

MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT MEETING

February 15, 2024

8:00 P.M.

The West Orange Zoning Board of Adjustment held a regular meeting on February 15, 2024, commencing at 8:00 PM utilizing the virtual Zoom platform.

Chairman Phillip 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."

Chairman Neuer asked everyone to stand for the Pledge of Allegiance.

Alexander Fisher, Esq., Board Attorney read the opening statement after a momentary lapse.

ROLL CALL

Present: William Michael Barbee (10:08 PM arrival), Michael Dannemiller,
Philip D. Neuer, Peter Ricci,
Irv Schwarzbuaam, Peter Scalora,
Brent D. Scott, Mark Sussman

Absent: Jerome Eben (unexcused absence),
Alice Weiss (excused absence),
John Hess, Consulting Engineer for the Township

Also Present: Paul Grygiel, Consulting Planner for the Township
Alexander Fisher, Esq. (proxy for Steven K. Warner, Esq.,) Board Attorney
Diana L. Chandler, Board Secretary
Zayibeth Carballo, Municipal Engineer

ANNOUNCEMENTS

- Future Meetings (Virtual): March 21, 2024 (Regular Meeting)
April 18, 2024 (Regular Meeting)
May 16, 2024 (Regular Meeting)

- Chairperson Neuer announced that application **ZB-23-11 DeOliviera/ 31 Bradford Avenue** is being adjourned to the **March 21, 2024, Regular Meeting**.

MINUTES

January 18, 2024 (Regular Meeting)

Motion: Chairperson Neuer

Second: I. Schwarzbaum

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

SWEARING IN

- Township Professionals Mr. Paul Grygiel (Consulting Township Planner) and Ms. Zayibeth Carballo (Municipal Engineer) were sworn under oath.

RESOLUTIONS

- Confirmation of Appointment of Board Attorney

Motion: Chairperson Neuer

Second: P. Ricci

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

- Proposed Amendment to Rules & Regulations

Motion: Chairperson Neuer

Second: P. Ricci

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

NOTES:

- Mr. P. Ricci stated that a change like this is long overdue.
- Mr. P. Scalora stated that he is for the change.
- Mr. B.D. Scott asked questions about where the funds provided by applicants will be going if this goes into effect. When it was explained by Chairperson Neuer that refunds would be dealt with by the Planning & Development Department on a case-by-case basis, Mr. Scott said that he could not support this because he believes it is just an extra layer of charging residents.
- Chairperson Neuer is in favor of this change and it allows the resident to refile and move to the back of the list as consistent adjournments (approximately six or so in a calendar year) make it difficult to prepare.
- Mr. I. Schwarzbaum said that he agrees with the Chairperson.

APPLICATIONS

1.) ZB-22-08/Flores (156 Main Street)

(Carried from 9/21/2023)

Block: 89; Lot: 21; Zone: B-1

156 Main Street

Seeking variances for construction of a new two-family dwelling.

PRESENTATION

- Mr. F. Guagliardi, Esq., appeared on the record on behalf of the applicant and gave a brief synopsis of previous testimony.
- Ms. G. Gornelli, a Professional Engineer, qualified herself and was accepted as an expert in Civil Engineering
- Ms. Gornelli referenced plans submitted dated August 23, 2022, with the **Soil Removal Plan (Exhibit A3)** and stated that the site is long and narrow measuring approximately 0.08 acres.
- Ms. Gornelli testified that:
 - a total of 0.08 acres of soil will be disturbed;
 - the limits of disturbance will be the majority of the site;
 - soil will be stockpiled on the front of the site as necessary;

- an inlet filter will be installed on the existing street inlet;
- a portion of the sidewalk will be removed and replaced with a depressed curb for driveway access;
- the majority of the excavation will be above grade, with a portion in the rear yard below grade;
- excavation will be no more than a few feet deep;
- the Applicant will submit an excavation plan to the Building Department;
- there will be a 5 (five)-foot wide sidewalk with a maximum of 2% (two percent) cross slope, to be ADA compliant.

