

RESOLUTION OF APPROVAL
PLANNING BOARD OF THE TOWNSHIP OF WEST ORANGE

Decided: June 7, 2017
Memorialized: August 2, 2017

GBSJ PROPERTIES, LLC
Preliminary and Final Site Plan Approval
With “c” Variances
303 Mt. Pleasant Avenue and 9 Marcella Avenue
Block 83, Lots 5 & 23
PB-17-04

WHEREAS GBSJ Properties, LLC (the “Applicant”) having an address at 271 Mt. Pleasant Avenue, 4th floor, West Orange, NJ 07052 having made application for Preliminary and Final Site Plan Approval with “c” variances for premises at 303 Mt. Pleasant Avenue and 9 Marcella Avenue, West Orange, NJ also known as Block 83, Lots 5 & 23 on the tax map of the Township of West Orange (the “Premises”); and

WHEREAS the Board having conducted a public hearing on this application on May 3, 2017 and June 7, 2017 and

WHEREAS the Applicant having appeared by Sal Anderton, Esq. and by witnesses Matthew Jarmel, RA, Nicole Harrison and Steve Harrison, the Franchisees, Gerard Gesario, PE, Harold Maltz, PE and Nicholas Graviano, PP, AICP, and the Board having received review letters from Township Planner Paul Grygiel, AICP dated April 28, 2017, and from Board Consulting Engineer Eric Keller, PE dated April 28, 2017 and June 6, 2017, and having granted an opportunity for public comment; and having deliberated on the merits of the application;

IT IS HEREBY RESOLVED:

EVIDENCE SUBMITTED

In summary, the following evidence was received and/or introduced in connection with this application:

1. A West Orange Planning Board application, and the following:
 - i. Proposal and Reasons for Relief (1 Sheet);
 - ii. Resolutions by the Zoning Board of Adjustment adopted on December 14, 1982 and December 20, 2007;
 - iii. Checklist;

- iv. Site Plans prepared by Jarmel Kizel Architects and Engineers, Inc. last revised May 23, 2017 (11 sheets);
 - v. Architectural Drawings prepared by Jarmel Kizel Architects and Engineers dated Feb. 21, 2017 (2 sheets);
 - vi. Turning Movement Exhibit prepared by Jarmel Kizel Architects and Engineers last revised April 21, 2017;
 - vii. Steep Slope Plan prepared by Jarmel Kizel Architects and Engineers, Inc. dated April 21, 2017 (1 sheet);
 - viii. Traffic Study prepared by Hamal Associates, Inc. dated April 20, 2017.
2. The following Exhibits were admitted into evidence:
- Ex. A-1 Colorized version of the Site Plan (Sheet C-300)
 - Ex. A-2 Color Rendering of Architectural Style of Proposed Building
 - Ex. A-3 Google Area Image of the subject property
 - Ex. A-4 Architectural Elevation
 - Ex. A-5 Google Earth aerial view of the property with evacuation route shown
3. Sal Anderton, Esq. introduced the application on behalf of the Applicant. He stated that it involves demolition of a vacant house and the former Mt. Fuji restaurant on the site and constructing a day care center.
4. Applicant called Matthew Jarmel, RA who was qualified as an expert in architecture with a specialty in child care centers. He testified that he had designed several similar facilities in the past and was also an investor and owner. Mr. Jarmel explained that Applicant wished to build a Goddard type center, which is a franchise which was started in 1986. There are 63 such centers in New Jersey. The proposed center would be approximately 8,800 square feet in size and would have a maximum of 136 children. Hours of operation would be 6:30 a.m. to 6:30 p.m. The facility would be a secure environment with a fob needed for door entry and a fence around the play area. The building would be sprinklered. He introduced a colorized rendering of the proposed building (Ex. A-2) to show the proposed architectural style which was described as "typical Goddard." There would be 18 employees. The trash enclosure would have separate dumpsters for trash and for recyclables.

