

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
May 17, 2018**

The West Orange Zoning Board of Adjustment held a regular meeting on May 17, 2018 commencing 8:00 PM at 66 Main Street, West Orange, N.J. in Council Chambers.

Chairman Buechler called the meeting to order at approximately 8:00 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 Buechler announced that a digital tape recording system is being utilized to record the proceedings of the meeting and instructed the general public on how the audio of the proceedings may be reviewed or obtained.

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

PRESENT: B. Buechler, D. Gabry, P. Neuer, B. Quentzel,
I. Schwarzbaum, M. Straker, W. Steinhart, M. Sussman,
A. Weiss

ABSENT: D. Nash, F. Sanders

ALSO PRESENT: Paul Grygiel, Acting Planning Director for the Township
Alice Beirne, Esq., Board Attorney
Rose DeSena, Board Secretary

ANNOUNCEMENTS

Future Meetings: June 21, 2018 (regular meeting)
July 19, 2018 (regular meeting)
August 16, 2018 (regular meeting)

Chairman Buechler stated for the record that the applicant for ZB-17-08/470 Eagle Rock Holdings, that was scheduled to be heard at this meeting, has withdrawn the application from consideration by the West Orange Zoning Board.

MINUTES

April 19, 2018 (regular meeting)

Chairman Buechler stated that the draft minutes from the April 19, 2018 regular meeting were circulated to all of the Board Members.

Chairman Buechler said that he and Vice Chairman Neuer submitted comments for these minutes and asked if any Board Member had any additional comments; there were none.

Vice Chairman Neuer made a motion to approve the minutes of the April 19, 2018 regular meeting; Ms. Gabry seconded the motion and all were in favor.

It was noted for the record that Mr. Steinhart was present but did not vote on these minutes because he was not in attendance at the April 19, 2018 meeting.

SWEARING IN

Paul Grygiel, acting Planning Director for the Township, was sworn under oath.

APPLICATIONS

- 1. ZB-18-01/Deutsche Bank Trust Co. c/o the Durkin Firm Carried from 4/19/18**
Block: 154; Lot: 131; Zone: R-5
112 Conforti Avenue
Seeking two (2) "c" variances for front and side yard setbacks to install wheelchair access ramps.

It was noted for the record that Mr. Steinhart was not present at the last meeting when this application was heard and left the meeting before testimony was presented.

EXHIBITS

- A-2 – Ten (10) pages of photos, two (2) photos per page, for a total of twenty (20) photos.
- A-3 - Survey with a revision date of March 15, 2018.

Chairman Buechler stated that the applicant retained their own court reporter, Allison Gulino of Quick Court Reporting, LLC.

Chairman Buechler addressed Ms. Gulino and asked her if she understood that the transcript that she was making will be the official transcript for this evening; she replied yes.

Chairman Buechler asked Ms. Gulino to provide the Zoning Board Secretary with a copy of the transcript; she agreed.

Elizabeth Durkin, attorney for the applicant, approached the podium.

Chairman Buechler asked Ms. Durkin if any revised plans were submitted; she replied no. Chairman Buechler addressed Ms. Durkin and stated that, because no revised plans were submitted, there were no changes made to the plans; she said yes the plans have not been amended.

Vice Chairman Neuer asked Ms. Durkin if they met with any of the neighbors as suggested by the Board; she replied no.

Vice Chairman Neuer stated for clarification that at the last meeting Ms. Durkin asked to amend the application because the owner, Deutsche Bank, was no longer a contract purchaser and that the closing took place between the filing of the application and the meeting.

Ms. Durkin stated that she did not remember saying that but she remembers Vice Chairman Neuer asking her if she wanted to amend the application because it showed Deutsche Bank as the contract purchaser. She said that she did not see that on the application but, regardless, she put on the record that Deutsche Bank now owns title to the property.

Ms. Durkin stated that the property was purchased for Ethan Roman who is a fifteen (15) year old who suffers from cerebral palsy who is here at this meeting. She said that the property is owned by Deutsche Bank as a trustee for Ethan and his family.

Vice Chairman Neuer stated that the property was purchased in November of 2016; Ms. Durkin stated that she was not involved in the acquisition of the property for the family.

Vice Chairman Neuer stated that the record should be clear that Deutsche Bank has owned the property since November of 2016.

Ms. Durkin stated that Mr. Pellon, architect for the applicant, testified that interior work was done in the home and appropriate building permits were pulled to make the house handicap accessible on the interior.

Ms. Durkin stated that the applicant's architect, Mr. Pellon, will continue with his testimony tonight and she also has a professional planner and a civil engineer who will be testifying.

Vice Chairman Neuer asked Ms. Durkin if the planner prepared a report; she said no because it is not required.

