

W.O. PLANNING AND
DEVELOPMENT DEPT.

MAY 9 3 51 PM '02
BOARD OF ADJUSTMENT
OF

ZB-84-21

THE TOWNSHIP OF WEST ORANGE

R E S O L U T I O N

ZB 02-27

WHEREAS, J. PETER RUSH, is the purchaser under contract of premises known as 64-A, Block 84-A, as shown on the tax map of the Township of West Orange; and

WHEREAS, the said J. Peter Rush has made application to the Zoning Board of Adjustment for a use variance pursuant to N.J.S. A. 40:55-D70(d), for permission to use an existing one family residential dwelling house as a commercial office, and to erect an accessory free standing sign, and for site plan approval; and

WHEREAS, the Board of Adjustment has considered the application together with drawings submitted, as well as the testimony offered in support of the application, and has also considered the comments of the public at the hearings as noted in the appropriate minutes of the Zoning Board of the Township of West Orange, and based upon the foregoing has made the following factual findings of fact at the public hearing held on December 11, 1984:

1. The premises are owned by George Altman.
2. J. Peter Rush is a purchaser under contract of the premises.

3. The subject premises are located in the P.U.R.D. Zone District.
4. The uses permitted by the Zoning Ordinance in the P.U.R.D. Zone District are limited to single family residential dwellings, townhouses, garden apartments and apartment buildings.
5. The premises fronts on Prospect Avenue having frontage of approximately 183 feet and being approximately 167 feet in depth.
6. The single family residence situate on the aforesaid premises consists of a two story stone veneer building approximately 37.5 feet wide and 26.5 feet deep.
7. The dwelling house is approximately 44 feet from the right of way line of Prospect Avenue and is located approximately 55.5 feet from the easterly sideline and 99.55 feet from the westerly sideline. The building and more specifically the attached two story garage at the rear of the building is 44.75 feet from the rear line.
8. In the vicinity of the subject premises on Prospect Avenue, except for the nearby substantial condominium complex, can be found a majority of non-residential uses including restaurants, offices, and immediately opposite the subject premises across Prospect Avenue, a substantial shopping center.
9. The applicant proposes to use the subject property as a real estate sales office.

10. The only exterior structural change involves the squaring off of the building resulting in a gross square foot increase of 745 square feet.
11. Applicant proposes to improve the appearance of the structure by improving the landscaping and general condition of the premises.

Based on the foregoing, the Zoning Board of Adjustment reaches the following conclusions:

1. The premises is and has for many years been used as a single family residence. The area surrounding the subject premises, although zoned in such a way as to permit single family uses, has been developed in a manner more consistent with commercial and multi-family uses than single family uses. Accordingly, the single family use of the premises is not compatible with the surrounding area.
2. In consequence of the foregoing, there is substantial potential in the immediate future for deterioration and obsolescence of the dwelling house if it must continue to be used as a residential dwelling.
3. The proposed use is more compatible with the surrounding area than the existing use and in conversion of the structure to the more compatible real estate sales office will tend to prevent its deterioration and obsolescence, all of which will tend to benefit the surrounding area by encouraging business activity in an area which has predominately business uses.

4. Because the existing use is not compatible with the surrounding area and the proposed use is, it is the conclusion of the Board of Adjustment that this unique condition represents a special reason justifying the granting of a Use Variance particularly where it appears as it does here that the existing permitted use may tend to impair the surrounding area whereas the proposed non-permitted use will tend to improve it.
5. For the same reasons the Board concludes that what is proposed will neither be substantially detrimental to the public good, nor will what is proposed cause substantial detriment to the zoning scheme and the plan of the Township of West Orange.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of West Orange, on this 17th day of January, 1985, that the application of J. Peter Rush to convert the existing structure to a commercial office and erect a free standing sign is hereby granted, subject to the following conditions:

- A. Approval of this Board of a Site Plan within six (6) months of the date of this Resolution, pursuant to proper application on notice as required by law.

B. Approval of the Site Plan by the Essex County Planning Board.

C. Approval of the Site Plan by the Hudson, Essex, Passaic Soil Conservation District.

THOSE IN FAVOR

DAN GALATE

THOMAS QUIGLEY

NICHOLAS VECCHIO

THOSE OPPOSED

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of West Orange meeting on January 17, 1985.