5. Nicole and Steve Harrison were sworn and testified that they are the proposed franchisees. They spoke about their desire to operate the facility and about the Goddard preschool curriculum.
6. Gerard Gesario, PE was sworn and qualified as an expert in engineering. He introduced Ex. A-3, an aerial view of the area in question, and noted the nearby uses. He stated that the property is uniquely shaped and has four different road frontages. There is a significant grade change on Lot 5. Applicant proposes two separate parking levels with 23 spaces on the lower level and 22 on the upper level for a total of 45. The spaces in the upper lot are 9.75' and 10' in width to provide more room to exit and enter the vehicle with small children. One of the driveways to Prospect Avenue will be eliminated. Lot coverage will be reduced from 79% to 66%. Mr. Gesario described the utilities and lighting. Landscaping would be added especially near the intersection. The refuse enclosure would be located in the southeast corner.
7. The Board requested revised plans with additional information about signage, landscaping and parking. Plans revised through May 23, 2017 were submitted.
8. When the hearing resumed on June 7, 2017 Applicant introduced Ex. A-5 which was an aerial view of the site with a proposed emergency egress route onto the adjacent property. Cameras were shown on the outside of the building and in the play area. A discussion was had whether the parking stalls should be reduced in width to the Township minimum of 9' in order to create additional green space in the islands at the end of the parking aisles, and the Board determined it was unnecessary.
9. Harold Maltz, PE was sworn and recognized as an expert in traffic engineering. Mr. Maltz authored the Traffic Study dated April 20, 2017 which was submitted with the application. Mr. Maltz testified that each leg of the Mt. Pleasant Avenue / Prospect Avenue intersection has its own individual "green" signal phase. He discussed the findings of his study and the levels of service during a.m. and p.m. peak hours both existing and after the proposed development. He noted that the proposed child care center would have arrivals and departures spread out over several hours with maximum trips generated of 107 during a.m. peak and 109 during p.m. peak hour. The intersection, which currently operates at a "D" or "E" level of service during peak hours, would remain at this level post-build with between 1-4 seconds of added delay. He opined no mitigation was required due to the proposed project.

With regard to parking Mr. Maltz stated that according to the Ordinance 45.1 spaces were required and Applicant is providing 45. (Mr. Keller reviewed Ordinance §25-12.2(b)(3) and noted that 45 would not be "rounded up" to

46.) Mr. Maltz stated that according to the Institute of Transportation Engineers ("ITE") the predicted number of spaces needed was only 33 based on the number of children.

In response to questions from the public Mr. Maltz stated that he would recommend that the green phases of the signal be re-timed to slightly reduce Prospect Avenue NB and slightly add to Mt. Pleasant Avenue WB. However it was noted this change would be the jurisdiction of NJDOT.

10. Nicholas Graviano, PP, AICP was sworn and qualified as an expert in planning. Mr. Graviano described the property as being two lots in the B-2 zone and having 1.25 acres in size where only .23 ac is required, L-shaped, having four street frontages and ten different sides. He stated that the proposal to demolish the existing buildings and construct a child care facility required variance relief as follows:

SECTION	REQUIRED	EXISTING	PROPOSED
25-7.1 Minimum Side Front Yard	25 feet	± 12 feet	10 feet
25-7.1 Maximum Lot Coverage	60%	79% (90% on Lot 5, 30% on Lot 23)	66.7%
25-8.1 Accessory Structure location	Not permitted within 5 feet of a property line	NA	Trash enclosure proposed less than 5 feet from side property line
25-8.1a Accessory Use Location	Not permitted in required yards	NA	Trash enclosure proposed in minimum required front and side yard
25-8.2 Yard Encroachments	Not permitted in minimum required front or side yard	Existing structures within required yards	Trash enclosure proposed in required front and side yard
25-8.4c Fence Location in Nonresidential District	Permitted in side or rear yard	NA	Fence for play area located in side front yard
25-8.4d Maximum Height of Fence or Wall Used for Screening	6 feet	NA	8 feet, 3 inches for trash enclosure
25-12.2b.1 Required parking	Loading area for school buses	NA	Not provided
25-15.3c.2(d) Maximum Monument Sign Area	50 sq. ft.	None	Approximately 60 sq. ft.
25-15.3c.2(d) Minimum Monument Sign Height	2 feet	None	Less than 2 feet

25-15.3c.2(d) Maximum Monument Sign Width	6 feet (including supporting structures)	None	8 feet (not including supporting structures)
25-28.8c Disturbance of Slopes of 25% or	Not permitted	Existing disturbed areas	Disturbance in developed areas

