

Professional Planning Report

470 Eagle Rock Avenue, Township of West Orange, NJ

Block 153, Lot 38

Zoning District: General Business (B-2)

Applicant: MPB Realty, LLC

Zoning Board of Adjustment

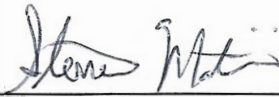
Public Meeting Date: July 20, 2023

Signed and Sealed by:



George Wheatle Williams

NJ PP # 33L10054470



Steven Martini

NJ PP # 33LI00633000



December 21, 2022

Revised: July 7, 2023

Table of Contents

Planning/Land Use Analysis..... 3

 Project Location..... 3

 Project Description 3

 Surrounding Land Uses 3

 Zoning Designation and Analysis..... 4

 Relief Sought 6

 Master Plan Review/Consistency..... 12

 Proofs 13

Planning/Land Use Analysis

Project Location:

The project site is located at 470 Eagle Rock Avenue in the Township of West Orange, specifically along the western side of Eagle Rock Avenue (which is County Road). The project site consists of one tax lot: Lot 38, which contains approximately 45,713 square feet of land. A 1-story vacant commercial building stands on the property, which was most recently used as a free-standing restaurant surrounded by surface parking serving the restaurant. The property is located within the General Business District (B-2). (NOTE: Year built of the existing restaurant building is not noted in the Township tax records).

Project Description:

The proposed project involves the demolition of the existing one-story commercial/restaurant building and construction of two one-story, free-standing quick-serve restaurants (QSR). One of the proposed restaurants will be a Popeyes restaurant and the other will be a Sonic restaurant. Both will contain drive-thru facilities. The proposed Popeyes restaurant will contain a floor area is approximately 2,537-square feet (with 706 square feet open to patrons) and a patron capacity of 42 seats and the proposed fast food Sonic restaurant will contain a gross floor area of approximately 1,484 square feet (with a 433-square foot patio that is open to patrons) and a patron capacity of 30 seats. In total, 31 parking spaces will be provided on site. There will be two ingress/egress driveways. The westerly driveway will only permit a right turn for vehicles exiting the site. Each restaurant will have its own respective refuse/trash enclosure area, located at the southerly boundary of the site. Signage associated with each fast food restaurant is also proposed, including 1 freestanding sign and 5 building mounted signs for the Popeyes restaurant and 1 freestanding sign and 1 building mounted sign for the fast food restaurant.

The applicant is requesting approvals for major site plan, Conditional Use variances and “C” variances.

Surrounding Land Uses:

Immediately north of the project site, across Eagle Road Avenue, is Mayfair Farms and its associated surface parking. Northeast is the strip commercial shopping center with a large surface parking area (containing a variety of retail tenants, such as Whole Foods, Staples, Dollar Tree, Jersey Mikes and Chipotle. East of the project site, on the same side of Eagle Rock Avenue, is a one-story bank with drive-through facility. Abutting the project site to the south are single-family dwellings located on Rosney Terrace to the west and Fundus Road to the east. Residential dwellings are also located west of the project site, fronting along Eagle Rock Avenue.

Zoning Designation and Analysis

The project site is located in the B-2 District (General Business). As noted in Section 25-7.1 of the Land Use Regulations, the following are the permitted principal uses, accessory uses and conditions uses of the B-2 District:

- a) Principal permitted uses:
 - i. Retail store
 - ii. Personal service store or studio
 - iii. Office or office building
 - iv. Business or vocational school
 - v. Restaurant
 - vi. Bar
 - vii. Massage, bodywork or somatic therapy establishment
- b) Accessory uses:
 - i. Required accessory parking
 - ii. Private garage
 - iii. Home occupation
 - iv. Home professional office
 - v. Signs
 - vi. Vending machines
- a) Conditional uses:
 - i. Motor vehicle fueling station
 - ii. Theater
 - iii. Public utility building or structure
 - iv. Telephone exchange
 - v. Senior citizens housing project
 - vi. Hotel
 - vii. Private club, other than a golf club
 - viii. Video or amusement arcade
 - ix. Fast food restaurant**
 - x. Commercial antenna

To that end, the proposed fast food restaurant is a conditionally permitted use in the B-2 General Business District. The following are the conditions that shall be met per Section 25-24.2. b.2.(i) of the Township's Land Use Regulations:

A fast food restaurant shall be permitted in a B-1 or B-2 District as a conditional use if the following requirements are satisfied:

