

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT MEETING**

May 20, 2021

8:00 P.M.

The West Orange Zoning Board of Adjustment held a meeting on May 20, 2021 commencing 8:00PM utilizing the virtual Zoom platform.

Chairman Neuer called the meeting to order at approximately 8:03 P.M. 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.

Alice Beirne Esq., read the opening statement.

Present:

Jerome Eben, Philip D. Neuer, Bart Quentzel, Jonathan Redwine, Peter Ricci,
Irv Schwarzbbaum, William Steinhart, Dr. Michael Straker, Mark Sussman (arrival
8:08PM), Alice Weiss

Absent: M. Straker [excused absence]

Also Present: Paul Grygiel, Acting Planning Director for Township

John Hess, Consulting Engineer for the Township

Alice Beirne, Esq. Board Attorney

Diana L. Chandler, Acting Board Secretary

ANNOUNCEMENTS

Meetings: June 10, 2021 (Special Meeting)

June 17, 2021 (Regular)

July 15, 2021 (Regular)

SWEARING IN

Township Professional(s)

RESOLUTIONS

1) **ZB-21-02/Santiago**
Block: 85.06; Lot:2; Zone: R-5

(Approved 4/15/2021)

205 Mt. Pleasant Avenue.

“C” Side Yard Variance to replace front and side decks with a wraparound porch.

[Changes to Original Variance Request](#)

Motion: Mr. Schwarzbaum

Second: Mr. Redwine

ADOPTED

Eben:	Y	Straker (Alt.4):	
Quentzel (Alt. 1):		Sussman (Alt. 3):	
Redwine:	Y	Weiss:	Y
Ricci:	Y	Chairman Neuer:	Y
Schwarzbaum:	Y	Yes: 6; No: 0	
Steinhart:			

APPLICATIONS

1. 1. ZB -19-10/955 Pleasant Valley Way, LLC

Carried from 3/29/2021

Block: 172.02; Lots: 8.01 & 8.03; Zone B-2

955 & 963 Pleasant Valley Way

Seeking “d” use and height variances and “c” variances and preliminary and final major site plan approval to construct a four (4) story self-storage facility.

Presentation:

Jason Tuvel, Esq. (applicant’s attorney) entered his appearance on the record. Ms. Rhonda Reinstein was designated the official court reporter for this application.

Prior hearings on this matter were:

February 20, 2020

July 16, 2020

August 20, 2020

September 24, 2020

November 19, 2020

January 21, 2021

March 29, 2021

- *Chairman Neuer* stated for the record that all members of board who may have missed one or more meetings have certified that they have either listened to the audio or read the transcripts so all regular members of the Board are eligible should this matter come to a vote at this meeting.

– *Mr. Tuvel* explained that after the 3/29 Meeting, the main issue of comment discussed was the disturbance of the slope. The applicant reduced the building size once again. The reduction moved the building further away from the cliff by nearly sixteen feet, thereby reducing the

disturbance to the steep slope. This also reduced building coverage by 14%. Another thing done was a large change to the architectural plan but added an additional feature of shutters to the building to break up the facade and make it look more residential in nature.

- *Mr. Jeffrey Martell* was sworn under oath and presented his credentials as an in the field of civil engineering; Mr. Martell is a licensed professional engineer in the State of New Jersey and he was accepted as an expert. The witness showed the core changes made to the Site Plan based on the reduction in the size of the building, how it affects the rear set back as well as the buffer to the rear (referring to **Exhibit A-26** dated May 7th 2021). Generally speaking, the applicant has pulled the building back to reduce the depth of the building. The steep slope to the rear of the property begins about two-thirds of the back and the construction disturbance in the slope is significantly reduced. The witness referenced an updated version of what was marked for identification as **Exhibit A-27**. Full elevations and floor plans show the shutters that were introduced, the planter areas, etc. A Site Plan rendering dated May 7, 2021 was marked for identification as **Exhibit A-28**. Based on these revisions, more than double the Slope stabilization will be implemented. A cross section comparison exhibit dated May 7, 2021 was marked for identification as **Exhibit A-29**. The site plan rendering, elevations and floor plans are based on all these latest changes on the architectural plans. The application meets or exceeds all the residential setback and buffer requirements and the latest change caused the reduction in building coverage and lot coverage by approximately 14%.