11. Mr. Graviano stated that the variances could be granted on either "c(1)" or "c(2)" grounds. For the c(1) positive criteria he stated that the site was unusually shaped as noted above, which qualified for a hardship variance. For c(2) grounds he stated the proposal would further several purposes of zoning set forth in MLUL §2 including: (a) benefiting the public good, (g) providing sufficient space for a variety of uses, (h) by encouraging location and design which promotes the free flow of traffic, and (i) by promoting a desirable visual environment. For the negative criteria Mr. Graviano stated the proposed deviations would not impact upon neighbors nor impair the intent of the planning documents. He summarized saying the proposal would breathe new life into a blighted lot with a use which is inherently beneficial.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. The Premises are located in the B-2 Zone where child care centers are a permitted use pursuant to MLUL §66.6.
13. Applicant seeks to demolish a vacant restaurant building and dwelling and construct a day care center. The subject property consists of two lots (5 & 23) and is located on the northeast corner of two highly travelled roadways, Mt. Pleasant Avenue running north and south, and Prospect Avenue running east and west. Surrounding uses include an electric substation, the Essex County Country Club, offices and communication towers with related equipment.
14. The proposed facility would be a one-story building having 8,800 sq. ft. with a 5,600 sq. ft. outdoor fenced-in play area attached. Maximum occupancy would be 136 students, 18 teachers, 2 administrators and one staff person. Forty-five parking spaces would be built in two separate lots, one lower and one upper. The site would be accessed via a right-in, right-out driveway onto Mt. Pleasant Avenue and a two-way driveway on Marcella Avenue which then intersects with Prospect Avenue.
15. Although the use is permitted the proposed improvements would require variance relief. At the hearing the Applicant announced that following the original submission the plans were revised and three variances eliminated.

The remaining variances needed were:

<i>SECTION</i>	<i>REQUIRED</i>	<i>EXISTING</i>	<i>PROPOSED</i>
<i>25-7.1 Minimum Side Front Yard</i>	<i>25 feet</i>	<i>± 12 feet</i>	<i>10 feet</i>
<i>25-7.1 Maximum Lot Coverage</i>	<i>60%</i>	<i>79% (90% on Lot 5, 30% on Lot 23)</i>	<i>66.7%</i>
<i>25-8.1 Accessory Structure location</i>	<i>Not permitted within 5 feet of a property line</i>	<i>NA</i>	<i>Trash enclosure proposed less than 5 feet from side property line</i>
<i>25-8.1a Accessory Use Location</i>	<i>Not permitted in required yards</i>	<i>NA</i>	<i>Trash enclosure proposed in minimum required front and side yard</i>
<i>25-8.2 Yard Encroachments</i>	<i>Not permitted in minimum required front or side yard</i>	<i>Existing structures within required yards</i>	<i>Trash enclosure proposed in required front and side yard</i>
<i>25-8.4c Fence Location in Nonresidential District</i>	<i>Permitted in side or rear yard</i>	<i>NA</i>	<i>Fence for play area located in side front yard</i>
<i>25-12.2b.1 Required parking</i>	<i>Loading area for school buses</i>	<i>NA</i>	<i>Not provided</i>
<i>25-15.3c.2(d) Maximum Monument Sign Width</i>	<i>6 feet (including supporting structures)</i>	<i>None</i>	<i>8 feet (not including supporting structures)</i>
<i>25-28.8c Disturbance of Slopes of 25%</i>	<i>Not permitted</i>	<i>Existing disturbed areas</i>	<i>Disturbance in developed areas</i>

16. The Board finds that the variances sought can be justified. The Applicant proposes a use deemed inherently beneficial, i.e. "universally considered of value to the community because it fundamentally serves the public good and promotes the general welfare." (MLUL §4) The site is in disrepair and badly in need of redevelopment. The lots are sloped and irregularly shaped having 10 separate sides and 4 street frontages. In combination these factors represent grounds for c(1) and c(2) variances. In addition, the Applicant's planning testimony, summarized herein but more amply set forth in the record, provided sufficient justification for relief under either hardship or flexible variance grounds. There is no substantial detriment to the surrounding area which is largely commercial, and the bulk non-conformities can be accommodated without impairing the zone plan or ordinance because the design offers a better alternative.

17. The Board finds that the Applicant has carried the burden of proof, including both the positive and negative criteria, necessary to obtain the variance relief sought.
18. Applicant amended its application to include a Soil Removal permit in accordance with an Earthwork Plan prepared by Jarmel Kizel dated June 7, 2017.

THE DECISION

WHEREAS, the Board, having reviewed the application for Preliminary and Final Site Plan approval and associated "c" variance relief and having considered the impact of the proposed application on the Township's master plan and zoning ordinance and the surrounding property owners, and having considered whether the proposal complies with and furthers the goals of the land use and zoning ordinances of the Township of West Orange and the Municipal Land Use Law; and upon the imposition of specific conditions to be fulfilled, hereby, concludes that good cause has been shown to approve the application.

