

**Resolution
Township of West Orange
Planning Board
PB 21-05- Valley Arts Dental LLC
515 Valley Road (Block 25, Lot 2; Zone: B-1)
Decided on August 11, 2021
Memorialized on September 1, 2021
Minor Site Plan and (C) Variance Approval**

WHEREAS, Valley Arts Dental LLC (hereinafter the "Applicant") has made an application for minor site plan approval with (C) variances to expand an existing building occupied by a dental office and to undertake related site modifications on a property located on Valley Road at the intersection of Central Avenue. The subject property is located in the B-1 zone and the Central Business District. The proposal is consistent with the permitted uses and most bulk standards, but requires variances from certain requirements; and

WHEREAS, a properly noticed public hearing was conducted on August 11, 2021; and

WHEREAS, the Applicant was represented by John R. Dusingberre, Esq.; and

WHEREAS, the Applicant provided testimony by Dr. Michael J. Klausner, D.D.S and Anthony Marruci, a professional planner and a professional engineer whose credentials were accepted by the Board; and

WHEREAS, the Applicant submitted the following documents to the Board in the form of the application package:

Item	Signed By	Date/Revision
Site Plan (7 sheets)	Anthony Marucci, P.E., P.P., P.L.S.	4/13/21
Architectural Plans (1 sheet)	Mark Evan Teichman, R.A.	4/9/21

WHEREAS, representatives of the public had an opportunity to ask questions of the witnesses and had an opportunity to offer statements in regard to the application; and

WHEREAS, the Board reviewed and considered the application, testimony and documents submitted therewith; and

WHEREAS, the Board also considered the input of its professionals at the hearing and in written reports; and

NOW THEREFORE, the Board makes the following findings of fact, based upon the evidence presented at its public hearing, at which a record was made.

1. The Applicant has made an application for minor site plan approval with (C) variances to expand an existing building occupied by a dental office and to undertake related site modifications on a property located on Valley Road at the intersection of Central Avenue. The subject property is located in the B-1 zone and the Central Business District.

2. The subject property consists of one tax lot with an area of 7,737.8 square feet (0.18 acres). It is located on the west side of Valley Road. It is developed with a one-story building with a gross floor area of 773 square feet that is occupied by a dental office. The site driveway also provides access to the rear yard of the residential property to the west. There is a mix of land uses in the surrounding area, including residential to the north, west and south, and commercial on the east side of Valley Road.

3. Valley Road is a two-lane road, with a third lane for turning at the traffic signal in front of the subject property. There is no on-street parking permitted on the section of Valley Street closest to the subject property. New Jersey Transit's Highland Avenue railroad station is approximately one-quarter mile to the southeast, with bus stops located further east on Scotland Road.

4. The applicant is proposing to construct an addition to the existing building, which will wrap around the east, north and west sides of the building. The addition is proposed to add 999 net square feet of floor area to the building, resulting in a new gross floor area of 1,772 square feet. A small portion of the building along the driveway where the entrance is located will be demolished and the entrance relocated to the rear of the building. The number of treatment rooms will be increased from three to five. Two wall-mounted signs are proposed on the front of the building, including one above the level of the roof.

5. A total of 10 parking spaces are proposed, inclusive of seven standard spaces, one handicap space and two employee spaces. Vehicular access will continue to be provided by one two-way driveway on Valley Road, although the driveway will be widened due to a portion of the existing building being removed. The driveway's width will be 16 feet closest to Valley Road and widen to 18 feet to the west. A sidewalk is proposed on the north side of the building to provide pedestrian access to the rear of the building and the relocated entrance.

6. Landscaping is proposed along the north side of the widened driveway and on the north and west sides of the parking lot. One new deciduous tree is proposed in the northwest corner of the site. Three new light fixtures are proposed: two mounted on the building and one on a pole at the west end of the parking lot. Two drywells are proposed in the driveway. A block wall with a maximum height of three feet is proposed along the western edge of the parking lot.

7. The applicant has requested three variances. However, Township Ordinance 2617-20 adopted in September 2020 amended various sections of the West Orange Land Use Regulations Ordinance. The off-street parking requirements were modified to implement recommendations in the Township's 2019 Master Plan Update. In particular, Section 25-12.2 b.5. provides an exemption from providing off-street parking for the first 1,000 square feet of gross floor area of an individual use for all permitted nonresidential uses other than restaurants and bars in the portions of the B-1 and B-2 Zones in the Central Business District. This section also requires provision of one space per 300 square feet of gross floor area above the first 1,000 square feet. Therefore, the requirement for the proposed building on the subject property is three spaces. (It is noted the overall requirement for medical, dental, psychiatric and chiropractic offices was amended to one space for each 150 square feet of gross floor area, which is not

applicable given the subject property's location.) However, in reviewing the application the Township's consulting planner determined two additional variances were required for signage, and the applicant amended its application to request these variances.