Marion Ehrhart
MARION EHRHART, SECRETARY

DATED: January 17, 1985

PLANNING AND
DEVELOPMENT DEPT.

MAY 9 3 46 PM '02

BOARD OF ADJUSTMENT
OF
THE TOWNSHIP OF WEST ORANGE

ZB-84-21

R E S O L U T I O N

ZB 02-27

WHEREAS, J. PETER RUSH, 460 Prospect Avenue, West Orange, New Jersey, has applied to the Board of Adjustment of the Township of West Orange for site plan approval of premises known as 460 Prospect Avenue, Block 84A, Lot 64A; and

WHEREAS, the applicant has met the jurisdictional requirements of the Zoning Board of West Orange and the New Jersey Statutes; and

WHEREAS, on January 17, 1985, a Resolution was adopted by the Board of Adjustment of the Township of West Orange granting permission to use the existing one family residential dwelling house as a commercial office, and to erect an accessory free standing sign, subject to the conditions enumerated therein; and

WHEREAS, an application was made for site plan approval on December 27, 1984; and

WHEREAS, the Board of Adjustment of the Township of West Orange on January 17, 1985, approved the application for site plan approval subject to conditions.

NOW THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of West Orange on this 14th day of February, 1985, that the site plan application of J. Peter Rush, prepared by G.C. Stewart Associates, as amended on January 16, 1985, shall be and is hereby approved subject to the following condition:

The applicant shall apply to the Villas at Eagle Ridge for sanitary and storm drain easements.

THOSE IN FAVOR

DAN GALATE

THOMAS QUIGLEY

NICHOLAS VECCHIO

PEG SEELIG

THOSE OPPOSED

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of West Orange meeting on February 14, 1985.

Marion Ehrhart
MARION EHRHART, SECRETARY

DATED: February 14, 1985

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

RESOLUTION ZB / 02-27

WHEREAS, Weichert Realtors, having its main office at 1625 Route 10, Morris Plains, New Jersey 07950, ("the Applicant"), has applied to the Zoning Board of the Township of West Orange, ("The Board") regarding premises 460 Prospect Avenue, West Orange, New Jersey, being Block 105, Lot 64.01 on the Tax Maps of the Township of West Orange and located in the PURD Zone for a "D" variance for said location occupied by it as the tenant of James M. Weichert, the owner, who has consented to the application in writing, seeking to construct a two-story 2,730 square foot addition onto the rear of the existing office building used as a realtor's office and requiring a "D" variance because the original use is non-conforming and is being expanded, and two "C" variances for lot width and side yard set back, and two additional "C" variances for rear yard set back and impervious surface coverage; and also seeking site plan approval; and

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

WHEREAS, the Applicant submitted proof of service of notice of the hearing upon all the property owners within 200 feet of the property; and

WHEREAS, the application was heard at public meetings of the Board on August 22, 2002 and September 19, 2002; and

WHEREAS, the matter was presented by Robert Gaccione, Esq. as attorney for the

Applicant; and

WHEREAS, submissions from the Applicant included architectural plans A1 - A5 prepared and signed by David N. Bilow, licensed architect of the State of New Jersey, and dated April 11, 2002; Engineering Plans 1 through 5 prepared and signed by Charles J. Stewart, licensed engineer of the State of New Jersey dated March 15, 2002, and property survey prepared and signed by James T. Stewart, licensed land surveyor, dated December 26, 1984; and Resolution ZB-84-21 and adopted by the Board of Adjustment of the Town of West Orange dated January 17, 1985 granting a use variance for the subject premises to permit it to be used as a commercial office and by a Resolution by the same Board of Adjustment of the Township of West Orange, adopted February 14, 1985 approving the site plan approval for the said property subject to the Applicant applying to the Villas at Eagle Ridge for sanitary and storm drain easements; and the easement agreement dated October 18, 1985 and recorded in Book 4908 Page 871 of Deeds for Essex County made between the Villas at Eagle Ridge Club Condominium and James M. Weichert for the subject property formalizing the easement agreement to allow Weichert to connect into the sanitary sewer pipes and storm water pipes currently located on a portion of the Serviant estate; and