BOARD QUESTIONS

- Chairperson Neuer asked if the final plans will be signed and sealed by Ms. Gornelli. Ms. Gornelli said yes.
- Mr. I. Schwarzbaum asked how deep the excavation of the property would be. Ms. Gornelli said that she believes it would be at or above grade because of the property being higher in the back.
- Mr. I. Schwarzbaum asked for confirmation that there are no plans for a basement. Ms. Gornelli said in response that the only foundation can be found on the first level not depicting the depth of the actual property for a basement to be constructed.
- Mr. I. Schwarzbaum asked what precautions are taken to prevent water issues. Ms. Gornelli said that she cannot speak on this.
- Mr. P. Ricci asked how close to the property line and how close the footing is going to be to the property line. Ms. Gornelli said that those seem like a “means and method” to give to the contractor.
- Mr. M. Dannemiller asked about the proposed cross slope if the apron will be within ADA compliance. Ms. Gornelli said that she would confirm that those grades are possible.
- Chairperson Neuer followed up Mr. Dannemiller’s questioning asking if a condition can be made. Ms. Gornelli said that based on review she believes it can be made but cannot confirm until calculations have been done.
- Chairperson asked if the side yard variance was requested. Ms. Gornelli said yes.
- Chairperson asked, from an engineering perspective, if she thinks there was a reason the property could not be reduced from a multifamily residential property to a single-family property. Ms. Gornelli said that she cannot speak about anything other than an engineering perspective but yes it could be reduced if the applicant chooses to do so.

Afterward, it was confirmed that Ms. Gornelli was not sworn under oath before her testimony so Mr. Fisher did such at this time. Afterward, Ms. Gornelli clarified her testimony stating that if a planning report was being required for a geotechnical review one would be provided at that time.

PROFESSIONALS QUESTIONS

- Ms. Z. Carballo asked Ms. Gornelli if the wall would have filter fabric for questioning without the length. Ms. Gornelli said that it would have a cross-pitch pit with a detention system.
- Ms. Carballo asked a question about the drywell and soil rate. Ms. Gornelli responded stating that she did not review but it would have to be confirmed.

- Ms. Carballo asked if they agreed that the soil removal plan would be on top of the drywell as to not "clog the system". Ms. Gornelli agreed.

NO PUBLIC QUESTIONS

PRESENTATION

- Mr. David Fahim, was sworn under oath as a Professional Engineer in the field of Traffic Engineering, and qualified himself to the satisfaction of the Board as an expert.
- Mr. Fahim referenced the trip generation manual where the site in question is set to generate three (3) vehicles with minimal impact on Main Street. Parking is for four (4) vehicles with parking generation for dwelling units.
- Mr. Fahim testified that:
 - the proposed home will not generate a significant increase in traffic;
 - there will be a total of three (3) trips during critical peak hours;
 - the site proposes four (4) parking spaces;
 - 200 feet of visual clearance would be sufficient for vehicles backing out of the driveway;
 - there will be safe and efficient ingress and egress.

BOARD QUESTIONS

- Mr. M. Dannemiller asked if the study was based on a single or a multi-family property. Mr. Fahim answered that it was based on a two (2) family home. M. Dannemiller followed up by asking for confirmation that testing was done on a single property. Mr. Fahim said it was based on two (2) single dwellings known as "Single Family Attached House".
- Mr. I. Schwarzbaum asked hypothetically if two (2) independent homes were what the study was based on what would the calculations would be. Mr. Fahim said that he would have to do the math as this is different criteria.
- Mr. B. Scott asked for confirmation concerning parking that this property will be backing into Main Street. Mr. Fahim said yes.
- Chairperson Neuer asked if Mr. Fahim was aware that this is proposed to be a multifamily dwelling. Mr. Fahim said yes.
- Chairperson Neuer asked if there would be room for parking to be developed into a single-family dwelling. Mr. Fahim said no as it would be the same whether it is a single or a multifamily dwelling.
- Chairperson Neuer asked if Mr. Fahim had been to the site. Mr. Fahid said no.
- Chairperson Neuer asked if he knew what the site distance is from the property. Mr. Fahid answered that it was approximately 300 feet.

NO PROFESSIONALS QUESTIONS

NO PUBLIC QUESTIONS

PRESENTATION

- Mr. Creigh Rahenkamp, Professional Planner was sworn under oath, qualified himself, and was accepted by the Board as a Professional Planner.

