

RESOLUTION

Township of West Orange

Planning Board

PB 22-04 IMMC993, LLC. / 993 Pleasant Valley Way

Block: 172.02 Lot: 6; Zone: B-2

Decided on July 6, 2022

Memorialized on August 3, 2022

C (2) Variance and Preliminary and Final Site Plan Approval

WHEREAS, IMMC993, LLC (Hereinafter the "Applicant") has made an application for a C (2) Variance and Preliminary and Final Site Plan approval in order to construct internal modifications to the existing structure to accommodate a medical office use and to re-stripe the parking lot and relocate the primary entry door located at 993 Pleasant Valley Way, also known as Block: 177.02; Lot 6, in the B-2 Zone; and

WHEREAS, a properly noticed public hearing was conducted on July 6, 2022; and

WHEREAS, the Applicant was represented by Derek W. Orth, Esq.; and

WHEREAS, the Applicant provided testimony by William Gentile, of Square Center LLC, Architecture Design Services, a licensed architect in the State of New Jersey 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
Preliminary & Final Minor Site Plan (Consisting of Sheets A-1, A-2, A-3, A-4, A-5, A-6, A-7, and F-1)	William Gentile, RA of Square Center LLC, Architecture Design Services	6/1/2022/2022
Boundary Retracement Survey	Edward R. Teunisen	1/10/2022
Application	Dr. Elyon Krok, Principal	6/13/2022
Image of current business identification sign	Exhibit introduced at the hearing	7/6/2022

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 preliminary and final site plan approval with variance relief for development of internal modifications to the structure to accommodate a medical office use, re-striping of the parking lot and relocation of the primary entry door.
2. Testimony established that Applicant purchased the property, which had previously been used as a pizza restaurant in December of 2020 and seeks to retrofit the existing building to create medical offices.
3. The property is located on the corner of Pleasant Valley Way and Mount Pleasant Avenue and the surrounding area is characterized by single family homes in the rear, and adjacent to a strip mall on Pleasant Valley Way.
4. The proposed medical offices practice will cater to patients who have been discharged from the hospital as is currently the practice located at 737 Northfield Avenue, West Orange, New Jersey.
5. The hours of operation will be Monday through Friday, 9AM to 5PM with late night hours on Mondays to 8PM once a month.
6. Waste removal of both medical and traditional waste will be addressed by a refuse pick up service on a month basis (As the office is paperless there is less office waste.)
7. Deliveries to the property are expected to arrive in passenger vehicles or vans such as those used by Amazon or FedEx.
8. There are 5 to 7 staff members typically employed by the practice with 4 to 5 members on site regularly. One patient is scheduled for every 45 minutes so it is anticipated that there will not be more than 2-3 patients in the office at any given time.
9. The building as situated is pre-existing, but the Applicant will reduce the parking from what exists currently to allow for safer and more efficient circulation around the building.
10. The corner of Mount Pleasant Avenue and Pleasant Valley Way where the property is located presents traffic challenges, though the intersection is governed by a traffic light. The proposed ingress and egress to the building is that traffic on Pleasant Valley Way may only make a right turn into the property and a right turn out of the property. The traffic coming from the Mount Pleasant side can make a right turn from Mount Pleasant Avenue or make a left turn into the site from Mount Pleasant as the traffic light will provide for safe entry. The Applicant will install "right turn" only from both points of egress to the property.
11. The property is irregularly shaped and presents challenges due to the configuration of the building on the land; however, the applicant is reducing the lot coverage.
12. The application requires the following bulk variance (c (2)) relief from the Board:

Section	Required	Existing	Proposed
25-7.1 Maximum Lot Coverage	60%	82%	75.73%

13. N.J.S.A. 40:55D-46a. and b. and N.J.S.A. 40:55D-50a. govern the Board's review of the preliminary and final site plan application. N.J.S.A. 40:55D-46a provides that an "ordinance requiring site plan review and approval shall require the developer submit to the administrative officer a site plan and such other information as is reasonably necessary to make an informed decision as to whether the requirements necessary for preliminary site plan approval have been met." N.J.S.A. 40:55D-46a further provides that "The site plan and any engineering documents to be submitted shall be required in tentative form for discussion purposes for preliminary approval. If any architectural plans are required to be submitted for site plan approval, the preliminary plans and elevations shall be sufficient." N.J.S.A. 50:55D-46b provides that "if the planning board required any substantial amendment in the layout of improvements proposed by the developer that have been the subject of a hearing, an amended application for development shall be submitted and proceeded upon, as in the case of the original application for development" and "the planning board shall, if the proposed development complies with the ordinance and this act, grant preliminary site plan approval." 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 applicant meets the standards set forth in the ordinances, the planning board lacks the authority to deny approval of the site plan and subdivision. N.J.S.A. 40:55D-50a; PRB Enters., Inc. v. S. Brunswick Planning Bd., 105 N.J. 1, 7 (1987); Dunkin' Donuts of N.J., Inc. v. Twp. of N. Brunswick Planning Bd., 193 N.J. Super. 513, 515 (App. Div. 1984).

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.

14. 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-70. A c (2) variance may be granted when 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 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 site plan approval:

2. Section	Required	Existing	Proposed
25-7.1 Maximum Lot Coverage	60%	82%	75.73%

3. Testimony established that the lot coverage exceeds the required lot coverage allowance as per the ordinance; however, the lot coverage is being reduced from what is presently located at the property and the proposed parking is a significant improvement as to what currently exists.
4. With respect to the negative criteria under the MLUL, the Board finds that entry into and out of the property has always been a challenge; but the proposed improvements and signage will allow for a more efficient and safer entry and exit to the property.
5. The project meets the goals of the Master Plan as it fulfills the goals and objectives including, creating a more efficient use of space and will promote a desirable visual environment through creative development.

NOW THEREFORE be it resolved by the Planning Board of the Township of West Orange that preliminary and final site plan approval for the modification of the building for use as a medical office with re-striping of the parking lot and relocation of the primary door with variance relief for the application of IMMC993, LLC for property located at 993 Pleasant Valley Way, is determined as follows:

1. The Board grants the following bulk variance relief pursuant to N.J.S.A. 40:55D-70 c (2):

2. Section	Required	Existing	Proposed
25-7.1 Maximum Lot Coverage	60%	82%	75.73%

2. Preliminary and final site plan approval is granted to IMMC993, LLC for the internal modifications to the structure to accommodate a medical office use and to re-stripe the parking lot and relocate the primary entry door along with the variance approvals set forth above.

3. Waivers granted include Application Item numbers: 28 (Existing street, water courses, flood plains and wetlands), 29 (Existing right of way and easements- satisfied by survey provided), 30 (Topographical features of subject property), 35 (Drainage calculations), 36 (Proposed utility infrastructure plans), 37 (Proposed utility infrastructure plans), 39 (Spot and finished elevations- not required), 46 (Waste management plan- addressed by testimony), 48 (Sight triangles), and 49 (Vehicular and pedestrian circulation patterns).