WHEREAS, various witnesses were presented on behalf of the Applicant in support of their application which included Ronald DePiro, the manager of the Weichert office at 460 Prospect Avenue, West Orange, New Jersey. He pointed out that he has been the manager for some 7 years and that they have 70 licensed agents with 55 on a regular basis but that there are never anymore than 15 or 20 agents at any one time at the

premises which they use for general office purposes, computer space and seeing customers, although much of the business is done at the home or premises being sold rather than at the office. He pointed out that they do not plan to have anymore agents or employees if the expansion approval is granted but rather it will enable them to have more room for the computer area which is needed and more space for interview of customers and for storage of records and other related business which includes the space for the mortgage officer who must come in and talk to the customer for which purpose additional room is needed to make it more user friendly and to have greater efficiency as there will be more computers and sharing of desks as required. The number of agents and employees will remain the same so that the traffic flow would not be increased beyond what the application calls for.

The next witness sworn was David N. Bilow, who is a licensed architect of the State of New Jersey for some 34 years and also a licensed professional planner of the State of New Jersey for 14 years, dealing primarily in a commercial practice and having prepared the architectural plans in this matter. He described the plans and pointed out that they seek approval to construct a two-story 2,730 square foot addition onto the rear of the existing office which would be an expansion of the existing real estate office use. Accordingly, since the original use was non-conforming as a one-family house and we are expanding the "D" variance previously granted, a further "D" variance is required for same. He pointed out that in addition there are "C" variances required for lot width and side yard set back and for rear yard set back and impervious surface coverage being a lot width existing of 164.93 feet whereas 300 feet is required, side yard of 42.81 feet existing

whereas 50 feet is required; a rear yard of 31.43 feet instead of 50 feet as required and impervious coverage of 46% instead of 35% as permitted. He pointed out that the existing two-story structure is 3,404 square feet so that the total size of the structure will be 6,134 square feet. He pointed out that they propose to place a sidewalk around the building and extend the north end of the existing parking lot by two parking spaces and will provide an entirely new parking lot for 10 parking spaces at the southern end of the property. They will preserve as many of the trees as they can that exist there by arranging the sidewalk and parking lots around them. Parking will include a handicapped spot next to the front of the building in accordance with the requirements of the American With Disabilities Act. This will be van accessible. Necessary signage for same will also be provided. He further indicated that no elevator was required for the building with the addition. He further indicated there would be parking for 19 spaces in the front and that on weekends and evenings when they were not in operation they allowed The Gatehouse Restaurant to have parking there for their customers. With The Gatehouse being replaced by a new entity, they will continue the same arrangement with the new entity.

Since this is the expansion of an existing non-conforming use, the proofs are less stringent and less severe in connection with establishing the criteria to satisfy the need for the "D" variance and that the positive and negative criteria were met. He indicated that there was no detrimental effect to the surrounding area as the premises had been in use for many years without any problems and that there was no detrimental effect to the premises or anyone in the area or any user of any surrounding property. He pointed out that the property was particularly suitable for the purpose because it was already in use

and that the special reasons were to make the operation more meaningful and more useful to the Applicant which would promote the general welfare without any detriment.

The next witness was Charles J. Stewart, licensed engineer and surveyor, who testified to the engineering aspects involved and referred to the copy of the plan which was marked A-6 and described the site. He indicated that there would be proper landscaping pursuant to a plan that was submitted to the Township Planner and that evergreen planting in the rear would constitute a buffer and that they will reconfigure the sidewalk and parking area so as to save the existing trees. The existing hedge along the pavement shall be eliminated and the lighting to be added shall match that which is there. He pointed out that the drainage was satisfactory by using the existing detention basin with a new storm drainage inlet and new pipelines to tie in. He further indicated that the existing entrance for two way traffic onto Prospect Avenue and onto the driveway along the property line would provide safe ingress and egress for use by persons coming there; and

WHEREAS, various members of the Board questioned the various witnesses and their attorney; and

WHEREAS, the testimony and report of Susan Borg, Township Planner, and the testimony and report of Allan J. Palmere, Assistant Municipal Engineer, were considered; and

WHEREAS, no one else appeared in favor of the application and no one else appeared either opposed to the application and no one else testified either for or against the application; and

WHEREAS, all the facts and data contained in the submitted application and all the

facts and testimony adduced at the public hearing on said application are incorporated herein as findings of fact of this Board as if set forth at length herein; and