- (1) A site plan, prepared by a New Jersey licensed architect or engineer, shall be submitted to the Planning or Zoning Board, as required by this chapter and State law, and the plan shall show all standards, established herein for fast food restaurant operation as a conditional use, have been satisfied.
- (2) No part of any building or structure used as a fast food restaurant nor any driveway entrance or exit to or from the same shall be located within five hundred (500) feet of any line of any lot upon which is located another fast food restaurant.
- (3) No part of any building or structure used as a fast food restaurant shall be located within one thousand (1,000) feet of any residential district boundary line.
- (4) The minimum size for any lot upon which any fast food restaurant is located shall be thirty thousand (30,000) square feet, and the minimum street frontage of such lot shall be two hundred (200) feet. If a fast food restaurant is located on a corner lot, the minimum street frontage on each street shall be two hundred (200) feet.
- (5) Entrance and exit driveways to and from any lot upon which is located a fast food restaurant shall have an unrestricted width of not less than twenty-four (24) feet nor more than thirty (30) feet, shall be located not nearer than twenty (20) feet to any lot line and shall be so designed to avoid the need for any existing vehicle to back across or into any portion of a public sidewalk or street.
- (6) The minimum distance between driveways on a lot upon which is located a fast food restaurant shall be one hundred (100) feet, measured from the two (2) closest driveway curbs.
- (7) The minimum distance of any driveway into the street, of a lot upon which a fast food restaurant is located, from a street intersection shall be one hundred (100) feet, measured from the nearest end of the curb radius of the intersection to the nearest end of the curb radius of the driveway.
- (8) Lanes for automobile service windows of fast food restaurants shall be physically separated from the traffic circulation system on the site by concrete curbed and landscaped islands with a minimum width of five (5) feet for landscaping. The lanes shall permit the stacking of a minimum of ten (10) vehicles at one (1) time.
- (9) All fast food restaurants shall provide suitable areas for storage of trash, designed and constructed to allow no view of the trash storage from the street, to prevent trash from blowing around the site onto adjacent properties or public rights-of-way and to permit safe removal of trash.
- (10) All fast food restaurants shall provide parking (i) at a ratio of at least one (1) off-street parking space for every thirty (30) square feet in the entire establishment (kitchen, storage, etc.) or (ii) one (1) space for every three (3) seats, whichever is greater.
- (11) Any lot on which is located a fast food restaurant must comply with the front yard, side yard, and rear yard requirements for the B-1 or B-2 District in which the lot is located.

Relevant Zoning Ordinance Definitions (Section 25-4.b.):

Fast food restaurant shall mean the retail sale of ready-to-eat foods and beverages for on and/or off premises consumption, whenever the foods and beverages are available upon a short waiting time, and orders are placed by the customer at a counter, and primarily served in or on disposable wrappers, containers or plates, and where there is a seating capacity of more than fifteen (15) individuals. This does not include restaurants which have "take-out" as accessory to a traditional restaurant.

Lot coverage shall mean that portion of a lot which is covered by parking areas and any impervious surface including but not limited to principal and accessory, structures, driveways, patios, sidewalks, etc.

Principal use shall mean the primary use and purpose of a lot or structure.

Sign, façade shall mean a sign that is in any manner affixed to any exterior wall of a building or structure and that projects not more than eighteen (18) inches from the building or structure wall. Also includes signs affixed to architectural projections that project from a building provided the copy area of such signs remains on a parallel plane to the face of the building façade or to the face or faces of the architectural projection to which it is affixed. They shall advertise only the permitted use, products or services on the premises on which they are displayed.

Sign, freestanding or pylon shall mean a sign principally supported by one or more columns, poles or braces placed in or upon the ground. Freestanding signs shall advertise only the permitted use, products or services conducted on the premises.

Sign height measurement shall mean the vertical height of the background upon which the lettering, illustration or display is presented, including the supporting members of any sign.

Relief Sought

As noted on the application, the Applicant is requesting several variances as part of the application. The requested bulk and area and signage variances listed below and also noted in bold in the tables below (Table 1: Bulk and Area Regulations and Table 2: Signage Regulations). Additional variances are also listed.

