

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT MEETING
October 26, 2023
8:00 P.M.**

The West Orange Zoning Board of Adjustment held a regular meeting on October 26, 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, Michael Dannemiller, Jerome Eben,
Philip D. Neuer, Peter Scalora, Irv Schwarzbaum,
Brent D. Scott, Mark Sussman, Alice Weiss

Absent: Peter Ricci

Also Present: Spach Trahan, Consulting Planner for the Township (Proxy for Paul Grygiel)
John Hess, Consulting Engineer for the Township
Steven K. Warner, Esq., Board Attorney
Diana L. Chandler, Board Secretary

ANNOUNCEMENTS

Future Meetings: November 16, 2023 (Regular Meeting)
December 21, 2023 (Regular Meeting)

SWEARING IN

- Township Professionals Mr. John Hess, Consulting Engineer, and Ms. Spach Trahan, Consulting Planner (proxy for Mr. Paul Grygiel) for the Township were sworn under oath.

APPLICATION

- 1) **Daughters of Israel Inc.**
Block:171; Lot:12; Zone: R-2
1155 Pleasant Valley Way

A public hearing pursuant to Whispering Woods at Bamm Hollow, Inc. v. Twp. of Middletown Planning Bd., 220 N.J. Super. 161 (Law Div. 1987), and other applicable case law, to consider and act upon a settlement proposal (the "Settlement Proposal") concerning litigation captioned Daughters of Israel, Inc. v. the Zoning Board of Adjustment of the Township of West Orange, Docket No.: ESX-L-004045-23 (the "Litigation"). The Settlement Proposal pertains to the Board's denial of Application #ZB-21-21, Daughters of Israel, Inc. concerning property located at 1155 Pleasant Valley Way and designated as Block 171, Lot 12 on the tax map of the Township of West Orange (the "Property"). Approval of the Settlement Proposal would settle the Litigation and result in its dismissal with prejudice.

The Settlement Proposal sought preliminary and final site plan approval, use, and height variances pursuant to N.J.S.A. 40:55D-70.d, variances pursuant to N.J.S.A. 40:55D-70.c, and design standard exception relief. The testimonial and documentary presentations to the Board, and the deliberations and vote by the Board, are limited to the Settlement Proposal. The record previously compiled concerning Application #ZB-21-21 was incorporated by reference.

1. Resolution of Statutory Denial, dated June 15, 2023
2. Complaint filed by Daughters of Israel, Inc. dated June 23, 2023
3. Answer filed by West Orange Zoning Board of Adjustment, dated August 25, 2023
4. Settlement Proposal with Exhibits
 - 00 - Transmittal Letter (10-13-2023)
 - 01 - Settlement Proposal (10-13-2023) 3101307_3
 - 02 - Letter from Petry Engineering (2023-10-13)
 - 03 - Supplemental Planning Report (10-13-23)
 - 04 - 3 ft Retaining Wall Calcs (2023-10-13)
 - 05 - Architectural Plans (2023-10-13) Architectural Settlement
 - 06 - Architectural Hearing Exhibits (2023-10-26)
 - 07 - Site Plans (2023-10-13)
 - 08 - Overall Phasing Plan (2023-10-13)
 - 09 - Steep Slopes Map (2023-10-13)
 - 10 - Tree Removal Plan (2023-10-13)
 - 11 - Civil Engineering Hearing Exhibits (2023-10-13)
5. Proposed Settlement Planning Review Memo – ZB-21-21 – Daughters of Israel 9-26-23- updated 10-17-23

- Proposed Settlement Planning Review Memo - ZB-21-21 - Daughters of Israel 9-26-23-updated 10-17-23

PRESENTATION

- Mr. Howard Geneslaw Esq. entered the record on behalf of the applicant, Daughters of Israel.
- Board Attorney, Steven Warner, Esq. added provisions to the court order. In response to this, Mr. Geneslaw said that the “Whispering Woods” Settlement hearing is an attempt to compromise as to deny further litigation at risk. Mr. Geneslaw opined that the applicant’s professionals have satisfied all comments from the Town Professionals and Board Members by addressing the following terms:
 - o Plan revision
 - o Five (5) year term on the conditions of approval based on the 5/11/23 resolution
 - o DOI would end litigation with prejudice against the Zoning Board of Adjustment.
- Stipulations brought up
 - o Taxes, as there was some confusion as Daughters of Israel is not fully tax-exempt and the new build will be expected to pay more taxes because of the antenna.
 - o Financial clarification i.e., residents will not have to move because of lack of funds.
- Mr. Banish, Mr. Fowles, and Mr. Petry were all sworn under oath and confirmed that all licenses are unchanged as experts in their respective fields.

