



TOWNSHIP OF WEST ORANGE

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Department of Planning and Development

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TO: Zoning Board Members

FROM: Paul Grygiel, AICP, PP, Township Planner

DATE: April 17, 2023 – *revised July 13, 2023*

RE: **ZB-22-13 / MPB Realty LLC**
Block: 153; Lot: 38; Zone: B-2
470 Eagle Rock Avenue
Seeking “c” and “d” variances to permit two drive-through restaurants

The applicant has submitted revised plans and additional information in response to initial reviews by the Board’s professionals and comments at the first public hearings on the application. This memorandum supplements my original review memorandum dated April 17, 2023. New information is denoted in **bold**, deletions are shown in ~~striketrough~~.

INTRODUCTION

The applicant is proposing to construct two drive-through restaurants and related improvements on a property currently developed with a vacant restaurant building. Multiple “d(3)” variances are required for noncompliance with certain conditional use standards. A number of “c” or bulk variances are also required, including for lot coverage, signage, parking, buffers and other standards. **The proposed development design has been modified, resulting in the elimination of certain previously requested variances.**



LAND USE/CIRCULATION

The property is located in the B-2 zone and is currently occupied by a vacant former restaurant building with a floor area of approximately 6,187 square feet. The site is 0.941 acres (40,971 square feet) in area and is somewhat regularly shaped, with 223 feet of frontage on Eagle Rock Avenue and 182 feet of frontage on Rosney Terrace. There are two existing driveways for the site on Eagle Rock Avenue, which are blocked by temporary barriers. The existing building is located in the center of the lot with parking on all sides of it. Photographs of the subject property taken on January 5, 2023 are included at the end of this memorandum.

The area surrounding the subject property is developed with a mix of commercial and residential uses. Commercial uses are generally located along Eagle Rock Avenue and Prospect Avenue to the east and north of the subject site, while residential uses are generally located to the south and west. A small shopping center is located directly east of the subject property. The two properties bordering the subject property to the south are residential, although they are located in the B-2 zone.

There is a sidewalk along the site's Eagle Rock Avenue frontage. It is generally in good condition. There are bus stops on Eagle Rock Avenue within a few blocks of the subject property.

SUBMISSIONS

<u>ITEM</u>	<u>SIGNED BY</u>	<u>DATE/REVISION</u>
Boundary and Topographic Survey	Craig Black, P.E., L.S.	5/13/21
Site Plan (4720 sheets)	Matthew J. Bersch, P.E.	7/5/23
Architectural Plans (69 sheets)	Robert Anthony Grimaldi, A.I.A.	5/4/23
Planning Report	George Wheatle Williams, P.P. and Steven Martini, P.P.	7/7/23
Acoustical Evaluation	Michael J. Dick, INCE Bd. Cert.	6/28/23
Traffic Impact Study	Kevin M. Savage, P.E., PTOE and Corey M. Chase, P.E.	7/6/23
Tree Removal Report	Marla L. Roller, L.L.A., P.P.	June 2023
Drainage Statement	Matthew J. Bersch, P.E.	June 2023
Stormwater Management Operation and Maintenance Manual	Matthew J. Bersch, P.E.	June 2023
Environmental Impact Statement	Matthew J. Bersch, P.E.	June 2023
Listing of Fast Food Restaurants		
Adjacent to Residential Uses	Dynamic Engineering Consultants, PC	7/5/23
Solid Waste Management Plan	Matthew J. Bersch, P.E.	6/30/23



VARIANCES REQUIRED

“d(3)” Variances		
SECTION/REQUIREMENT	PERMITTED /REQUIRED	PROPOSED
25-24.2.b.2.(i)(2) Minimum distance from any part of building or structure used as fast food restaurant to lot line of another fast food restaurant	500 ft.	0 ft. (two fast food restaurants on one lot)
25-24.2.b.2.(i)(3) Minimum distance from any part of building or structure used as fast food restaurant to residential zone	1,000 ft.	0 ft.
25-24.2.b.2.(i)(4) Minimum street frontage for fast food restaurant	200 ft.	182.4 ft.
25-24.2.b.2.(i)(7) Minimum distance of driveway of lot with fast food restaurant to street intersection	100 ft.	13.1 ft.
25-24.2.b.2.(i)(9) All fast food restaurants shall provide parking in accordance with § 25-12.2 b.	Required	Not provided
“c” Variances		
SECTION/REQUIREMENT	PERMITTED /REQUIRED	PROPOSED
25-7.1 Maximum lot coverage	60%	69.4 68.8%
25-8.1 a Accessory use location	Not permitted in required front or side yards	Parking proposed in required front and side front yards
25-11.2 Minimum side yard of nonresidential building on lot which is contiguous to the boundary of any residential district	75 ft.	66.1 ft. (side front yard to R-6 zone on west side of Rosney Terrace)
25-11.3 a. Minimum buffer strip width	50 ft.	12.0 ft.
25-12.1 b. Minimum curb setback from any fence, screening or structure	5 ft.	0 ft.
25-12.1 l. Parking location in O-B and B districts	Side or rear yards only	Front yard



