

RESOLUTION

**ZONING BOARD OF ADJUSTMENT
OF THE TOWNSHIP OF WEST ORANGE**

**APPLICATION: 19 Wheatland Avenue Development, LLC
ZB-21-22 (17 Wheatland Avenue)**

WHEREAS, 19 Wheatland Avenue, LLC, (the "Applicant"), with a mailing address of 10 Orton Road, West Caldwell, NJ 07006, owner of the property located at 17 Wheatland Avenue, West Orange, New Jersey also known as Block 39, Lot No. 56.06 on the Tax Map of the Township of West Orange and located in the R-6 zone, applied to the West Orange Zoning Board of Adjustment ("the Board"), for six "c" bulk variances, to wit: (1) a "c" variance for minimum lot area of 5,789 square feet when 6,000 square feet is required; (2) a "c" variance for maximum (effective) building coverage of 64.48% when the maximum permitted is 35%; (3) a "c" variance for maximum (effective) lot coverage of 116.24% when the maximum permitted is 45%; (4) a "c" variance for maximum disturbed steep slope of 100% when only 60% is permitted in areas with grades of 10 to 14.99%, 40% is permitted in areas with grades of 15 to 19.99%, 20% is permitted in areas with grades of 20 to 24.99%, and 0% is permitted in areas of steep slope greater than 25%; (5) a "c" variance for disturbance of steep slope greater than 25% when no disturbance is permitted, and (6) a "c" variance for minimum effective lot area of 1,847 square

feet when 6,000 square feet is required, all to build a new single family home on an undersized lot;

WHEREAS, the Applicant presented proof that adequate notice of the hearing on the application was published in the West Orange Chronicle, one of the official newspapers of the Board; and

WHEREAS, the Applicant submitted proof of notice of the hearing upon all property owners within 200 feet of the property and all others required to receive notice; and

WHEREAS, the Application was heard at a public meetings of the Board held on May 19, 2022, and July 21, 2022; and

WHEREAS, the Applicant was represented by Michael Piromalli, Esq.; and

WHEREAS, during the course of the Application the Applicant sought to amend its Application to include a "c" variance for tree removal of more than 30% of existing trees, which amendment was granted; and

WHEREAS, the Applicant offered the testimony of Miquel Armijos, Managing Member of the Applicant, he testified that the Applicant also owns the neighboring property at 17 Wheatland Avenue, which is also vacant and that he does not intend to occupy the property once it is built; and

WHEREAS, the Applicant offered the testimony of Charles Baldanza, a licensed professional architect in the State of New Jersey, who was recognized by the Board as such, Mr. Baldanza

testified about the architectural floor plans and the elevation plans at the first meeting, and then testified about his revised plans of 7/2/22 which showed an unfinished basement with a utility room and a powder room, Mr. Baldanza was questioned about the need for a powder room in an unfinished basement, and the Applicant agreed to remove the powder room from the basement level; and

WHEREAS, the Applicant presented the testimony of Shaun Delaney, a licensed professional civil engineer in the State of New Jersey, who was accepted by the Board as an expert in the field of civil engineering, Mr. Delaney testified that the Application conforms to the necessary setbacks for the zone, and that the plan calls for a retaining wall and a detention filtration system on the eastern side of the property, and indicated that the Applicant did not have a landscape plan or a tree replacement plan at which time the Applicant asked to be carried to the next hearing; and

WHEREAS, Mr. Delaney continued his testimony at the next hearing, at which point he testified about the grading and landscape plan, a reduced size of the retaining wall from 7 ½ feet to 5 ½ feet, and that this wall was pulled off the lot line and farther into the property, the wall will be constructed with modular block material, he discussed the trees slated to be removed and the quantity and size of the planned replacement trees; and

WHEREAS, the Applicant offered the testimony of Michael Petry, a New Jersey licensed professional engineer, architect and planner of the State of New Jersey, who was offered and recognized by the Board as an expert professional planner for this Application, Mr. Petry testified about the project which includes a variances for steep slope and undersized lot, that the Applicant cannot cure the need for variance by use of the adjoining lot due to the non-conforming garages on the adjoining properties, that 5 of the 8 lots on the block are undersized in width, (less than 50 feet wide), that the proposed structure is suited to the property because it is modest by today's new construction standards in that it has only a 1,191 square foot footprint, and that the existing conditions drive the need for the variances, that the variances can be granted and justified under a C-2 criteria by the MLUL purposes under N.J.S.A. 40:55D-2, sections b (to prevent flooding) e (control population density) and i (creating a desirable visual environment while keeping within the size of the surrounding properties), and that the only possible detriment to the Application is loss of open space, however, the lot is currently poorly maintained, on a slope and the proposed Application completes the neighborhood, that the positives outweigh the negatives, it is an appropriate size home for the lot, that meets all necessary setbacks, Mr. Petry went on to comment about height and caliper of the proposed trees and the screening that will be

afforded to the neighbor, the Applicant is adding a drainage system, so that as far as the negative criteria, there is virtually no detriment to the surrounding properties and that he believes that the Application presents no substantial detriment to the public good or public welfare and no impairment of zone plan or zoning ordinance; and

WHEREAS, the Applicant offered the following exhibits;

A-1 colorized version of proposed floor plan;

A-2 colorized version of architect's elevation plan;

A-3 colorized grading plot plan;

A-4 colorized version of grading plot plan;

A-5 colorized landscaping plan;

