert Rashkes (35 Oakcrest Road) asked about the driveway plan for 750 Northfield Avenue. Mr. Colton-Max opined that the driveway is unrelated to this application.

Mr. John Hess left the meeting at 10:16 p.m.

PRESENTATION

- Mr. Steve Majewski, Architect, was sworn under oath and was accepted as an expert in the field of Architecture. Mr. Majewski opined to say that the tree belongs to the Township of West Orange.
- Mr. Majewski, in regard to the composition and location of the existing and proposed signs, testified that:
 - the existing sign currently measures 3' by 2'10" and sits atop a 2'3" pylon;
 - the proposed sign would measure 4'7" by 2'6" (11.46 square feet), sit atop a 1'8" masonry base, and feature additional outer framing;
 - the proposed sign would pose the same setback from the Northfield Avenue sidewalk of 10' and the same setback from the Property's eastern boundary of 30'3", and be internally illuminated;
 - setting the proposed sign back 40' from the Northfield Avenue sidewalk would be impractical because the view of the proposed sign would be blocked by both a nearby bus stop, situated to the west, and existing improvements on Lot 15; and
 - the presence of the tree in question obscures the existing sign and keeping it would make it more difficult to see the proposed sign as well.
- Mr. Majewski, regarding the Applicant's proposed landscaping, testified that:
 - the Applicant proposes to remove the shrubbery that surrounds the existing sign;
 - the base of the proposed sign would be constructed of aesthetically pleasing masonry that the Applicant may decide to surround with flowers;
 - the Tree appeared to be in poor condition when observed in May of 2023; and is 24" in diameter. He believes that it belongs to the Township of West Orange because of its location from the sidewalk.

It was at this time Chairperson Neuer announced that due to time constraints, application ZB-23-05 Red Barn Dog is being carried to the October 19, 2023, Regular Meeting with no further notice.

In response, the attorney for the applicant, Ms. Stone-Dougherty said that if the Board can reach her client's application earlier, they are willing to re-notice.

BOARD QUESTIONS

- Mr. P. Ricci asked for confirmation that this application is for only the sign and tree. Mr. Majewski replied in the affirmative.
- Mr. M. Sussman asked if the tree is the property line to show ownership. Mr. Majewski said no.
- Mr. I. Schwarzbaum asked about the dimensions of the sign existing and what is proposed. Mr. Majewski answered that the existing sign is two feet sitting on a pedestal and the proposed is (3) three feet high, internally illuminated, pylon sign.
- Mr. W.M. Barbee asked if the sign currently has lighting. Mr. Majewski said that it would need to be inspected as he is unsure.
- Chairperson Neuer addressed the fact that he would like a resubmission. In his opinion, this application has no line of sight addressed or a landscape architect. In response to this, Mr. Colton-Max said that this application has no benefits other than better visibility of a differing sign. If this application is carried to another meeting, they will not be returning.

PROFESSIONALS QUESTIONS

PUBLIC QUESTIONS

- Ms. Zasah Khademi (4 Dawes Avenue) asked if having the sign solar paneled would be cost-effective. Mr. Majewski said no because there is already electricity there.
- Mr. Robert Rashkes (35 Oak Crest Road) asked if a street sign had been considered instead of just a pylon. Mr. Majewski said no.
- Ms. Joyce Rudin (Woodland Avenue) asked for confirmation that this address is on a county road. Mr. Majewski said yes.
- Mr. Kevin Malanga (Ridge Road) asked if this was a "statue sign" Mr. Majewski said yes.
- Mr. Malanga asked if the sign would be white. Mr. Majewski said yes. Mr. Malanga asked what coloring the sign would be. Mr. Majewski said green.

There was no redirect for Mr. Majewski's testimony.

PUBLIC COMMENT

- Mr. Kevin Malanga (57 Ridge Road) was sworn under oath and urged the Board to approve the application since the tree in question is going to be saved.
- Mr. Robert Rashkes (35 Oak Crest Road) was sworn under oath and urged the Board to deny the application because of the lack of pedestrian safety.
- Ms. Zasah Khademi (4 Dawes Avenue) was sworn under oath and testified of having no opposition to the application as long as no trees are damaged.

Mr. Rice's closing remarks were solely about the aesthetics of the sign.

BOARD DISCUSSION

- Chairperson Neuer moved to approve the amended application specifically that the tree not be removed.

CONDITIONS

- The Tree shall not be disturbed;
- The Applicant shall abide by the Township's Tree Protection Ordinance;
- The Applicant shall consult the Township Forester before commencing installation of the proposed improvements, regarding preserving the health of the Tree, and abide by Forester's directions accordingly;
- All construction and installation activities surrounding the proposed improvements shall take place on the south, interior side of the proposed sign, if practical. If it would be impractical to perform any such activities from the south side of the proposed sign, the Applicant shall demonstrate the same to, and obtain approval from, the Township Building Department and the Township Director of Planning and Zoning to perform such activities on the north side of the proposed sign;
- The Applicant shall provide a three (3) year maintenance bond for the maintenance of the Tree;
- The proposed sign shall feature a white-colored background with green, blue, and gray text;

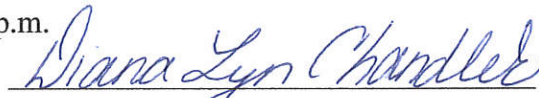
Motion: Chairperson Neuer

Second: I. Schwarzbaum

Barbee:	Y	Scott:	Y
Dannemiller (Alt. 1)	-	Sussman (Alt. 3):	
Eben:	N	Weiss:	-
Ricci:	A	Chairman Neuer:	Y
Scalora (Alt. 2)	Y		
Schwarzbaum:	Y		

Chairperson Neuer adjourned the meeting at 11:12 p.m.

Adopted: 10/19/23



Diana L. Chandler, Secretary