8. The Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-60 permits a planning board to grant variances from the bulk regulations of a zoning ordinance and other zoning deviations that do not require a "d" variance as part of site plan or subdivision review. The variance proofs are the same as for "c" variances as set forth in N.J.S.A. 40:55D-70c. A "c(1)" variance is for cases of hardship due to factors such as shape or topography, or due to "an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon." A "c(2)" variance may be granted where the purposes of zoning are advanced and the benefits of deviating from the ordinance requirements outweigh any detriments. The benefits derived from granting a "c(2)" variance must include benefits to the community as a whole, not just the applicant or property owner. A "c" variance applicant also must address the "negative criteria," and affirmatively demonstrate that the variance can be granted "without substantial detriment to the public good" and "without substantial impairment to the intent and purpose of the zone plan and zoning ordinance" of the municipality.

9. The application requires minor site plan and variance approval.

10. The application requires the following variances:

Section	Permitted/Required	Existing	Proposed
25-7.1 Maximum Lot Coverage	75%	58%	87.5%
25-12.1 h.6. Minimum driveway width	24 feet	11 feet	16 feet
25-15.3c.2.(b) Maximum number of signs	One sign on the principal façade	Multiple signs on windows on principal façade	Two signs on principal façade
25-15.3c.2.(c) Sign location	Not permitted on roof	N/A	Wall sign above the roof

11. The public was afforded an opportunity to ask questions of witnesses and offer testimony on the application.

12. Dr. Michael J. Klausner is a licensed dentist in the State of New Jersey. He has been practicing dentistry since 2017, and joined the Leff & Link Valley Arts Dental located at 515 Valley Road, West Orange, New Jersey 07052. On March 9, 2020, Dr. Klausner purchased the real property at 515 Valley Road in his real estate holding company, GSK Realty, LLC. At the same time he purchased the dental practice in the name of Valley Arts Dental, LLC, the Applicant. Dr. Klausner is committed to serve the West Orange community and now seeks to expand the building and the practice to meet the needs of the community for the coming years. He desires to remain at this location in West Orange rather than seeking out a new location for an expanded practice.

13. Dr. Klausner wishes to continue to use the property for his dental practice. He desires to expand the physical space of the building to improve efficiency, and to meet COVID-19 cleaning protocols that extend the periods between patients. The increase in down time for treatment rooms reduces the number of patient visits per day.

14. The proposal is to add additions to the front and rear of the building, and to reconfigure the floor plans in a manner that will (a) increase treatment rooms from three (3) to five (5); (b) add a sanitization room; and, (c) relocate the main entrance and waiting area in the rear (no longer on the driveway).

NOW, THEREFORE, based upon the foregoing findings of fact, the Board reaches the following conclusions of law.

1. This application requires the following bulk "c" variances, as well as minor site plan approval:

Section	Permitted/Required	Existing	Proposed
25-7.1 Maximum Lot Coverage	75%	58%	87.5%
25-12.1 h.6. Minimum driveway width	24 feet	11 feet	16 feet
25-15.3c.2.(b) Maximum number of signs	One sign on the principal façade	Multiple signs on windows on principal façade	Two signs on principal façade
25-15.3c.2.(c) Sign location	Not permitted on roof	N/A	Wall sign above the roof

2. The Municipal Land Use Law, at N.J.S.A. 40:55D-70(c) provides Boards with the power to grant variances from bulk and other Ordinance requirements when the Applicant satisfies certain specific proofs which are enunciated in the statute.
3. Under the (c)(2) criteria, the Applicant must demonstrate that in a particular instance relating to a specific piece of property, the purposes of the Act would be advanced by allowing a deviation from the Zoning Ordinance requirements and that the benefits of any deviation will substantially outweigh any detriment.
4. These tests specifically enumerated above constitute the affirmative proofs necessary in order to obtain "bulk" variance relief, under Section (c)(2).
5. Also, an applicant for these variances must show that the proposed relief sought will not cause a substantial detriment to the public good and will not substantially impair the

intent and purpose of the zone plan and zoning ordinance. The burden of proof is upon the Applicant to establish that these criteria have been met.

