

Resolution
Township of West Orange
Planning Board
PB 21-08: Sign Pros/ 217 Main Street
Block: 116.02; Lot: 1.01; Zone: E-C (Downtown Redevelopment Plan)
Decided on September 1, 2021
Memorialized on October 6, 2021
Amended Site Plan Approval and Variances for Limited Site Modifications
Related to Signage for New Tenants on the Property

WHEREAS, Sign Pros (hereinafter the "Applicant") has made an application for amended site plan approval with variances for limited site modifications related to signage for new tenants on an existing multi-tenant retail building on the property located at 217 Main Street, in the Edison Commercial ("E-C") zone of the Downtown Redevelopment Area, also known as Block: 116.02; Lot: 1.01; and

WHEREAS, a properly noticed public hearing was conducted on September 1, 2021; and

WHEREAS, the Applicant was represented by Scott R. Kipnis, Esq.; and

WHEREAS, the Applicant provided testimony by Nicholas Kappatos, President & Owner of the Applicant; and

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

SUBMISSIONS

ITEM

SIGNED BY

DATE/REVISION

Façade sign plans (1 sheet)

(not signed)

2/17/21

Monument sign plans (1 sheet)

(not signed)

2/9/21

ALTA/NSPS Land Title Survey

Nickolas R. Fusco, PLS

11/8/17

WHEREAS, representatives of the public asked 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

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

1. The applicant is requesting amended site plan approval with variances for signage on a commercial property.

2. The property is encompassed by an existing multi-tenant retail building on a property located in the Edison Commercial zone of the Downtown Redevelopment Area.
3. The proposed signage does not comply with certain applicable standards. As noted on page 12 of the Downtown Redevelopment Plan, "C" variance relief pursuant to Section N.J.S.A. 40:55D-7c may be addressed by the Planning Board through the development application process.
4. The subject property consists of a single tax lot with an area of 93,716 square feet (2.15 acres). The site has 336 feet of frontage on Main Street, 380 feet of frontage on Alden Street and 125 feet of frontage on Babcock Place. The subject property is developed with a one-story multitenant commercial building with floor area of approximately 24,300 square feet. Approximately half the building is occupied by a CVS/Pharmacy store and the remainder is currently vacant.
5. The property is located on the east side of Main Street between Alden Street and Babcock Place. There is a mix of land uses in the surrounding area, including residential, commercial and government. The property wraps around residential properties on Babcock Place and abuts a large former industrial property to the rear. There are sidewalks along the site's frontages.
6. Building mounted signage is proposed on one storefront that will be occupied by a Family Dollar store. The sign would be located above the store entrance and will be 108.4 square feet in area. Its width will be just over 27 feet and it will be four feet in height at its highest point, with letter height of 3.25 feet. The sign is proposed to be internally illuminated.
7. The existing two-sided monument sign along Main Street is proposed to be refaced to include signage for the existing CVS, the proposed Family Dollar and a third tenant, indicated as a Sherwin Williams store on the sign plans. The rendering on the sign plans indicated the signage area starts 6.5 feet above the ground, and is 7.83 feet in height and five feet in width, for an area of 39.15 square feet. The existing monument sign exceeds the maximum permitted height of eight feet but as it not being changed, a variance is not required. The sign is proposed to be internally illuminated, while it is currently externally illuminated. No other changes are proposed to the exterior of the building, to the layout of the parking lot or to site circulation.
8. The application requires the following bulk variance relief from this Board:

Section/Requirement	Permitted/Required	Existing	Proposed
Downtown Redevelopment Plan signage requirements – internal illumination	Not permitted	None	1 Proposed
Downtown Redevelopment Plan signage requirements – comply with Township standards:			
25-15.3.c.1.(b)(1) Maximum sign	2 feet	None	4 feet, 3.25

height			feet for letters
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9. N.J.S.A. 40:55D-46b and 50a are the focal points for consideration of amended preliminary and final site plan applications. N.J.S.A. 40:55D-46b provides that if "any substantial amendment in the layout of improvements proposed by the developer that have been subject of a hearing" is proposed, "an amended application for development shall be submitted and proceeded upon, as in the case of the original application for development." N.J.S.A. 40:55D-46b further provides that the Board "shall" grant amended preliminary site plan approval if the proposed development complies with all provisions of the applicable ordinances. Similarly, N.J.S.A. 40:55D-50a provides that final site plan approval "shall" be granted if the detailed drawings, specifications, and estimates of the application conform to the standards of all applicable ordinances and the conditions of preliminary approval. As such, if the application complies with all ordinance requirements, the Board must grant approval. Conversely, if the application does not comply with all ordinance requirements, the Board must deny approval. Cortesini v. Hamilton Planning Board, 417 N.J. Super. 201, 215 (App. Div. 2010). However, there are two exceptions: (1) The first exception is where an application does not comply with all ordinance requirements but the Board grants relief in terms of variances or exceptions. In that case, the Board then must review the application against all remaining ordinance requirements and grant approval if the application complies with all such remaining requirements.

10. 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(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.

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

1. This application requires the following variance relief, as well as amended site plan approval:

Section/Requirement	Permitted/Required	Existing	Proposed
Downtown Redevelopment Plan signage requirements – internal illumination	Not permitted	None	1 Proposed
Downtown Redevelopment Plan signage requirements – comply with Township standards:			
25-15.3.c.1.(b)(1) Maximum sign height	2 feet	None	4 feet, 3.25 feet

			for letters
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2. The Municipal Land Use Law, at N.J.S.A. 40:55D-70c 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. In this case the proposed Family Dollar store is located over 180' from the street. A larger wall sign letter height will be more visible for both vehicular and pedestrian traffic. The intent of the sign ordinance is to identify the businesses. Allowing for this variance for a larger letter height under these circumstances would substantially outweigh any detriment. Further, the ordinance does require the sign to be externally illuminated. Once again, the distance from the street and the other signs on the façade, the CVS sign, are internally illuminated. All the signs located are in the sign band and the proposed Family Dollar sign is located in the sign band. By allowing the larger letter height it will more equally fill the space. The sign proposed is proportional to the building area and is centered over the entrance.
7. The monument sign will incorporate the new tenants. The internal illumination will allow the sign to be more visible for both pedestrian and vehicle traffic. The sign will match the new wall signs also giving a consistent design on the property. The sign size and height does not change.

NOW THEREFORE be it resolved by the Planning Board of the Township of West Orange that the amended application (PB-21-08) of Sign Pros for property located at 217 Main Street, is determined as follows:

1. The Board grants the following bulk variance relief pursuant to <u>N.J.S.A. 40:55D-70(c)</u> :			
Section/Requirement	Permitted/Required	Existing	Proposed
Downtown Redevelopment Plan signage requirements – internal illumination	Not permitted	None	1 Proposed
Downtown Redevelopment Plan signage requirements – comply with			

Township standards:			
25-15.3.c.1.(b)(1) Maximum sign height	2 feet	None	4 feet, 3.25 feet for letters

2. Amended site plan approval is granted along with c variance approval.

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 a final plan submission.

8. Applicant shall comply with the New Jersey State Standard with respect to the quantity and quality of lumens for the applicable monument sign type.

The undersigned secretary certifies the decisions set forth herein was made by this Board on September 1, 2021, and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on October 6, 2021.

Diana Lyn Chandler

Diana L. Chandler-Zimmerman, Acting Board Secretary

Vote on Action Taken by the Board on September 1, 2021:

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

Vote on Memorialization on October 6, 2021:

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