

RESOLUTION
Township of West Orange
Planning Board
PB 21-01 West Orange Plaza/235 Prospect Avenue
Block: 152.01 Lots: 1445 and 1445.05; Zone: P-C and R-5/IHO-1
Memorialized on November 29, 2023
C(2) Variances and Preliminary and Final Site Plan Approval

WHEREAS, West Orange Plaza, a New Jersey Partnership (hereinafter the “Applicant”) has made an application for c (2) Variances and Preliminary and Final Site Plan approval in order to renovate and expand the existing West Orange Plaza Shopping Center at property located at 235 Prospect Avenue, also known as Block: 152.01 Lots 1445 and 1445.05, in the P-C and R-5 Zones and the IHO-1 Overlay Zone; and

WHEREAS, properly noticed public hearings were conducted on July 19, 2023, August 24, 2023, September 6, 2023, October 4, 2023, and October 25, 2023; and

WHEREAS, the Applicant was represented by Gregory Meese, Esq. of the firm Price, Meese, Shulman & D’Arminio, P.C.; and

WHEREAS, the Applicant provided testimony by Shaun Delaney, P.E., of Petry Engineering, LLC, a licensed Civil Engineer in the State of New Jersey whose credentials were accepted by the Board; and

WHEREAS, the Applicant provided testimony of Allison Mathern, P.E., Senior Development Manager of Target Corp., a proposed tenant of the shopping center; and

WHEREAS, the Applicant provided testimony of James Welsh, LA, of MKW & Associates, a licensed New Jersey Landscape Architect whose credentials were accepted by the Board; and

WHEREAS, the Applicant provided testimony of Doug Polyniak, P.E., traffic engineer, whose credentials were accepted by the Board; and

WHEREAS, the Applicant provided testimony of John Montoro, AIA, a licensed Architect in the State of New Jersey whose credentials were accepted by the Board; and

WHEREAS, the Applicant provided testimony by John McDonough, LA, AICP, PP of John McDonough Associates, LLC, a licensed Planner 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
Site Plans (21 Sheets)	J. Michael Petry, P.E., P.P., R.A	5/4/2023
Architectural Plans (15 Sheets)	Joseph Montoro, AIA	5/5/2023
Landscape Plans (9 Sheets)	Allen E. Juba, L.A.	5/5/2023
Stormwater Management Report	J. Michael Petry, P.E., P.P., R.A.	3/3/2023
Drainage Area Maps (4 Sheets)	Petry Engineering, LLC	3/3/2023
Truck Turning Movements (5 Sheets)	J. Michael Petry, P.E., P.P., R.A.	5/4/2023
Planning Report	John McDonough, L.A., AICP, PP	5/19/2023
Traffic Impact Assessment	Gary W. Dean, P.E.	5/17/2023
Stormwater Maintenance Manual	Petry Engineering, LLC	4/24/2023

WHEREAS, representatives of the public asked questions of the witnesses and had an opportunity to offer testimony and evidence in regard to the application; and

WHEREAS, the Board reviewed and considered the application, testimony and documents submitted therewith (including but not limited to amendments to the site plans, landscape plans and the Wall Sign Chart Amendment dated August 2, 2023); and

WHEREAS, the Board considered the reports of these professionals, as well as the report from the West Orange Pedestrian Safety Advisory Board, Forester's report dated October 24, 2023, Township Engineer (John Hess) report dated June 7, 2023, Township Planner (Paul Grygiel, AICP, PP) report dated June 22, 2023, and the Board also considered the input of professionals John Hess, PE Township Engineer, Paul Grygiel, AICP, PP, Township and of Doug Rohmeyer, PE, professional engineer at the hearings; and

WHEREAS, the Board also reviewed the report from Peter Steck, PP, a professional planner called by Kevin Malanga, Esq., who objected to the application, and heard the testimony of Mr. Steck during the hearing and reviewed the memorandum from Gregory Meese, Esq., in response to Mr. Steck's report; 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 is requesting preliminary and final site plan approval with variance relief to renovate and expand the existing West Orange Plaza Shopping Center which will include the construction of three new buildings, plus the enlargement of the existing Verizon building; proposed modifications to the existing "Mavis" Building B-5; plus modifications to the main building to improve the entrance to the proposed Target store

and modifications to the loading docks at the rear of the proposed Target, modification to the site access and circulation patterns and parking areas, new landscaping and lighting and the construction of various related improvements.