- Mr. Rahenkamp then testified stating that he was aware of the policy concerns, that he was present for all testimony, and then gave a brief history of the properties on Main Street.
- Mr. Rahenkamp continued his testimony referencing the **Planning Report (Exhibit A2)** and went into detail showing the table, confirming the consistency with what is going on in the neighborhood and providing historical analysis on properties and uses.
- Mr. Rahenkamp testified that:
 - the pattern of the area was established around 1936 with single-family homes on small lots;
 - until 1970 there was a house on the Property, when it disappeared on satellite maps;
 - most of the remaining homes on the street have been converted to 2-family homes;
 - the lot width and separation between dwellings are consistent with the neighborhood;
 - the 2010 Master Plan reexamination report identified the lack of small lot sizes in the area as a problem and recommended a zone change to reflect the actual development pattern of the area;
 - due to the size of the lot, any construction would need a variance;
 - this is not a single-family neighborhood and no one would rationally invest the cost to construct a single-family dwelling in this neighborhood;
 - the Master Plan recommends residential uses on Main Street, identifies a need for smaller/rental units, and further identifies a need for diversity in housing stock.
- As to the subsection (c) variance justifications, Mr. Rahenkamp opined that:
 - the lot area deviations warrant a hardship variance because it is not possible for the homeowner to expand the size of the lot to meet the minimum lot size;
 - the side-yard variance can be granted as a subsection variance since the house is symmetrically in the middle of the lot, it is consistent with building-to-building distance in the neighborhood, and it follows the existing pattern of development.
- As to the negative criteria, Mr. Rahenkamp testified that there was neither substantial detriment to the public good, nor substantial impairment of the zone/ordinance, because:
 - the lot is a very small area of the district;
 - the proposed home will not change the character of the district;
 - there will be no impact on the neighborhood other than what one would expect from a permitted use;
 - the proposal is consistent with the Master Plan.

Break 9:25 PM-9:33 PM

PROFESSIONALS QUESTIONS

- Mr. Grygiel asked for confirmation of the variances. Mr. Rahenkamp responded that there are four (4)C Variances regarding bulk standing.

- Mr. Grygiel asked if they are consistent in use. Mr. Rahemkamp said yes.
- Ms. Carballo had no questions for Mr. Rahemkamp.

BOARD QUESTIONS

- Mr. Dannemiller asked if the property will have a semi-arch with an aesthetic harmonious with the other properties in the area. Mr. Rahemkamp answered in the affirmative.
- Chairperson Neuer said that Mr. Rahemkamp testified saying that this is not a conforming property because of the size of the yard for condensing. Mr. Rahemkamp confirmed that it is based on economics.
- Chairperson asked if a single-family was built instead of a multifamily, how would the garage look. Mr. Rahemkamp said that it would look the same. Chairperson Neuer then opined to say that he believes that the applicant "self-created hardship" because of purchasing the land.

NO PUBLIC QUESTIONS

NO PUBLIC COMMENT

BOARD DISCUSSION

- Mr. Dannemiller stated that he is unsure and feels uneasy about approving the application.
- Mr. Ricci said that this is a difficult site because of the land size.
- Mr. Schwarzbaum concurred that he wanted confirmation of adjacent lots being 30 ft wide and having no water in the basement.
- Mr. Scott said that he agrees with Mr. Ricci and Mr. Schwarzbaum but referenced that the state of New Jersey is currently having a "zoning crisis" and confirmed that he is only worried about the neighboring properties and possible flooding.
- Mr. Sussman said that in his opinion a two (2) family is reasonable
- Chairperson Neuer said that he finds himself agonizing over this application and feels that applications like these are "daring to approve variances". Chairperson continued stating that he is unsure because of fear of rock slides and cars backing into Main Street doesn't sit well with him, especially without no testimony for geotechnical results.

CONDITIONS

- The drain will be covered and protected for the drain in front of the home during soil removal following the standards for Soil Erosion and Sediment Control
- The Building Department will review soil removal/excavation and confirm they have no objection concerning the effect on neighboring properties;
- The sidewalk shall be installed ADA compliant, being 5-feet wide and having no greater than a 2% cross-slope;
- A replacement tree will be installed as provided in the report of the Consulting Township Planner;
- The Property shall neither be used for any transient rentals, defined as less than one (1) year nor for uses such as Air BnB;

- To the extent required, the Applicant shall submit revised Plans to reflect the changes to which the Applicant agreed and/or those modifications that were required by the Board or the Board's experts;
- Approval shall be subject to all requirements, conditions, restrictions, and limitations outlined in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;

Motion: I. Schwarzbaum

Second: B. D. Scott

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

3.) ZB-23-10 Feleke & Sewasew

18 Kling Street

Block: 116; Lot:62 Zone:

18 Kling Street

Seeking "d" and "c" variance approvals to convert two-family dwelling to three-family dwelling