- **Maximum impervious coverage** (60% is the maximum permitted and ~~71.2~~ 69.4% 68.8% is proposed)
- **Signage**
 - **Freestanding sign:**
 - **Section 25-15.3.c.2.(d): Maximum number of freestanding signs** (1 is permitted, whereas 1 is proposed for the Popeyes restaurant and 1 is proposed for the Sonic restaurant for a total of 2 freestanding signs)
 - **Section 25-15.3.c.2.(d): Maximum sign height** (16' is the maximum permitted, whereas 20' for the proposed Popeyes restaurant is proposed. **COMMENT:** 16' is now proposed, therefore the sign is compliant with this requirement.)

- **Section 25-15.3.c.2.(d): Maximum sign width** (6' is the maximum permitted, whereas 7.88' is for the proposed Popeyes restaurant is proposed)
 - **Building mounted sign:**
 - **Section 25-15.3.c.2.(b): Maximum number of façade signs** (1 is the maximum permitted, whereas 5 is proposed for each fast food restaurant)
 - **Section 25-15.3.c.2.(b): Maximum façade area** (15% of front wall area or 120 square feet, whichever is less [100 square feet for the Popeye's restaurant and 114 square feet for the Sonic restaurant], whereas 198.9 square feet is proposed for the Popeye's restaurant and 160.2 square feet for the Sonic restaurant)
- **Parking**
 - **Section 25-12.1.B:** The entire perimeter of all parking areas and the edges of all entrance and exit drives shall be enclosed with a concrete or granite block curb at least six inches above the paving surface. Curbing shall not be less than five feet from any fence or screening nor less than five feet from any structure. However, there will be a concrete curb directly adjacent to proposed building at drive-thru window and a fence located 1.3' from curb.
 - **Section 25-12.1.L:** Off street parking may be placed in the side or rear yard only. However, parking is proposed in front yard.
 - **Section 25-25-12.2.b: The parking requirement for each fast food restaurant is the following:**
 - **Proposed Popeye's restaurant:** 706 sq. ft. x 1 space per 45 sq. ft. = 16 spaces (or 24 seats x 1 space per 3 seats = 8 spaces)
 - **Proposed Sonic restaurant:** 764 433 sq. ft. x 1 space per 45 sq. ft. = 17 10 spaces (or 14 18 seats x 1 space per 3 seats = 5 6 spaces)
 - **Total: 33-26 spaces required; Provided: 27 spaces (30 28 spaces including EV credit).**
~~Therefore, a variance is requested.~~
 - **COMMENT:** With the reduction of the proposed building footprint of Sonic, the number of required parking spaces have been reduced to 26 in total (with the inclusion of 1 EV space credit). With the revised site plan, 27 parking spaces are proposed and to that end, parking compliance is reached and a variance is not requested.
- **Driveway**
 - **Section 25-12.1.I:** Each entrance or exit from such parking area shall be at least fifty (50) feet from any residential district. However, the northwesterly access aisle proposed is 37.4' from the adjacent residential zoning district (R-6).
- **General Requirements**
 - **Section 25-8.1.:** No accessory uses shall be located within any minimum required front yard or side yard. However, refuse/trash enclosure are proposed to be located approximately 1.1' from the rear property line.
 - **Section 25-8.1B.:** If any such accessory use is located in B district and a property line which is the district boundary line abuts a residential district, then the minimum required distance from such property line shall be ten feet. However, the proposed parking and trash enclosure are located within required front (30') and side yard setbacks (10' each side).

- **Buffer Requirements**

- **Section 25-11.3.a.:** Along any side or rear property line which is also the boundary line between a nonresidential district and a residential district or is contiguous to a residential use in a residential zone, a buffer strip shall be planted and maintained in perpetuity with trees and shrubbery of such sizes and densities as to adequately screen the buildings from such abutting residential district or use in a residential zone. The required buffer width shall be fifty feet in all nonresidential zones. However, the proposed residential buffer is 1.1'.
- **Section 25-11.2.:** Side yards of nonresidential buildings on lots which are contiguous to the boundary of any residential district shall have a minimum required width of seventy-five feet. However, the proposed Popeyes is 66.9' from side front contiguous to residential district boundary (R-6).