2. The subject property is located in the P-C Planned Commercial zone and the R-5 Residential zone, though no construction or improvements exist or are proposed for the portion of the site in the R-5 zone.
3. The property is also located in the IHO-Inclusionary Overlay zone, which was created by the Township in accordance with an ordinance adopted in October 2020; however, no residential units are proposed at the site.
4. The site is located in the northeastern portion of West Orange in an area developed with a mix of land uses that include commercial, office, residential, open space and hotel.
5. The property is bounded by Prospect Avenue on the east and by Eagle Rock Avenue on the south, with the former Mayfair Farms catering facility directly to the west and residential and vacant properties bordering the site to the north and west.
6. Eagle Rock reservation is located to the east across Prospect Avenue, and commercial uses are located to the south across Eagle Rock Avenue.
7. The subject property is located at the signalized intersection of Prospect Avenue and Eagle Rock Avenue, which is one of the busiest intersections in West Orange. Prospect Avenue and Eagle Rock Road are both major thoroughfares under the jurisdiction of the County of Essex.
8. Existing traffic signals are also located at the site's Eagle Rock Avenue driveway opposite Woodhull Avenue and northerly Prospect Avenue driveway. There is also a southerly unsignalized driveway on Prospect Avenue.

9. The existing site has a slip ramp entrance from Prospect Avenue which is proposed to be eliminated for the proposed modified existing signalized entrance for safety.
10. A sidewalk is located along Eagle Rock Avenue between Prospect Avenue and the site driveway, but no sidewalks currently exist along the site's Prospect Avenue frontage.
11. A bus stop is located to the west of Eagle Rock Avenue driveway and a companion bus stop is located on the opposite side of the street at Woodhull Avenue.
12. The existing site consists of an upper level that includes a Whole Foods, the former K Mart store and other stores, at the mid level the former Retro Fitness and other storefronts, and in the lower level small retail stores. At the northeast corner of the property a Mavis Discount Tire store is situated close to Prospect Avenue (31.3 ft. front setback and 10.1 side yard setback.) Lastly, there is a Verizon store at the southeast corner of the site (113.8 ft front yard setback and 43.4 side yard setback from Eagle Rock Avenue.)
13. There are 1,476 existing parking spaces, many of which are currently unused.
14. There are three primary entrances to the site: from Eagle Rock Avenue (signalized with right and left turns into the site and a dedicated right turn lane), and two from Prospect Avenue (at the Mavis building with a signal allowing for right and left turns and at Prospect unsignalized allowing right turn only). There is a slip ramp entrance from Prospect Avenue (near the Mavis building) that is proposed to be eliminated.
15. There are two main drainage systems for the site: a County system that drains to a ditch to the north of the site behind the residences and one that runs along the building to a new outfall section recently created in anticipation of the development that the Applicant's engineer testified corrected prior issues.

16. The Applicant proposes to construct three new buildings, an addition to the Verizon Building; renovation to the Mavis Building; also renovations and an addition to the former K Mart space (that will include the retail spaces leased by Dollar Tree and Staples) so as to construct a Target store and fulfillment center, and to completely reconstruct the parking lot.
17. The project is designed with sustainability in mind as it includes EV charging spaces, compact car parking spaces, landscaping along the street frontages and landscaped islands throughout the parking lot to reduce storm water runoff and reduce the heat island effect, and the replacement of the parking lot lighting with more energy efficient LED lighting. The architecture of the buildings also includes canopies to shield the sun, to reduce energy demand and add architectural interest and white roofs on the Target building and the new buildings to reflect the sun and make those buildings more energy efficient; as well as larger pedestrian spaces and large plazas.
18. The testimony established that the space between buildings A & B, which is less than the Code permits, and which requires a variance, provides a courtyard area and a possible outdoor dining space. Proposed Building A is also angled toward the main building to improve pedestrian circulation and enhanced the center's sense of place.
19. The front entrance at the Target store will be modified and the sidewalk area enlarged to give pedestrians more space and improve pedestrian safety by providing awareness to cars regarding pedestrians.
20. Building C will be one story and 8,400 sq. ft. with a maximum height of 28 ft. and is proposed to house a drive thru for a number of potential permitted uses and will allow for

a 10-car queue (exceeding the standard que of 8 cars) and a screening wall to match the building on the west side.

