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August 31, 2023

PLANNING REPORT

TO: Kevin Malanga, Esq.

kevinmalanga@yahoo.com

RE: Evaluation of Jurisdictional Issues

Application of West Orange Plaza PB-21-01
Block 152.01, Lots 1445 & 1445.05
155 Prospect Avenue
West Orange, New Jersey

INTRODUCTION

At your request I reviewed the above referenced application that is scheduled to continue to be heard by the West Orange Planning Board on September 6, 2023. The materials reviewed were posted on the West Orange municipal website.*

Based on my review, I conclude from a planning point of view that the West Orange Planning Board does not have jurisdiction to hear this application. This conclusion is based on the proposed inclusion of a fast food restaurant that is not a permitted use in the PC Zone, the zoning dimensional data assuming that the entire property is in a PC Zone (whereas a substantial portion is in the R-5 Zone), and a defective public notice.

STATUS OF A QUICK SERVICE RESTAURANT

Testimony by the applicant's engineer, Mr. Delaney, is understood to indicate that the applicant is proposing a "quick casual restaurant" at the northern end of proposed Building C with approximately 70 seats and a drive-up window. The term "quick casual restaurant" seems to be Mr. Delaney's amalgamation of a "quick service restaurant" and a "fast casual restaurant." These are not zoning terms but food service industry terms. Both terms encompass what are commonly known as a fast food restaurant with "fast casual restaurant" being an industry term for a fast food restaurant that allows for more customization of meals but possesses the same service characteristics as a "quick service restaurant." **Attachment A** indicates the results of a Google search for the term "fast food restaurant" and indicates that the term is synonymous with "quick service restaurant". A "quick casual restaurant" is not a zoning classification used in the West Orange Land Use Regulations.

*Go to September 6, 2023 Planning Board Special Meeting <https://www.westorange.org/Archive.aspx?AMID=38>

Section 25-4 of the Land Use Regulations has two relevant definitions that are reproduced below. They are mutually exclusive categories. If a use fits the definition of a fast food restaurant, it cannot be classified as a restaurant.

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 15 individuals. This does not include restaurants which have "take-out" as accessory to a traditional restaurant.

RESTAURANT

Shall mean a public establishment which serves food and drink primarily or exclusively for consumption on the premises and is not a "fast food restaurant" as defined in this chapter. For the purposes of this chapter, a "bar" shall also be deemed a "restaurant" only if food is prepared, served and consumed on the premises.

The P-C Zone permits restaurants but not fast food restaurants. **Attachment B** reproduces the Township's table of permitted uses. The issue of whether the proposed business is permitted or not permitted is a fact sensitive question. Simply put:

- Does the establishment sell ready-to-eat foods and beverages, that is, foods that are already cooked and can be eaten immediately?
- Does the establishment allow purchased items to be consumed on the premises or taken off-premises for consumption?
- Upon ordering, is there a short time for receiving the order (because the foods are already cooked and kept warm)?
- Are orders placed at a counter, rather than by served by wait staff while the customer is sitting at a table?
- Are the food and beverage products provided in disposable containers, such as paper or plastic plates and cups rather than on chinaware or in glassware?
- Have more than 15 seats on the premises available for on-site consumption by customers?

If the proposed use has these characteristics, it is a "fast food restaurant" and not a "restaurant," and is not a permitted principal use in the P-C Zone. Because it is not a principal use in the P-C Zone and requires a variance under N.J.S.A.40:55D-70.d(1), only the Board of Adjustment has jurisdiction to entertain the entire application.

IMPROPERLY INCLUDING R-5 ZONE ACREAGE

The subject site consists of approximately 23 acres in the P-C Zone and approximately 9.67 acres in the R-5 Zone. The R-5 Zone does not allow commercial uses. In calculating the dimensional standards for the proposed development, the applicant is using the acreage of the entire 32.67 acre site including the portion in the R-5 Zone. This is improper as there is no provision in the Land Use Ordinance that allows land in another zone that does not permit the proposed use to count as if entirely within the zone that permits the proposed use. Although the applicant is not proposing any physical improvements in the R-5 Zoned portion of the property, the R-5 Zoned acreage is being treated as if it were in the P-C Zone.

For example, the zoning schedule on the site plan (**See Attachment C**) states the maximum building coverage is 20% in the P-C Zone and the existing building coverage is 12.54% of the site and is proposed to be 15.14% of the site. However, it appears that these calculations are based on the entire 32.67 acres including the approximately 9.67 acres in the P-C Zone. If only the approximate 23 acres in the P-C Zone were utilized in the calculation, the existing building coverage would be 17.8% and the proposed building coverage would be 21.5% which exceeds the maximum permitted in the P-C Zone.

