

RESOLUTION

Township of West Orange

Planning Board

PB 24-06 410 Main Street Holdings, LLC/ 410 Main Street

Block: 113 Lots: 262, 264 and 308; Zone: B-2

Decided on December 11, 2024

Memorialized on January 8, 2025

**Denial of Application for Conditional Use, Preliminary and Final Major Site Plan
Approval and Variance Approvals to Permit a Mixed-Use Development**

WHEREAS, 410 Main Street Holdings, LLC (Hereinafter the “Applicant”) has made an application for conditional use, major site plan approval, and variance relief for the proposed new three-story mixed use building at property located at 410 Main Street, also known as Block: 113; Lots 262, 264 and 308 (the “Property”), in the B-2 commercial zone; and

WHEREAS, a properly noticed public hearing was conducted on June 5, 2024, August 7, 2024 September 4, 2024, October 9, 2024, November 6, 2024, December 4, 2024 and December 11, 2024; and

WHEREAS, the Applicant was represented by Jason Tuvel, Esq. and Benjamin Wine, Esq. of the firm Prime & Tuvel; and

WHEREAS, the Applicant provided testimony of Brittany Klimm, R.A. of Mistry Design and Yogesh Mistry, R.A. as a professional architect; Aliasgar Rangwala, PE, of SMBT Consultants of East Brunswick as a professional engineer; Mallory Clark PPM, AICP as a professional planner, and, Harold K. Maltz, PE. of Hamal Associates as a professional traffic engineer (the “Witnesses”); and

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

ITEM	SIGNED BY	DATE/REVISION
Topographic Survey	Allstate Mapping & Layout	6/3/2023
Architectural Plans	Mistry Design	12/23/2023 revised 8/21/2024
Site Plan (13 sheets)	SMBT Consultants	1/16/2024 revised 8/23/2024
Traffic Report	Hamal Associates, Inc.	1/12/2024
Stormwater Report	Aliasgar M. Rangwala, P.E.	8/23/2024

WHEREAS, representatives of the public were provided with an opportunity to pose questions of the Witnesses and also had an opportunity to offer statements in regard to the Application; and

WHEREAS, the Board reviewed and considered the Application, and the documents submitted therewith, the testimony of the Witnesses and members of the public; and

WHEREAS, the Board also considered the testimony and filed review letters of its professionals at the hearing, including Planning Report by Paul Grygiel AICP, PP, Township Planner dated April 10, 2024 Engineering Memorandum by John J. Hess, PE, PP, CME of CME Associates dated April 18 2024, July 30, 2024 and August 28, 2024.

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 approval for conditional use, that being a new mixed-use building, as well preliminary and final major site plan approval and variance relief.
2. The Property is 11,936 square feet (0.274 acres) in area and is located at the southwestern corner of the intersection of Main Street and Park Drive North.

3. The Applicant is proposing to construct a new three-story mixed-use building with ground floor commercial space and parking on the property located on the West side of Main Street.
4. The property has 139.95 feet of frontage on Main Street and 84.46 feet of frontage on Park Drive North.
5. Until recently, the property was developed with a 2.5 story frame residential building and other improvements such as walkways, steps, porch, a rear shed, and a patio.
6. The improvements on the site were demolished and the site is currently vacant.
7. The area surrounding the subject property is developed with a mix of land uses including commercial and residential, mixed-use buildings are located along Main Street, as are educational and institutional uses. There are residential uses to the west along Park Drive and other streets to the west and east of Main Street.
8. The Applicant proposes to construct a three-story mixed-use building with 12 apartment units on the upper floors (six dwelling units on each floor) and 900 square feet of commercial space.
9. Applicant also proposes related site improvements including stormwater management infrastructure, landscaping, and lighting improvements.
10. The proposed apartments consisted of eight (8) two-bedroom units and four (4) one-bedroom units.
11. Three building entrances are proposed on the ground floor on Main Street: the commercial space, a trash room and residential lobby. An exit door is proposed in the rear of the building, which will connect to a sidewalk between the building and the western property line.