25-12.2 b. Minimum number of parking spaces	33 (1 for each 3 seats or stools or 1 for each 45 square feet of floor area available to patrons, whichever requirement is greater)	30
25-14.3 Minimum maintained lux/footcandles in parking areas	20 lux/2.0 footcandles	0.5 0.8 footcandles
25-15.3 c.2.(b) Maximum number of building mounted signs	One per permitted use	Popeye's: five Sonic: five four
25-15.3 c.2.(b) Maximum building mounted sign area	120 sq. ft. or 15% of front wall area, whichever is less (Permitted: 100 sq. ft. for Popeye's, 114-91 sq. ft. for Sonic)	Popeye's: 198.9 sq. ft. Sonic: 160.2 142.5 sq. ft.
25-15.3 c.2.(d) Maximum freestanding sign height	16 ft.	20 ft.
25-15.3 c.2.(d) Maximum freestanding sign width	6 ft.	7.88 ft.
25-15.3 c.2.(d) Maximum number of freestanding signs	One per lot	Two per lot

The applicant ~~has also~~ **had previously** requested a waiver from providing an environmental impact statement (EIS) as “the project proposes a reduction in impervious coverage while remaining within the existing developed area” and would therefore have no environmental impacts. I note that Section 25-13 of the Land Use Regulations Ordinance, “Environmental Impact Analysis” outlines what development proposals require an EIS. This application does not require an EIS per Section 25-13.3 b., as the site is less than five acres in area. However Section 25-13.3 c. states an application for a “d” variance “may be required, at the discretion of the Zoning Board, to be accompanied by an environmental impact statement.” As noted by the applicant, the subject property is already developed and proposes a reduction in impervious area on the site. **However, the applicant has now submitted an EIS.**

PROPOSED DEVELOPMENT

The applicant is proposing to remove all improvements on the subject property and construct two drive-through fast food restaurants: a Popeye's and a Sonic. Thirty-three trees on the subject property are proposed to be removed. Of these, 21 are considered “viable” trees and require replacement. A total of ~~38~~ 41 replacement trees are proposed: ~~17~~ 10 major and ~~21~~ 31 minor trees.



The Popeye's restaurant is proposed to have a floor area of 2,525 square feet and 24 seats. The Sonic restaurant is proposed to have a floor area of ~~1,616~~ **1,484** square feet and a ~~764~~ **433** square foot outdoor seating area **with 18 seats**. No indoor dining is proposed for the Sonic. A drive-through window is proposed for each restaurant, with an ordering station and menu board to the rear of each restaurant. Each drive-through lane is proposed to have queuing space for ~~10~~ **11** vehicles.

Proposed signage includes two freestanding signs along the Eagle Rock Avenue frontage: a ~~20~~ **16**-foot tall, ~~49.43~~ **30.2**-square foot sign for Popeye's and a 16-foot tall, 42.98-square foot sign for Sonic. Five façade signs are proposed on ~~each building~~ **the Popeye's building and four façade signs are proposed on the Sonic building**, on three sides of ~~each building~~ **the Popeye's building and four sides of the Sonic building**. Site lighting includes 13 pole lights with mounting heights of 15 to 18 feet, five wall lights and 22 canopy lights.

Two, two-way driveways are proposed on Eagle Rock Avenue. The eastern driveway will be full movement, while the western one will only allow right turns out, with a center island proposed prohibit left turns out of it. Parking spaces are proposed in the front, side front and side yards. A total of ~~30~~ **27** parking spaces are proposed, including two handicap spaces and ~~three~~ **one** electric vehicle charging spaces. However, nine of these spaces located along the eastern property line are order locations for the Sonic restaurant. A 1,400-square foot canopy is proposed above these nine spaces. The height of the canopy **will be 11.67 feet, according the applicant's resubmission letter** ~~is not provided~~.

A bicycle rack is proposed to the northeast of the Sonic restaurant. Two pedestrian connections are proposed from the sidewalk on Eagle Rock Avenue, one to each restaurant. A sidewalk connecting Fundus Road to Eagle Rock Avenue located in a five-foot wide sidewalk easement along the eastern property line is proposed to remain.