Ms. Durkin stated that the single family residence was purchased for Ethan and his family and front and side yard "c" variances are required to make it accessible for him. She stated that two means of egress and ingress are required.

Vice Chairman Neuer asked Ms. Durkin if a rear setback is also required as stated in the application filed with the Board; Mr. Grygiel responded and said that a rear yard variance is not required for this application; front yard and two side yard variances are required.

Chairman Buechler asked Ms. Durkin if at the time the property was purchased, did they seek advice from any professionals to determine if this property is suited for the installation of a ramp to make the home handicap accessible; Ms. Durkin said she did not know.

Chairman Buechler asked Ms. Durkin if she has anyone that can answer that question; she said she does not believe so.

Chairman Buechler asked Ms. Durkin if the applicant looked at better suited properties; she said she did not know.

Chairman Buechler asked Ms. Durkin if she has anyone who can testify to that; she said she does not know.

Ms. Durkin stated that what she can tell the Board, based on some of the questions that Chairman Buechler and some of the other Board members had at the last meeting, is that New Jersey has the Fair Housing Act which is a Federal statute and she cited 10:5-12.5 which is the New Jersey LAD Act; the law against discrimination. Ms. Durkin said that the title of that statute is regulation of land use, housing unlawful discrimination: 10:5-12.5. She said that 12.a of that statute states as follows: it should be unlawful discriminations for a municipal, county, or other local civil or political subdivision of the State of New Jersey or an officer, employee or agent thereof to exercise the power to regulate land use or housing in a manner that discriminates on the basis of race, creed, color, national origin, ancestry, marital status, familial status, sex, gender identity or expression, nationality or disability. Ms. Durkin said that although she does not think that this is the Board's intention she feels that it is important to bring this statute to the attention of the Board because she feels that this is not a question that is proper for this application. She said that this Board cannot discriminate against Ethan and his family, because he is handicapped, by telling them that they can live in a certain home.

Chairman Buechler stated that the Board appreciates the litigation threat and it is well noted.

Ms. Durkin stated that this was not a litigation threat. .

Chairman Buechler stated that under the Land Use Law, regardless of who the applicant is, one of the things that is required is that if someone is seeking a variance for a certain property to see if it is well suited and if they looked at alternative pieces of property that might be better suited in the surrounding area. He said that usually, when someone is seeking approvals, a property is purchased subject to the approvals but in this particular case the applicant knew the use that was intended and they did not hire someone to make that investigation at the time they purchased the property.

Chairman Buechler addressed Ms. Durkin and said that she told him that she has no one to answer those questions and that is testimony that she is not going to provide. He said this is not discrimination; this is whether you meet your burden for the variances that you are seeking under the New Jersey Land Use Law. Chairman Buechler stated that the Board is not making a decision yet; he said this is only the beginning of the application.

Ms. Durkin addressed Chairman Buechler and said that he is putting words in her mouth because she never said that. She said, based on some of the questions from the Board at the last meeting, she researched the issue because the question she had in her head was if the Board had the right to deny this application because this child in a wheelchair cannot choose to live in a certain home because it requires a variance to make that property handicap assessable. Ms. Durkin stated that she did not think the Board's intentions were to be discriminatory.

Ms. Durkin stated that she has a Planner that will address the issue the Board had regarding the suitability of this property.

Ms. Durkin called the applicant's architect as her first witness.

Kevin Pellon approached the podium and was sworn under oath.

Ms. Durkin stated that Mr. Pellon was accepted by the Board at the last meeting as a qualified licensed architect.

Mr. Pellon presented ten (10) pages of photos with two (2) photos on each page for a total of twenty (20) photos that was marked as Exhibit A-2 for identification.

Mr. Pellon stated that he prepared Exhibit A-2 and began to detail the photos.

Mr. Pellon stated that the first two aerial photos were from Google Earth; he said that the remainder of the photos were taken by his team which included Ms. Durkin, Chuck Stewart and himself. Mr. Pellon stated that the photos were all taken within the last week.

Mr. Pellon referred to Exhibit A-2 and detailed the photos.

Ms. Durkin stated that at the last meeting Vice Chairman Neuer asked if the large evergreen tree at the north side of the property had to be removed; Ms. Durkin stated that it does not have to be removed.

Mr. Pellon stated that there is a small dogwood tree and some bushes that will have to come out.

Vice Chairman Neuer asked Mr. Pellon if they applied for a tree removal permit; he said no.

Vice Chairman Neuer asked Mr. Pellon if the construction of the ramp will hinder the roots of the evergreen tree; he said there is always danger but they are using the same footings that are used to build a deck so the tree should be fine.

Vice Chairman Neuer asked Mr. Pellon if he spoke to the town's Forester; he said no.