Board Questions:

- *Mr. Eben* asked why landscaping isn't being filled in? Last time it was relatively close to the rear of the building. There could be additional landscaping added into that void created by the reduction of the size of the building. *Mr. Martell* responded that they obviously wanted to keep the landscaping output on the higher side of the Hill so it would be effective as a buffer for the neighboring properties.

- *Mr. Eben* asked about the percentages that were violating steep slope requirements and how much of the slope has been in violation. *Mr. Martell* explained that the steep slope calculations are on Sheet T-17 in the Site Plan set. The calculations are all there.

- *Mr. Peter Ricci*, asked if by moving the building and cutting off several feet is it more than one story and is actually below grade. **NOTE**

Commented [PDN1]: What was the response?

-*Mr. Eben* stated his interpretation of the calculation of the lot coverage due to the steep slope application. He then quoted the steep slope and natural features ordinance. Section 25-28 of the Land Use Regulation Ordinance or zoning ordinance of the Township code stating that applicant cannot cover this much of the lot.

PUBLIC QUESTIONS

-*Kevin Malanga* (57 Ridge Road) Asked whether the applicant would consider filling in some of the slope and putting soil on top of the slope to create a condition to get water pitched positively away from the area. This is the side of the building, so that it is really kind of following the existing grade. *Mr. Martell* explained that sloping the area from the rear wall of the building

towards the front wall of the building is not the correct analysis. The steep slope area is the whole site where it has a steeper slope area of 25% or greater and generally ends, then the site topography flattens out where the areas previously developed in the center of the property. *Mr. Martell* said that what has been done to this steeper slope areas (areas over 25%), was that sixteen feet has been taken off the back of the building to reduce encroachment into that slope.

-*Mrs. Sally Malanga* (57 Ridge Road) wanted to understand the encroachment on the steep slope because from the drawings it seemed that the slope is not encroaching at all *Mr. Martell* explained that it requires reviewing cross sections, grading plans and the detailed engineering plans to see the full story. Grading and excavating the slope as opposed to putting additional soil on top of the slope to control the drainage coming down the hill will stabilize the slope and create a flat area behind the building; that can control the runoff and correct it.

-*Mrs. Sally Malanga* asked what will happen to the trees in this area now? How many trees have to be removed from that area? *Mr. Martell* explained that the setback area where they are using fill there will be generally little vegetation.

-*Mrs. Sally Malanga* asked if there was any drilling required now for this plan. *Mr. Martell* explained that 25% will be excavating foundation doing things of that nature. But only on 25% of the slope.

PUBLIC COMMENT

-*Mr. Manuel Lim*, (938 Pleasant Valley Way) was sworn Under oath. *Chairman Neuer* reminded *Mr. Lim* that he is limited to additional testimony based upon the testimony adduced this evening. *Mr. Lim* testified that self-storage units are undesirable uses. In his opinion, if this site is so particularly suitable and one must question why a variance for building coverage of 40% greater coverage is required and it is apparent to *Mr. Lim* that the applicant has not shown sufficient reasons for the grant of the use variance. He brought up an example of the manhole at 955 Pleasant Valley Way where the patrol car shows up a few minutes later and the officer would restore the manhole cover and the pressure has resulted in a sinkhole in the middle of the street that the existing storm drain system downstream of this site is barely able to accommodate. This application adding approximately 21,000 square feet of additional impervious surface flow would double the intensity and volume of water flow. Short of a major improvement in the Storm drain line, the addition will exacerbate existing conditions. Even though the applicant has designed for underground detention, this will simply supercharge the underwater table which will result in flooding that will move contaminants from this property.. Because of all this and more, *Mr. Lim* recommends rejecting the variance requested by the applicant.

-*Ms. Leanna Torrice* (21 Ronald Terrace) was sworn under oath. and testified that with the new school bus transportation going on and where the walking distance to school is 2 1/2 miles, what is the impact on children walking to their schools? *Chairman Neuer* explained that there was traffic testimony, a number of meetings ago, but we don't have a traffic engineer here, *Mr. Tuvel* responded in the affirmative that at this meeting they don't have anybody at this meeting to respond to that question.