21. Building D is proposed to be 5,502 sq. ft. and is 35 ft. high with the second proposed drive-thru that has a 5-car queue and will comply with the condition suggested by Township Engineer Hess that there be a “Left turn only” sign posted for pedestrian safety. The size of the proposed dumpster near the exit has also been reduced as recommended by Mr. Hess to improve visibility.
22. The entrance from Eagle Rock Avenue will be upgraded so that it is narrower to slow vehicles entering the site to protect pedestrians and the egress has been modified to have one left turn lane, a combined left turn and through lane, and a right turn lane.
23. The testimony was that the proposed 12 loading docks provided in the plan are sufficient for the use and will be screened as shown on the plans.
24. Over an acre of new landscape areas will be added to the parking lot along with new ADA compliant parking throughout the parking lot which will provide more ADA parking than required by the ordinance.
25. A new sidewalk will be installed on the entire length of Prospect Avenue where there currently is no sidewalk and the sidewalk on Eagle Rock will also be replaced where necessary so that the entire frontage will contain sidewalks.
26. Bicycle racks will be installed on site.
27. Testimony established that because the pavement in the rear of the building is being expanded for the loading docks, a retaining wall of up to 13 ½ feet is needed. The proposed retaining wall is very close to the neighboring property but can be installed

without entering the neighboring property or by a construction easement to be negotiated directly with that neighbor.

28. New storm sewers will be installed throughout most of the site.
29. The lighting plan proposes 25 ft. high fixtures (including the 3ft mounting pedestal necessary to protect the poles from vehicles) which are necessary to illuminate the parking area and new sidewalks and which will provide an average illumination of 0.3 footcandles.
30. The need for the higher poles (18' are permitted) is that this will allow for more light coverage with less poles and will provide a more even lighting pattern, with fewer patches of bright or dark areas.
31. The light poles will be on a timer from dusk to dawn.
32. 125 trees are required by ordinance and the Applicant is exceeding this requirement by planting them in the parking lot islands and at the perimeter of the site.
33. The Target store is a typical Target merchandise store with ancillary uses, such as a CVS, Optical services, Ulta, Starbucks, and groceries on the upper level and the uses of the lower-level include storage of stock for the first floor store and a delivery/fulfillment center for delivery to customers for smaller local deliveries.
34. The Target store hours will be 8AM to 11PM, seven days a week.
35. The fulfillment deliveries will be made by small vans or sprinter trucks.
36. The trees currently located at the corner of Eagle Rock and Prospect Avenue will remain.
37. The courtyard area between buildings A & B will be an attractive area for gathering, with the possibility of the adjacent spaces being used for restaurants.

38. The application requires the following bulk variance relief from the Board:

Section	Required	Existing	Proposed
25.7.1 Minimum front yard setback (Prospect Avenue)	300 ft.	372.3 ft. (Main building), 113.8 ft (Verizon), 31.3 ft. (Mavis)	268.3 ft. (Building A), 135.9 ft. (Building B), 65.4 ft (Building C) 72 ft (Building D)
25-7.1 Minimum side front yard setback (Eagle Rock Avenue)	100 ft.	53.9 ft. (Main building) 43.4 ft. (Verizon)	68.6 feet (Building D)
25.7.1 Minimum side yard setback	100 ft.	10.1 ft. (Mavis)	50.7 feet (Building A) and 60 feet (Building B)
25.7.1 Minimum rear yard setback	75 ft.	52.5 ft. (Main building)	39.6 feet (Loading dock of main building)
25.7.1 Minimum space between buildings	150 ft.	182 ft. (Main building and Verizon)	90.3 feet (Existing Main Building and Building A), 38.0 feet (Building A and Building B), 54.2 feet (Building B and the Mavis Building)
25-8.1 Minimum parking setback	5 ft.	Not provided	2 ft.
25.8.1a. Accessory use location	Not permitted in required front or side yard	N/A	Drive-up windows in required front yard
25-8.4 Maximum retaining wall height	4 ft.	Not provided	13.5 ft.
25-11.9 Loading area/bay location	Entirely within the structure	Not entirely within the structure	Not entirely within the structure

