

**MINUTES
TOWNSHIP OF WEST ORANGE
PLANNING BOARD MEETING
October 4, 2023 7:30 P.M.**

The Township of West Orange Planning Board held its regular meeting on October 4, 2023 at 7:30 P.M. via virtual ZOOM videoconference.

Chairman Bagoff called the meeting to order at approximately 7:30 P.M. He announced that notification of the meeting was given to the Township Clerk, and posted on the Township Bulletin Board, sent to the West Orange Chronicle and the Star Ledger, and posted on the Township's website calendar. This meeting has been properly noticed to the public in accordance with the Open Public Meetings Act. No new matters will start after 10:30 P.M.

PLEDGE OF ALLEGIANCE

- *Chairman Bagoff* requested all persons stand for the Pledge of Allegiance.

ANNOUNCEMENTS

- The next Planning Board regular meeting will be held **Wednesday November 1, 2023 at 7:30 P.M.**

ROLL CALL

PRESENT: Dr. Robert Bagoff; Mr. William Wilkes; Mr. Ken Alper; Mr. Jerry Guarino; Mr. Christopher Morgan, Sr.; Mayor Susan McCartney; Mr. Peter Smeraldo; Councilwoman Tammy Williams; Mr. Sal Jensen; Mr. Cardoza;

ABSENT:

ALSO PRESENT: Diana P. McGovern, Esq., Planning Board Attorney;
Paul Grygiel, Town Planner;
Mr. Doug Rohmeyer, Board Engineer;
Jamilet Baquerizo Vite, Acting Planning Board Secretary

MINUTES & RESOLUTIONS

SWEARING IN

- The Township Professionals *Mr. Paul Grygiel, Township Planner and Mr. John Hess* were sworn in.

ORDINANCE REVIEW

[2819-23 Drive-Up windows - Clean 9.20.23](#)

[2819-23 Drive-Up windows \(9.20.23\)](#)

[Planning Review Memo 2819-23 Drive-Up Windows Ordinance](#)

PRESENTATION

- The purpose of the ordinance is to modify regulations for drive-up windows.
- Section 25-11.14 was added to the Land Use Regulations Ordinance in September 2020 to explicitly permit drive-up windows, pursuant to certain regulations.
- The particular recommendation is on page 29 of the Reexamination in the recommended zoning changes section, and reads as follows: “Permit drive-through windows as customarily accessory use for banks, fast food and pharmacies (with standards for vehicle stacking etc.).”
- The purpose of this Ordinance 2819-23 “is to further clarify the use of Drive-Up windows for public establishments within the Township.” The two proposed changes to Section 25-11.14 in Ordinance 2819-23 are deleting one use category with which drive-up windows are permitted and adding additional requirements which is any restaurant must be located in a property 5 or more acres and provide ample queuing to ensure that no waiting vehicles are in or on public street.
- The proposed ordinance amendment would be contrary to a recommendation of the Master Plan, and would therefore be inconsistent with that particular section.

BOARD QUESTIONS

- Chairman Bagoff asked if Cannabis entities are included in the ordinance. Mr. Grygiel said that use is not listed on the ordinance and was not address in the Master Plan.

NO PROFESSIONAL QUESTIONS

NO PUBLIC QUESTION

NO PUBLIC COMMENT*

Motion: Chairman Bagoff

Second: Mr. Guarino

Alper:	Y	Morgan:	Y
Bagoff:	Y	Smeraldo:	Y
Cardoza (Alt.2):	Y	Wilkes:	Y

Guarino: Y	Williams: Y
Jensen (Alt. 1): ----	
Klein: ----	
Mayor Susan McCartney: Y	

APPLICATIONS

- **PB-21-01/West Orange Plaza**
Block: 152.01; Lots: 1445 & 1445.05; Zone: P-C/R-5
235 Prospect Avenue
Improvements to West Orange Plaza Shopping Center with addition of new buildings.

