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September 5, 2023

Via Email and Federal Express

Honorable Planning Board
Township of West Orange
66 Main Street
West Orange, NJ 07052

**Re: West Orange Plaza PB-21-01
235 Prospect Avenue (Block 152.01, Lots 1445 & 1445.05)**

Dear Members of the Board:

This office represents West Orange Plaza in connection with its application to expand and improve the West Orange Plaza Shopping Center. We are writing to respond to the planning report prepared by Peter Steck, P.P. submitted on behalf of Kevin Malanga, Esq.

Mr. Steck raises jurisdictional issues based on his theories as to how a fast food restaurant should be defined and why land owned by the applicant should not be included in the acreage for lot coverage purposes.

Restaurant Use

The argument regarding the restaurant use is not ripe for review and inapplicable to the subject application. This is a Shopping Center site plan application. Shopping Centers, by their very nature, involve multiple uses that change from time-to-time. The only new use that has been proposed and discussed is the Target use due to its size, unique site plan requirements and the fact that the Applicant and Target have entered into a lease.

No application has been made for a specific restaurant. The testimony to date is that the two drive-thru facilities shown on the plans can accommodate a restaurant or another use permitted in the PC Zone, such as a bank, pharmacy, or medical office. We have clearly stated that the Owner does not have leases in place and is not proposing any fast-food restaurants.

The definition of fast food restaurant is stated in Section 25-4 of the West Orange Zoning Code. Although various bodies have proposed and adopted different definitions of fast food restaurant, there is only one definition that the Zoning Officer or Planning Board can be concerned about, i.e., the one set forth in the West Orange Zoning Ordinance. Mr. Steck's choice of definition is both irrelevant and not properly a subject for debate in this application.

A successful shopping center is dynamic and uses change from time-to-time. Any new use shall be subject to zoning review by the Zoning Officer prior to obtaining building permits. If a future restaurant use does not meet the definition contained

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in the Zoning Ordinance, the Zoning Officer will deny the use and the applicant will be required to seek a variance. At that time, Mr. Malanga and Mr. Steck can have their day. Until then, this issue is not properly before the Board.

Split zone

As shown on the plans and discussed by the Applicant's engineer, the property is in two zones, the P-C Zone and the R-5 Zone. The shopping center development is limited to the P-C Zone portion of the lot and since there is no development occurring on the residential portion of the lot, the commercial use does not extend into the same. Mr. Steck, without citing to any provision of the West Orange Zoning Ordinance or any other legal authority, asserts that only the portion of the property that is zoned P-C may be included for purposes of lot coverage. He claims that it "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."

There is nothing in the West Orange Zoning Ordinance that leads to the conclusion sought by Mr. Steck and there is ample legal authority to the contrary. In Ciocon v. Franklin Lakes, 223 N.J. Super. 199 (1988), a property was bisected by both the municipal boundary line of the Borough of Franklin Lakes and the Township of Wayne, and the boundary of Bergen County and Passaic County. Like Mr. Steck, the Franklin Lakes Planning Board took the position that the municipal boundary line controlled the need for a rear yard variance. The court disagreed and reversed. The court held that "where a boundary line transects a property located within two municipalities, the rear-yard set-back requirements of one municipality refer to the distance that the building is located from the rear-lot line located in the adjoining municipality rather than from the municipal boundary line." 223 N.J. Super. at 208. Clearly, if land on the other side of a municipal and county boundary line must be included for purposes of setbacks, there is absolutely no reason that land in a different zone must be excluded for purposes of lot coverage.

This result is dictated by the definitions contained in the West Orange Zoning Ordinance. The term "Lot Coverage" is defined as "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." There is no subtraction for portions of the lot that may be in a different zone. The definitions of "Rear Yard" and "Side Yard" lead to the same conclusion as the distance to be measured for both extends to the property line, not to the zone line.

In addition to the above, this Board has a history of including the entire property when considering applications involving the property. For instance, when Pathmark was before this Board seeking to expand, the Board included the entire property and did not arbitrarily remove the residentially zoned portion of the property as argued by Mr. Steck. See title page of Pathmark site plan last revised September 24, 2004, attached hereto.

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As Mr. Steck's attack on the legal notice is predicated on his misplaced theories about restaurants and erroneous elimination of land from the application, there is no reason to discuss the notice.

Very truly yours,

Gregory D. Meese

Gregory D. Meese

gdm/

cc: West Orange Plaza (via email)
Kevin Malanga, Esq. (via email)
Diana McGovern, Esq. (via email)
Paul Grygiel, P.P. (via email)