PUBLIC HEARING CLOSED

CLOSING STATEMENTS

-*Mr. Tuvel* explained that with the Board's and the Public's help in providing comments, this project is even better than when it first began. When first proposed, this project required a height variance. It was several stories greater than what it is today Since then, the building's been reduced to 85,679 square feet and the height variance associated with this application is no longer necessary.

-In terms of landscaping, the applicant substantially increased the landscaping in the buffer area even further today by increasing the buffer over sixteen feet. The application meets or exceeds all the set back and buffer requirements.

-Signage has been reduced and is now compliant with the West Orange Ordinance.

-Parking variance that was initially associated with the project has also been eliminated with more parking and loading areas added and based on the reduction of the building size.

-Storm Water Management has been improved and have met ordinance requirements.

-One substantial change made to this application, is the architecture and the look of the building. The Board challenged the applicant to have building look more residential in nature. To meet this, a number of items have been added and the roof was made more aesthetically pleasing for residents above the property.

-To summarize in respect to traffic, in the morning peak hour this site would generate only five cars coming on to the site in the morning. At evening, peak hour only eight cars coming on to the site and off and on the weekends. The traffic engineer gave many examples of uses that are permitted in the zone that would be exponentially greater.

- *Ms. Joyce Rudin* (38 Woodland Ave), had her hand raised but was just now recognized. *Ms. Rudin* was sworn under oath and testified that even though the applicant has really jumped through hoops to try to satisfy a lot of the conditions there are still some very important things that have not been addressed. This application has a huge impact on our community for a very long time and it is not the appropriate site. It was said in earlier testimony that there will be nobody at the site who could provide surveillance between the hours of 10:00PM – 6:00AM.

- *Ms. Rudin* added that while the reduction in size and the reduced disruption to the steep slope is appreciated, the testimony tonight still said that there will be disruption to the slope and this could cause a landslide. In earlier testimony it was cited that the impact is to the hillside will be unknown until the drilling starts and at that point the engineer stated that they may have to stop and reassess as they are drilling in each pile. While she knows it is a difficult location to find a business, in her opinion it is not the job of the Zoning Board to approve of this but it is the job of the Zoning Board Members to assure that our community is safe and that any application will assure the Community safety. *Ms. Rudin* urged Board to vote against this proposal.

-*Mr. Tuvel* responded to *Ms. Rudin's* comment that it will only be open 6am to 10:00PM and would be closed to the public at all other times. There was extensive environmental testimony to comply with NJDEP requirements, the steep slope has been reviewed by the applicant's engineer and the Board Engineer as well. Applicant has met all standards and methodologies to stabilize and keep the slope safe and actually make it better than it is today.

BOARD DISCUSSION

- *Mrs. Weiss*, asked for clarification in regards to the hours of operation and entrance after 10:00PM. *Mr. Tuvel* responded that nobody can enter after 10:00PM. *Chairman Neuer* asked for confirmation that no one will be able to go in and out. *Mr. Tuvel* answered in the affirmative.

-*Mr. Schwarzbaum* said there has been a lot of discussion in regards to the slope of the property. It looks like there is a substantial amount of soil erosion currently on the property and the applicant has indicated that they are going to put in stabilization mats which I believe that what is proposed will be a substantial improvement. If nothing is done to this property, there is potential that the soil erosion could impact the property at the western side on the hill. The property will continue to experience erosion if it is not stabilized and eventually it could start impacting adjoining properties. The applicant has been very responsive to the suggestions and comments from the board as has been indicated, and without substantial impairment to the intent

and purpose of the zoning plan and the zoning ordinances of the municipality, the proposed self-storage facility is consistent with the type of uses permitted, much lower traffic generation than the permitted uses. While the site is in proximity to residential uses, it is not located in the middle of a residential neighborhood. Purpose of the zoning plan and zoning ordinances have been satisfied. The granting of the variances will not result in a substantial detriment to the intent of the zone plan and the granting of the variance will not result in a substantial detriment to the public good. *Mr. Schwarzbach* strongly urged my fellow board members to approve this project.