Ms. Durkin asked Mr. Pellon if the proposed ramp design is the most feasible for this house; he said yes. Mr. Pellon stated that they did explore different options, such as lifts, but none of them would work because of Ethan's needs.

There was a lengthy discussion regarding the proposed ramp design.

Vice Chairman Neuer asked Mr. Pellon how they would clean snow off of the ramp; Mr. Pellon referred to photo of a ramp that was included in the application package and detailed how the snow is removed.

Mr. Quentzel asked Mr. Pellon if he submitted a rendering of the ramp they are proposing; he said the photo of the ramp in the package is the same ramp that they are proposing.

Mr. Quentzel stated that the Board needs to see an exact design of the ramp; he said the Board cannot vote on a ramp if they do not see a rendering of it.

There was discussion regarding the side ramp not being able to take Ethan to the driveway which defeated the purpose of a second means of egress in case of an emergency or a fire.

Mr. Pellon stated that they could install a concrete pad in the rear yard that would enable Ethan to get away from the house.

Mr. Pellon continued with his testimony and stated that the original idea was to make the ramp as small as possible; he said that the ramp is eighty three (83) feet long and that every thirty (30) feet a 3' x 3' landing is required. Mr. Pellon said that this design is the least intrusive in his opinion.

Mr. Pellon presented a copy of the survey, with a revision date of March 15, 2018, outlining where the ramps are being proposed that was marked as Exhibit A-3 for identification.

Chairman Buechler referred to Exhibit A-3 and detailed the configuration of the ramp in the front yard for clarification.

Chairman Buechler asked Mr. Pellon how far the ramp was from the fire hydrant on the street; he said that it looks to be close to the next door neighbor's driveway. Mr. Pellon said that the ramp will be approximately twenty seven (27) feet from the fire hydrant.

Vice Chairman Neuer instructed the Board Secretary to send this application to the Township's Fire Official and have him submit a report to the Board regarding the safety issues that were addressed at the meeting.

Ms. Durkin asked Chairman Buechler if all Zoning Board applications are sent to the Fire Department; he said most of them are, yes.

Ms. Durkin asked if this application was sent to the Fire Department; the Board Secretary replied no.

Chairman Buechler asked Ms. Durkin who prepared Exhibit A-3; she replied their engineer, Charles Stewart.

Chairman Buechler referred to Exhibit A-3 and asked Mr. Pellon if the ramp was 8.35 feet from the property line; he said that he did not prepare Exhibit A-3 and asked if the engineer who prepared the Exhibit can approach to answer that question.

Charles Stewart approached the podium and was sworn under oath.

Chairman Buechler stated that Mr. Stewart has appeared before this Board numerous times and was accepted as an expert in Engineering.

Chairman Buechler asked Mr. Stewart if he prepared Exhibit A-3; he replied yes.

Chairman Buechler asked Mr. Stewart if the ramp is 8.35 feet from the property line; he replied yes.

Chairman Buechler asked Mr. Stewart if he knew how far the fire hydrant was from the ramp; he said it is closer to the driveway of the neighbor to the north.

Vice Chairman Buechler asked Mr. Stewart if he would submit a revised survey showing the fire hydrant; he said yes.

Mr. Pellon continued with his testimony and stated that ideally the most aesthetically pleasing ramp and least intrusive ramp would be the smallest ramp possible.

Ms. Durkin asked Mr. Pellon if there is a distinction between the design of the ramp and the materials of the ramp; he said yes.

Ms. Weiss stated that the larger the ramp the more intrusive it is; she said that the Board would like to see the ramp as small as possible.

Vice Chairman Neuer asked Mr. Pellon a hypothetical question; he asked Mr. Pellon if the ramp would be less intrusive and go straight to the sidewalk if the grade of the site was not as severe as it is; he replied yes.

Mr. Pellon reiterated that this design is the most suitable and less intrusive for this property.

Mr. Quentzel asked Mr. Pellon if it would be possible to raise the grade of the driveway and provide a wheelchair lift with a ramp to the front steps; he said yes there are other options. Mr. Pellon said that they could re-grade the front yard and remove all of the dirt out of the driveway in the front of the property but this would be very costly. He said that solving one problem creates another problem because they would still have to provide access to the house from the front yard.

There was a lengthy discussion regarding what is being proposed and the option of re-grading the front yard and driveway and adding a wheelchair lift.

Vice Chairman Neuer stated that when the applicant comes back, the Board would like to see photos of an eighty (80) foot ramp similar to the one being proposed.

Ms. Durkin asked Mr. Pellon if his testimony is that the front yard ramp is the least intrusive design that is ADA compliant; he replied yes.

Ms. Durkin asked Mr. Pellon if there is a non-intrusive design for a wheelchair ramp; he said no.