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 but excluding interior renovations, 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 a 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 successor 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 the 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 agrees to comply with the recommendations and directives set forth in the reports of the Township Engineer and Planner.
8. Applicant shall list all conditions of approval onto a final site plan submission.
9. Applicant shall install and maintain a lock box for any medical drop off or pick up.
10. The signage package for the property shall conform with the Ordinance requirements for size and shall be shown on the plans with a sign application to be submitted.
11. Applicant must supply a letter or report from an engineer attesting to the condition of the Westerly retaining wall.
12. Parking space #15 shall be designated for employees only.
13. Parking space #1 shall be marked as "Emergency Only or Ambulance Parking."
14. Applicant shall consider making Parking Space #5 as a full-size parking space and will work with the Township Engineer to determine the feasibility of a full-size space in that location.
15. Applicant must repair the sidewalk if deemed necessary by the Building Department.
16. Applicant shall submit to the County Planning Board for review if necessary.
17. Applicant shall stripe the parking lost strip (Approximately two feet section) with "No Parking" and striping on the rear/West side of the building.
18. Parking space #9 shall be employee only parking.
19. The fire lane must be striped onto the parking lot.
20. As per the memorandum of John J. Hess, Planning Board Engineer dated July 5, 2022, item 38, Applicant must supply verification to the Planning Board Engineer that they do not need a Soil Erosion or Sediment Control Plan.
21. As per the memorandum of John J. Hess, Planning Board Engineer dated July 5, 2022, item 44, Applicant must supply a Lighting Plan and details, including the level of foot candles to be used.
22. As per the memorandum of John J. Hess, Planning Board Engineer dated July 5, 2022, item 45, Applicant must provide a landscape plan detailing all landscaping proposed and such landscaping must be maintained in perpetuity.
23. Applicant shall supply a diagram of the dumpster enclosure as per the memorandum of John J. Hess, Planning Board Engineer dated July 5, 2022, Design Comment # 17.
24. Applicant will install signs "right turn only" and arrows painted on the ground at both exits and will address any site triangle issues for placement of those signs to the satisfaction of the Township Engineer.
25. As per the memorandum of John J. Hess, Planning Board Engineer dated July 5, 2022, item 52, Applicant must submit documents to the Township for West Orange COAH Ordinance compliance if applicable.
26. Applicant shall submit a letter to the Township confirming that there are no deed restrictions or covenants to satisfy item #20 of the memorandum of John J. Hess, Planning Board Engineer dated July 5, 2022.
27. To the extent that any letter from the State DOT stating they have no interest is required will be obtained by Applicant if necessary.

28. A fire truck turning template shall be supplied by Applicant.
29. Applicant will install curbs as per the memorandum of John J. Hess, Planning Board Engineer dated July 5, 2022, comment 8.
30. An electric vehicle parking space sign to be added to the plans as per the memorandum of John J. Hess, Planning Board Engineer dated July 5, 2022, Design Comment # 23.
31. Electric vehicle parking space to be installed in compliance with State Law.
32. As per the memorandum of John J. Hess, Planning Board Engineer dated July 5, 2022, Design Comment #11, a bollard at the Northwest corner must be added to the plans.
33. As per the memorandum of John J. Hess, Planning Board Engineer dated July 5, 2022, Design Comment #12, the details of the proposed retaining walls must be added to the plans.
34. As per the memorandum of John J. Hess, Planning Board Engineer dated July 5, 2022, Design Comment #13, wheel stops should be labeled, and a wheel stop detail added to the plans.
35. As per the memorandum of John J. Hess, Planning Board Engineer dated July 5, 2022, Design Comment #15, sheet A-5 must be revised to clearly identify the limits of the proposed concrete curb.
36. As per the memorandum of John J. Hess, Planning Board Engineer dated July 5, 2022, Design Comment #16, existing and proposed improvements must be clearly labeled on sheets A-4 and A-5.
37. As per the memorandum of John J. Hess, Planning Board Engineer dated July 5, 2022, Design Comment #18, Applicant must show the parking lot lights on Sheet A-4 and demonstrate that the parking lot lighting complies with the requirements of Section 25-14 of the Land Use Regulations.
38. As per the memorandum of John J. Hess, Planning Board Engineer dated July 5, 2022, Design Comment #19, a detail of the proposed bollard lights must be added to the plans (As noted on sheet A-6).
39. If a site identification sign is proposed then the location must be shown on sheet A-4 and a detail provided (As per the memorandum of John J. Hess, Planning Board Engineer dated July 5, 2022, Design Comment #21)
40. Details of the proposed pavement markings must be added to the plans as per the memorandum of John J. Hess, Planning Board Engineer dated July 5, 2022, Design Comment #22.

The undersigned secretary certifies the decision set forth herein was made by this Board on July 6, 2022 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on August 3, 2022.



Jamilet Baquerizo Vite, Planning Board
Secretary