Table 1: Bulk and Area Regulations

470 Eagle Rock Avenue, West Orange (Block 153, Lot 38)		
Regulation	Requirement (B-2)	Provided
Minimum Lot Width	No Standard	248.5'
Minimum Lot Area	10,000 sq. ft.	45,713 sq. ft.
Minimum Front Yard Setback	30'	55.5' 50.1'
Minimum Rear Yard Setback	30'	38.2' 44.2'
Minimum Side Front Yard Setback (corner lots)	25'	66.9' 66.6'
Minimum Side Yard Setback	10'	57.4' 61.4'
Maximum Building Coverage	40%	11.7% 8.8%
Maximum Impervious Coverage	60%	71.2% 68.8%
Maximum Building Height (feet)	35'	21.83' 22.4'
Maximum Building Height (stories)	2.5 stories	1 story
Parking	31 26 spaces	31 27 spaces

Table 2: Signage Regulations

Sign	Requirements		Proposed Popeyes	Proposed Sonic
Freestanding	Number of signs	1	1	1
	Maximum sign area	50 sq. ft.	49.43 sq. ft. 30.2 sq. ft.	50 sq. ft. 43.0 sq. ft.
	Minimum sign height	8'	20'	8'
	Maximum sign height	16'	20' 16'	16'
	Maximum sign width	6'	7.88'	6'
	Minimum sign front setback	10'	10'	10'
	Minimum distance between freestanding signs	50'	159.9' 196.1'	159.9' 196.1'
Building mounted	Number of façade signs	1	5	5 4
	Maximum façade sign area	15% of front wall area or 120 sq. ft., whichever is less (100 sq. ft.)	North: 'Popeyes Louisiana Kitchen' channel letters 39.1 sq. ft. West: Popeyes seal 7.1 sq. ft.; 'Love that chicken!' graphic 90.4 sq. ft. East: 'Popeyes' channel letters 14.3 sq. ft.; 'Famous Louisiana Chicken' graphic 48 sq. ft. TOTAL: 198.9 sq. ft.	North: 'Sonic' channel letters 17.7 sq. ft. 'Sonic' brand logo 52.7 sq. ft. West: 'Sonic' channel letters 17.7 sq. ft. East: 'Sonic' cherry logo 54.5 54.4 sq. ft.; 'Sonic' channel letters 17.7 sq. ft. South: 'Sonic' brand logo 52.7 sq. ft. TOTAL: 160.2 sq. ft. 142.5 sq. ft.
	Maximum sign projection	12 inches	5 inches	12 inches

Conditional Use Variances

As per the Conditional Use Requirements stated in Section 25-24.2. b. 2. (i) of the Township's Land Use Regulations, the following variances are requested:

(2) No part of any building or structure used as a fast food restaurant nor any driveway entrance or exit to or from the same shall be located within five hundred (500) feet of any line of any lot upon which is located another fast food restaurant.

COMMENT: The proposed application will contain two fast food restaurants on one lot. Therefore, the two proposed fast food restaurants will be within 500 feet of one another.

(3) No part of any building or structure used as a fast food restaurant shall be located within one thousand (1,000) feet of any residential district boundary line.

COMMENT: The proposed fast food restaurant is located on a lot adjacent to a residential zoning district (R-6 District to the west and south). The proposed fast food restaurant uses are consistent with the commercial land use pattern north and west of the project site and will be a complementary addition to the array of business establishments within the B-2 District. Although the project site is situated adjacent to a residential district, the proposed fast food restaurants have been arranged and designed to mitigate any impacts to the nearby residences.

(4) The minimum size for any lot upon which any fast food restaurant is located shall be thirty thousand (30,000) square feet, and the minimum street frontage of such lot shall be two hundred (200) feet. If a fast food restaurant is located on a corner lot, the minimum street frontage on each street shall be two hundred (200) feet.

COMMENT: The frontage along Rosney Terrace is 182.4 feet. This is an existing condition. Based on the site plan and layout, the Rosney Terrace frontage will not be utilized for vehicular access. To that end, the potential impacts to Rosney Terrace, if any, will be minimal.

(7) The minimum distance of any driveway into the street, of a lot upon which a fast food restaurant is located, from a street intersection shall be one hundred (100) feet, measured from the nearest end of the curb radius of the intersection to the nearest end of the curb radius of the driveway.

COMMENT: The proposed driveway is 13.1 feet from the street intersection. This intersection is with Rosney Terrace, a predominantly single-family residential street, where the traffic volume is much lower than nearby streets (i.e., Prospect Avenue). As mentioned, a vehicle exiting the site can only make a right turn onto Eagle Rock Avenue, which is funneling traffic away from Rosney Terrace. To that end, the impacts to Rosney Terrace, if any, will be minimal.

(10) All fast food restaurants shall provide parking (i) at a ratio of at least one (1) off-street parking space for every thirty (30) square feet in the entire establishment (kitchen, storage, etc.) or (ii) one (1) space for every three (3) seats, whichever is greater.