A similar observation is made with respect to the lot coverage (impervious coverage). The applicant indicates that the proposed lot coverage is 56.54% of the site and the maximum permitted is 75%. However, if only the 23 acre portion of the site in the P-C Zone is utilized, the proposed lot coverage amounts to approximately 80.3% of the P-C Zoned portion of the site which exceeds the maximum of 75%.

The proper consideration of this application should acknowledge at a minimum that building coverage and lot coverage variances are needed. More significantly, use of the open space in the R-5 Zone for justifying building coverage and lot coverage in the P-C Zone constitutes a use variance under N.J.S.A.40:55D-70.d(1) in my opinion and necessitates Board of Adjustment jurisdiction of the entire application.

DEFECTIVE PUBLIC NOTICE

The applicant's public notice is included in **Attachment D**. The notice is defective in that it states that the applicant is proposing a restaurant whereas what is being proposed is a fast food restaurant which is not permitted in the P-C Zone. The notice also does not reference variances needed for building coverage and lot coverage. Finally, the public notice references a hearing by the West Orange Planning Board whereas the Planning Board does not have jurisdiction of this application.



N. J. Planner License No. 1776
August 31, 2023



WIKIPEDIA
The Free Encyclopedia

Fast-food restaurant

From Wikipedia, the free encyclopedia

A **fast-food restaurant**, also known as a **quick-service restaurant (QSR)** within the industry, is a specific type of restaurant that serves [fast-food](#) cuisine and has minimal [table service](#). The food served in fast-food restaurants is typically part of a "[meat-sweet diet](#)", offered from a limited menu, cooked in bulk in advance and kept hot, finished and packaged to order, and usually available for [take away](#), though seating may be provided. Fast-food restaurants are typically part of a [restaurant chain](#) or [franchise](#) operation that provides standardized ingredients and/or partially prepared foods and supplies to each restaurant through controlled supply channels. The term "fast food" was recognized in a dictionary by [Merriam–Webster](#) in 1951.^[1]

Arguably, fast-food restaurants originated in the United States with [White Castle](#) in 1921.^{[2][*unreliable source?*]} Today, American-founded fast-food chains such as [McDonald's](#) (est. 1940) and [KFC](#) (est. 1952)^{[3][4][5][6]} are [multinational corporations](#) with outlets across the globe.

Variations on the fast-food restaurant concept include [fast-casual restaurants](#) and [catering trucks](#). Fast-casual restaurants have higher sit-in ratios, offering a hybrid between counter-service typical at fast-food restaurants and a traditional table service restaurant. Catering trucks (also called food trucks) often park just outside worksites and are popular with factory workers.^[*citation needed*]



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QSR Meaning - What Defines a Quick Service Restaurant?

'In professional terms, this is official restaurant terminology for what others may call a **'Fast Food' restaurant**. Burger King, KFC, McDonald's, Subway, ...

[Qsr Meaning](#) · [Qsr Vs. Fast Casual Dining](#) · [Qsr Vs. Casual Dining](#)

What is a QSR?

When we define QSR, the QSR meaning is 'Quick Service Restaurant.' In professional terms, this is official restaurant terminology for what others may call a 'Fast Food' restaurant.

Burger King, KFC, McDonald's, Subway, Wendy's, and Taco Bell are prime examples of QSR establishments.

When we think about what QSR means in terms of service, these restaurants' environments are centered around functionality, with efficiency and speed being primary goals.

To answer the question, 'what is a QSR restaurant?' They usually share one or more of these attributes:

- Limited menu items, generally consisting of burgers, wraps, sandwiches, and/or pre-packaged salads
- Most food is ordered for takeaway
- Price points typically range between \$5-\$8 per meal
- These restaurants usually provide plastic seating and tabletops
- Table service is rarely provided in a QSR

To further understand the QSR meaning, we're going to compare QSRs to some other dining concepts.

'Fast Casual' is one of the latest concepts in the 'fast food' industry. The term relates to the 'hybrid' nature of the concept, as it blends casual dining with fast food dining.

Fast-casual borrows some aspects from casual dining restaurants and some from fast food. Some of the leading 'fast-casual chains include:

- Five Guys Burgers and Fries
- Chipotle
- Mexican Grill
- Panera Bread
- Jimmy John's Gourmet Sandwich Shop

These restaurants feature more diverse and upscale menus, cost slightly more than standard QSRs, and offer additional seating space for customers.