25-11.14i Drive-up window	Not permitted in a required yard setback	N/A	Proposed in required front yard
25-12.1o. Maximum parking row length without landscaped island	20 spaces	>20 spaces	Up to 32 spaces
25-12.2 Minimum number of parking spaces	Required 1,476	1,555	1,197
25-12.3a.1. Minimum number of loading spaces	34 (1 per 10,000 sq. ft. of gross floor area)	7	12
25-14.1c. Maximum light fixture height	18 feet	Not provided	25 feet
25-14.3 Minimum lighting levels in parking areas	1.5 footcandles	Not provided	0.3 footcandles
25-15.3c.2(b) Maximum number of wall signs	1 per unit: 6 Bldg. A 4 Bldg. B 2 Bldg. B-5 3 Bldg. C 3 Bldg. D 1 Bldg. 1M-D	N/A	8 Bldg. A 6 Bldg. B 6 Bldg. B-5 11 Bldg. C 13 Bldg. D 7 Bldg. 1M-D
25-15.3c2(d) Maximum number of freestanding signs	1	2 (2 monument signs)	4 (1 monument sign, 3 shopping center signs)
25-15.3c2.(d) Location of freestanding signs	Front yard	Front yard	Front and side yards
25-15.3c2(d) Minimum sign front setback	50 ft. (Shopping center sign)	Not provided	Ten (10') feet
25-15.3c2.(d) Maximum sign area- shopping center sign	150 sq. ft. (Shopping center)	Not provided	220 sq. ft. (2 signs), 260 sq. ft. (1 sign)
25-15.3c2.(d) Maximum sign height- shopping center sign	20 ft.	N/A	28 ft. (2 signs), 36 ft. (1 sign)
25-15.3c2(d) Maximum sign	15 ft.	N/A	16 ft. (3 signs)

width- shopping center sign			
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39. 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.

40. 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.

41. The Board found the Applicant’s witnesses to be credible and their testimony to be well supported. The Applicant was responsive to the Board and the Board’s professionals and the plans were modified in response to those comments.

42. The Board does not find that there is an issue as to the calculation of coverage and that Mr. Steck's testimony is not supported by the clear language of the West Orange Zoning Ordinance with respect to the calculations of building or impervious coverage. Under the Ordinance, if there was a shortfall as to building coverage or impervious coverage requiring a variance, they would be a c variance and within the jurisdiction of this board to determine.

43. Members of the public offered comments regarding the lack of "cool pavement," solar panels on Target's roof and requests for more trees on the property; however, the Board noted that the Township Planner testified that the West Orange Code does not require cool pavement or solar panels and the amount of landscaping provided by Applicant exceeded the Township Code requirements. Further, the assumption that the approved drive throughs were created for use by "fast food" restaurants is unfounded as the unequivocal testimony by the Applicant's witnesses was that there are no restaurant tenants under contract with the applicant, nor is the Applicant seeking restaurants that meet the definition of "fast food restaurants" under the Code. Finally, the Board also notes that should a potential tenant for the site present a business not permitted in the zone they would have to make an application on proper notice to the Zoning Board of Adjustment.

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
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25.7.1 Minimum front yard setback (Prospect Avenue)	300 ft.	372.3 ft. (Main building), 113.8 ft (Verizon), 31.3 ft. (Mavis)	268.3 ft. (Building A), 135.9 ft. (Building B), 65.4 ft (Building C) 72 ft (Building D)
25-7.1 Minimum side front yard setback (Eagle Rock Avenue)	100 ft.	53.9 ft. (Main building) 43.4 ft. (Verizon)	68.6 feet (Building D)
25.7.1 Minimum side yard setback	100 ft.	10.1 ft. (Mavis)	50.7 feet (Building A) and 60 feet (Building B)
25.7.1 Minimum rear yard setback	75 ft.	52.5 ft. (Main building)	39.6 feet (Loading dock of main building)
25.7.1 Minimum space between buildings	150 ft.	182 ft. (Main building and Verizon)	90.3 feet (Existing Main Building and Building A), 38.0 feet (Building A and Building B), 54.2 feet (Building B and the Mavis Building)
25-8.1 Minimum parking setback	5 ft.	Not provided	2 ft.
25.8.1a. Accessory use location	Not permitted in required front or side yard	N/A	Drive-up windows in required front yard
25-8.4 Maximum retaining wall height	4 ft.	Not provided	13.5 ft.
25-11.9 Loading area/bay location	Entirely within the structure	Not entirely within the structure	Not entirely within the structure
25-11.14i Drive-up window	Not permitted in a required yard setback	N/A	Proposed in required front yard
25-12.1o. Maximum parking row length	20 spaces	>20 spaces	Up to 32 spaces

