

TOWNSHIP OF WEST ORANGE
RESOLUTION OF THE PLANNING BOARD

Decided: September 4, 2019
Memorialized: October 2, 2019

**APPROVAL OF APPLICATION
ZUFALL HEALTH CENTER, INC.
PRELIMINARY AND FINAL SITE PLAN APPROVAL
WITH LOT CONSOLIDATION AND “C(1)” AND “C(2)” VARIANCES
AND TREE REMOVAL AND REPLACEMENT PERMIT
43-45 AND 47-49 MOUNT PLEASANT AVENUE
BLOCK 88, LOTS 29 & 31
PB APPLICATION #19-03**

WHEREAS, Zufall Health Center, Inc (“Applicant”) having made application for Preliminary and Final Site Plan approval with lot consolidation and “C(1)” and “C(2)” variance relief, and for a Tree Removal and Replacement Permit to the Township of West Orange Planning Board (Application #19-03) regarding property located at 43-45 and 47-49 Mount Pleasant Avenue, West Orange, NJ (the “Premises”), and known as Lots 29 & 31 in Block 88 on the tax map of the Township of West Orange (the “Township”); and

WHEREAS the Board having accepted jurisdiction based upon proof of publication and notices provided in accordance with the Municipal Land Use Law; and

WHEREAS, a public hearing having been conducted at a meeting held on September 4, 2019 and the Applicant having appeared by its attorney Richard S. Schkolnick, Esq., and the Board having heard testimony of the Applicant by Eva Turbinder, and by its professionals Thomas J. Quinn, P.E., Elizabeth Dolan, PE, Aldo Carminio, RA, and James R. Watson, PP, and the Board having considered the review letters issued by Township professionals including Deputy Chief Fred Kingston, Fire Official, dated June 18, 2019; Paul Grygiel, PP Township Planning Director, dated June 19, 2019 updated June 25, 2019; John Linson, Township Forester, dated June 21, 2019; and John Hess, PE Planning Board Engineer dated June 25, 2019 updated July 26, 2019; and considered the exhibits submitted by the Applicant, and considered the comments of all members of the public desiring to be heard, and having deliberated on the merits of the application;

NOW, BE IT RESOLVED AS FOLLOWS:

EVIDENCE SUBMITTED

In summary, the following evidence was submitted in connection with the application and considered by the Board:

1. The Board received the application and the documents submitted therewith, including:

- (i) Application to Township of West Orange Planning Board dated May 17, 2019,
- (ii) Application for Tree Removal and Replacement Permit,
- (iii) Site Plan Checklist with waiver requests,
- (iv) Paid Tax Statement dated May 13, 2019,
- (v) Property owners list dated April 12, 2019,
- (vi) Tree removal applications and \$300 application fee,
- (vii) W-9 form,
- (viii) Survey prepared by Teunisen Surveying and Planning Co., Inc., revised April 17, 2019,
- (ix) Architectural plans and elevations (PB-A101 – A105 and PB-A201 – A204 and full-sized plan) prepared by Carminio Architecture, LLC last revised July 18, 2019,
- (x) Site Plans prepared by EKA Associates, PA (6 sheets and full-sized plans) and Existing Conditions Plan (1 sheet and full-sized plans) dated May 15, 2019 last revised July 3, 2019,
- (xi) Traffic Impact Analysis, prepared by Dolan and Dean, dated May 15, 2019
- (xii) Copy of cover letter and application to the Essex County Planning Board, dated May 17, 2019,
- (xiii) Stormwater Management Narrative prepared by EKA Associates, PA dated April 9, 2019.

The Board also received the following:

- (i) Sustainability Checklist Form

2. The Board accepted into evidence the following exhibits:

- A-1 Color rendering of the proposed building
- A-2 Sheet PB-302 with color

3. Richard S. Schkolnick, Esq. appeared on behalf of the Applicant and introduced the application stating that Applicant is a health care provider which seeks to consolidate the lots, remove all existing structures and construct a 3-story 15,000 sq. ft. medical office building.

