

RESOLUTION OF APPROVAL
PLANNING BOARD OF THE TOWNSHIP OF WEST ORANGE

Decided: February 6, 2019
Memorialized: April 3, 2019

**JAY MAHARAJ REALTY, LLC
PRELIMINARY AND FINAL SITE PLAN APPROVAL
WITH “C” VARIANCES
AND TREE REMOVAL PERMIT
96-102 HARRISON STREET
BLOCK 125.03, LOT 53
PB-18-04**

WHEREAS Jay Maharaj Realty, LLC (the “Applicant”) having an address at 96-102 Harrison Street, West Orange, NJ 07052 having made application for Preliminary and Final Site Plan Approval with “c” variances for premises at 96-102 Harrison Street, West Orange, NJ also known as Block 125.03, Lot 53 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 February 6, 2019; and

WHEREAS the Applicant having appeared by Savino Russoniello, Esq. and by witnesses and the Board having received review letters from Township Planner Paul Grygiel, AICP dated August 15, 2018 and October 12, 2018, and a review letter from Board Consulting Engineer Bowman dated October 25, 2018 and February 4, 2019, 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. Sheet with “Additional Variances,”
 - ii. Proposal and Reasons for Relief,
 - iii. Soil Investigation Report,
 - iv. Stormwater Management Report
 - v. Sustainability Checklist Form;
 - vi. Site Plan/Subdivision Checklist;
 - vii. Site Plans prepared by AWZ Engineering, Inc. dated March 16, 2018 revised November 19, 2018 (Sheets C-01 through C-06, S-01 ad S-02),

- viii. Boundary and Topographic Survey prepared by Geospatial Surveying and Layout dated October 2, 2017,
- ix. Architectural drawings prepared by CPA Architecture dated March 3, 2018 (Sheets A-1, A-2 and A-3).

The Board also received:

- (i) Memorandum from the West Orange Fire Department dated August 10, 2018,
 - (ii) Letter to Paul Grygiel, AICP, PP from AWZ Engineering, Inc. dated November 19, 2018,
 - (iii) Letter from John Linson, Township Forester, dated November 28, 2018
2. The following Exhibits were admitted into evidence:
- Ex. A-1 Site Plans prepared by AWZ Engineering, Inc. last revised November 19, 2019 received by the West Orange Planning Department on January 23, 2019
- Ex. A-2 Architectural drawings prepared by CPA Architecture dated March 3, 2018 received by the Planning Dept. on Jan. 30, 2019 (Sheets A-1, A-2 and A-3)
- Ex. A-3 Color photographs (2 pages, 8 photos)
3. Savino Russoniello, Esq. introduced the application on behalf of the Applicant.
4. Applicant called Adnan A. Khan, PE, CME who was sworn and qualified as an expert in civil engineering. He testified that Applicant proposes to construct a new building on the subject property which will have retail space on the first floor and two 1-bedroom apartments above. The proposed building would be adjacent to a similar existing building which has first floor retail and apartments above. He noted that the property slopes upward as you enter further into the lot. A parking area at the rear of the site is accessed by a driveway on the left side which would be widened to approximately 24 feet. Twenty-one parking spaces are proposed including on handicapped van accessible. Shrubbery is proposed around the handicapped space. A retaining wall would be built behind the building with a handicapped accessible hydraulic platform lift to allow access from the elevated parking area to the ground floor level. The rear parking area and driveway would be paved and a new drainage system installed to control stormwater runoff.
5. Responding to questions from the Board and its professionals Mr. Khan stipulated that (i) parking in the rear lot would be restricted with appropriate signage, (ii) a guardrail would be installed at the top of the retaining wall, (iii) the owner would record a stormwater maintenance manual and file same with NJDEP, (iv) Applicant would follow the special improvement district design guidelines, (v) the number of handicapped parking spaces would be increased to two, (vi) consideration would be given to eliminating the proposed parking space in the northwest corner of the parking lot because of its lack of back-up area, (vii) lighting would be designed to avoid spillover onto adjacent properties especially at the rear property line, (viii) the hydraulic platform lift would be covered and have an emergency contact

communication system.