without landscaped island			
25-12.2 Minimum number of parking spaces	Required 1,476	1,555	1197
25-12.3a.1. Minimum number of loading spaces	34 (1 per 10,000 sq. ft. of gross floor area)	7	12
25-14.1c. Maximum light fixture height	18 feet	Not provided	25 feet
25-14.3 Minimum lighting levels in parking areas	1.5 footcandles	Not provided	0.3 footcandles
25-15.3c.2(b) Maximum number of wall signs	1 per unit: 6 Bldg. A 4 Bldg. B 2 Bldg. B-5 3 Bldg. C 3 Bldg. D 1 Bldg. 1M-D	N/A	8 Bldg. A 6 Bldg. B 6 Bldg. B-5 11 Bldg. C 13 Bldg. D 7 Bldg. 1M-D
25-15.3c2(d) Maximum number of freestanding signs	1	2 (2 monument signs)	4 (1 monument sign, 3 shopping center signs)
25-15.3c2.(d) Location of freestanding signs	Front yard	Front yard	Front and side yards
25-15.3c2(d) Minimum sign front setback	50 ft. (Shopping center sign)	Not provided	Not provided (1 shopping center sign), 0 ft. (2 shopping center signs)
25-15.3c2.(d) Maximum sign area- shopping center sign	150 sq. ft. (Shopping center)	Not provided	220 sq. ft. (2 signs), 260 sq. ft. (1 sign)
25-15.3c2.(d) Maximum sign area- shopping center sign	Wall sign area 48 sf	Not provided	1M-A.7 Two signs at 81 sf
25-15.3c2.(d) Maximum sign height- shopping center sign	20 ft.	N/A	28 ft. (2 signs), 36 ft. (1 sign)
25-15.3c2(d) Maximum sign	15 ft.	N/A	16 ft. (3 signs)

width- shopping center sign			
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3. The Municipal Land Use Law, at N.J.S.A. 40:55D-70(c) provides Planning Boards with the power to grant variances from bulk and other Ordinance requirements when the Applicant satisfies certain specific proofs enunciated in the statute.
4. 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 the benefits of any deviation will substantially outweigh any detriment.
5. These tests specifically enumerated above constitute the affirmative proofs necessary in order to obtain “bulk” variance relief, under Section c (2).
6. 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.
7. As to site plan requested waivers, Applicant requested waivers (as noted in the report of Township Engineer, John Hess, dated June 7, 2023), of the following: #22 (Development stages or staging plans), #46 (Solid waste management plan), #48 (Sight triangles), to permit a parking area setback of 2 ft whereas 5 ft is required by §25-8.1 of the Ordinance, to permit 1,197 parking spaces where 1,147 parking spaces are required, to permit 12 loading spaces where 34 loading spaces are required, to permit a light pole height of 25

ft. where a maximum light pole height of 18 ft is permitted, and to permit a retaining wall height of 13.5 ft where a maximum height of 4 ft is permitted.