4. Eva Turbiner was sworn and identified as the President and CEO of Zufall Health Center, Inc. She testified that Zufall's mission is to provide medical care and wellness training to those who are underserved. Zufall operates 8 facilities in New Jersey including one located on Northfield Avenue in West Orange for the past 5 years which they have outgrown. The Northfield Avenue facility would be

moved to the new building. They served 4,000 patients last year in West Orange approximately one-half of whom were unable to pay. She stated that the proposed location is preferred given that it is in a downtown area, across the street from a senior housing apartment building, near a bus stop and walkable. The proposed building would be used for medical and dental offices with administrative support and counseling space. All back office functions will continue to be operated out of their Dover, NJ headquarters. There would be a maximum of 25 staff at the proposed building. In her opinion there is no need for additional handicapped parking because many of the patients use Medicaid transportation.

5. In response to a question by Jonathan Drill, Esq., attorney for the owners of the office building at 80 Main Street, Ms. Turbiner answered that there would be no concierge parking.

6. Thomas Quinn, PE was sworn and qualified as an expert in civil engineering. He described the site as approximately 2/3 of an acre with a 7.5% slope from west to east. There are some steep slopes and retaining walls are proposed along the western boundary. Mr. Quinn reviewed the lighting plan and landscaping plan noting that the proposed lights would be luminaire not visible unless you are directly beneath them, and that proposed landscaping includes a 5'5" buffer around the perimeter.

7. In connection with the tree removal permit application Mr. Quinn testified that there are a total of 19 trees onsite and Applicant would be removing 18 of them and planting 3. Applicant agreed to plant an additional 15 trees wherever the Township Forrester and Planner deem appropriate.

8. Mr. Quinn testified the site currently exceeds lot coverage and the proposal would add approximately 6,100 sq. ft. of new impervious surface. Discussion was had between the attorney for 80 Main Street and Applicant's attorney about improvements to the proposed storm water management system to better prevent any offsite impacts. Mr. Drill questioned Applicant's engineer about the agreement for additional storm water improvements and read into the record the understanding reached between Applicant and the owner of 80 Main Street in that regard.

9. Mr. Quinn addressed the review letter from John Hess, PE of CME Associates dated July 26, 2019 stating that Applicant would comply except as follows:

Section D1 Applicant agrees to restrict 4 parking spaces closest to the Mt. Pleasant exit for employee parking only;

Section D2 No additional handicapped parking needed. Applicant's patients utilize Medicaid transportation and Applicant testified that they have not had a need for more handicapped parking at their present location.

Section D3 Mr. Quinn testified that the project would not impact the basement wall of the adjoining dwelling.

Section D4 Applicant contends it would be impossible to save trees on the site due to site constraints.

Section D5 Applicant testified that the 9' x 18' trash enclosure would enclose a 3 cubic yard dumpster which would be more than enough capacity for the facility.

Sections D6-D9 Applicant will comply.

10. Elizabeth Dolan, PE was sworn and qualified as an expert in traffic engineering. Referring to her report dated May 15, 2019 she summarized that although the Levels of Service for exiting the site during morning peak and evening peak hours were Level E and Level C respectively, in her opinion the site would still operate effectively because the amount of traffic generated by the use would not be that high. Based upon 11 surveys of Zufall sites, the size of the building, and access to other transportation options, the number of vehicles entering and leaving would expected to be approximately one vehicle every two minutes during peak hours with no measurable impact on the surrounding roadway network. As for parking she testified that under the Ordinance required parking would be either 76 spaces if based upon 1 space/200 sq. ft., or 53 if based on the number of staff and rooms. 43 spaces are proposed. She opined that since many patients do not drive to their appointments and the availability of public bus transportation nearby that 43 spaces would be sufficient.

11. Aldo Carminio, RA was sworn and qualified as an expert in architecture. He introduced Exhibits A-1 and A-2 which were color renderings of the proposed building. He testified the 1st and 2nd floors would be used for clinical work and the 3rd floor would be used as support space for the clinical work. He reviewed the floor plans. Emergency generators would be located on the roof and the roof would be light in color to avoid heat absorption. The final exterior color to be presented to the Board Planner for his review and comment. The large proposed exterior feature would be artwork and would not contain any lettering or constitute a sign.

12. James Watson, PP was sworn and qualified as an expert inn planning. He testified that the following variances would be needed for this project: front yard

setback, maximum lot coverage, accessory use setback (parking area), maximum wall height, wall in front yard, minimum number of trees in parking area, minimum number of parking spaces, minimum number of loading spaces, number of trees to be preserved, maximum grade change within 5' of property line, steep slope disturbance and maximum retaining wall height.