Two trash enclosures are proposed to the rear of the restaurants. The one for Popeye's is proposed to be located 13.7 feet from the southern property line and the one for Sonic is proposed to be located ~~21.3~~ **20.3** feet from the southern property line. A six-foot tall board on board fence is proposed to the south and west of the parking lot and circulation aisles. Landscaping is proposed between the fence and lot lines and elsewhere on the property. The proposed landscaping consists of ~~nine~~ **10** shade trees, 29 evergreen trees, ~~59~~ **52** evergreen shrubs, ~~52~~ **57** deciduous shrubs, groundcover, perennials and ornamental grasses.



DISCUSSION/RECOMMENDATIONS

Variance Proofs

The subject property is located in the B-2 Business zone district. As noted, a fast food restaurant is permitted as a conditional use in the B-2 zone. While the proposal complies with some of the conditional use standards for this use, others are not met. The Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-70d(3) permits a board of adjustment to grant a variance to allow "deviation from a specification or standard ... pertaining solely to a conditional use." Per the MLUL, a "d" variance may be granted only "in particular cases for special reasons." An applicant for a "d(3)" variance need not demonstrate particular site suitability. Instead, a showing must be made that the "proposed site would accommodate any problems associated with use even though proposal does not comply with all conditions." (Coventry Square Inc. v. Westwood Zoning Bd. Of Adjustment, 138 NJ 285 [1994]) The applicant is not obligated to provide the "enhanced quality of proof" required for a "d(1)" variance as required by the Medici case (i.e., show that the site is particularly suited to the proposed use and reconcile granting of variance with governing body's intent to prohibit a use in the zone).

In addition, the MLUL at N.J.S.A 40:55D-70c permits a board of adjustment to grant variances from the bulk regulations of a zoning ordinance and other zoning deviations that do not require a "d" variance. A "c(1)" variance is for cases of hardship due to factors such as shape or topography, or due to "an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon." A "c(2)" variance may be granted where 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.

For all of the above variances, the applicant must also address the "negative criteria," and affirmatively demonstrate that each 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.

Site Plan and Other Issues

At a meeting of the Township of West Orange Site Plan Review Advisory Board (SPRAB) held on February 7, 2023, the SPRAB reviewed the application with the applicant's representative, attorney, engineer, architect, traffic engineer and planner. Most of the site plan and design issues that were discussed at this meeting have been addressed in the revised plans and supporting documentation submitted subsequent to the SPRAB meeting.



One item that has not been addressed was to examine potential traffic impacts in the morning peak hour, assuming the proposed Sonic would be open at that time. **The revised traffic impact study responds to this comment as follows: “Further, given the weekday AM traffic volumes were lower than both the weekday PM and Saturday midday peak hour traffic volumes and given only the Sonic restaurant is proposed to be open during the weekday AM peak hour, a separate analysis was not prepared for the weekday AM peak hour.”**

Another issue raised that has been partially addressed is the relationship to adjacent residential uses. As noted, there are two adjacent residences to the south, which are located in the B-2 zone. A buffer area has been added that was not included on the originally submitted plans. However, the potential impacts from noise, lights and odors due to the proposed locations of the trash enclosures and drive-through order boards should be addressed. An acoustical study focusing on the sound levels of the proposed rooftop mechanical equipment and intercom loudspeakers was provided by the applicant. The applicant should confirm whether there are intercoms proposed at the nine covered order locations for Sonic, and if so, whether they were included in the evaluation. **The revised acoustical study states it is the preparer’s understanding that “that only one of the east canopy intercoms will operate at any given time, and therefore the closest intercom to the nearest residences was modelled.”**

In addition, the applicant’s resubmission letter indicates the revised architectural plans provide information on the canopy. However, there does not appear to be a detail of the canopy on the architectural plans, which in turn state “refer to canopy drawings for additional premanufactured canopy information. These drawings must be provided.

Other issues are as follows (current status listed after each one):

1. The applicant is variously listed as MPB Realty LLC, Orange Dev, LLC, and Parikh Network, LLC. Please confirm which is correct.

Current status: the applicant and property owner is MPB Realty LLC.

2. The height of the proposed canopy over the Sonic parking area must be provided, along with details of this structure and the ordering positions below it. Testimony should be provided regarding its operations.

Current status: as noted above, the proposed height is 11.67 feet, but no plans have been provided.

3. The applicant’s planning report must be updated to address the current proposal and required variances.

Current status: the applicant’s planning report has been updated.



4. Testimony should be provided as to why a sign is proposed on the south façade of the Sonic building, as it does not face a street only interior circulation aisles and the adjoining residential properties to the rear.

Current status: this proposed sign has been removed.

5. The traffic impact study refers multiple times to the “Mayfield driveway.” The applicant’s traffic engineer should confirm whether this reference should be corrected to Mayfair Farms.

Current status: this correction has been made.





Front views of property



Eastern side of property, including sidewalk connecting to Fundus Road



Views from Rosney Terrace