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Township of West Orange that the application for Preliminary and Final Site Plan approval with "c" variances relief and Soil Removal Permit as set forth in the plans, reports, representations, testimony, stipulations and Exhibits offered by the Applicant is granted subject to the following conditions:

1. The Applicant shall comply with all applicable Township, County, State and Federal laws, ordinances, regulations and directives, including without limitation, obtaining all applicable local, state and federal approvals and/or permits. Without limitation of the foregoing, prior to the signing of the approved site plans, and prior to the commencement of any land disturbance or construction, the Applicant shall submit to this Board, with a copy to the Board Engineer, proof that it has obtained all required governmental approvals.
2. If another governmental entity or agency grants a waiver or variance affecting the plans and/or exhibits submitted by the Applicant, this approval or the conditions attached to it, then the Applicant shall re-apply to this Board respecting the same and this Board shall have the right to view that issue as it relates to this approval and these conditions and modify and amend same, if appropriate.
3. In the event that any other required regulatory approval conflicts with the terms and conditions hereof, or materially alters the same, or the terms and conditions hereof are materially altered by any change in applicable law or regulation other than those municipal regulations for which change is prohibited by the Municipal Land Use Law (MLUL), or in the event Applicant or its successors or assigns construct or attempt to construct any improvement in conflict with or in violation of the terms of

this approval, the Board hereby reserves the right to withdraw, amend or supplant the instant approval.

4. All construction, use and development of the property shall be in conformance with the plans approved herein, all representations of the Applicant and its witnesses during the public hearing, all exhibits introduced by the Applicant, and all terms and conditions of this resolution.

5. The Applicant shall pay all outstanding taxes, tax liens, application fees and technical review fees, as well as any inspection fees that may be required hereunder. The Applicant shall pay any additional fees or escrow deposits which may be due and owing within thirty (30) days of notification or this approval shall be deemed withdrawn.

6. All notes included in the approved plans, including notes required by this Resolution, shall be deemed conditions of approval having the same force and effect as conditions expressly set forth in this Resolution. All conditions of approval shall be written on the plans.

7. Applicant to comply with the Complete Streets element of the Master Plan and implement its recommendation to the extent possible.

8. Applicant to comply with the review letters from Bowman Consulting dated April 28, 2017 and revised through June 6, 2017, and Planning Director Paul Grygiel dated April 28, 2017.

9. Any blasting must be in accordance with State regulations.

10. Applicant shall merge the lots and provide a proposed Deed for review by the Board Attorney and legal description for review by the Board Engineer.

11. The plans shall be revised to show the sidewalks and guide rails.

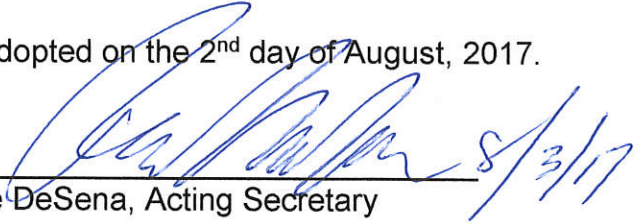
12. Applicant to provide an Engineer's estimate of the cost of improvements.

13. Prior to beginning work Applicant shall request a pre-construction meeting with Township officials.

14. Applicant to provide a chart of its compliance with the Township's sustainability checklist.

15. Applicant to provide the Board with a copy of the State-approved evacuation plan for the facility including a copy of any easement or license to use adjacent properties. Said easement or license shall be in recordable form and shall run with the land for so long as the Applicant operates a child care center at the premises.

Certified to be a true copy of the Resolution adopted on the 2nd day of August, 2017.


Rose DeSena, Acting Secretary

Vote on the Action Taken by the Board

Board Member	Motion	Second	Aye	Nay	Abstain	Absent	Recused
Cardoza (2 nd Alt.)		*	*				
Eben							*
Ghebremicael						*	
Keigher			*				
Klein (Vice Chair)			*				
McCartney							*
Trenk			*				
Wegner (1 st Alt.)			*				
Weston						*	
Wilkes						*	
Bagoff (Chair)	*		*				

Vote on the Memorializing Resolution

Board Member	Motion	Second	Aye	Nay	Abstain	Absent	Recused
Cardoza (2 nd Alt.)			*				
Eben							*
Ghebremicael						*	
Keigher			*				
Klein (Vice Chair)		*	*				
McCartney							*
Trenk			*				
Wegner (1 st Alt.)			*				
Weston						*	
Wilkes						*	
Bagoff (Chair)	*		*				