

RESOLUTION OF APPROVAL
PLANNING BOARD OF THE TOWNSHIP OF WEST ORANGE

Decided: June 5, 2019
Memorialized: June 18, 2019

SONRIA KITCHEN, LLC
Minor Site Plan Approval
492 Prospect Avenue
Block 84.01, Lot 45
PB-19-02

WHEREAS Sonria Kitchen, LLC (the “Applicant”) having an address at 127 Parsonage Hill Road, Short Hills, New Jersey 07078 having made application for Minor Site Plan Approval for premises located at 492 Prospect Avenue, West Orange, NJ also known as Block 84.01, Lot 45 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 June 5, 2019; and

WHEREAS the Applicant having appeared by its attorney Robert C. Williams, Esq., and by witnesses John Buchholz, RA, and J. Michael Petry, PP and having received review letters from Board Consulting Engineer CME Associates by John Hess, PE dated April 18, 2019, and from Township Planner Paul Grygiel, AICP dated April 22, 2019, and the Board 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. Proposals and Reasons for Relief
 - ii. Resolution of the West Orange Planning Board dated September 2, 1981;
 - iii. Resolution of the West Orange Zoning Board dated September 8, 1981;
 - iv. Checklist and Sustainability Checklist,
 - v. Paid taxes letter dated March 28, 2019,
 - vi. 200’ list,
 - vii. Color Photographs of the Site (2 sheets)
 - viii. Survey prepared by Yannaccone, Villa & Aldrich dated June 7, 2018;
 - ix. Architectural drawings prepared by Buchholz Architects dated March 14, 2019 (Sheets A-O and A-1).

The Board also received;

- (i) A Memorandum from the West Orange Fire Department dated April 8, 2019

2. The following Exhibits were admitted into evidence:

Ex. A-1 Photograph of the building from Prospect Avenue

Ex. A-2 Photograph of the rear of the building

3. Robert C. Williams, Esq. introduced the application on behalf of the Applicant. He stated the application was for minor site plan approval. Applicant seeks to add a walk in box so that they may use the site for the preparation and packaging of foods for individuals with severe food allergies.
4. Applicant called John Buchholz, RA who was sworn and qualified as an expert in architecture. He testified that the site has two buildings on it, 492 and 494 Prospect Avenue. Applicant proposes to add a small addition to 492 Prospect Avenue. The addition will be a 136.3 sq. ft. walk in box type refrigerated room. The addition would "fill in" the rear corner of the building which presently jogs inward. The a/c units which currently occupy the area would be relocated to the roof of the addition.
5. Mr. Buchholz noted that installing the addition would intensify an existing side yard setback nonconformity. The side yard setback requirement in the zone is 10 ft. and the existing building is only 2.3 ft. from the property line. The addition would also be 2.3 ft. from the property line.
6. Mr. Buchholz testified that the proposed addition would also increase lot coverage above the allowable limit and a variance would be needed.
7. He stated that the property currently has two signs which will remain.
8. Applicant introduced J. Michael Petry, PP, RA, PE who was qualified as an expert in planning. He testified that the property is located on the northwest corner of Prospect Avenue and Marcella Avenue in the B-2 zone. The existing building is only 2.3 ft. from the side yard property line to the North where 10 ft. is required. The Verizon building is the northerly neighbor. The addition would intensify the setback violation by extending the existing building at the same 2.3 ft. from the property line.
9. Mr. Petry testified that the lot coverage and side yard setback variances could be granted on both MLUL 70(c)(1) and c(2) grounds. Regarding the c(1) grounds he stated that the location of the existing building was already in the setback and that the proposed location of the addition was in "the only logical place" by filling in the rear corner of the existing building which jogs inward. Regarding c(2) grounds he stated that the benefits outweigh the detriments. The proposed use benefits the

general welfare by providing a needed service for all those who suffer from food allergies and need to purchase specialty foods. He further opined that the addition would promote a desirable visual environment because it would clean up the existing hvac equipment on the ground. Regarding the negative criteria, he noted that there would be no detriment to the public good because the increase in lot coverage would be de minimus at 136.3 sq. ft. and the addition would not intrude further into the setback but would match the existing building setback.