Mr. Pellon continued his testimony and detailed the side yard ramp that is being proposed along the side of the house; he stated that the ramp will run along the existing walkway.

Ms. Durkin asked Mr. Pellon if there are a lot of overgrown bushes that belong to the neighbor along that the side of the house on to the path; he said yes.

Ms. Durkin asked Mr. Pellon if the ramp along the side yard would be visible from the road; he said it would be just as visible as the current path.

Ms. Durkin asked Mr. Pellon if the use of the side yard ramp is also for the parents to be able to get Ethan to the top of the driveway to board the family's personal van; he said yes.

Ms. Durkin asked Mr. Pellon if, other than the side yard ramp, the only way Ethan would be able to access a vehicle is down by the street; he said yes.

Ms. Durkin asked Mr. Pellon if the side yard ramp will replace the existing paved surface on the side of the house; he said yes.

Chairman Buechler asked Mr. Pellon if the existing overgrown bushes on the side yard would have to be cut back in order to build the ramp; he said yes.

Chairman Buechler asked Mr. Pellon if the side yard ramp will be more visible from the street once the overgrown bushes are cut back; he said the ramp will be just as visible as the current paving.

Vice Chairman Neuer asked if there has been any conversation with the neighbor who owns the bushes regarding trimming them back; Ms. Durkin said she personally has not spoken to the neighbor but Ms. Roman has spoken to the neighbor.

Vice Chairman Neuer asked Ms. Durkin if Ms. Roman spoke to the neighbor about trimming the bushes back; she said she does not know what they spoke about.

Chairman Buechler called for a recess at 9:32 pm.

Chairman Buechler resumed the meeting at 9:48 pm.

Chairman Buechler asked if any Board Members had any questions for Mr. Pellon.

Mr. Schwarzbaum asked Mr. Pellon if the driveway will still have a slope after the proposed front yard ramp is installed; he said yes.

Mr. Schwarzbaum asked Mr. Pellon if someone would always have to hold the wheelchair when it is in the driveway; he said that he does not think that the driveway should be used for anyone in a wheelchair other than at the top landing.

Mr. Schwarzbaum asked Mr. Pellon if the re-grading of the front yard will solve the issue and eliminate the slope and make the property safer for the child; Mr. Pellon said to be clear with this design, the child cannot be loaded into the van from the side; he can only be loaded into the van from the rear. Mr. Pellon stated that the van would have to be backed into the driveway.

Mr. Schwarzbaum asked Mr. Pellon if his design is safer than re-grading the front yard; he said yes.

Mr. Schwarzbaum asked Mr. Pellon if re-grading the driveway is safer for a wheelchair verses an incline; he said it would be safer than the current condition.

Mr. Pellon stated that the re-grading would not be practical because a good portion of the front yard and the driveway would have to be removed. He said that removing all of that dirt would expose the basement and the front of the house would look worse. Mr. Pellon said that he does not feel that this option would be any less intrusive as what is being proposed.

Chairman Buechler asked Mr. Pellon if the front of the property was re-graded, would a rear loading van lift gate fit on the flat part of the driveway; he said he does not know.

Ms. Durkin stated that Mr. Pellon is an architect and not an expert on rear loading vans.

Ms. Durkin asked Mr. Pellon if his testimony was in regards to the rear handicap ramp design allowing Ethan's parents to have accessibility at the top of the driveway to get him into their personal van; he said yes.

Ms. Durkin stated that the Board's questioning is confusing the witness and she is trying to clarify what his previous testimony was.

Ms. Durkin said that Mr. Pellon's dialog with Mr. Schwarzbaum's was in regards to the front, as she understood, and Mr. Pellon's understanding was that Mr. Schwarzbaum was talking about the rear.

Mr. Schwarzbaum asked Mr. Pellon if he testified that Ethan would have access to the bus if they re-graded the front and added a chair lift; he said yes.

Mr. Schwarzbaum asked Mr. Pellon if his testimony is that his design is less intrusive than the

re-grading with a chair lift; he said yes.

Mr. Schwarzbaum asked Mr. Pellon why his design is less intrusive; he said because with the other design they would have to regrade the entire front of the house.

Chairman Buechler asked if any members of the public would like to ask Mr. Pellon any questions.

Ms. Durkin stated that her client would like to end the meeting and take Ethan home because he is having problems.

Chairman Buechler stated that the meeting will be adjourned and carried over to the next Zoning Board meeting held on June 21, 2018 and that no further notice will be necessary.

Chairman Buechler stated that the meeting will start with the public posing questions to Mr. Pellon.

The meeting was adjourned by Chairman Bucher at 10:23 pm.

Adopted: June 21, 2018



Rose DeSena
Zoning Board Secretary