

RESOLUTION
Township of West Orange
Planning Board
PB 23-12 L&B Realty Group, LLC / 106 Ashland Avenue-5 White Street
Block: 62 Lot: 1 and 5.01; Zone: I
Decided on May 1, 2024
Memorialized on June 5, 2024
Application for Preliminary and Final Major Site Plan Approval with Bulk Variances

WHEREAS, L& B Realty Group, LLC (Hereinafter the “Applicant”) has made an application for Preliminary and Final Major Site Plan approval with Variances to renovate and replace existing industrial buildings and undertake related site improvements on a developed in the Industrial zone at property located at 106 Ashland Avenue and 5 White Street, also known as Block: 62; Lot 1 (the “Property”), in the I Industrial zone; and

WHEREAS, a properly noticed public hearing was conducted on May 1, 2024; and

WHEREAS, the Applicant was represented by Richard Schkolnick, Esq.; and

WHEREAS, the Applicant provided testimony from Frank S. Ench, owner of L&B Realty Group, Gregory Somjen, AIA, a licensed architect, and Anthony Marucci, P.E., L.S., P.P., as a professional engineer and professional planner; (the “Witnesses”); and

WHEREAS, the Applicant submitted the following documents to the Board in the form of the application package:

ITEM	SIGNED BY	DATE/REVISION
Site Plan (6 sheets, includes survey)	Anthony Marucci, P.E.	2/23/2024
Architectural Plans (3 sheets)	Marc R. Parette, AIA	11/6/2023

WHEREAS, representatives of the public were provided with an opportunity to pose questions of the Witnesses and also had an opportunity to offer statements in regard to the Application; and

WHEREAS, the Board reviewed and considered the Application and the documents submitted therewith, the testimony of the Witnesses and members of the public; and

WHEREAS, the Board also considered the testimony and filed review letters of its professionals at the hearing, including a review memo dated March 25, 2024 from John J. Hess, P.E., PP, CME (Township Engineer) and a Planner's Report by Paul Grygiel, AICP, PP, Township Planner dated March 13, 2024.

NOW THEREFORE, the Board makes the following findings of fact, based upon the evidence presented at its public hearing, at which a record was made:

1. The Applicant is requesting approval for Preliminary and Final Major site plan approval with c variances to renovate and replace existing industrial buildings and undertake related site improvements on a developed property in the Industrial Zone with "c" or bulk variances.
2. The subject property is located in the east central section of West Orange near its border with the City of Orange.
3. The property is an L-shaped through lot with frontages on Ashland Avenue and White Street.
4. The area surrounding the subject property is developed with a mix of land uses which include one-, two- and multi-family residential, commercial and industrial uses.
5. The property is currently developed with three industrial buildings ranging in height from one to three stories.

6. The existing one-to three-story building on the southern leg of the property is proposed to remain with changes limited to interior improvements and provision of a rollup door on the White Street frontage. On the northern portion of the property, an existing 2 ½ - story building in the northeast corner of the lot is proposed to remain. A one-story building along the northern lot line is proposed to be partially rebuilt and expanded. Three rollup doors are proposed on the southern façade of this building. A reinforced concrete sidewalk is proposed along the western and southern facades of this building. An existing sign on the building is proposed to remain.
7. The specific proposed uses have not been provided on the plans, although parking calculations have been provided for warehouse and wholesale business uses. Applicant provided testimony that they will be eliminating 5500 square feet of office space in the warehouse which reduces the parking non-conformity.
8. An existing unstriped asphalt parking area on the northern portion of the site is proposed to be striped to provide 17 outside parking spaces, including one ADA accessible space and two electric vehicle charging parking spaces. There will be 8 interior parking spaces.
9. The driveway access along Ashland Avenue is proposed to be relocated slightly to the south.
10. There is a concrete box culvert in a storm sewer right of way that runs through the property. New stormwater management structures are proposed to be installed beneath the parking lot to the south of the existing box culvert.
11. The subject property is located in a flood zone with 0.2% annual chance of flood, per FEMA Flood Insurance Rate Maps.