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At Panera Bread, standard sandwiches have been replaced with upmarket paninis. Their sandwich items include artisan breads, replacing the white loaf bread and soggy bread rolls offered by competitors. Additionally, the salad is hand-tossed rather than pre-packaged.

Fast-casual restaurants generally don't offer table service; orders are completed and paid for. Then, customers are told to wait at a designated assembly area to pick up their food and take it to a table.

Certain chains use a different approach - allowing you to place your order, proceed to your table, and have your food delivered by a food runner. In fast-casual restaurants, the ambiance is typically more upscale than standard fast-food providers. Interiors tend to be more comfortable with soothing interior designs.

*25 Attachment 2***Township of West Orange****TABLE OF DISTRICT REGULATIONS****PART A: PERMITTED USES TABLE OF DISTRICT REGULATIONS****(Subsection 25-7.1)****West Orange Land Use Regulations****[Amended 9-22-2020 by Ord. No. 2617-20; 7-13-2021 by Ord. No. 2647-21; 7-19-2022 by Ord. No. 2685-22]**

ZONE	PERMITTED PRINCIPAL USES	PERMITTED ACCESSORY USES	PERMITTED CONDITIONAL USES
P-C	Retail store Personal service store or studio Restaurant Bar Motor vehicle fueling station Post office Civic center, limited to assembly hall and noncommercial indoor recreation facilities Theater on lots of 8-acre minimum Urgent care Physical therapy Fitness center/health club Home design showroom Indoor commercial recreation	Required accessory parking Required accessory truck loading spaces Private garage Signs	Video or amusement arcade Commercial antenna Microbreweries, craft distilleries and wineries

SITE DATA CHART

OWNER & APPLICANT: WEST ORANGE PLAZA, A NEW JERSEY PARTNERSHIP P.O. BOX 326 PLAINFIELD, NJ 07061					
PROPERTY: LOT 1445 & 1445.05 BLOCK 152.01 AREA = 32.67± ACRES					
ZONE: P-C § 25-3.1 P-C DISTRICT (FRONT) R-5 (REAR-UNDEVELOPED & NO DEVELOPMENT PROPOSED) (ZONING INFORMATION FROM THE TOWNSHIP OF WEST ORANGE ZONING ORDINANCE)					
EXISTING USE: SHOPPING CENTER		PROPOSED USE:SHOPPING CENTER			
LOT SIZE REQUIREMENTS					
DESCRIPTION		CODE (P-C)	EXISTING	PROPOSED	COMPLIANCE
§25-7.1 BULK STANDARDS TABLE OF DISTRICT REGULATIONS					
MAX. HEIGHT "MAIN BUILDING" "VERIZON" "MAVIS" "A" "B" "C" "D"		2 1/2 STORIES/ 35'	46.3 FT. 18.6 FT. 18.1 FT.	46.3 FT. 18.6 FT. 18.1 FT. 35.0 FT. 35.0 FT. 28.0 FT. 35.0 FT.	EXISTING NON-CONFORMING YES YES YES YES YES YES YES
MIN. LOT AREA		8 ACRES	32.67 ACRES	NO CHANGE	YES
MIN. FRONT YARD "MAIN BUILDING" "VERIZON" "MAVIS" "A" "B" "C" "D"		300 FT.	372.3 FT. 113.8 FT. 31.3 FT. N/A N/A N/A N/A	372.3 FT. 113.8 FT. 31.3 FT. 268.3 FT. 135.9 FT. 65.4 FT. 72.0 FT.	YES EXISTING NON-CONFORMING EXISTING NON-CONFORMING NO * NO * NO * NO *
MIN. SIDE FRONT YARD-CORNER "MAIN" "VERIZON" "D"		100 FT.	53.9 FT. 43.4 FT. N/A	53.9 FT. 43.4 FT. 68.6 FT.	EXISTING NON-CONFORMING EXISTING NON-CONFORMING NO*
MIN. SIDE YARD "A" "B" "MAVIS"		75' + 75' 100' RESIDNECE	N/A N/A 10.1 FT.	50.7 FT. 60.0 FT. 10.1 FT.	NO * NO * EXISTING NON-CONFORMING
MIN. REAR YARD		75' 100' RESIDENCE	52.5 FT.	52.5 FT. 39.6 FT. ⁽³⁾	EXISTING NON-CONFORMING NO *
MAX. BUILDING COVERAGE		20%	12.54%	15.14%	YES
MAX. LOT COVERAGE		75%	60.33%	56.54%	YES
MIN. SPACING BETWEEN BUILDINGS "MAIN BUILDING" - "A" "A" - "B" "B" - "MAVIS"		150 FT.	182.0 FT. (MAIN - VERIZON)	90.3 FT. 38.0 FT. 54.2 FT.	NO * NO * NO *