COMMENT: The parking requirement consists of the following:

Proposed Popeye's restaurant: 706 sq. ft. x 1 space per 45 sq. ft. = **16 spaces** (or 24 seats x 1 space per 3 seats = 8 spaces)

Proposed Sonic restaurant: 764 433 sq. ft. x 1 space per 45 sq. ft. = **10 spaces** (or 14 18 seats x 1 space per 3 seats = 5 6 spaces)

Total: ~~33~~ 26 spaces required; Provided: ~~30~~ 27 spaces including the EV credit

COMMENT: ~~Based on the proposed arrangement on the site, parking compliance cannot be reached even with the inclusion of parking provided in the front yard, which in turn, requires a variance for a separate regulation (Section 25-12.1.L)~~ With the reduction of the proposed building footprint of Sonic, the number of required parking spaces have been reduced to 26 in total (with the inclusion of 1 EV space required). With the revised site plan, 27 parking spaces are proposed (28 spaces with EV credit) and to that end, parking compliance is reached and also compliance with this condition.

Master Plan Review/Consistency:

2019 Master Plan

The proposed project is consistent with the Township's **2019 Master Plan Re-examination Report**. The following goals and objectives are furthered through the implementation of this application:

- Continue to maintain a balance of land uses (Economic Development Recommendations, pg. 42).
- Encourage supporting services for open space, recreation and tourism attractions (Economic Development Recommendations, pg. 42).
- Modify zoning as appropriate to allow for varied nonresidential uses (Economic Development Recommendations, pg. 42).
- Properly Locate Public, Commercial/Retail, Industrial, Residential and Service Uses (pg. 12). It was noted that this principle is still valid.
 - The Master Plan should continue to emphasize the need to locate public, commercial/retail, industrial, residential and service uses at sites and locations which are suitable for their use environmentally, economically, and geographically, and can be adequately serviced by public infrastructure. (pg. 29).
- Improve the safety and appearance of Pleasant Valley Way and Eagle Rock Avenue, in particular the intersection of these two streets. (pg. 36)
 - **COMMENT:** This project will ameliorate an existing blighting condition of a vacant commercial storefront along Eagle Rock Avenue.
- Redevelopment
 - **COMMENT:** On pg. 19, it is noted that "[i]n 2004 the Borough's single viable commercial use (an insurance brokerage office) was transferred to an owner of a civil engineering and surveying consulting business who wanted to extend the hours of use of the building beyond what the Borough had imposed as conditions of commercial occupancy..."

Based on these relevant goals, objectives and excerpts, the proposed project would further the Township's **2019 Master Plan Re-examination Report**. There is no substantial detriment to the public good or impairment to

the Master Plan as the project will not negatively impact the B-2 District or adjacent uses, including residential dwellings.

Proofs

Statutory criteria as set forth in the Municipal Land Use Law (Section 40: 55D-70d)

Positive Criteria

In accordance with the Municipal Land Use Law [Section 40: 55D-70d(3)], conditional use relief is sought for the proposed fast food restaurant as several conditions identified for a fast food restaurant use are not in compliance. In demonstrating the positive criteria, proofs shall consist of special reasons and particular cases how the proposed use will be beneficial the general welfare of the community.

As per the **Coventry Square** guidelines for “D-3” Conditional Use variance relief, the enhanced burden of proof set forth in the Medici case does not need to be made in the granting of a conditional use variance. The variance at hand is essentially a permitted use, however one or more conditions stated in the zoning ordinance are not met and therefore, it should not be held to the same standards as uses that are not permitted. This application is only seeking deviations from specific conditions.

The following Purposes of Zoning, as stated in the MLUL, will be advanced through the implementation of this project:

- **Section a:** To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the health, safety, morals, and general welfare.
 - **COMMENT:** The proposed development will improve the public health, safety, and general welfare of the site as it will be activating the site with two new commercial establishments. It will be eliminating a blighting condition as the site has been vacant and abandoned for at least two consecutive years.
- **Section g:** To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens
 - **COMMENT:** The proposed screening along the rear property line allows for the project to blend with the residential land use pattern to the south. The landscaped buffer to be planter along the site’s westerly boundary allows for a harmonious transition to residential community along the opposite side of Rosney Terrace. The proposed fast food restaurants will also help bolster the B-2 District and the promote the prominent commercial intersection of Eagle Rock Avenue and Prospect Avenue.
- **Section i:** To promote a desirable visual environment through creative development techniques and good civic design and arrangement

- **COMMENT:** The proposed development of the project site is a better alternative than the deteriorating existing conditions. The project will enhance the Eagle Avenue streetscape and fill in missing physical gap. The layout of the proposed restaurants on the site are arranged in a way so that traffic impacts will be minimal.