PRESENTATION

- Applicant introduced A-5; a revised site plan prepared by Petry Engineering with highlighting bubbles around the areas of change since the original submission.
- Shaun Delaney, P.E. of Petry Engineering testified that the revisions shown on the plans (A-4) were shown in blue “clouds” and where items discussed at the last meeting. The revisions in the red “clouds” were those items that were new.
- On Building A, they were adding two “Do Not Enter” signs and on Building D they were adding a new sign on the North East corner that says, “Authorized Vehicles Only” to convey that delivery vehicles only were permitted.
- The plans also show on Building C that they added a sidewalk extension that allows pedestrians to go north to the parking spaces. They may need to add steps because of grade changes in the parking lot. This would not be an accessible route. The plans also show that they pushed the screen wall on the south side as suggested.
- The parking field in front of Whole Foods now has 2 landscape islands which meant that they gave up four parking spaces. This allows for shade and breaks in the appearance of asphalt.
- At Building D, the drive-through now directs cars to make a left turn only. They reduced the size of the refuse area and reduced it to 20 feet wide from 30 feet and added landscaping. A crosswalk was added from Building D on the east side so that created the loss of one parking space. Altogether with these new changes five (5) parking spaces were reduced.
- At Eagle Rock Avenue side the crosswalk was “straightened” and shifted five (5) ft to the west to accomplish this. At the end of Jersey Mike’s is a sign that states, “Authorized Vehicles Only” and two (2) “Do Not Enter” signs at the loading docks.
- The proposed retaining wall will have a guard rail added to the top and an anti-climb chain-link fence will be installed where the retaining wall is 10 feet or less along the Mayfair Farms property line.

- The witness showed an image of a typical refuse enclosure. They will use stucco façade or material that matches the building such as vertical wood slats as shown on plan sheet SP-15.
- The EV charging spaces were moved to the employee parking lot because it is expected that more employees would have the need for use of them.
- Upon inquiry from the Board at the last meeting, the engineer testified that they looked into Cool Pavement technology. Because the shopping center is still functioning the applicant would not be able to install the entire lot with the pavement. Pigmented pavement, which is lightened asphalt, is not available from any of the surrounding asphalt suppliers and asphalt cannot be transported long distances. The material known as “Tru Grit” is more applicable to residential projects. A cool seal could be used but it has to be installed on asphalt that is at least 6 months old and a project of this size would take 3 weeks to complete resulting in closing of sections for two to three days at a time. The cool seal is only good for five (5) years and is expensive as it would cost \$900,000 to 1.2 million every year.
- Another option they looked into was Chip Seal which is liquid asphalt that is lightened with stone chips. This type of material is used in low use parking lots. One lot that Mr. Delaney was aware of that used Chip Seal was Van Vleck Garden’s parking lot which is a low use parking lot. Because the parking lot of the shopping center already exists, there are no viable alternative options for cool paving.
- Mr. Delaney was asked about the Forester’s report and Delaney said that he had a conversation with the Forester who did not realize that the width of the planting beds had been increased when he wrote his comments. As to the Forester’s roof runoff concerns, the engineer testified that all roof leaders are connected to the water runoff system and there will be no roof runoff onto surfaces.
- The engineer was asked about what business at the D building would use the drive through and the engineer said that either D3 or D4 can use it but there would be just one user in the building for the drive through.
- Another change was noted on Building D for the gas meters. Mr. Montoro had testified they would be inside but they will be on the outside of the building and hidden with screening as shown on Architectural Exhibit 10-3-2023.
- Target will be getting a new roof on top of the existing roof and it will be painted white.

BOARD QUESTIONS

- Mayor McCartney commented that she is satisfied that the crosswalks at Jersey Mike’s and Chipotle were improved and that the Whole Foods crosswalk was going to be enhanced. She also appreciated the modifications to the retaining wall.

PROFESSIONAL QUESTIONS

PUBLIC QUESTION

- Joyce Rudin at Woodland Avenue asked why the slip lane was being eliminated. Mr. Delaney testified that elimination of the slip lane would help narrow traffic as it comes in

and currently the slip lane is under-utilized. They also removed it to take traffic away from the buildings.