12. Due to the presence of a storm sewer culvert that has been there since 1935. The culvert extends along property line such that, the side yard setback can not be improved and must remain at the same footprint line.
13. The Applicant indicated that mechanical equipment will be elevated and other measures taken in light of the flood zone designation.
14. The subject property is located in the I Industrial zone, which permits a range of industrial, commercial and other nonresidential uses.
15. The existing and proposed uses are permitted in the I zone; however, there are some existing nonconforming conditions with regard to the I zone bulk standards and other zoning regulations, which are proposed to be maintained or improved. For the side yard setback, the existing distance to the northern property line is proposed to be maintained, although a new building is being constructed with the same setback as the existing one. The site plan indicates that lot coverage of 100 percent will not be improved; however, there is some limited landscaping proposed along with a 2.5 foot wide strip along the southern property line on the Ashland Avenue portion of the property, such that lot coverage would be reduced at least a small amount. (Bulk or “c” variances are still required.)
16. The application was reviewed by the Site Plan Review Advisory Board (“SPRAB”) and the Applicant addressed the issues raised at the SPRAB meeting through revised and supplemental application materials. Applicant provided revised plans that include a pedestrian warning device at the White Street garage door, electric vehicle charging spaces, providing vehicle turning templates of the largest vehicle that would access

the site to the site plans, indicating on the site plan that the entire parking lot and driveway areas will be repaved, and providing plantings along the Ashland Avenue frontage.

17. Building A has three overhead doors which will allow for three (3) indoor parking spaces. The Applicant will be adding an overhead door to Building C which will allow for two interior parking spaces and Building B, is a two-story building that has a three-car garage on the first floor which creates a total of 8 inside parking spaces.
18. The project proposes no increase in run-off but the Applicant is improving the drainage by tying into the culvert and capturing the roof water instead of allowing it to flow over the parking lot (as it had been.)
19. Applicant will be moving the front fence and adding landscaping while also reducing the signs on the fence which will make for a better use and function and a better visual appearance.
20. In response to the Hess report dated March 25, 2024, the applicant will have a trash container at the rear of the property and the trash enclosure details will be added to the plans.
21. The property has operated with only 15 parking spaces without difficulty and is now adding an additional 10 parking spaces for a total of 25 spaces.
22. The Application requires the following variance relief from the Board:

SECTION/REQUIREMENT	PERMITTED	EXISTING	PROPOSED
25.71 Minimum side yard	6 feet	1.3 feet	1.3 feet for new building
25-7.1 Maximum lot coverage	75%	100%	<100%

25-12.2b.1 Minimum number of off-street parking spaces	26	+/-15	25

23. N.J.S.A. 40:55D-46a. and b. and N.J.S.A. 40:55D-50a. govern the Board’s review of the preliminary and final site plan application. N.J.S.A. 40:55D-46a provides that an “ordinance requiring site plan review and approval shall require the developer submit to the administrative officer a site plan and such other information as is reasonably necessary to make an informed decision as to whether the requirements necessary for preliminary site plan approval have been met.” N.J.S.A. 40:55D-46a further provides that “The site plan and any engineering documents to be submitted shall be required in tentative form for discussion purposes for preliminary approval. If any architectural plans are required to be submitted for site plan approval, the preliminary plans and elevations shall be sufficient.” N.J.S.A. 50:55D-46b provides that “if the planning board required any substantial amendment in the layout of improvements proposed by the developer that have been the subject of a hearing, an amended application for development shall be submitted and proceeded upon, as in the case of the original application for development” and “the planning board shall, if the proposed development complies with the ordinance and this act, grant preliminary site plan approval.” N.J.S.A. 40:55D-50a. provides that final site plan approval “shall” be granted if the detailed drawings, specifications, and estimates of the application conform to the standards of all applicable ordinances and the conditions of preliminary approval. As such if the applicant meets the standards set forth in the ordinances, the planning board lacks the authority to deny approval of the site plan and

subdivision. N.J.S.A. 40:55D-50a; PRB Enters., Inc. v. S. Brunswick Planning Bd., 105 N.J. 1, 7 (1987); Dunkin' Donuts of N.J., Inc. v. Twp. of N. Brunswick Planning Bd., 193 N.J. Super. 513, 515 (App. Div. 1984).

Conversely, if the application does not comply with all ordinance requirements, the Board must deny approval. Cortesini v. Hamilton Planning Board, 417 N.J. Super. 201, 215 (App. Div. 2010). However, there are two exceptions: (1) The first exception is where an application does not comply with all ordinance requirements but the Board grants relief in terms of variances or exceptions. In that case, the Board then must review the application against all remaining ordinance requirements and grant approval if the application complies with all such remaining requirements.