Negative Criteria

In terms of the negative criteria, there are two prongs that must be met. The first prong is that there will be no substantial detriment to the public good. The second is that proposed project will not substantially impair the intent of the zoning ordinance or the Township Master Plan. As previously identified in this report, numerous goals, objectives and excerpts stated in the Master Plan will be advanced through the implementation of this project (see page 5 of this report).

Based on these relevant goals, objectives and excerpts, the proposed project would further the Township's 2019 Master Plan. There is no substantial detriment to the public good as the project will not negatively impact the B-2 Zone or adjacent uses. The proposed development will activate a dormant commercial site and simultaneously blend with the adjacent residential community through buffering along the westerly property line and screening along the southerly property line. Landscaping along the Eagle Rock Avenue frontage contributes to the site's walkability and pedestrian experience. The westerly driveway only permits a right egress turn, which funnels traffic away from the residential community and towards the business district. There is no curb cut driveway proposed along the Rosney Terrace frontage. To that end, this demonstrates that traffic impact will not significantly impact the adjacent residences in the R-6 District. Cumulatively, the design and layout of the proposed fast food restaurants will have numerous positive impacts and not cause substantial detriment to the public good. It is a better zoning alternative than the strict application of the Conditional Use standards for a fast food restaurant within the B-2 District.

C Variances

In addition to the D-3 Conditional Use variances required as part of the application, there are also “C” variances requested. These variances consist of:

- **Maximum impervious coverage** (60% is the maximum permitted and ~~71.2%~~ 68.8% is proposed)
- **Signage**
 - **Freestanding sign:**
 - **Section 25-15.3.c.2.(d): Maximum number of freestanding signs** (1 is permitted, whereas 1 is proposed for the proposed Popeyes restaurant and 1 is proposed for the fast food restaurant for a total of 2 freestanding signs)
 - **Section 25-15.3.c.2.(d): Maximum sign height** (16’ is the maximum permitted, whereas 20’ for the proposed Popeyes restaurant is proposed) **COMMENT:** With the reduction in sign height, compliance has been reached and variance is not requested.
 - **Section 25-15.3.c.2.(d): Maximum sign width** (6’ is the maximum permitted, whereas 7.88’ is for the proposed Popeyes restaurant is proposed)
 - **Building mounted sign:**
 - **Section 25-15.3.c.2.(b): Maximum number of façade signs** (1 is the maximum permitted, whereas 5 is proposed for each fast food restaurant)
 - **Section 25-15.3.c.2.(b): Maximum façade area** (15% of front wall area or 120 square feet, whichever is less [100 square feet for the Popeye’s restaurant and ~~114~~ 91 square feet for the Sonic restaurant], whereas 198.9 square feet is proposed for the Popeye’s restaurant and ~~160.2~~ 142.5 square feet for the Sonic restaurant)
- **Parking**
 - **Section 25-12.1.b:** The entire perimeter of all parking areas and the edges of all entrance and exit drives shall be enclosed with a concrete or granite block curb at least six inches above the paving surface. Curbing shall not be less than five feet from any fence or screening nor less than five feet from any structure. However, there will be a concrete curb directly adjacent to proposed building at drive-thru window and a fence located 1.3’ from curb.
 - **Section 25-12.1.L.:** Off street parking may be placed in the side or rear yard only. However, parking is proposed in front yard.
- **Driveway**
 - **Section 25-12.1.I:** Each entrance or exit from such parking area shall be at least fifty (50) feet from any residential district. However, the northwesterly access aisle proposed is 37.4’ from the adjacent residential zoning district (R-6).
- **Supplemental Provisions for All Districts**
 - **Section 25-8.1A.:** No accessory uses shall be located within any minimum required front yard or side yard.
 - **COMMENT:** A variance is requested as a parking area is proposed within the required front yard setback.