BOARD QUESTIONS

- Mr. W.M. Barbee asked if there are any visuals from behind in the form of a neighbor’s view. Mr. Fowles answered no because there is no real change in that viewpoint.
- Mr. I. Schwarzbaum asked what exactly was reduced. Mr. Fowles answered that 15 feet in height on the top level. Mr. Schwarzbaum asked if the other floors remained the same. Mr. Fowles answered in the affirmative.
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NO PROFESSIONALS QUESTIONS

PUBLIC QUESTIONS

- Mr. Kevin Malanga (57 Ridge Road) asked what the reduction from front to back is. Mr. Banish said there is a 20 feet reduction. Mr. Malanga asked if there was a rendering of the head on drawings. Mr. Fowles said that it is not in the exhibits for this meeting.

Mr. Geneslaw did not offer a redirect for this expert.

PRESENTATION

- Mr. J. Michael Petry, Civil Engineer entered the record and confirmed of no changes to credentials. He then displayed AS 2.1-2.6 inclusive with a date of October 13, 2023.
 - o 2.1 (Settlement Plan – Overall Layout Sheet) pulled away from the common entrance line with Kessler to remove fewer trees and decrease the steep slope. He also confirmed that the height of the building has not changed.
 - o 2.2 (Settlement Plan Layout Sheet) where they reduced the independent units by six (6) units.
 - o 2.3 (Settlement Plan, Grading and Drainage Plan) where Mr. Petry explained that zero (0) live trees are being removed and there will only be a 1% steep slope disturbance in settlement. The number of trees removed went from 57 in the previous testimony to 25 currently dead trees.

BOARD QUESTIONS

- Mr. Dannemiller asked referencing AS 2.1 about the uniqueness of the long parking spots. Mr. Petry said that Daughters of Israel has two (2) vehicles on site. Mr. Dannemiller asked if there was public parking under the building. Mr. Petry said no. Mr. Dannemiller asked if there was going to be a pedestrian access route. Mr. Petry answered no.
- Mr. Schwarzbaum asked if pulling into the driveway was to reduce the steep slope disturbance. Mr. Petry said that by following the alignment of the original change of grade made it necessary to maintain trees.

PROFESSIONALS QUESTIONS

- No questions from Ms. Trahan.
- Mr. John Hess asked if the stormwater management is being maintained. Mr. Petry answered in the affirmative adding that the inclusion of green roofs has and will help with that.

NO PUBLIC QUESTIONS

Mr. Geneslaw did not offer a redirect for this expert.

PRESENTATION

- Mr. Frank Banish, Professional Planner confirmed that there is no change in licensing and was confirmed as an expert in Planning.
- Mr. Banish discussed the updated Planning Report (dated October 13, 2023), listing the changes.
- Mr. Geneslaw asked if there is a better planning alternative. Mr. Banish said that this is the best alternative in planning.

BOARD QUESTIONS

- Mr. Barbee asked for Mr. Banisch's definition of the term "inherently beneficial". Mr. Banisch said that it is positive by the courts and for the general public.

PROFESSIONALS QUESTIONS

- No questions from Mr. Hess
- Ms. Trahan asked if Senior Housing was a favored use. Mr. Banish answered in the affirmative.

PUBLIC QUESTIONS

- Mr. Kevin Malanga (Ridge Road) asked about what the percentages of the proposed facility would be comprised of. Mr. Banisch said that about 50% of the Proposed Facility would be comprised of independent living units; the Existing Facility is two (2) stories tall, while the Proposed Facility would be 57.77' tall; there would be a hardship if forced to construct a smaller facility and the topography of the Property helps make it particularly suited for the Applicant's use.