6. The proposed project is providing an expansion of dental health services to the neighborhood.
7. The proposed project will allow the dental practice to service more patients safely.
8. The benefits of granting the four (4) variances outweighs any detriment to the public. The benefits include, but are not limited to, an improved appearance of the building and site; the modernization of the dental care and services provided; and, the improvement of the interaction with Valley Road traffic.
9. The impervious coverage increase will allow the applicant to increase the parking and driveway as well as the building footprint. It will not be detrimental to the public in that the lot is flat, and stormwater will drain to Valley Road.
10. The dental practice has existed at this location for many years. The continuation of that use is the continuation of this healthcare service to the Valley Road and greater West Orange communities is desirable. As a permitted use, it reflects the Master Plan of the Township and is consistent with the intent and purposes of the Zoning Ordinance. The use is certainly not detrimental to the public good.
11. The small size of the lot, and the size and location of the building on the lot make it difficult for an existing use to continue to be viable in the community without growth and adaptation to modern conditions.
12. The size of the lot and location of the building make it impractical to add a second floor to the building, which at first glance would reduce coverage and perhaps permit more parking. The applicant and the architect evaluated the viability of this alternative. After designing for a stairway, or even a small lift, the remaining space could not be used efficiently on a 2nd floor. If only a stairway were used it would be difficult for some patients to use.
13. The existing driveway is non-conforming at eleven (11') feet in width. The size of the lot and the overall width of the lot, as-well-as the location of the existing building, make it impossible to achieve the required twenty-four (24') foot required width. However, the applicant is able through improved design to achieve a sixteen (16') foot driveway width. This enhanced width of the driveway also improves the interaction of the site with the intersection it abuts.

NOW THEREFORE be it resolved by the Planning Board of the Township of West Orange that the application (PB-21-05) of Valley Arts Dental, LLC for property located at 515 Valley Road; Block 25, Lot: 2; B-1 Zone, is determined as follows:

1. The Board grants the following bulk variance relief pursuant to N.J.S.A. 40:55D-(c):

Section	Permitted/Required	Existing	Proposed
25-7.1 Maximum Lot Coverage	75%	58%	87.5%
25-12.1 h.6. Minimum driveway width	24 feet	11 feet	16 feet
25-15.3c.2.(b) Maximum number of signs	One sign on the principal façade	Multiple signs on windows on principal façade	Two signs on principal façade
25-15.3c.2.(c) Sign location	Not permitted on Roof	N/A	Wall sign above the roof

2. Minor site plan approval is granted pursuant to N.J.S.A. 40:55D-50a.

AND IT IS FURTHER RESOLVED that the above approval is subject to the following terms and 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. Applicant shall list all conditions of approval onto final site plan submission.

8. Applicant shall obtain all necessary approvals pertaining to water and sewer utilities and soil conservation districts.

9. Applicant shall comply with all comments and recommendations found in the 8/5/21 letter of the Board's Engineer, excepting any differences addressed at the public hearing and agreed to by the Board's Engineer.

11. Applicant shall comply with all comments and recommendations with the Planning Director's Memorandum dated August 2, 2021.

12. Applicant shall utilize an amalgam waste separator.

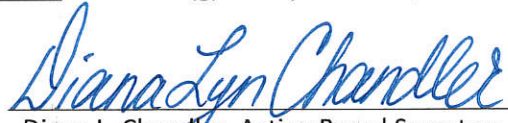
13. Applicant shall explore the feasibility of installing a generator on the rooftop on the structure.

14. Applicant shall utilize a light color roof on the structure.

15. Applicant shall install a fence enclosure for the trash area.

16. Applicant shall paint a stop stripe at the exit of the parking lot.

The undersigned secretary certifies the decisions set forth herein was made by this Board on August 11, 2021 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on September 1, 2021.


Diana L. Chandler, Acting Board Secretary

Vote on Action Taken by the Board on August 11, 2021

BOARD MEMBER	MOTION	SECOND	AYE	NAY	ABSTAIN	ABSENT
Bagoff (Ch.)			x			
Guarino			x			
Trenk			x			
Smeraldo			x			
Klein	x		x			
McCartney		x	x			
McNair						x
Wilkes (V.Ch)			x			

Vote on Memorialization on September 1, 2021:

BOARD MEMBER	MOTION	SECOND	AYE	NAY	ABSTAIN	ABSENT
Bagoff (Ch.)	x		x			
Guarino			x			
Smeraldo			x			
Klein			x			
McCartney		x				
McNair					x	
Wilkes (V.Ch)			x			