24. N.J.S.A. 40:55D-60 permits a planning board to grant variances from the bulk regulations of a zoning ordinance and other zoning deviations that do not require a “d” variance as part of site plan or subdivision review. The variance proofs are the same as for “c” variances as set forth in N.J.S.A. 40:55D-70. A c (2) variance may be granted when 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. A “c” variance must address the “negative criteria,” and affirmatively demonstrate that the 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.

NOW, THEREFORE, based upon the foregoing findings of fact, the Board reaches the following conclusions of law:

1. The requested variances for minimum side yard, maximum lot coverage and minimum off-street parking spaces satisfy the c (1) criteria as they are pre-existing conditions which are hardships caused by the property and as to the lot coverage the improvements to landscaping and curbing will improve the conditions on site.
2. The requested variances also the benefits of replacing an old deteriorated building with a new building outweigh any negatives and satisfies the c (2) criteria because the project as a whole advances the purpose of the MLUL as it is improving the general welfare, adding parking, and upgrading safety systems and also will be an aesthetic improvement.
3. The benefits of the project outweigh any negatives.

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Township of West Orange that approval for Preliminary and Final Major site plan approval with c variances to renovate and replace existing industrial buildings and undertake related site improvements on a developed property in the Industrial Zone is granted; and

IT IS FURTHER RESOLVED that the approval granted to L&B Realty, LLC, is subject to the following terms and conditions:

1. The Applicant shall comply with all applicable Township, County, State and Federal laws, ordinances, regulations, and directives, including without limitation, obtaining all applicable local, state, and federal approvals, or permits. If another governmental entity or agency grants a waiver or a variance affecting the plans and/or exhibits submitted by the Applicant, this approval or the conditions attached to it, then the Applicant shall

re-apply to this Board respecting the same and this Board shall have the right to view that issue as it relates to this approval and these conditions and modify and amend same, if appropriate.

2. In the event that any other required regulatory approval conflicts with the terms and conditions hereof, or materially alters the same, or the terms and conditions hereof are materially altered by any change in applicable law or regulation other than those municipal regulations for which change is prohibited by the Municipal Land Use Law (MLUL), or in the event Applicant or its successor or assigns construct or attempt to construct any improvement in conflict with or in violation of the terms of this approval, the Board hereby reserves the right to withdraw, amend or supplant the instant approval.
3. All construction, use and development of the property shall be in conformance with the plans approved herein, all representations of the Applicant and its witnesses during the public hearing, all exhibits introduced by the Applicant, and all terms and conditions of this resolution.
4. The Applicant shall pay all outstanding application fees and technical review fees, board attorney fees for preparation of the resolution, as well as any inspection fees that may be required hereunder. The Applicant shall pay any additional fees or escrow deposits which may be due and owing within thirty (30) days of the notification or this approval shall be deemed withdrawn.
5. All notes included in the approved plans, including notes required by this Resolution, shall be deemed conditions of approval having the same force and effect as conditions expressly set forth in this Resolution.

6. Applicant agrees to abide by all of the suggestions and directives set forth in the Hess report dated March 25, 2024.
7. The Applicant shall list all conditions of approval onto a final site plan submission prior to the submission of the building permit.
8. Applicant shall install a white TPO roof.
9. Applicant will have a video done of the storm culvert to determine the structural integrity of the culvert before a C.O. is issued.
10. Applicant shall install and maintain an AED in both the existing building and the new building.
11. Applicant shall submit the environmental LSRP reports to the Construction Official and Municipal Engineer.

The undersigned secretary certifies the decision set forth herein was made by this Board on November 1, 2023, and memorialized herein pursuant to N.J.S.A. 40:55D10(g) on November 29, 2023.

Jamilet Baquerizo Vite
Planning Board Secretary

Vote Action Taken by the Board on May 1, 2024:

Board Member	Motion	Second	Aye	Nay	Abstain	Absent
K. Alper			X			
J. Guarino		X	X			
L.Klein			X			
S. McCartney			X			
C. Morgan						----
P. Smeraldo			X			
W. Wilkes			X			
W. Rutherford						----
J. Cardoza			X			
L. Kapferer			X			
R. Bagoff	X		X			

Vote on Memorialization on June 5, 2024:

Board Member	Motion	Second	Aye	Nay	Abstain	Absent
K. Alper						
J. Guarino						
L.Klein						
S. McCartney						
C. Morgan						
P. Smeraldo						
W. Wilkes						
W. Rutherford						
J. Cardoza						
L. Kapferer						
R. Bagoff						