PRESENTATION

- Mr. Richard Schkolnick, Esq., entered the record on behalf of the applicant and provided a brief synopsis of the application in question. He said that this application is to make the property a legal three (3) floor property while informing the Board that the application is for "interior changes only."
- Board Attorney, Mr. A. Fisher, Esq confirmed approval of adequate noticing.
- Ms. Rina Asemamaw, (Applicant's Daughter) entered the record and was sworn under oath. Ms. Feleke testified that:
 - her parents have owned the Property since 1997 and she grew up there;
 - trying to use the top two floors as one unit has presented challenges, as a unit that large is unaffordable for families, with more turnover and people bringing in extended family trying to make rent;
 - the Property has a two (2)-car garage and a driveway;
 - there have been no complaints about parking;
 - the area is very accessible for walking;
 - there is a public parking lot across the street with two permits available per household for \$140 per year;
 - she owns another property on that street;

- the top unit would be good as a starter apartment.

NO BOARD QUESTIONS

NO PROFESSIONALS QUESTIONS

NO PUBLIC QUESTIONS

PRESENTATION

- Mr. John McDonough, PP, was sworn under oath, qualified himself, and was accepted by the Board as a Professional Planner.
- Mr. McDonough, using a set of 13 photographs of the site and the neighborhood, described the existing conditions on the site and in the immediate neighborhood, testifying that:
 - the neighborhood has a diversified character with many three-family, and some four-family, dwellings and it is good planning to concentrate the population near town centers;
 - the Property is next to other three-family homes and is immediately opposite a public parking lot;
 - there is a fire escape installed up to the third floor, which is unusual for a two-family, and would accommodate a three-family;
 - the adjacent three-family home has a similar fire escape.
- Mr. McDonough provided his professional opinion that the criteria for all of the variances had been met. As to the positive criteria for the d(1) use variance, d(5) density variance, and c(2) variances, he testified that the site is particularly suitable by context and condition, namely;
 - the proposed three-family would provide a similar pattern to the rest of the neighborhood;
 - the site is opposite public parking;
 - it is good planning to concentrate density around public amenities;
 - the conversion will consist of simply retrofitting the interior of the building with no outside work;
 - there is adequate sewer and water;
 - the overall bedroom density is going down from seven bedrooms to six bedrooms even though the unit density is increasing;
 - the conversion will provide for a variety of housing types and needs for residents;
- As to the negative criteria, Mr. McDonough opined that there will be no substantial detriment caused by the conversion, especially as it will decrease the overall number of bedrooms, and the site will function safely, efficiently, and comfortably and, there is adequate capacity for the conversion. The proposal can further be reconciled with the Master Plan and is site-specific, based on its distinct physical characteristics and setting. Finally, Mr. McDonough noted that the smaller units are difficult to find in the area and the Master Plan encourages the provision of a variety of housing types.
- As for the subsection c(2) bulk variances, Mr. McDonough opined that, for the same reasons, the proposal's benefits substantially outweigh the relatively modest detriments.

BOARD QUESTIONS

- Mr. I. Schwarzbaum asked how many parking spaces were required for a three (3) family property. Mr. Schkolnick said that Mr. Grygiel's report said six (6) and they are not going to dispute it.

NO PROFESSIONALS QUESTIONS

NO PUBLIC QUESTIONS

NO PUBLIC COMMENT

NOTE: After consideration, it was determined unnecessary for Scott Monro, Architect to testify concerning this project because of all renovations being done indoors and nothing in his scope is being modified for the exterior of the property.

CONDITIONS

- The aforementioned approval shall be subject to all requirements, conditions, restrictions, and limitations outlined in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;
- The Applicant shall comply with all statutes, ordinances, rules, regulations, and requirements affecting development in the Township, County and State;
- The Applicant is and shall be bound by all the evidence, including documents and testimony presented by the Applicant at the Public Hearing;
- These Conditions shall be printed on the engineering drawings submitted for filing in the official records of the Board.

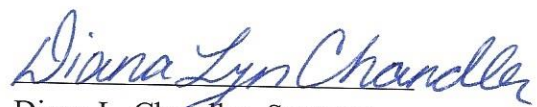
Motion: Chairperson Neuer

Second: M. Dannemiller

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

Chairperson Neuer adjourned the meeting at 10:58 P.M.

Adopted: 3/21/24


Diana L. Chandler, Secretary