10. During Board questions Mr. Petry testified there are no changes proposed to 494 Prospect Avenue.
11. The Board then engaged in extensive discussions about installing sidewalks in front of the premises. The Board noted that the Ordinance requires installation of sidewalks in conjunction with improvements to properties in nonresidential zones. Applicant argued that there are no sidewalks immediately adjacent to either side of the property and it could be potentially dangerous to have pedestrians start to walk down a sidewalk and then have to walk along Prospect Avenue when the sidewalk ended. The Board noted that sidewalks are an important element of the Township's circulation and complete streets policies, and that they are currently being installed for the Goddard School project at the corner of Prospect Avenue and Mt. Pleasant Avenue.
12. During public comment Robert Rashkes stated he supported installing sidewalks.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

13. The Premises are located in the B-2 business zone where the proposed use is permitted.
14. Applicant seeks to construct a small addition at the rear of the existing structure at 492 Prospect Avenue. The addition would house a new walk in refrigerated box to support a proposed specialty food business at the site.
15. The proposal requires the following variances:

Standard	Existing	Proposed	Required/ Allowed
§25-7.1 Maximum Lot Coverage	82.8%	83.8%	60%
§25- Minimum Side Yard Setback	2.3'	2.3' intensified	10'

16. The variances can be justified pursuant to MLUL 70(c)(2) as the benefits outweigh the detriments and the proposal furthers purposes of zoning and offers a better alternative to development of the site than is allowed by Ordinance. The Board finds that the proposed use as a specialty food preparation and packaging store for

individuals having allergies promotes the general welfare and provides a valuable and needed service. The Board further finds that the proposed addition would help clean up the rear of the site and promote a desirable visual environment. The Board finds that the setback variance needed for the addition is continuing an existing setback on that side of the property and will not interfere with the adjacent neighbor which is a Verizon building. As for lot coverage the Board finds that the additional 136.3 sq. ft. will be very minor in size, and will be at the rear of the site and unseen from the street. The variances will not be a substantial detriment to the public good as they are not significant in size nor significant departures from existing conditions. The variances will not substantially impair the intent and purpose of the zone plan inasmuch as they allow for an important use with only minor, insubstantial departures to what already exists for is allowed.

17. In summary, the Applicant has provided sufficient proofs to satisfy the positive and negative criteria necessary for the variance relief sought.
18. Regarding the installation of sidewalks, the Board finds that this in an important policy in the Township which should be adhered to. However, given that that the Applicant is a small business start-up, and there are no sidewalks immediately adjacent to the subject property, that a temporary waiver can be granted. Sidewalks will not have to be installed until 18 months after issuance of a Certificate of Occupancy.

THE DECISION

WHEREAS, the Board, having reviewed the application for Minor Site Plan approval and associated “c” variances, and waiver from having to install sidewalks immediately, 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 Minor Site Plan approval with variances, and waiver from having to install sidewalks immediately, 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 screen the HVAC equipment on the roof and screen the trash enclosure subject to the review and approval of the Board Planner and Engineer.

9. Applicant to install sidewalks in front of the property pursuant to Township Ordinance within 18 months of issuance of a Certificate of Occupancy.

10. Applicant to schedule and attend a pre-construction meeting with the Township prior to commencing work on the site.

11. Applicant to submit revised plans within 90 days of the date hereof. Failure to do so may result in the Board revoking this approval or taking such other appropriate action.

Certified to be a true copy of a Resolution adopted by the West Orange Planning Board on June 18, 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						*
Weston (Chair)		*	*			
Williams (1 st Alt.)						*
Johnson (2 nd Alt)			*			

Vote on the Memorializing Resolution

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