6. Applicant introduced Albert Arencibia, RA who was sworn and qualified as an expert in architecture. Mr. Arencibia testified that the proposed architectural design was intended to “tie into” the adjacent existing building. The existing building would be power-washed. Similar awnings and entrance doors would be used for the new building. A gate would be installed at street level to control entrance into the alleyway where stairways to the second floor apartments would be accessed.
7. Responding to questions from the Board and its professionals Mr. Arencibia stipulated that (i) the finish on the outside of the building would be cement plank type board and not vinyl siding, (ii) the hydraulic platform lift would have a canopy, (iii) the roof would be light in color and/or use “cool roof” solar reflective technology to help reduce solar heating. Discussion was had whether to eliminate or raise the three windows on the east side of the building but the issue was left to the discretion of the Applicant.
8. Applicant called David Karlebach, PP who was sworn and qualified as an expert in planning. Mr. Karlebach noted that the subject lot was a vacant gravel lot in deteriorated condition in need of upgrading. In his opinion the proposed project would provide benefits which would justify the variances requested in accordance with Municipal Land Use Law §70(c)(2).

9. Reviewing the variances needed Mr. Karlebach testified as to the positive and negative criteria. Based on changes in the plans the variances needed were:

Maximum Lot Coverage, 75% permitted vs. 118.69% proposed. (The “effective lot area” under the Ordinance is reduced by the steep slopes, see §25-28(d)) He testified that meaningful improvements cannot be made on this site if the lot coverage requirement is strictly applied and that most of the lot coverage occurs at the rear of the site behind the buildings and is not visible from the street.

Maximum Wall Height, where 6’ is allowed but 10’ proposed he stated that the wall would be 50’ from the rear property line and therefore have little impact on the neighborhood;

Sidewalk required between building and parking lot, none proposed, he stated that it is a small lot and there is another access from the lot to the street;

Minimum curbing setback from structures, 5’ required but none proposed, (revised plans now comply with this requirement).

Minimum parking aisle width, 24’ required, 23.6’ proposed (20’ proposed in revised plans, which was sufficient for the volume of traffic anticipated).

Minimum number of trees in the parking lot, 2 required, 1 proposed, and 0 on the revised plans. (zero trees are internal to the parking lot but that two street trees are proposed which meets the intent of the ordinance).

Minimum parking spaces, 23 required, 22 proposed initially,(19 as part of the revised plans). he noted that there is parking in front along Harrison Avenue and across the street in a municipal lot, and that the Ordinance at 25-12.1n allows for shared parking for a mixed use project;

Minimum number of loading spaces, 1 required, none proposed, he stated that the existing adjacent building currently functions without one and that loading would similarly occur via Harrison Avenue,

Minimum distance from parking access aisle to side lot line, 5' required, none proposed, he stated that this is a pre-existing non-conforming condition,

Maximum disturbance of steep slopes, he noted that Applicant's project will stabilize the existing eroding slopes and improve the existing condition.

Mr. Karlebach stated that the project would advance goals of the State Plan by concentrating developing in already developed areas and providing affordable housing, which he defined as smaller apartments but not necessarily below market rates.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

10. The Premises are located in the B-1 business zone where mixed-use ground floor retail with residential units above are a permitted use.
11. Applicant seeks to construct a two-story building with 1,409 sq. ft. of ground floor retail space and 3,941 sq. ft. of residential space on the second floor consisting of two one-bedroom apartments. The property is currently developed with a similar building on its western side, the new building would be adjacent and to the west. The first floor of the new building would be at street level and the second floor would be level with the parking lot in the rear of the property. A retaining wall would be constructed between the rear parking lot and the new building. An hydraulic lift would provide access between the parking lot and the street level at the rear of the building.
12. The proposal requires the following variances:

Standard	Existing	Proposed	Required/ Allowed
§25-7.1 Maximum Lot Coverage	n/a	113.68% (effective lot area reduced by slopes	75%
§25-8.4.c Maximum fence or wall height in nonresidential area	n/a.	10'+/-	6'
§25-12.3.a.1 Minimum Number of Loading Spaces	None	None	1 space

§25-12.1.a Sidewalk provided between building and parking lot	Not provided	No	Yes
§25-12.1.b Minimum curbing setback from structures	Not provided	0'	5'
§25-12.1.h Minimum parking aisle width	n/a	20'	24'
§25-12.1.p Minimum number of trees in parking lot	n/a	0	2
§25-12.2 Minimum number of parking spaces	Not provided	19	23
§25-28.8b Maximum disturbance of steep slopes		Applicant proposes to exceed maximum permitted per plans	