**WHEREAS, THE BOARD HAVING MADE THE FOLLOWING SPECIFIC FINDINGS
OF FACT AND CONCLUSIONS:**

- A. Applicant is the tenant in occupancy of premises at 460 Prospect Avenue, West Orange, New Jersey, Block 105, Lot 64.01 on the Tax Maps of the Township of West Orange in the PURD Zone, being Weichert Realtors, which premises are owned by James M. Weichert, who has consented to the application.
- B. The property is used as a real estate office. As indicated in the prior resolutions adopted by the Zoning Board of West Orange, being ZB-84-21 adopted on January 17, 1985 granting a "D" variance to convert the existing one family dwelling into a commercial real estate office, and for the resolution adopted February 14, 1985 granting site plan approval and conditioning it upon the application to the Villas at Eagle Ridge for sanitary and storm drainage easements. It was also noted that the easement agreement had been executed between the Villas at Eagle Ridge Club Condominium Association Inc. and James M. Weichert for the subject property dated October 18, 1985 and recorded in Book 4908 of Deeds for Essex County at Page 871 whereby Weichert was granted the right to utilize the 15 inch reinforced concrete pipe for storm water drainage and the existing 8 inch pipe for sanitary sewer drainage.

- C. The evidence presented indicates the desire to construct a two-story, 2,730 square foot addition onto the rear of the existing office to permit the additional room needed for the real estate operation.
- D. In connection therewith, because the use was a non-conforming one that had been granted a "D" variance, and now the use is being expanded, a further "D" variance is required for that use. In addition "C" variances are needed for lot, width and side yard set back and rear yard set back and impervious coverage. The "C" variance required for the lot width involves the existing 164.93 feet against 300 feet required. The "C" variance for the side yard is the existing 42.81 feet instead of 50 feet as required. The "C" variance for the rear yard is 31.43 feet instead of 50 feet as required and the impervious coverage is proposed as 46% instead of 35% as permitted.
- E. The foregoing "C" variances will permit them to install an entirely new parking lot consisting of 10 parking spaces at the southern end of the property and a sidewalk around the building and extending the north end of the existing parking lot by 2 spaces. In doing so they will configure the sidewalk and parking space to avoid the removal of the existing trees.
- F. With the addition proposed, the Applicant would have more room for the computers that they need and have to expand and more space for meeting with customers although the number of real estate agents working from the location and the employees working therefrom will not increase.
- G. The Applicant also seeks approval of the preliminary and final site plan in

addition to the variances sought.

- H. The burden of proof for the granting of the use variance is less than the usual burden for a "D" variance because the property is a non-conforming commercial use that is being expanded.
- I. Through the evidence presented and the various witnesses, the positive and negative criteria were met and it was pointed out that there would be no substantial detriment to the neighborhood or to the public good, safety and welfare and the proposed variance will greatly improve the property and the neighborhood.
- J. The benefits that would arise from the granting of the use variance would be that the property would be greatly improved and no longer be inadequate for the needs of the Applicant and would be used for purposes that would increase the utility of the property and therefore benefit the neighborhood.
- K. To grant applicant's relief would not substantially impair the intent and purpose of the zoning Ordinance and Master Plan of the Township of West Orange.
- L. Benefits arising from the granting of the variances will improve the property and be a positive impact for the neighborhood without having any negative impact on the neighborhood.
- M. The various "C" variances sought are necessary to the proper development of the property.
- N. The proposed application advances the purposes of the Municipal Land Use

Laws enunciated in N.J.S.A. 40:55d-2.

- O. Granting the application will not negatively impact on the character of the neighborhood and will not negatively affect the other premises in the neighborhood.

A motion to approve the application for a "D" variance to permit the construction of a two-story, 2,730 square foot addition on the rear of the existing real estate office at 460 Prospect Avenue, West Orange, New Jersey and for the various "C" variances requested as above stated as will be detailed below was made by Bruce Buechler and seconded by William Flannery and voted upon as follows:

<u>AYES</u>	<u>NAYS</u>	<u>ABSTENTIONS</u>
Blind Buechler Flannery McElroy Ricci	0	0