12. A parking garage is proposed on the ground floor of the building, which would be accessed by a driveway on Park Drive North.
13. Fourteen (14) parking spaces, including two electric vehicle charging spaces, one of which is also an accessible space, are proposed.
14. Landscaping is proposed on each side of the building.
15. Proposed lighting includes eight (8) wall-mounted fixtures (six on Main Street façade and two on the Park Drive North façade flanking the garage door), one full cutoff wall pack above the rear exit door on the west façade and 16 LED luminaires in the garage.
16. A trash and recycling room is proposed on the south end of the ground floor of the building, with access directly from Main Street.
17. Applicant revised the appearance of the building after suggestions from the Board and designed a more enhanced façade, added more single windows, and arched upper windows with more articulation and added awnings (instead of tinted windows) to camouflage the trash room. The Applicant also wrapped the front façade around to the rear and created a more elaborate cornice.
18. The Applicant's architect testified that the decision to keep part of the retaining wall in the front was to break up the façade and camouflage the utility space.
19. In response to suggestions by the Board, Applicant again revised the architectural plans to add an 800 sq. ft. green roof area constructed with plastic trays and plants to absorb rainwater and provide a cool roof.
20. Also, in response to Board suggestions, Applicant reconfigured the trash room to be located to the left of the lobby (and away from the commercial space) which in turn created an additional parking space (bringing the total parking spaces from 13 to 14).

21. Trash and recycling will be picked up private hauler and which will be picked up by the trash/recycling contractor on Main Street.
22. The proposed building is 25,700 square feet and within that space, 900 square feet is the commercial space.
23. Applicant's engineering expert testified that the previous structure on the lot was 3,546 sq. ft. of impervious coverage and the proposed building would be over 10,000 square feet of impervious coverage.
24. Applicant's engineer testified that the grading of the property is ADA compliant; however, he clarified that because of the existing conditions, relief under ADA standards is given. In actuality, due to the existing slope of the property, nothing can bring the sidewalk into ADA compliance.
25. The existing storm water flows to the sidewalk on Main Street and the proposed design will catch more than 95% of all storm water, while storing the storm water under ground and slowly releasing the storm water into an existing catch basin which will improve the existing conditions.
26. All of the roof drains are connected to the storm drains and inlets and surface water will be captured and discharged into the drainage system.
27. While the engineer admitted that he did not take into account the brook and its potential to overflow located at the top of Park Drive North in the storm water calculations, he opined that any water that would flow from that brook overflow would be captured by the proposed drainage system if it does flow onto the property.
28. The lighting plan complies with the Township requirements as to foot candles and will not bleed outside the property boundaries.

29. Most of the trees on the north side of the building will be removed and Applicant will plant evergreen trees of different sizes along the south side of the building (15' to 20' high with a 4' spread) along the entire width of the neighboring building and shrubs 8' high and wide. Along the west side of the property will be trees of varying height and on the east side will be Boston Ivy along the retaining wall. The Applicant's engineer testified that the proposed trees, once they have matured, will fill the side setback.
30. The dimensions of the sidewalk on Main Street at the area of the retaining wall range in width between 6.06' to 5.16' where the ADA requires 5' width to be compliant.
31. At the request of the Board, Applicant agreed to install both a visual and audible pedestrian warning alarm for vehicles entering and exiting the parking garage.
32. At the suggestion of the Board, Applicant added additional illumination at the rear wall (four more wall sconces) which will be low intensity and point downward.
33. Applicant's traffic engineer, Harold Maltz, testified that the traffic trips generated by both the residential units and potential commercial use will not have any impact on traffic as trip generation from the use would be negligible.
34. The Applicant's traffic engineer testified that RSIS standards take into account household characteristics, access to mass transportation, geographic constraints and off-site parking options.
35. Mr. Maltz testified that typically one-bedroom units do not generate more than one vehicle per household.
36. Mr. Maltz also noted that directly in front of the proposed building is a New Jersey Transit bus stop.