Break 9:34 PM-9:40 PM

PUBLIC DISCUSSION/COMMENT

- Ms. Ellis Slivka (8 Parsons Drive) was sworn under oath, Mr. Geneslaw objected to testimony because of no video. Chairperson Neuer said the objection was overruled. Ms. Slivka objects to the application because her quality of life is being disrupted due to the application. Urged the Board to vote against the application.
- Ms. Zasah Khademi (4 Dawes Avenue) was sworn under oath, Mr. Geneslaw objected to testimony because of no video. Chairperson Neuer said the objection was overruled. Ms. Khademi said that the quality of life for residents will be detrimental as in her opinion there is no change and urged the Board to deny this settlement.
- Ms. Jennifer Kurlander (11 Gale Drive) was sworn under oath, Mr. Geneslaw objected to testimony because of no video. Chairperson Neuer said the objection was overruled. Ms. Kurlander said that this settlement is a "positive add" to the Daughters of Israel application and urged the Board to approve this settlement.
- Mr. Kevin Malanga (57 Ridge Road) was sworn under oath, Mr. Geneslaw objected to testimony because of no video. Chairperson Neuer said the objection was overruled. Mr. Malanga said that there is no beneficial use in the services provided but is a burden and hazardous with no hardship with an excessive height and urged the Board to deny this settlement.
- Ms. Joyce Rudin (38 Woodland Avenue) was sworn under oath, Mr. Geneslaw objected to testimony because of no video. Chairperson Neuer said the objection was overruled. Ms. Rudin said that the application is an inherently beneficial use to Daughters of Israel's bottom line not to the community and urged the Board to deny the settlement.
- Ms. Sally Malanga (57 Ridge Road) was sworn under oath, Mr. Geneslaw objected to testimony because of no video. Chairperson Neuer said the objection was overruled. Ms. Malanga thanked the applicant for decreasing the number of trees

- being cut down but felt that this attempt at a settlement was strong-arming the Board. She urged to deny the settlement as in her opinion and said that it is not beneficial.
- Mr. Miky Faibis (24 Skyline Drive) was sworn under oath, Mr. Geneslaw objected to testimony because of no video. Chairperson Neuer said the objection was overruled. Mr. Faibis urged the Board to deny the settlement because of the current traffic and how additional traffic due to construction is going to affect that specific area.
 - Mr. Robert Rashkes (35 Oak Crest Road) was sworn under oath, Mr. Geneslaw objected to testimony because of no video. Chairperson Neuer said the objection was overruled. Mr. Rashkes stated that he was concerned with the timing of construction and traffic, so he urged the Board to deny the settlement.
 - Ms. Andrea Sultan (11 Swayze Street) was sworn under oath, Mr. Geneslaw objected to testimony because of no video. Chairperson Neuer said the objection was overruled. She urged the Board to approve the settlement.

Public Portion Closed

Mr. Geneslaw offered closing remarks with a summation of the previous testimony and the settlement components.

BOARD DISCUSSION

- Mr. Dannemiller said that the parking was reduced with a residential buffer, and decreased the tree removal with the change of driveway/slope makes the Pleasant Valley Way view better now and is in favor of this settlement.
- Mr. Schwarzbaum said that he is going to vote in favor of this settlement.
- Mr. Scott complimented the revised plans but vocalized that he still intended to vote against this settlement.
- Mr. Barbee urged the Board to deny settlement because of the neighbors' issues.
- Chairperson Neuer said that this application is to settle the lawsuit and litigation (dispute) in the best position not perfect but by denying the application is to turn the decision to a judge. Urged the Board to settle because a judge 1) approved the denial or 2) saw it as arbitrary and capricious. Urged the Board to approve of the settlement because of the use etc.; hardship with zoned use
- Mrs. Weiss is in favor of this settlement. 1) originally the applicant was kicking out Medicaid patients for lack of funds and has countered that opinion 2) this application is suited for this site because of its proximity to commercial properties for the betterment of the community; not a traffic-driven community.
- Mr. Eben said that he will not be voting in favor of this settlement as he also voted to deny the application.

Motion: I. Schwarzbaum
Second: M. Dannemiller

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

Chairperson Neuer announced that this settlement was statutorily denied by a vote of four in favor and three opposed where five affirmative votes are required.

Chairperson Neuer adjourned the meeting at 10:49 p.m.

Adopted: 12/21/23


Diana L. Chandler, Secretary