NOW, THEREFORE, be it resolved that the Zoning Board of Adjustment of the Township of West Orange, based upon the Findings of Fact and Conclusions aforesaid and upon the laws established in the State of New Jersey hereby grants the application of Weichert Realtors for a "D" variance for premises at 460 Prospect Avenue, West Orange, New Jersey, being Block 105, Lot 64.01 on the Tax Maps of the Township of West Orange and located in the PURD Zone to construct a two story, 2,730 square foot addition to the rear of the existing real estate office so as to provide more room for the operation; the owner of said property James M. Weichert having consented thereto, and for preliminary and final site plan approval and for the granting of the following "C" variances

as required in accordance with the plan submitted:

1. Lot width of 164.93 feet as it exists instead of 300 feet as required.
2. Side yard of 42.81 feet as it exists instead of 50 feet as required.
3. 31.43 feet for rear yard instead of 50 feet as required.
4. 46% of impervious coverage instead of 35% as permitted.
5. The foregoing shall accommodate the additional parking that is required in the form of 10 parking spaces at the southern end of the property with two additional at the northern end and with a handicapped parking space in the front in accordance with the Americans With Disabilities Act; and

NOW, THEREFORE, be it further resolved that the grant of the said variances shall be conditioned upon the Applicant's full and complete satisfaction of the following conditions:

1. The basement at the premises 460 Prospect Avenue, West Orange, New Jersey shall be used only for storage purposes.
2. A landscaping plan shall be submitted to Susan Borg, Township Planner, for her approval, and the landscaping shall be installed in accordance therewith.
3. All landscaping shall be maintained in perpetuity so as to require the Applicant to replace all shrubs and/or landscaping that dies in the future with shrubs and/or landscaping equal to or better than that which is there.
4. Amended plans changing the configuration of the sidewalk on the southern side of the building to accommodate keeping as many existing trees as is possible, shall be submitted before a building permit is obtained for the

approval by the Township Planner and the Office of Municipal Engineering.

5. The addition shall be constructed to match the existing structure in material, color, and style.
6. A signature shall be provided on the plans that have been submitted for the Zoning Board Chairman, Secretary and Municipal Engineer to sign, same to be done before a building permit is applied for.
7. The parking space in the front shall provide for one parking space that complies with the Americans With Disabilities Act to be van accessible and to be 8 feet wide with an 8 foot access aisle.
8. The three required signs that must be provided for the foregoing shall be done in accordance with the act in the form of the accessibility sign, the penalty sign, and the van accessible sign, all of which must be shown on the plans.
9. The plans shall be amended as required to reflect the foregoing and shall be submitted to the municipal engineer for approval before a building permit can be obtained.
10. All new parking spaces shall be dimensioned and shall be shown on the plans accordingly. If amended plans are required to show this, they shall be submitted to the office of municipal engineering for approval before a building permit can be obtained.
11. The curb ramp shall be located at the access aisle instead of in front of the building, thus providing the shortest route to the accessible building entrance as provided by the Americans With Disabilities Act.

12. The Applicant shall pay a supplemental sewer fee of \$1.43 per square foot for 2,750 square feet, the proposed addition, or \$3,932.50 in accordance with Ordinance Number 1328-95.
13. The project is also subject to a development fee in accordance with Ordinance Number 1136-92.
14. The Applicant shall obtain a tree cutting permit before the removal of any trees.
15. Conditions and approvals granted herein are conditioned upon the West Orange Fire Department Approval.
16. All Findings of Fact and Conclusions of Law set forth herein are deemed conditions that are binding upon the Applicant.
17. The Applicant shall execute, prior to the issuance of a Certificate of Occupancy, an Affidavit of Compliance certifying that they have fulfilled all conditions set forth which shall be to the satisfaction of the Township Planner, Engineering Department and Building Department of the Township of West Orange, who shall be furnished with a copy of this Resolution. No Certificate of Occupancy shall be issued until receipt of an executed Affidavit of Compliance approved and signed by the Zoning Official.

Moved By: Mr. Blind

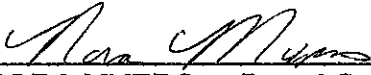
Seconded By: Chairman Buechler

Those In Favor: 5

Those Opposed: 0

Abstentions: 0

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 October 17, 2002 and that said Resolution memorializes the action of the Zoning Board taken at its meeting held on September 19, 2002 granting the application by a vote of 5 to 0.



NORA MYERS, Board Secretary

Dated: October 17, 2002