8. As for the requested bulk variances, they also satisfy a c (2) criteria as Applicant has provided credible evidence that the following purposes of the MLUL set forth in N.J.S.A. 40:55D-2 are advanced:

- a. With respect to the minimum front and side yard setback variances, the evidence demonstrates that if the buildings were to meet the required setbacks they would block the existing buildings and would interfere with the overall enhancement of the center. The placement of the buildings as proposed is a more effective method of attracting patrons and enhances the overall viability of the center. The placement of the buildings also allows for adequate parking in front of Buildings A & B and promotes efficient land use by putting underutilized asphalt areas to a functional use while also promoting a desirable visual environment. The side yard setback at the north has a significant grade difference to the residential development to the north which provides a physical divide that further mitigates any setback related impacts. (Along with the extensive landscaping that will be added as per conditions.)
- b. As to the variance related to the minimum space between buildings, the placement of the buildings, especially Buildings A and B, provides outdoor dining areas and landscaping that will break up the expanse of asphalt that currently exists and presents an aesthetically pleasing courtyard. The angle of the building and the spacing between the Main Building and Building A promotes pedestrian circulation and helps to integrate the center and enhance its sense of place.

- c. With respect to the variance for fewer landscape islands and parking spaces in the parking lot, the proposed landscaped islands are an improvement to the current fully paved area and will provide sufficient shading, additional drainage, and less impervious coverage while also striking a balance between the lessened parking spaces provided. There are also additional landscaping areas within the site and along its perimeter, and a new courtyard and because the number of spaces provided will be sufficient to meet the needs of all the proposed businesses on site, the Board finds that this is a better zoning alternative.
- d. The light pole heights will allow for a more even lighting pattern with fewer poles to create a more efficient lighting design.
- e. The proposed signs are appropriate for the proposed buildings. Some of the buildings will be seen from several angles, making signs on each side a necessity for patrons to identify locations, and an architectural enhancement over bare building walls that add interest to the varied façade designs. The signs presented as to Target are part of the Target branding and the related businesses that are identifiable by consumers and will bring patrons into the site for this anchor tenant. The pylon signs and monument signs are necessary for identification of the site for approaching vehicles.
- f. The enhanced loading zones provided behind Target and the existing loading zones behind Whole Foods are sufficient to provide the necessary large truck deliveries to those stores. The other buildings will have smaller stores that will have deliveries from smaller vehicles instead of tractor trailer deliveries such that

a traditional loading zone is not required. The Board finds that the number, location and size of the proposed loading zones to be sufficient and appropriate.

- g. The retaining wall in the rear is hidden from the rear facing neighboring property due to the topography of the land and the proposed fence and guardrail will prevent persons from attempting to climb or walk on top of the wall.
 - h. The proposed placement of the drive-through windows will be adequately screened with landscaping and will allow for sufficient space for queuing all of which will be self-contained on the site and will not create any spillover onto either Eagle Rock Avenue or Prospect Avenue.
9. The project as a whole, will revitalize the existing site which currently is a sea of asphalt and impervious coverage. The project will take an older shopping center and revitalize and modernize it with new buildings and significant additional landscaping and landscaping buffers and screenings. In considering the application as a whole as directed by Pullen v. Tp. of South Plainfield, 291 N.J. Super. 1, 8 (App. Div. 1996), the Board finds that all the relief sought is necessary to effectuate the overall enhancement of the center and the public benefits cited above. The Board finds that the benefits of the proposed project significantly outweigh the detriments as the project advances the purposes of the MLUL (N.J.S.A. 40:55D-1 et. seq.) by promoting the general welfare in its improvement of a key economic center of the Township, providing for an appropriate location for recreational, commercial and open space to meet the needs of all New Jersey citizens, by promoting a desirable physical environment through creative development and good civic design, and by providing a more efficient use of the land by revitalizing and improving what is there.

10. With respect to the negative criteria under the MLUL, the Board accepts the testimony that new trip generation will create additional traffic; however, 1/3 of the traffic expected already exists on Prospect Avenue and Eagle Rock Avenues, the site will bring shoppers but there is improved pedestrian safety present. The Board also accepts the evidence that since the Pandemic, shopping practices have changed and there is a noticeable reduction in people physically shopping and more pick up uses. The proposed drive aisles, elimination of the slip lane and improvements to the entrances and exits with signs, crosswalks and striping will be an improvement over what is currently at the site. The setback variances have been adequately ameliorated with landscaping and enhanced architectural treatment of the buildings' facades and screened rooftop mechanical units. The Board finds that the detriments of the application are significantly outweighed by the many benefits.