13. He stated that all of the requested variances could be granted pursuant to N.J.S.A. 40:55D-70(c)(1) or c(2). He noted that c(2) variances may be granted when they involve a specific piece of property where the benefits outweigh the detriments, and that c(1) variances may be granted when unusual conditions such as shape or topography affect a specific piece of property and cause undue hardship. He then opined that the variances for front yard setback, excessive lot coverage, number of parking spaces and no loading space, could be granted on c(2) grounds, while the remaining variances for distance of parking from property line, height of retaining walls, wall in the front yard, disturbance of steep slopes, alteration of site elevations more than 1 'within 5' of the property line, certification from engineer regarding retaining walls greater than 4'. He further opined that hardship could justify removing trees when a minimum of 30% of trees are to be preserved and from having a qualified tree expert's report for a tree removal and replacement plan. He stated the variances would further purposes of zoning, namely, 40:55D-2(a) by promoting the general welfare, 2(e) by promoting appropriate population concentrations to contribute to the well-being of the community, and 2(i) by promoting a desirable visual environment. He stated that the project would eliminate an existing boarding house which is a non-permitted use in the zone, and would qualify as an inherently beneficial use if this were a use variance application. He noted the project would promote principles #2 and #4 of the 2010 Master Plan Reexamination by repurposing this site in the downtown area with a new and attractive building.

14. The owners of 80 Main Street were represented by counsel and made request for changes involving drainage and a restriction on the length of the variance.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

15. The property is located in the OB-2 zoning district where medical office buildings are a permitted use.

16. Applicant seeks Preliminary and Final Site Plan approval with variance relief and a tree removal permit in connection with the demolition of existing structures and construction of a 3-story medical building. The site is presently occupied by two structures one of which is a former rooming house and the other a professional office and music school. The proposed building would be a substantial upgrade for the site.

17. The proposal would require variance relief as follows:

SECTION	REQUIRED	EXISTING	PROPOSED
25-7.1 Minimum front yard setback	30 ft.	46.24 ft. (Lot 29), 21.76 ft. (Lot 31)	22 ft.
25-7.1 Maximum lot coverage	50%	52.7% (Lot 29), 67.1% (Lot 31)	84.5% (based on effective lot area)
25-8.1.c Accessory use setback – parking area in OB-2 District	75 ft.	0 ft.	5 ft.
25-8.4.a Maximum solid wall or fence height	4 ft.	NA	5 ft.
25-8.4.c Solid wall or fence location	Side and rear yards	NA	Front, side and rear yards
25-12.1.p Minimum number of trees in parking area	4 (1 per 10 parking spaces)	NA	0
25-12.2.b.1 Minimum number of parking spaces	75	NA	43
25-12.3.a.2 Minimum number of loading spaces	2 (gross floor area of 15-30,000 sq. ft.)	NA	0
25-27.8.a.1 Minimum trees to be preserved	30%	NA	18.2%
25-28.8.b Maximum steep slope disturbance	Varies by category	NA	Maximums exceeded for 3 categories
25-28.8.f.9 Maximum elevation change within five feet of property line	1 ft. change	NA	Greater than 1 ft.
25-28.8.f.11 Maximum retaining wall height	4 ft.	NA	5 ft.
Tree Removal and Replacement Plan by Certified Tree Expert	n/a	By Engineer	By Expert
Certification from Engineer for Walls Exceeding 4'	n/a	None submitted	Required

18. Applicant agreed to submit a certification from an engineer regarding walls exceeding 4' in height thereby eliminating that variance.

19. Variances may be granted pursuant to N.J.S.A. 40:55D-70-1 et seq. (the Municipal Land Use Law or "MLUL"). Under MLUL §70(c)(1) variances may be granted when unique or exceptional conditions caused by shape, size, topography

or lawfully existing structures cause exceptional difficulties or undue hardship for development of a specific piece of property. Variances may be granted under MLUL §70(c)(2) when it would further the purposes of zoning, the benefits outweigh the detriments, and it offers a better alternative than what is allowed by the Ordinance. In all instances the Applicant must also prove that granting the variance will not cause substantial detriment to the public good nor substantially impair the intent and purpose of the Master Plan or zoning Ordinance.

