

RESOLUTION
Township of West Orange
Planning Board
PB 22-10 Altera 769, LLC/ 769 Northfield Avenue
Block: 166.15 Lot: 9; Zone: OB-1
Decided on October 12, 2022
Memorialized on November 2, 2022
Final Major Site Plan Approval and C(1) and C(2) Variance Approvals

WHEREAS, Altera 769, LLC (Hereinafter the “Applicant”) has made an application for final major site plan approval and c (1)and (2) variance approvals which would modify the variances that were previously granted by the Planning Board as part of the Phase II preliminary site plan approval for disturbance of steep slopes in order to construct Phase II development which consists of the construction of 54 additional parking spaces for a total of 280 spaces at property located at 769 Northfield Avenue, also known as Block: 166.15; Lot 9, in the OB-1 Zone; and

WHEREAS, a properly noticed public hearing was conducted on October 12, 2022; and

WHEREAS, the Applicant was represented by Lisa A. John-Basta, Esq. of the firm Chiesa Shahnian & Giantomasi P.C.; and

WHEREAS, the Applicant provided testimony by Joseph Sparone, P.E., P.P. of Dynamic Engineering, a professional civil engineer and planner whose credentials were accepted by the Board (For both Engineering and Planning); and

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

ITEM	SIGNED BY	DATE/REVISION
Final Major Site Plan Phase 2	R. Colucco III, Dynamic Engineering	8/17/2022
Stormwater Management Report	R. Colucco III, Dynamic Engineering	Last revised August 2022
Storm Water Management Facilities O&M Manual	R. Colucco III, Dynamic Engineering	Last Revised August 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 Final Major Site Plan approval with variance relief for Phase II of the development.
2. Preliminary Site Plan approval and variance for Phase II of the development was granted by the Board on March 2, 2022 and memorialized in a resolution on April 6, 2022.
3. Phase II of the development consist of the construction of 56 additional parking spaces for a total of 280 spaces and upgrades to the stormwater system.
4. The property is located on Northfield Avenue and the surrounding area is characterized by single family residential development to the Northeast, medical offices and commercial building to the South, single family dwellings and a church to the Northwest.
5. The application requires the following bulk variance relief from the Board:

Phase II- Final Major Site Plan

Section	Required	Existing/Proposed
25-28.8	Maximum disturbance area permitted is 20% for slope areas of 20-25% slope.	39.7% previously approved; 30.8% proposed
25.28.8.c	Disturbances of slopes of 25% or more is prohibited.	35.2% previously approved; 34.4% proposed.

6. N.J.S.A. 40:55D-50a. govern the Board's review of the Phase II Major Final Site Plan application. 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.
7. 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 (1)” variance permits a variance from a bulk or dimensional provision of a zoning ordinance, such as frontage, when, by reason of exceptional conditions of the property, strict application of a bulk or dimensional provision would present peculiar and exceptional practical difficulties or exceptional hardship to the applicant. Such exceptional conditions may include the dimensions of the property, topographic conditions, or some other extraordinary or exceptional feature unique to the property. 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 final site plan approval:

Phase II- Major Final Site Plan

Section	Required	Existing/Proposed
25-28.8	Maximum disturbance area permitted is 20% for slope areas of 20-25% slope.	39.7% previously approved; 30.8% proposed
25-28.8	Disturbances of slopes of 25% or more is prohibited.	35.2% previously approved; 34.4% proposed.

2. Testimony established that the conditions required for the preliminary site plan of Phase II, (Granted March 2, 2022 and memorialized in a resolution on April 6, 2022) have been satisfied.
3. A variance is required due to steep slopes; however, the steep slope variance previously granted is modified as the Applicant presented less steep slope disturbance on the final site plan which is an additional benefit to the project.
4. The proofs also demonstrated that the additional storm water runoff from the proposed additional impervious coverage will be adequately managed with the storm water detention system as designed and presented in the preliminary site plan application.
5. As to Phase II, the additional parking will also be extended on the west side and allow for the continued tree and landscape buffer to the east along the residential properties. The additional impervious coverage will trigger the construction of a new storm water

retention facility to be built on the west side of the parking lot (Mid way) adjacent to the current detention facility.

6. The Applicant agreed with the Board that security lighting will be illuminated during the overnight hours as a safety measure.
7. The Applicant also agreed that it as current property owner and any future property owners would be responsible for all fees and maintenance associated with the Storm Water Management as more fully described in the Stormwater Management Facilities Operation and Maintenance Manual that will run with the property and be recorded as part of the deed.
8. Applicant further agreed that it will water and maintain the trees and shrubs shown on the landscape plan.
9. While not a condition, but a recommendation, the Board suggested that the Applicant use native trees and bushes if they are found to be reasonable, long lasting and appropriate for the project.
10. Testimony of the Applicant's planning expert at the hearing previously established that the bulk variance requested as to maximum disturbance and disturbance of slopes of 25% or more could be granted as a c (1) variance as there is a hardship created by the topography of the property, the shape of the property being very long and narrow, and the existence of structures lawfully located thereon and the revised plan reduces the slope variance request, thereby improving the application.
11. As to the c(2) variance request, the modified variance for the steep slope disturbance satisfies the criteria of the MLUL paragraph i. the overall property upgrades will promote a desirable visual environment through creative design.
12. With respect to the negative criteria under the MLUL, the Board previously accepted the testimony that there was no detriment to the public good as most of the variances were due to pre-existing deficiencies which were adequately addressed by storm water management and landscape buffers and improved by the reduction presented to lessen the steep slope disturbance.
13. The project meets the goals of the Master Plan as it fulfills the goals and objectives including, Objective #16- Encouraging Economic Development and Redevelopment That is Compatible with the Suburban Character of the Township as it encourages economic redevelopment and Objective #2: Ensure That the Public's Safety is Secured as the project addresses the issues with flooding (Storm water management, and topography).

NOW THEREFORE be it resolved by the Planning Board of the Township of West Orange that Final Major Site Plan approval for Phase II with variance relief for the application of Altera 769, LLC for property located at 769 Northfield Avenue, is determined as follows:

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

Phase II- Final Major Site Plan

Section	Required	Existing/Proposed
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25.28.8.	Maximum disturbance area permitted is 20% for slope areas of 20-25% slope.	39.7% previously approved; 30.8% proposed
25.28.8	Disturbances of slopes of 25% or more is prohibited.	35.2% previously approved; 34.4% proposed.

2. Major Final Site plan approval is granted for Phase II along with the variance approvals set forth above.

Applicant shall list all conditions of approval onto a final site plan submission.

The undersigned secretary certifies the decision set forth herein was made by this Board on October 12, 2022, and memorialized herein pursuant to N.J.S.A. 40:55D10(g) on November 2, 2022.

Jamilet Baquerizo Vite

Planning Board Secretary

Vote Action Taken by the Board on October 12, 2022:

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

Vote on Memorialization on November 2, 2022:

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