NOW THEREFORE be it resolved by the Planning Board of the Township of West Orange that preliminary and final site plan approval with variance relief for the application of West Orange Plaza for property located at 235 Prospect Avenue, is determined as follows:

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

Section	Required	Existing	Proposed
25.7.1 Minimum front yard setback (Prospect Avenue)	300 ft.	372.3 ft. (Main building), 113.8 ft (Verizon), 31.3 ft. (Mavis)	268.3 ft. (Building A), 135.9 ft. (Building B), 65.4 ft (Building C) 72 ft (Building D)
25-7.1 Minimum side front yard	100 ft.	53.9 ft. (Main building) 43.4 ft. (Verizon)	68.6 feet (Building D)

setback (Eagle Rock Avenue)			
25.7.1 Minimum side yard setback	100 ft.	10.1 ft. (Mavis)	50.7 feet (Building A) and 60 feet (Building B)
25.7.1 Minimum rear yard setback	75 ft.	52.5 ft. (Main building)	39.6 feet (Loading dock of main building)
25.7.1 Minimum space between buildings	150 ft.	182 ft. (Main building and Verizon)	90.3 feet (Existing Main Building and Building A), 38.0 feet (Building A and Building B), 54.2 feet (Building B and the Mavis Building)
25-8.1 Minimum parking setback	5 ft.	Not provided	2 ft.
25.8.1a. Accessory use location	Not permitted in required front or side yard	N/A	Drive-up windows in required front yard
25-8.4 Maximum retaining wall height	4 ft.	Not provided	13.5 ft.
25-11.9 Loading area/bay location	Entirely within the structure	Not entirely within the structure	Not entirely within the structure
25-11.14i Drive-up window	Not permitted in a required yard setback	N/A	Proposed in required front yard
25-12.1o. Maximum parking row length without landscaped island	20 spaces	>20 spaces	Up to 32 spaces
25-12.2 Minimum number of parking spaces	Required 1,476	1,555	1,197
25-12.3a.1. Minimum number of loading spaces	34 (1 per 10,000 sq. ft. of gross floor area)	7	12
25-14.1c. Maximum light fixture height	18 feet	Not provided	25 feet

25-14.3 Minimum lighting levels in parking areas	1.5 footcandles	Not provided	0.3 footcandles
25-15.3c.2(b) Maximum number of wall signs	1 per unit: 6 Bldg. A 4 Bldg. B 2 Bldg. B-5 3 Bldg. C 3 Bldg. D 1 Bldg. 1M-D	N/A	8 Bldg. A 6 Bldg. B 6 Bldg. B-5 11 Bldg. C (including the clearance bar) 13 Bldg. D (including the clearance bar) 7 Bldg. 1M-D (Target)
25-15.3c2(d) Maximum number of freestanding signs	1	2 (2 monument signs)	4 (1 monument sign, 3 shopping center signs)
25-15.3c2.(d) Location of freestanding signs	Front yard	Front yard	Front and side yards
25-15.3c2(d) Minimum sign front setback	50 ft. (Shopping center sign)	Not provided	Ten (10') feet (2 shopping center signs) Zero (0') feet (1 shopping center sign)
25-15.3c2.(d) Maximum sign area- shopping center sign	150 sq. ft. (Shopping center)	Not provided	220 sq. ft. (2 signs), 260 sq. ft. (1 sign)
25-15.3c2.(d) Maximum sign area- shopping center sign	48 sq. ft wall sign	Not provided	1M-A.7 Two signs at 81 sf
25-15.3c2.(d) Maximum sign height- shopping center sign	20 ft.	N/A	28 ft. (2 signs), 36 ft. (1 sign)
25-15.3c2(d) Maximum sign width- shopping center sign	15 ft.	N/A	16 ft. (3 signs)

2. Preliminary and final site plan approval is granted along with the c (2) variance approval set forth above.

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. New sidewalks along Building C as suggested by Township Engineer will be installed as shown on the revised site plan exhibit.
8. A "Left turn only" sign shall be installed at the Suite D-3 drive thru lane as recommended by the Township Engineer in his report dated June 7, 2023 and as shown on the revised site plan exhibit.
9. Applicant will comply with all of the recommendations set forth by the Township Engineer in his report of June 7, 2023 with the exception of: #6- EV spaces will be installed as per State statute (In three phases), #10- already provided on the plans, and #14 relating to the Stormwater Maintenance Manual as it was already provided.
10. A note regarding the 0.3 footcandles for light poles to be added to plans.
11. Striping to be added to pavement in the rear of the Main Building to show fire lanes.