20. The Board finds that all of the variances requested are warranted on c(2) grounds. The benefits of the proposal are obvious – replacing a non-permitted rooming house and another older structure with a new and attractive medical office building are the type of improvement contemplated by Principles #2 and #4 of the 2010 Master Plan and will also promote a desirable visual environment furthering purpose 2(i) of the Municipal Land Use Law as well as promoting the general welfare furthering purpose 2(a) of the Municipal Land Use Law. The front yard setback intrusion allows for the appropriate development of the site, the excess lot coverage will be accommodated by the oversized storm water drainage system, the parking setback allows for needed parking, wall height and location are appropriate design elements for development of the site, the reduced number of parking spaces will be offset by the proximity to public transportation and Medicaid transportation alternatives for patients, no loading space is needed, trees will be planted off site to compensate for the trees being removed, disturbance of steep slopes is a result of topography as is disturbance of grade within 5' of the property line. In addition the Board finds that the variances for retaining wall height, retaining wall location, disturbance of steep slopes and elevation changes more than 1' within 5' of the property line are also justified on MLUL(c)(1) grounds given the lot's slope.

21. The Board finds further that granting the variance will not cause substantial detriment to the public good. The most significant offsite impacts being storm water drainage and the size of the project are mitigated by oversized drainage capacity and the attractiveness of the proposed building. And by upgrading and improving the site the application will further principles of the Master Plan and purposes of zoning thereby causing no substantial impairment to either. To the contrary the proposal further the Township's planning goals.

22. 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 - the site is constrained so replacement trees will be planted offsite, also additional landscaping is included in the site plans;

- b. Soil erosion, sedimentation and dust - Applicant will obtain Soil Conservation District approval as needed;
 - c. Stormwater or drainage problems – the Applicant agreed to increase the capacity of the storm water drainage facilities in response to requests by the owners of 80 Main Street;
 - d. Significant diminution of the screening between existing or proposed buildings or roads on site and adjacent land or in the wooded as lot or site from any adjacent road – new buffering landscaping is being provided;
 - e. Sewerage problems – site plans indicated that the site is connected to a public sewer system and there was no indication that the proposed tree removal would have any effect upon sewage disposal; and
 - f. Dangerous or hazardous conditions – the proposed site plan is for construction of a medical office building, and the proposed tree removal would not create any dangerous or hazardous conditions either for staff, visitors or for the public in general.
22. For all these reasons the Board finds that the Applicant has met both the positive and the negative criteria to qualify for the “d” and “c” variance relief requested. Issuance of a Tree Removal and Replacement permit is also warranted.

THE DECISION AND CONDITIONS

WHEREAS, the Board, having reviewed the application for Preliminary and Final Site Plan approval with “c” variance relief and a Tree Removal and Replacement permit, and having considered the evidence submitted, and having considered the impact of the proposed application on the Township and its residents and the surrounding property owners, and having considered whether the variance request complies with and furthers the goals of the Master Plan and zoning ordinances of the Township of West Orange and the Municipal Land Use Law; hereby, concludes that good cause has been shown to grant 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 and a Tree Removal and Replacement Permit as set forth in the plans, reports, representations, testimony, stipulations and Exhibits offered by the Applicant is hereby approved subject to the following conditions.

1. The Applicant shall comply with all applicable Township, County and State laws, ordinances, regulations and directives, including without limitation, obtaining all applicable local and state approvals and/or permits.
2. 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.

3. 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.

4. The Applicant shall pay all outstanding taxes, application fees, technical review fees, inspection fees and performance guarantees 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 Applicant shall be subject to all appropriate remedies for failure to comply with this condition.