- **Buffer Requirements**

- **Section 25-11.3.a.:** Along any side or rear property line which is also the boundary line between a nonresidential district and a residential district or is contiguous to a residential use in a residential zone, a buffer strip shall be planted and maintained in perpetuity with trees and shrubbery of such sizes and densities as to adequately screen the buildings from such abutting residential district or use in a residential zone. The required buffer width shall be fifty feet in all nonresidential zones. However, the proposed residential buffer is 1.1’.
- **Section 25-11.2.:** Side yards of nonresidential buildings on lots which are contiguous to the boundary of any residential district shall have a minimum required width of seventy-five feet. However, the proposed Popeyes is 66.9’ from side front contiguous to residential district boundary (R-6).

- **Lighting Requirements**

- **Section 25-11.2:** Minimum of 20 lux/2.0 footcandles required in parking areas, whereas 0.5 footcandles is proposed.
 - **COMMENT:** 0.5 footcandles was determined to be appropriate as it would be less intrusive to neighboring properties, especially those that are residential.

In reviewing this variance, the flexible C-2 Context [as stated in Section 40:55D-70c(2) of the MLUL], is appropriate. The granting of approval must benefit the community in that it represents a better zoning alternative for the property. The focus of a c(2) case, then, will be not on the characteristics of the land that, in light of current zoning requirements, create a “hardship” on the owner warranting a relaxation of standards, but on the characteristics of the land that present an opportunity for improved zoning and planning that will benefit the community.

When a use variance is sought based on the assertion that the site is “particularly suitable for the proposed use,” the required bulk variances may be considered subsumed in the consideration of the use variance. In the case of *Price v. Himeji, LLC*, [214 N.J. 263, 301](#) (2013), in which the Court noted that although the board referred to the c(2) variances for setbacks and coverage as “subsumed in the consideration of the (d) variances,” the record of the board’s review supported its decision. The Price Court further found that the record and resolution demonstrated that the c(2) variances advanced the purposes of the MLUL and created benefits that outweighed any detriments caused by the deviations from the zoning ordinance. Additionally, in the case of *Pullen v. Tp. Of South Plainfield*, [291 N.J. Super. 1](#) (App. Div. 1996), the court reviewed a grant of a c(2) variance where a proposed pharmacy would be constructed on a “thru-lot” site lying between two streets. Plaintiff had urged that any deviation from the front yard setback at issue had to further the purposes of the MLUL, and that only those benefits flowing from the deviation should be factored into the required balancing test. The court, however, held that the benefits flowing from the entire proposal should be considered. To that end, in the context of the *Pullen* Case, the overall site arrangement works better as designed than the strict application of the Township’s Zoning Ordinance.

Again, multiple Purposes of Zoning from the MLUL will be advanced from the implementation of this project. These include Sections a, g, and i. It is necessary to deviate from the strict application of the standards of the B-2 District. Additionally, the lot coverage deviation is necessary in order for adequate parking to be provided onsite. The building coverage deviation is needed for the proposed development to be viable.

Similarly, there will be no substantial detriment to the public good in the implementation of this project. There will also be no impairment to the zone plan, for the reasons previously mentioned. The proposed lot coverage is necessary in providing adequate parking for the employees and patrons of the proposed fast food restaurants. It is also a decrease coverage ratio than the existing condition of 88.3% (~~71.2%~~ 68.8% proposed; a decrease of ~~17.1%~~ 19.5%). The requested deviations from the signage standards are necessary as these deviations will effectuate the proposed Popeyes restaurant. Although the project site abuts a residential zoning district to the south and west, adequate screening will be provided in the form of a variety of landscaped vegetation (along the westerly boundary) and a 6' board of board fence (along the southerly boundary). Residential uses to the south and west will have minimal impacts, if any, as the vehicular circulation is designed to steer traffic away from the nearby residences while maintaining the commercial cohesion of the B-2 District and the adjacent business establishments. Cumulatively, all of the "C" deviations are better zoning alternatives than the strict application of the B-2 District standards set forth in the zoning ordinance. Lastly, additional proofs will be added during the time of planning testimony.