12. Landscaping for parking lot islands to be as shown on the plans as approved by the Town Forester.
13. Employee parking and the placement of the EV charging stations shall be installed in accordance with the revised site plan exhibit, or as modified in the future with the prior approval of the Director of Planning and Development/Zoning Official and Township Engineer.
14. A new sidewalk will be added at the east corner on Eagle Rock (Near Verizon) reducing one parking space as shown on the revised site plan exhibit.
15. Parking lot area in front of Whole Foods- will do addition of green islands as shown on revised plans marked as A-5 at the hearing of October 4, 2023.
16. The wall mounted lights in the rear of Buildings A and B shall be lowered to fifteen feet to reduce light onto residential properties as testified to by Mr. Delaney.
17. A noise barrier of some type to reduce noise from the courtyard between Buildings A & B as directed towards the residents to the north, as discussed by James Welsh, shall be installed, in addition to the additional five (5) trees shown on the revised landscape plans marked A-5.
18. A crosswalk near Jersey Mike's and the bus stop shall be added as shown on the revised plans marked A-5.
19. There shall be no restaurants that meet the Code definition of "fast food restaurant" permitted at the site.
20. Applicant will plant and maintain majestic jade arborvitaes to screen dumpsters as shown on the revised landscape plans.

21. The Applicant shall shorten screen wall to increase sight line for pedestrians at Building C, as shown on the revised site plan exhibit.
22. The Applicant will conduct a video assessment on site of the sanitary sewer system and will add all new and upgraded lines if deemed necessary by the Township engineer. The Applicant shall also provide an evaluation of the sewer functionality of entire site.
23. A fence and guard rail will be added on top of the retaining wall behind Target (noted as wall D on the plans).
24. The sizes of the pylon signs are reduced to 260 sq. ft. (for the main larger sign) and 220 sq. ft. for the other two pylon signs.
25. If trees or shrubbery depicted on the plans fail or die they must be replaced in kind at the first opportunity during the growing season.
26. Applicant shall add evergreen shrubs intermittently along the length of Prospect Avenue at a height that will buffer view of the parked cars but allow for the buildings to be seen (approximately 2-3' high) in addition to the Giant Arborvitae's being used to screen the dumpster and drive-through areas.
27. Applicant shall comply with the Forester's report of October 23, 2023, with the exception that yearly evaluations will be performed by the Director of Planning and Development/Zoning Official and the Forester and not the Applicant. The Applicant must abide by the instruction of the Forester and Director of Planning with respect to their findings regarding those yearly evaluations.
28. Applicant must maintain a sprinkler/irrigation system in the grass/landscape area that runs along Prospect Avenue in perpetuity.

29. Applicant shall list all conditions of approval onto a revised site plan to be submitted for compliance review.

The undersigned secretary certifies the decision set forth herein was made by this Board on October 25, 2023, and memorialized herein pursuant to N.J.S.A. 40:55D10(g) on November 29, 2023.

A handwritten signature in black ink, appearing to read "Jamilet Baquerizo Vite", is written over a horizontal line.

Jamilet Baquerizo Vite, Planning Board

Secretary

Vote Action Taken by the Board on October 25, 2023:

Board Member	Motion	Second	Aye	Nay	Abstain	Absent
K. Alper			X			
J. Guarino			X			
L. Klein			X			
S. McCartney			X			
C. Morgan			X			
P. Smeraldo			X			
W. Wilkes			X			
T. Williams		X	X			
S. Jensen					---	
J. Cardoza					---	
R. Bagoff	X		X			

Vote on Memorialization on November 29, 2023:

Board Member	Motion	Second	Aye	Nay	Abstain	Absent
K. Alper			X			
J. Guarino			X			
L. Klein			X			
S. McCartney			X			
C. Morgan			X			
P. Smeraldo		X	X			
W. Wilkes			X			
T. Williams						----
S. Jensen					----	
J. Cardoza					---	
R. Bagoff	X		X			