5. The parking variance shall be a temporary variance which is granted for the specific medical use (not the user) as proposed by Zufall Health Center, LLC during the hearing. The use as proposed by Zufall is a medical care facility providing medical, dental and counseling services to low income persons. The parking variance shall expire and become null and void upon the cessation of the use as described above. New Jersey courts have long recognized the authority of a board to grant temporary approvals. In Houdaille Const. Materials v. Tewksbury Board of Adj., 92 N.J. Super. 293, 303-304 (App. Div. 1966), the court upheld a limitation on the duration of a conditional use approval for an industrial operation to 5 years to coincide with the term of the applicant's lease to use the property. In a similar vein, the court in Wilson Coalition v. Mayor and Council of Summit, 245 N.J. Super. 616, 617-618 (Law Div. 1990), noted that the Summit Board of Adjustment had granted temporary use variances to the applicant to coincide with the terms of a lease the applicant had entered into with a tenant. In upholding the trial court's reversal of a board's denial of a use variance to permit parking on the property containing another use – a gas station – the court in Bell Atlantic v. Riverdale Zoning Board of Adj., 352 N.J. Super. 407, 412-413 (App. Div. 2002) commented that the use variance would be for a limited time period – 7 years – which would provide assurance that the proposed parking use would not expand or last forever. See, Cox & Koenig, New Jersey Zoning & Land Use Administration (Gann 2019), section 28-2.1, page 602 (citing Bell Atlantic). In the event the premises are to be used for a materially different purpose the owner will be required to return to the Planning Board (or Zoning Board) for further approval.

6. In connection with the proposed storm water drainage system:

(i) Applicant shall revise and submit to the Planning Board Engineer for review and approval the drainage calculations to model the pervious and impervious coverages as a combined Curve Number (CN), rather than a composite CN, per NJDEP Stormwater Best Management Practices. Route the offsite drainage through the stormwater management system.

- (ii) Revise the stormwater system to increase the size of the basin from 1,400 cf to 2,100 cf (a 50% increase in size). Re-design the outflow structure to fully utilize the additional storage being provided by the 2,100 cf basin.
- (iii) Add a trench drain to the end of the driveway to eliminate flow across the sidewalk and into the street.
- (iv) Review the location of the underground detention system at the easterly property line for mounding issues which could cause water seepage or slope failure and report findings to the Planning Board Engineer for review and approval.
- (v) Replace the “Rain Store” system with a “Storm Tank” system which does not require a pre-filter and submit revised plans to the Planning Board Engineer for review and approval.
- (vi) Prepare and submit to the Planning Board Engineer for review and approval an Operations and Maintenance Manual (“O&M Manual”) for the underground detention system. Upon approval of the Planning Board Engineer and the Township Attorney, record the O&M Manual as a deed restriction for the property.
- (vii) Revise the drainage details and outlet structure shown on the plans to reflect the revised stormwater management system as required by the above conditions.
- (viii) Approval of the stormwater management system shall also be subject to County review and approvals.
- (ix) Provide courtesy copies to Municipal Square Associates, Attention of Lawrence K. Drill, Agent, of all submissions made to the Planning Board Engineer and Township Attorney.

7. The roof of the structure shall be light in color so as not to absorb heat.

8. The exterior façade of the building shall be in a color or colors subject to the review and approval of the Board Planner.

9. Applicant to comply with the review letter from John Hess, PE of CME Associates dated July 26, 2019 (attached) as follows:

Section D1 Applicant agrees to restrict 4 parking spaces closest to the Mt. Pleasant exit for employee parking only;

Section D2 No additional handicapped parking needed. Applicant’s patients utilize Medicaid transportation and Applicant testified that they have not had a need for more handicapped parking at their present location.

Section D3 Suggested change not needed. Mr. Quinn testified the project would not impact the basement wall of the adjoining dwelling.

Section D4 Applicant contends it would be impossible to save trees on the site due to site constraints.

Section D5 Applicant testified that the 9' x 18' trash enclosure would enclose a 3 cubic yard dumpster which would be more than enough capacity for the facility.

Sections D6-D9 Applicant will comply.

10. Applicant to plant 15 replacement trees offsite in a location determined by the Township Planner.

11. Applicant to designate 4 parking spaces adjacent to the driveway entrance to Mt. Pleasant Avenue as "Employee Parking Only."

12. The emergency generator on the roof shall be screened as approved by the Township Planer.

13. The exterior artwork feature on the façade of the building shall contain no lettering or signage.

14. Applicant to provide an engineer' certification regarding the stability of all retaining walls above 4'.

15. Applicant to install one "No Overflow Parking Allowed at 80 Main Street" sign on the premises.

The lots shall be consolidated by deed subject to the prior review and approval of the Board Attorney.

IN WITNESS WHEREOF, the Board has caused this Resolution to be executed by its Secretary on the 2nd day of October 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)						