A-6 panoramic photo board of houses on same side of street;

WHEREAS, members of the Board questioned the Applicant's witnesses; and

WHEREAS, the following members of the public questioned the Applicant's witnesses:

Kevin Malanga, 57 Ridge Road, questioned Mr. Baldanza about the width of the structure, and whether or not it was compatible in size and style with the neighborhood, Mr. Baldanza answered affirmatively, and Mr. Malanga then asked how many cars the garage will hold. He further questioned Mr. Delaney about location of the swales on the property, the location of the retaining wall and its visibility, about soils and trees to be removed, the method of

excavation planned and the species of the replacement trees planned;
and

WHEREAS, the following members of the public spoke regarding the Application:

Kevin Malanga, 57 Ridge Road, urged the Board to carefully consider replacement tree species and to require a maintenance plan to maintain the replacement trees; and

WHEREAS, the Board considered the report of Paul Grygiel, Township Planner dated April 8, 2021, and his testimony at the hearings; and

NOW THEREFORE, the Board hereby makes the following Findings of Fact and Conclusions of Law:

1. The Applicant is the owner of the property located at 17 Wheatland Avenue, West Orange, New Jersey also known as Block 39, Lot No. 56.06 on the Tax Map of the Township of West Orange and located in the R-6 zone.
2. The Applicant requires seven "c" bulk variances , to wit:
 - (1) a "c" variance for minimum lot area for dwelling unit of 5,789 square feet when 6,000 square feet is required; (2) a "c" variance for maximum (effective) building coverage of 64.48% when the maximum permitted is 35%; (3) a "c" variance for maximum (effective) lot coverage of 116.24% when the maximum permitted is 45%; (4) a "c" variance for maximum disturbed steep slope of 100% when only 60% is permitted in

areas of grade of 10 to 14.99%, 40% is permitted in areas of grade of 15 to 19.99%, 20% is permitted in areas of grade of 20 to 24.99%, and 0% is permitted in areas of steep slope greater than 25%; (5) a "c" variance for disturbance of steep slope greater than 25% when no disturbance is permitted, and (6) a "c" variance for minimum effective lot are of 1,847 square feet when 6,000 square feet is required, and (7) a "c" variance for tree removal of more than 30% of existing trees, all to build a new single family home on an undersized lot.

3. The variances requested are justified under the C-2 criteria by sections b (to prevent flooding) e (control population density) and i (creating a desirable visual environment while keeping within the size of the surrounding properties).
4. The positive criteria as cited above outweigh the negative criteria in this matter with the addition that the house is appropriately sized for the lot and the neighborhood, the home meets all necessary setbacks, the Applicant is adding a drainage system and landscape buffer, so that that there is virtually no detriment to the surrounding properties.
5. The Application presents no substantial detriment to the public good or public welfare and no substantial impairment

to the general purposes of the Township's Zone Plan, Master Plan or Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED, that the Zoning Board of Adjustment of the Township of West Orange, based upon the findings and conclusions aforesaid, and upon the Laws established in the State of New Jersey grants the following variances:

1. a "c" variance for minimum lot area for dwelling unit of 5,789 square feet when 6,000 square feet is required.
2. a "c" variance for maximum (effective) building coverage of 64.48% when the maximum permitted is 35%.
3. a "c" variance for maximum (effective) lot coverage of 116.24% when the maximum permitted is 45%.
4. a "c" variance for maximum disturbed steep slope of 100% when only 60% is permitted in areas of grade of 10 to 14.99%, 40% is permitted in areas of grade of 15 to 19.99%, 20% is permitted in areas of grade of 20 to 24.99%, and 0% is permitted in areas of steep slope greater than 25%,
5. a "c" variance for disturbance of steep slope greater than 25% when no disturbance is permitted.
6. a "c" variance for minimum effective lot are of 1,847 square feet when 6,000 square feet is required.
7. a "c" variance for tree removal of more than 30% of existing trees, all to build a new single family home on an undersized lot.

BE IT FURTHER RESOLVED that the grant of said variances shall be conditioned upon the Applicant's full and complete satisfaction of the following conditions:

1. The architectural plans will be revised to remove the powder room from the basement area.
2. There shall be no occupancy in the basement other than storage without specific application to this Board.
3. The Applicant will submit a maintenance plan for all replacement trees, (which plan shall require replacement of any dead trees in the very next planting season), such plan shall be subject to the reasonable approval of the Township Planner and the Applicant will adhere to same for a two-year period after the date of the final certificate of occupancy is issued for this property.
4. All representations, testimony and evidence elicited at the hearing in this matter are binding on the Applicant and are additional conditions of approval.
5. All conditions hereby listed will appear on the Final Site Plan to be filed with Township and are made an integral part of this approval.

A motion to grant the Application as set forth above was made by Chairman Neuer and seconded by Mr. Redwine and voted upon as follows:

	Ayes	Nays	Abstentions
Eben	Y		
Redwine	Y		
Sussman	Y		
Weiss	Y		
Neuer	Y		

Those in Favor:

Those Opposed:

Abstention:

I hereby certify that the foregoing Resolution was adopted by the Zoning Board of Adjustment of the Township of West Orange at its meeting of August 18, 2022 and that said Resolution memorializes the action of the Zoning Board taken at its meeting held on July 21, 2022 granting the application by a vote 5 in favor, 0 against and 0 abstentions.

August 18, 2022



Diana L. Chandler
Board Secretary