13. The variances can be justified pursuant to MLUL 70(c)(2) as the benefits outweigh the detriments and the proposal offers a better alternative to development of the site than is allowed by Ordinance. The Board finds that the site is in need of improvement from its present deteriorated condition and the proposal offers a reasonably-scaled development which will upgrade the site's aesthetics and promote a desirable visual environment in furtherance of MLUL 2(i). The proposal would also promote development where infrastructure currently exists in furtherance of the State Plan. The Board agrees, adopts and incorporates by reference the arguments in favor of the variances offered by Applicant's planner David Karlebach, PP as set forth in Par. 9 herein. The Board further finds that notwithstanding the number of variances requested the project will not cause substantial detriment to the public good so much as it will eliminate existing detriments by improving the site's appearance, stabilizing the slopes, and preventing stormwater runoff. Similarly, the proposal would not cause substantial harm to the intent and purpose of the zone plan and Ordinance since the variances are triggered by the sites slopes and existing development, would not be out of character with the development pattern in the area and are not the result of an inappropriately large project.
14. Finally the Board grants the tree removal permit sought. The Applicant will remove 19 trees and plant 5 new trees and add additional landscaping. The Board specifically finds - based upon the evidence presented and the Board's knowledge of local conditions – that pursuant to Ordinance Section 25-27.7(c)(2) the tree removal proposed by the applicant will not result in or cause, increase or aggravate any or all of the following conditions:
 - a. Impaired growth or development of remaining trees or shrubs on the property of the applicant or upon adjacent property;
 - b. Soil erosion, sedimentation and dust;

- c. Stormwater or drainage problems;
 - d. Significant diminution of the screening between existing or proposed buildings or roads on site and adjacent land or in the wooded aspect of the lot or site from any adjacent road;
 - e. Sewerage problems; and
 - f. Dangerous or hazardous conditions.
15. In summary, the Applicant has provided sufficient proofs to warrant the relief sought.

THE DECISION

WHEREAS, the Board, having reviewed the application for Preliminary and Final Site Plan approval and associated “c” variances, tree removal permit, and waiver from having a landscape architect prepare the landscape plan, and having considered the impact of the proposed application on the Township’s Master Plan, 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 variances, tree removal permit, and waiver from having a landscape architect prepare the landscape plan all 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.

7. All conditions of approval shall be written on the plans.

8. Applicant to comply with the comments in the review letter from Bowman dated February 4, 2019.

9. Applicant to comply with the comments in the review letter from Paul Grygiel, PP, dated October 12, 2018.

10. Applicant to comply with the comments in the Memorandum from the West Orange Fire Department dated August 10, 2018 except that only the residential area shall be sprinklered.

11. Applicant to submit revised plans with the following revisions, subject to the review and approval of the Board Engineer and Planner:

- (i) Light colored or solar reflective roof;
- (ii) Design lighting to avoid spillover onto neighboring properties,
- (iii) Provide a stormwater maintenance manual, record same and file a copy with NJ DEP,
- (iv) Provide specifications for the hydraulic platform lift, including a canopy cover and emergency contact communication system,
- (v) Utilize cement plank board siding on the exterior of the building, no vinyl siding,
- (vi) Reconfigure the proposed parking layout to include an additional handicapped space adjacent to the one proposed, and eliminate the parking space in the northwest corner of the parking lot,
- (vii) Provide landscaping around the handicapped parking area,
- (viii) Provide additional landscaping in the area of the eliminated parking space in the northwest corner of the parking lot,
- (ix) Reduce the driveway width to 20 ft. and add additional landscaping in the area between the driveway and the new building,
- (x) Provide signage at the entrance driveway and in the parking lot restricting access to residents and customers of the building only,

12. Applicant to comply with the Downtown West Orange Alliance Design Guidelines.
13. Applicant to comply with all affordable housing contributions and/or fees applicable to the project
14. Applicant to provide an Engineer's Estimate for proposed improvements for the purpose of calculating inspection review fees.
15. Applicant to schedule and attend a pre-construction meeting with the Township prior to commencing work on the site.
16. Comply with the recommendations of the Township Forester set forth in his Memo dated November 28, 2018, subject to his review and approval.

Certified to be a true copy of a Resolution adopted by the West Orange Planning Board on April 3, 2019.



Robin Miller, Secretary

Vote on the Action Taken by the Board

Board Member	Motion	Second	Aye	Nay	Abstain	Absent
Bagoff		*	*			
Cardoza (Vice Chair)						*
Keigher						*
Klein						*
McCartney			*			
Trenk			*			
Wegner			*			
Wilkes			*			
Williams (Alt. #1)			*			
Johnson (Alt. #2)			*			
Weston (Chair)	*		*			

Vote on the Memorializing Resolution

Board Member	Motion	Second	Aye	Nay	Abstain	Absent
Bagoff			*			
Cardoza (Vice Chair)						
Keigher						
Klein						
McCartney		*	*			
Trenk			*			
Wegner			*			
Wilkes			*			
Williams (Alt. #1)			*			
Johnson (Alt. #2)			*			
Weston (Chair)	*		*			