- *Mr. Eben* said that this is an existing and now totally vacant site and has been an eyesore for the past twenty years. There is absolutely no reason to throw out the master plan reexamination report and zoning ordinance by granting a variance and disregarding those documents. *Susan Borg*, worked hard to protect steep slopes. *Mr. Eben* informed the Board that none of these neighbors have spoken in favor of this project. In his opinion the applicant did not meet the enhanced quality of proof as required to demonstrate the proposed use is consistent with the intent and purpose of the Master Plan. There is no value for West Orange there is no undue hardship for the applicant. *Mr. Eben* expressed that he was looking for any positive reasons that would allow him to vote for this project simply are none to be had. It is not advisable to approve it this evening with all of the reasons that I stated in terms of the use. In terms of the C variances, even in terms of the dumpster that is in the front yard that could have been inside the building. That would give an extra parking space. This building will dwarf every other adjacent building within 500 foot radius. While the building height and stories have been reduced, portions of the building are now completely lost and informed the Board that his vote is going to be an absolute no.

-*Mr. Redwine* expressed his concern from the perspective of Zoning ordinance that municipal government sets out permitted uses in order to guide the appropriate use for development in a manner that will promote the health, safety and morals in general welfare. Those elected officials (i.e. Mayor or Town Council), should be the ones deciding applications like this because they are directly accountable to voters and the decisions that they have made so it should weigh very heavily on the minds of Board Members *Mr. Redwine* let the public know that he will be voting against this application because he does not think that this use is justified.

-*Mr. Ricci* tried to explain his situation that he did not hear all of the meetings but have read all of the testimony from both the applicant from the Board Members and what they spoke about this project from his perspective in regards to the steep slope that sometimes erosion and other factors come into play and is glad a solution is proposed as part of this application to deal with that existing item. Basically, he is agreeing with everything in favor of this application, and that not too many lots down the road is a strip mall that at some point of time had to dig into the slope and put up some kind of retaining system so the neighboring property is already cut into this particular slope, so this application should also be entitled to cut into that slope.

- *Chairman Neuer*, spoke in an effort to clear up misconceptions in regards to the Zoning Ordinance Section 28, the infamous steep slope ordinance. It seeks to eliminate or reduce disturbance of steep slopes because they result in accelerated erosion. Erosion that is occurring there is not visible, but it is there and it will continue unabated. He endorses the commentary from *Mr. Hess* who gave a very thorough and complete analysis.

-Chairman Neuer offered a Resolution to approve the application for the variances and urged the Board to approve this application with the following conditions.

- That all of the conditions are to be printed onto the site plan drawing to enable the Building Department to understand what we have done and to enable our code enforcement people to enforce the conditions being imposed.
- The Resolution will also recite that the applicant is bound by all of the exhibits presented and all of the testimony adduced on behalf of the application.
- The applicant is to comply with the reports issued by our engineer, *Mr. Hess*. The Hess letter of January 15, 2021 is to be attached to the Resolution. And a copy of that letter is to be reproduced into the notes section of the final site plan.
- The applicant shall comply with Forester *John Linson's* June 12, 2020 letter to Mr. Linson's or Mr. Hess' reasonable satisfaction. —The applicant will comply with the statements contained in the Fire Prevention Bureau letter of September 9, 2020. Item number 5A of that letter to be complied with Prior to issuance of a Certificate of Occupancy. -There should be no parking signs erected to prohibit parking in the drive aisle and authorizing the West Orange Police Department to issue tickets to violators.
- The applicant shall comply with the September 21st, 2020 letter from the Traffic Bureau.
- This approval is subject to Essex County Planning Board approval.
- Exterior lighting shall be controlled by the motion sensors approved by Chief of Police.
- The parking space designated for the employee shall be located in the North on the property.
- The applicant shall submit a three year maintenance contract for the landscaping that requires inspections every year for at least three years.
- There will be no live auctions conducted from the property.
- The installation of the erosion matting will be subject to the review and approval of the Board Engineer.
- Hours of operation for access to the building are limited to between 6:00 AM to 10:00 PM and no other hours. Access shall be controlled by a card reader.
- The rental contract with renters of the storage units must specify that hazardous materials, explosives, firearms, guns, and ammunition are not permitted to be stored. A copy is to be delivered to the Board Attorney for review.
- Finally, there will be a need of consolidation of the two lots for a new single tax lot. This deed is to be presented and reviewed and approved by *Ms. Beirne* with *Mr. Hess* prior to the time of issuance of a certificate of occupancy.