37. Approximately a tenth of a mile, at Harrison Street and Eagle Rock Avenue is municipal lot #1 which has both metered parking spaces and 28 permit parking spaces for 24-hour parking. Applicant's traffic engineer testified that the police department confirmed that there were 16 open permit parking spaces available as of the date of his testimony and Applicant intends to re-imburse any tenant that parks in one of the permitted parking spaces.
38. Based upon the fact that the one-bedroom units have limited parking demands typically, that there is a bus stop in front of the building and that sufficient 24 hour parking is available in the municipal lot #1 , under RSIS guidelines, the Applicant's expert testified that on-site parking available at the building are sufficient.
39. Mr. Maltz testified that the 23-foot drive aisle in the parking garage is sufficient width for two-way traffic to pass side by side.
40. Applicant supplemented the parking options by securing an agreement with Bethany Church, across the street from the property for a total of ten (10) parking spaces.
41. Applicant further advised that through communication with the Essex County Planning Division that due to Main Street being a County Road that the County would work with the Applicant and is agreeable to the installation of a lighted crosswalk to allow safer crossing to pedestrians from the west side of Main Street to the east side of Main Street.
42. The project requires twenty-five (25) on-site parking spaces with fourteen (14) on-site parking spaces proposed and 10 available parking spaces across the street at Bethany Church and any over-flow at the Municipal Lot at the corner of Harrison and Eagle Rock Avenue.

43. The neighbors on Park Drive North and South provided testimony that there is currently a significant parking problem on Park Drive North and South due to the fact that many of the homes on that loop do not have driveways and currently there is no restriction to limit parking to those residents.
44. The commercial space of 900 feet limits the type of businesses that can realistically occupy in the provided space such that Applicant agreed to a condition that the space be limited to office use only; however, there was no on-site parking for that office use.
45. The Board took note that during the pendency of the application that a serious pedestrian versus vehicular accident occurred on Main Street at the location of the proposed project.
46. N.J.S.A. 40:55D-67 governs the Board's review of the application for Conditional Use. N.J.S.A. 40:55D-67a. provides that a zoning ordinance may provide for conditional uses to be granted by the planning board according to definite specifications and standards which shall be clearly set forth with sufficient certainty and definiteness to enable the developer to know their limit and extent. N.J.S.A. 40:55D-67b. provides that the review by the planning board of a conditional use shall include any required site plan review pursuant to N.J.S.A. 40: 55D-37 to 40:55D-59.
47. A conditional use is defined under the MLUL (N.J.S.A. 40:55-D-3) as a use permitted in a particular zoning district only upon a showing that such a use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in the zoning ordinance, and upon the issuance of an authorization therefor by the planning board. If a planning board finds compliance with the specified

standards of the ordinance for the specific proposed conditional use, it will be required to approve the application. Exxon Co. U.S.A. v. Livingston Tp. In Essex Cty, 199 N.J. Super. 470, 477 (App. Div. 1985).

48. Chapter 25, Section 24.2(b)(2)(m) of the Township of West Orange Municipal Code, sets forth the conditions that are required for a mixed-use development in a B-1 and B-2 District as follows:

- (1) Permitted uses on the ground floor of a mixed-use development shall include the following permitted uses in the B-1 and B-2 Districts: retail store, personal service store or studio, office, business or vocational school, restaurant, bar, massage, bodywork or somatic therapy establishment, and fitness center/health club.
- (2) One or more dwelling units shall be permitted on the upper floor(s) above any of the permitted ground floor uses in §25-24.2b2(m)(1).
- (3) Access to upper floor uses shall be provided by means of a separate entrance than provided for ground floor uses.
- (4) Minimum lot area shall be 5,000 square feet, and the minimum street frontage of such lot shall be 50 feet.