- Ms. Rudin asked how runoff would be minimized and Mr. Delaney stated that because they will be re-doing the asphalt and adding drainage. The parking lot will be re-graded to provide positive drainage into drainage flows, the existing channel and to the Peckman River not to a pump station. Rudin also asked why they were putting signs so close to the road and Mr. Delaney stated to help people trying to see what is on the site and because of the trees and the buildings which obscure people from seeing what else is on site. Rudin asked why they were not adding more trees if they weren't doing cool pavement and Delaney said they are doing a significant reduction of the heat island with the proposed landscaping. Finally, Ms. Rudin inquired as to why Target was not putting solar panels on their roof. Mr. Delaney stated that the panels were a tremendous cost that Target could not commit to at this time.
- Phil Litwinoff at Linden Avenue asked if the applicant had looked into whether the residents at Paddock Farms would see the tall signs.
- Sally Malanga at Ridge Road asked about whether drainage into the Peckman River was reviewed by the DEP and Mr. Delaney said there had been a water quality review. Because they were reducing the available motor vehicle surface there was no issue.
- Traffic Engineer, Doug Polyniak, P.E. was recalled for cross-examination by members of the public. Ms. Rudin asked if there had been any studies of crashes on Prospect Avenue and Eagle Rock Avenue. Mr. Polyniak stated that he did not but that the County would have to review the application because Prospect and Eagle Rock were County roads. Rudin also asked why they couldn't keep the slip lane and Mr. Polyniak testified that removal of the lane was a benefit because the current lane leads to internal conflict inside the parking lot. He also testified that they counted the vehicles that used the slip lane in their counts. The project was expected to increase traffic by 13%.
- Kevin Malanga at Ridge Road asked about the reduction of parking spaces to accommodate the parking islands. Mr. Polyniak testified that 950 parking spaces would suffice for this shopping center. Mr. Malanga suggested that the Applicant could then remove 200 parking spaces and add more trees. Mr. Polyniak testified that at this point they have a balance between the required number of parking spaces as per the Ordinance.

PUBLIC COMMENT*

PRESENTATION

- The planner John McDonough entered on the record, he was sworn under oath and his credential were accepted by the board.
- Mr. McDonough issued a report dated May 19, 2023. McDonough showed the board an arial photograph of the site taken on March 20, 2023 that shows all the asphalt in the parking lot. The shopping center is over 60 years old. The plan is to create a destination with high quality buildings that attract high quality patrons.
- The expert noted that the Master Plan indicates that revitalization is a goal under the plan and they would be taking the older center, revitalizing and modernizing it.

- The site is 32.6 acres and has 296 sq. ft. of leasable space. The current site has very little landscaping or shade trees. The site is a major prime commercial corner. The surrounding uses are residential, commercial and business uses.
- Mr. McDonough testified that the buildings proposed break up the mass and buffer the proposed signs. The proposed drive though is something that has gained in popularity since the Pandemic. The overall development area is not being expanded but 335,199 sq. ft. of buildings are being added, all are proposed permitted uses.
- As to the proposed variances, Mr. McDonough testified that there are three types of variances: the setbacks, Mr. McDonough testified that the satellite buildings breaks up the mass and trigger the need for the setback variances as any outer building would require setback relief, parking relief, wall height and sign package. The relief requested as under the c (2) variance standards where the benefits must out weight the detriments. While there is some hardship reasons present under the c(1) criteria, mostly the requested variances are under c(2). Mr. McDonough also stated that the Pullen case suggests that the Board must look at the project as a whole.
- There are numerous positives for the project as it will improve the overall center, substantially improve the aesthetic, improve the vitality of the center and will also provide environmental improvements.
- The fundamental provisions under the MLUL that apply to the variance relief are paragraphs a) general welfare, g) variety, i) aesthetic improvement and m) efficient use of land. The project furthers the goal of the Master Plan by balancing economic development and environmental practices and advances both goals.
- Mr. McDonough testified that the benefits are substantial and negatives are minimal. The project provides improvement of pedestrian safety, improved parking, circulation, and job generation. The overall parking provided meets ITE current standards.
- As for building setbacks, the building positioning brings the center out to the road and attracts the public. The side yard setbacks are mitigated by the additional landscaping and the rear is a small expansion for the loading docks. The space between the main buildings and building A is 90.3 ft (150 ft is required), between A and B is 38 ft (150ft is required) and from B to Mavis is 54.2 feet. The entire site design will operate safely.
- Initially, 1202 parking spaces were proposed but that has dropped to 1197 spaces (1476 are required). The loading docks are 12 proposed and 34 are required. Mr. McDonough opined that it is unnecessary to have additional loading docks because the loading areas provided meet the demand.
- The drive-through in the front yard is for a permitted use and they are not looking for a fast-food restaurant. The 2 ft. setback deviation on the drive through is the minimum and consistent with what is at the site. The landscape islands are required for every 20 spaces but the area is shaded by the tree canopies on the islands.
- As for the design related variances. The lighting required is below .03-foot candles and the proposed light poles of 25 feet (18 ft. are permitted) is a safety interest because by going higher they achieve the same effect and minimize the number of fixtures. The need for the retaining wall of 13 ft was explained by the engineer.