Motion: Chairman Neuer

Second: Mr. Steinhart

APPROVED

Eben:	N	Straker (Alt.4):	
Quentzel (Alt. 1):		Sussman (Alt. 3):	Recused
Redwine:	N	Weiss:	Y
Ricci:	Y	Chairman Neuer:	Y
Schwarzbaum:	Y	Yes: 5 No: 2	

Steinhart:	

ZB 21-06 / Rawls

Block: 176.02; Lot: 7

7 Marmon Terrace

Seeking 2 C2 Variances

- *Ms. Boerner Lay* was accepted as an expert in the field of Architecture from the Board.
- Mr. Rawls* and *Ms. Boerner Lay* were sworn under oath. *Mr. Rawls* testified that when the home was purchased *Mr. Rawls* knew that some significant aesthetic work and some upgrades would be necessary. However, the overall flow and layout, because there is one bedroom downstairs and two bedrooms upstairs, is quite disconnected from the rest of the house as it is almost three feet below the floor level of the main floor and only accessible via a small opening and staircase from the kitchen. It is also not properly heated since it is built on a slab and the heating system is just hot water, so these were the main issues that needed to be addressed immediately. This application is basically for a 1 1/2 to 2 story element versus the one-story element that it currently is. It should also be noted that the right side yard is almost twice as large as the required being 17.6 feet versus the 10 feet required as the home was not centered on the lot. Concerning the variance for lot coverage, the existing coverage is non-conforming at 4,084.62 square feet or 46.68%.
- Ms. Boerner-Lay* explained that this application is just to allow for a safe ingress and egress from the family room and believes this small increase in lot coverage will not adversely affect the neighboring properties but will enhance the aesthetics and use of this property.

Questions/Comments From the Board

- *Mrs. Weiss* commented positively on the appearance of the house and balcony.
- *Mr. Eben* asked why they are not using that foundation for the new addition. This will imitate the read the variance. *Ms. Boerner-Lay* responded that it would be correct from a roofline perspective because it is a two story element, and it would look a lot nicer just to continue the roofline on that side versus having a one story element. It also does not really have a proper foundation. The way it is now, the first floor does not get heat so it cannot be utilizable.
- Mr. Eben* asked So why not build a bigger deck? *Ms. Boerner-Lay* explained that the applicant really just did not want to over impact lot coverage. *Mr. Eben* agreed it will look much better when it's finished.

Professional Questions:

- *Mr. Grygiel* asked whether that pool is remaining in the back of the property. *Mr. Rawls* answered yes, it was to remain.

No Further Board Questions

No Public Questions

In closing, *Chairman Neuer* asked *Mr. Rawls* if he has heard from any of the neighbors about this application. Mr. Rawls responded that he has not but his son has and what he has heard they are all in favor of the application.

Public Hearing Closed.

Motion by Chairman Neuer to grant the variances and to approve the site plan as presented.

Motion: Chairman Neuer

Second: Mr. Eben

APPROVED

Eben:	Y	Straker (Alt.4):	
Quentzel (Alt. 1):		Sussman (Alt. 3):	Recused
Redwine:	Y	Weiss:	Y
Ricci:	Y	Chairman Neuer:	Y
Schwarzbaum:	Y	Yes: 7 No: 0	
Steinhart:	Y		

3) ZB 21-05 / Tamay

(Carried to 6/17/2021 Meeting)

Block: 125.02; Lot: 100

60 Cherry Street

Seeking a C1 Variance with an exceptional situation.

Chairman Neuer announced that this application is being carried to the June 17th, 2021 meeting. No further notice is required and the applicant has extended the statutory time for a decision.

Chairman Neuer Adjourned Meeting at 11:10PM.

Minutes Adopted:

Diana L. Chandler
Acting Zoning Board Secretary