Form of Notice West Orange Plaza

Please take notice that West Orange Plaza, the owner of property known as the West Orange Plaza Shopping Center, having a street address of 235 Prospect Avenue, West Orange, New Jersey and known on the West Orange Tax Assessment Map as Block 152.01, Lots 1445 & 1445.05, has made application to the West Orange Planning Board for preliminary and final site plan approval to make improvements to the shopping center. The applicant proposes a Target store, with a fulfillment center in the former Kmart space, as expanded, and to add four new buildings with a combined new square footage of approximately 38,702 square feet which will include new retail, restaurant, medical, and other potential uses, and to make improvements to the site which generally include modifications to the site access, parking areas, grading, landscaping, signage and lighting.

The applicant has requested the following specific variance relief from the requirements of the West Orange Zoning Ordinance in order to undertake the proposed improvements: to permit front yard setbacks of 268.3 feet (to proposed Building A), 135.9 feet (to proposed Building B), 65.4 feet (to proposed Building C), and 72 feet (to proposed Building D), where a front yard setback of 300 feet is required; to permit a side front yard-corner setback of 68.6 feet (to proposed Building D) where a setback of 100 feet is required; to permit a side yard setback of 50.7 feet (to proposed Building A) and 60 feet (to proposed Building B) where a side yard setback of 100 feet is required; to permit a rear yard setback of 39.6 feet for future loading dock, rather than 75 feet; to permit spacing between the existing Main Building and Building A of 90.3 feet, spacing between Building A and Building B of 38 feet and spacing between Building B and the Mavis Building of 54.2 feet, where a minimum spacing between buildings of 150 feet is required; to permit a parking area setback of 2 feet, rather than 5 feet; to permit 1204 parking spaces where 1476 parking spaces are required; to permit 12 loading docks where 34 loading docks are required; to permit some loading docks outside of the structure; and to permit certain portions of the parking area to have 0.0 footcandles of lighting where a minimum of 1.5 footcandles are required; to allow certain light poles to be 25 feet in height, rather than 18 feet high; to permit a retaining wall height of 13.5 feet, rather than 4 feet; and to permit a drive-thru in the front yard and a drive-up window within a yard setback where same is not permitted. The existing and proposed parking is located within the front yard setback, and while extensive additional landscaping is proposed, the proposal deviates from the Code requirement of a landscaped island for every twenty parking spaces. The applicant also requests variances related to the proposed shopping center identification signs and individual business unit signs, as follows: to permit multiple wall signs at the following locations: Space A-1 on the west side elevation; Space A-6 on the east side elevation; Space B-1 on the west side elevation; Space B-3 on the east side elevation; Space B5-A on the south and east side elevations; Space B5-B on the north and east side elevations; Space C-1 on the east and west side elevations; Space C-2 on the east side elevation; Space C-3 on the east side elevation; Space 1M-A on the east and north side elevations; to permit three pylon signs and a monument sign where only one freestanding sign is permitted; to permit two freestanding signs having an area of 260 square feet, a height of 28 feet and width of 16 feet, where an area of 150 square feet, a height of 20 feet and a width of 15 feet is permitted; to permit a freestanding sign having an area of 338 square feet, a height of 36 feet

and a width of 16 feet where an area of 150 square feet, a height of 20 feet and a width of 15 feet is permitted; to permit the pylon signs to be set at the property line, rather than having a setback of 50 feet; and to permit a monument sign with a width of 15 feet where a width of 6 feet is permitted. The applicant will request any additional variances, waivers or other relief required by the Board in connection with its review of this application.

The Planning Board has scheduled a public hearing to review this application for April _____, 2023, at ____ PM. Due to the COVID-19 pandemic, the hearing will be held virtually via _____. Interested parties may attend the hearing and provide comments and/or testimony and evidence by utilizing the following link: _____.

The application forms, documents and plans supporting this application are available for inspection on the Township website and by arrangement with the Board Secretary, Jamilet Baquerizo Vite at (973)325-4111 or via email at jvite@westorange.org

Very truly yours,
Price Meese Shulman & D'Arminio, P.C.
Attorneys for West Orange Plaza

By: _____
Gregory D. Meese