- The sign package summarized by Mr. Grygiel in his report on page 4 sets forth what is proposed. Due to the need for signs on two sides of the buildings, the sign square footage requested is higher than what is allowed. Target has five (5) signs which include their logo and unifying elements.
- The tallest pylon sign is at the Prospect Avenue location and is largest to announce it is the main entrance to the site. The monument sign is on the corner. The sign package compliments the buildings and provides visual cues. They are not gaudy and not visual clutter but will integrate the buildings.
- Mr. McDonough testified that the project was really good for the community at large as it is making a long-standing established center better.
- With respect to the variances, all the requested variances meet the c2 criteria and some meet the c1 criteria.

BOARD QUESTIONS

- Chairman Bagoff asked about the 11 signs that will be used on building C. Mr. McDonough said that sign #1 will announce the store, #2 drive thru, #3 secondary store front, #4 third store front, #5 fourth store front, #6 store front logo, #7 reverse store front sign, #8 reverse store front sign, #9 drive thru, #10 announce back retail units and #11 safety feature.
- Mayor asked if the roof will be light color. Mr. McDonough said that they will be using a white roof.

PROFESSIONAL QUESTIONS

- Mr. Grygiel asked how this project compares to others. Mr. McDonough said that many projects are doing the same thing as Target and are trying to make it more appealing.

PUBLIC QUESTION

- Kevin Malanga at Ridge Road asked about the reason why a drive-through cannot be permitted in the front yard. Mr. McDonough said that it is for aesthetic reasons.
- Mr. Malanga also asked if the proposed signs were the proper height would there be less patrons. Mr. McDonough said that the applicant has a good balance in putting in signs that are going to be attractive and appropriate.
- Joyce Rudin at Woodland Avenue asked if all the proposed uses would be permitted uses. Mr. McDonough answered in the affirmative and they are not asking for use relief.
- Andy Macleod at Fundus Road asked if there were similar projects close to residential areas. Mr. McDonough said that the residential areas are well protected from the development of the new buildings.
- Phil Litwinoff at Linden Avenue asked about a section on page 14 in McDonough's report specifically about the two free standing signs in the development. Mr. McDonough said that one of the signs will be at the main entrance and the second one will be at the northern access point at Prospect Avenue and Eagle Rock Avenue.

OPPOSING SIDE PRESENTATION

- Kevin Malanga called as an expert in Planning, Peter Steck. Mr. Steck testified that the types of retail use most commonly used with drive throughs are fast food restaurants,

pharmacies and banks. He opined that the restaurant was “likely to be fast food” and the number of signs proposed was typically associated with a fast-food restaurant.

- Mr. Steck did not find that the benefits outweighed the detriments as it is poor site plan design to have the back of a building face Prospect Avenue.
- Steck also opined that the property was split zoned with the rear being a residential zone. There are approximately 23 acres in the PC zone and 9.7 acres in the residential zone so to calculate impervious coverage the applicant included the acreage in the residential zone. If you calculate the building coverage on just the 23 acres in the PC zone then the project exceeds the maximum building coverage allowed and impervious coverage which would be 80.3% if the residential acres are not included. Mr. Steck opined that by including the residential acreage into the calculation that this would trigger the need for a d variance. The West Orange ordinance does not provide any direction on how to calculate when there is a split zone. If it is not a d variance, then the applicant also did not notice for the c variances required for maximum lot coverage and impervious coverage because they should not have factored the residential zone acreage into the total.
- Cross examination of Mr. Steck was done by Greg Meese, attorney for the applicant. Mr. Steck testified that the proposed building was too small for a pharmacy and there is a very large CVS directly across the street. Also, Steck said that banks were getting rid of drive-thru windows. He admitted that there is a definition in the code of “drive up window.”
- Mr. Steck also admitted that he had testified on behalf of an applicant as a planner in favor of an application for Pathmark at this exact location in the past and at that time his calculations included the entire parcel of property with the residential acres for purposes of calculating building coverage and impervious coverage.

NO BOARD QUESTIONS

NO PROFESSIONAL QUESTIONS

NO PUBLIC QUESTION

NO PUBLIC COMMENT*

***Application adjourned to the October 25, 2023 Planning Board Regular Meeting. ***

Meeting adjourned at 11:11PM.

ADOPTED:

Jamilet Baquerizo Vite
Acting Planning Board Secretary