APPENDIX I: Maps

Map 1: Aerial Map

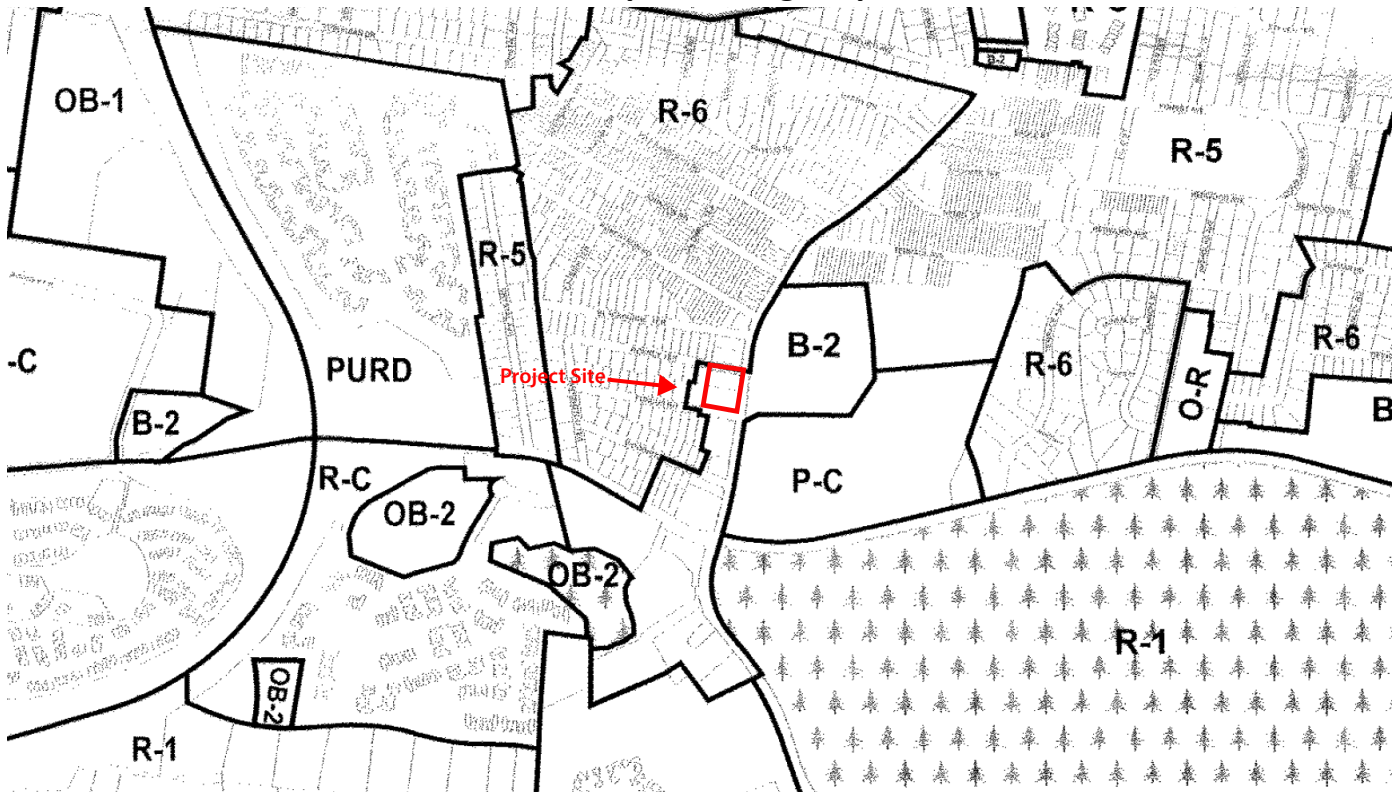
Map 2: Zoning Map

Map 1: Aerial Map



The project site is located along the southern side of Eagle Rock Avenue. It is proximate to numerous commercial establishments, including the West Orange Plaza (Whole Foods, Chipotle, Jersey Mike's etc.), CVS pharmacy and Kim's Sushi restaurant (Source: Google Maps, accessed December 2022).

Map 2: Zoning Map



The project site is located within the B-2 General Business zoning district (Source: Township of West Orange Zoning Map dated November 2006).

APPENDIX II: Site and Surrounding Area Photographs

(Dated 2/17/2022)



Photo 1: View of the project site's frontage along Eagle Rock Avenue looking north.



Photo 2: View of project site looking south. Note that the existing commercial building is vacant but most recently occupied by a restaurant.



Photo 3: Immediately north of the project site is a commercial building containing multiple tenants, including a bank, urgent care, and dental office.



Photo 4: The southerly portion of the project site consists of an impervious surface parking area, which previously consumed 88.3% of the site). The proposed lot coverage conditions would be a decrease, amounting to approximately 71.2%.



Photo 5: Existing streetscape conditions of Eagle Rock Avenue looking north. Note that the existing transformer at the right of the photograph will be relocated as part of the proposed project.



Photo 6: The ground of the former Mayfair Farms banquet hall/event venue is located across Eagle Rock Road, north of the project site. This facility closed in June 2022, according to its website.