14. Applicant complies with all of the conditional use standards.

15. Applicant requires the following variance relief:

SECTION/REQUIREMENT	PERMITTED/REQUIRED	PROPOSED	
25-7.1 Minimum Front Yard-			
Main Street	25 ft	5 ft.	
Park Drive North	25 ft	5.14 ft	
25-7.1 Minimum side yard	10 ft.	5.22 ft.	
25-7.1 Minimum rear yard	30 ft.	8.16 ft	
25-7.1 Maximum building height (Stories/Feet)	2.5/35 ft	3/34.34 ft	
25-7.1 Maximum building coverage	60%	73%	
25-7.1 Maximum lot coverage	60%	82%	
25-12.2a1 Minimum off-street parking spaces	25	14	

16. 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.

17. 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.
18. Applicant requested waivers from Item #'s: 20 (Delineation of existing or proposed for or dedicated to public use), 21 (Any existing or proposed easement or land reserved for dedicated public use), 22 (Development stages or staging plans), 28 (All existing street, water courses, flood points, wetlands or other environmentally sensitive areas on and within 200' of the site), 29 (Existing right-of-way and/or easements on and within 200' of tract), 42 (Proposed street names), 49 (Vehicular and pedestrian circulation patterns) and 52 (Plans and legal documents for compliance with West Orange COAH Ordinances.)
19. Applicant is also seeking a design waiver for the required 24 drive aisle width as they are proposing a 22 ft. wide drive aisle in the garage.
20. The proposed units consist of four (4) one-bedroom units and eight (8) two-bedroom units.

21. The Board Planner, Gerard Haizel, testified that the proposed project would be the largest building in the area with only the Senior Building located a block away being larger.
22. Mr. Haizel further testified that parking was driving the design of the building because to achieve the necessary depth for parking the building had to cover most of the lot, but a smaller building would be more fitting.
23. Mr. Haizel expressed concern about the limited on-site parking, especially in comparison to the limited residential parking in the immediate vicinity.
24. Mr. Haizel also noted that the other buildings on Main Street in the area were significantly smaller than the proposed building and the length of the proposed building reinforces that size factor.
25. The majority of the Board members opined that the proposed building with 12 apartment units was too large for the site as they were concerned about the lack of parking provided on site and that there was no available on-site parking for the commercial space.
26. A majority of the Board members opined that the scale of the building and the close setback to Main Street was not in keeping with the other buildings in the area.
27. Most Board members were concerned about the safety of the tenants crossing Main Street to access parking, even with a crosswalk added to the area.
28. Board members did not find that the option of parking at the municipal lot a block away was a realistic option for the residents as they believed that rather than walk late at night or in inclement weather the most likely action taken by residents that did not have on-site parking was to park on the already over-crowded North and South Park Drive.

29. Board members did not find Applicant's traffic expert to be credible and further noted that the expert offered no opinion as to the effect of delivery trucks, which are a daily use for residents, Uber and Lyft pick-ups and drop offs and other vehicles arriving and leaving the site could be reasonably accommodated.
30. Board members found the five-foot setback to a residential neighborhood where twenty-five feet was required and the lot coverage which was greater than 20% of what is permitted in the zone did not allow for sufficient light, air, and open space.

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

1. This application meets all the zoning conditions for a mixed-use development in a B-2 District as set forth in the Township of West Orange Land Use Regulations Ordinance, §25-24.2b.(m).
2. As for the requested variance relief; however, Applicant fails to establish that the c(2) criteria has been met as the detriments of the project substantially outweigh the benefits due to lack of required parking, lot coverage, and setbacks which do not allow for sufficient light, air and open space.

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Township of West Orange that while Applicant met all zoning conditions for a Mixed Use Development in a B-2 Zone, and the required proofs for approval of the c(1) and c(2) variances for the site 410 Main Street Holdings, LLC for property located at 410 Main Street were NOT established and therefore the Application is hereby DENIED.

The undersigned secretary certifies the decision set forth herein was made by this Board on December 11, 2024 and memorialized herein pursuant to N.J.S.A. 40:55D10(g) on January 8, 2025.

A handwritten signature in dark ink, appearing to read "J. Baquerizo", is written over a horizontal line.

Jamilet Baquerizo Vite
Planning Board Secretary

Vote Action Taken by the Board on December 11, 2024:

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

Vote on Memorialization on January 8, 2025:

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