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August 12, 2024

Ms. Diana Chandler-Zimmerman
Board Secretary
Township of West Orange Zoning Board of Adjustment
66 Main Street
West Orange, NJ 07052

Re: **Planning Review Letter**
325 Mount Pleasant Ave
Block #155, Lot 26.01
Application for C and D Variances, Preliminary and Final Major Site
Plan Approvals
ZB-24-06

Dear Ms. Chandler-Zimmerman,

This office has reviewed the application submitted by *the Public Service Electric and Gas Company (PSE&G)*. (**"Applicant"**). The Applicant filed an application with the West Orange Board of Adjustment for a preliminary and final site plan approvals with C and D variances in connection with upgrades at their facilities at 325 Mount Pleasant Avenue within the Township's O-R, PURD, and R-5 zones. Specifically, the Applicant proposes a two-story 26kV switchgear with additional pieces of equipment, to include six 70-foot-tall lightning masts. As noted in the applicant, the current use is not permitted within the O-R zone, so the proposed improvements require a "D2" variance for expansion of a non-permitted use. As some of the proposed equipment exceeds the permitted height of 35 feet by greater than 10%, a "D6" height variance is also required. "C" Variances are also requested for minimum side front yard setbacks for corner lots to Mount Pleasant Avenue, maximum lot coverage, and fence height.

In preparation of this memorandum, the following documents were reviewed:

1. Cover letter from Noreen Meraine, AICP, PP, PMP, dated May 15, 2024.
2. Township of West Orange Application Form for the Planning Board or Board of Adjustment, dated May 6, 2024.



3. Checklist of Required Items “C” and “D” Applications and Sustainability Checklist Form.
4. List of Requested Submissions and Design Waivers.
5. List and Buffer Report Map of Property Owners to be Served Notice, dated March 6, 2024.
6. Property Documents.
7. Affidavit of Ownership, dated May 10, 2024.
8. Corporate Ownership Disclosure for Public Service Electric and Gas Company, dated May 10, 2024.
9. Prior Resolutions of Approval, Zoning Board of Adjustment for of West Orange.
10. COAH Documentation.
11. Tree Removal and Replacement Application, dated May 6, 2024.
12. Requirements for Variances and Reasons for Relief, dated May 10, 2024.
13. Stormwater Management Plan, prepared by Burns & McDonnell, dated May 9, 2024.
14. PSE&G West Orange Photosimulations.
15. Landscape Plans, prepared by PS&S, dated December 12, 2022.
16. Site Plan, prepared by PSE&G, dated October 4, 2024.
17. Property Survey, prepared by PSE&G, dated May 6, 2024.

Property Information

The property that is the subject of this Application is commonly known as 325 Mount Pleasant Ave and identified as **Block #155, Lot #26.01** in the municipal tax records for the Township of West Orange. The site presently serves as an electrical switching station for Public Services Electric and Gas Company. It is located generally at the intersection of Mount Pleasant Avenue (NJ 10) and Prospect Avenue (CR-577).

Generally the surrounding land uses are non-residential in nature. There are medical offices to the west of the site, and LA Fitness and an office building immediately to the north. Further north is Essex Green. To the east, along Prospect Ave, there are a number of commercial buildings including a gas station, Verizon Building, Chiropractor, Insurance Office, Daycare, and what does appear to be two residential homes. To the south is the Essex County Country Club. Site photos were take on Monday, June 24th.



*Figure 1: Aerial Image of the site at 325 Mount Pleasant Avenue is outlined in yellow.
Source: NJ-GeoWeb*



Figure 2: Zoning Map section depicting the subject property in the R-5, PURD, and O-R zones shown in yellow. The proposed improvements take place in the O-R Zone.

Source: NJ-GeoWeb/Township of West Orange



Figure 3: View of switching equipment from the north of the site



Figure 4: Medical Office Building of the east of the site



Figure 5: View of site from the east



Figure 6: La Fitness to the north of the site. PSEG equipment is in the background.



Figure 7: Facility entrance from Mount Pleasant Ave



Figure 8: Access gate from Prospect Ave



Project Overview

The Applicant, Public Service Electric and Gas, proposes to upgrade their existing facilities by constructing a two-story 26kV switchgear and feeder reactors of 28 feet and 45 feet. Additionally, six 70-foot-tall lightning masts are proposed. The siting of the equipment includes slab and foundations, increasing the overall impervious coverage. To compensate for the increase, the Applicant proposes to install bioretention basins with underdrains to capture any additional runoff. The applicant also proposes to replace the current 6-foot perimeter fence with a new fence, 8-foot in height. The applicant also proposes to remove 167 trees on the site, and replace with the same number of trees.

Completeness

Our office has reviewed the checklist of required items for C and D Variance Applications.

The Applicant requests waivers for the following items:

#12. One (1) of four (4) standardized sheets.

Justification: *A waiver is requested from Site Plan Checklist Item No. 12 as the West Orange Site Plan drawing package prepared by PSE&G's consultant, Burns & McDonnell, consists of 36"x48" sheets. The larger drawing size allows for the proposed project to be depicted at a scale that provides increased legibility. **We have no objection to this waiver request.***

#31. Existing and Proposed Contour intervals. **Waiver requested for continues at least 200' beyond subject property.**

Justification: *A waiver is requested from Site Plan Checklist Item No. 31. The project proposes the installation of spread foundations, structural steel, and stormwater basin systems within the existing station yard footprint, which is relatively flat and requires minimal grading. Properties on the opposite side of the Station on Mount Pleasant and Prospect Avenues are not included. **We defer to the engineer on this waiver request.***

#46. Solid waste Management Plan.

Justification: *A waiver is requested from Site Plan Checklist Item No. 46 as the existing station will continue to be unmanned, with visits by approximately one (1) to two (2)*

*maintenance vehicles biweekly. The proposed expansion will not generate solid waste. **We have no objection to this waiver request.***

#49. Vehicle and pedestrian circulation patterns.

Justification: *A waiver is requested from Site Plan Checklist Item No. 49 as the proposed expansion is not anticipated to cause changes to existing vehicular and pedestrian circulation patterns. **We have no objection to this waiver request.***

#50. Parking plan.

Justification: *A waiver is requested from Site Plan Checklist Item No. 50 as the existing station will continue to be unmanned, with visits by approximately one (1) to two (2) maintenance vehicles biweekly, is not publicly accessible, and does not require designated parking. **We have no objection to this waiver request.***

In addition, the following items were marked as N/A “Not Applicable” but should be provided or a waiver requested.

#41. Road and paving cross-sections and profiles.

Reasoning: Required for major site plan applications, and the site plan shows “drive path” improvements, which requires paving. **In a call with the Applicant’s planner following the SPRAB meeting, the planner agreed to provide this information to the Board.**

#47. Site identification signs, traffic control signs, and directional signs.

Reasoning: Application should provide traffic control in conjunction with site circulation improvements or request a waiver. **In a call with the Applicant’s planner following the SPRAB meeting, the planner agreed to have plans revised to include a Stop Sign at the end of the driveway onto Mount Pleasant Avenue.**

Zoning (§25-7.1)

The site sites within three zoning districts, the R-5, PURD, and O-R. As the proposed improvements are physically located within the O-B zone and public utility buildings or structures are conditionally permitted within the R-5 and PURD zones, this section focuses on the requirements of the O-R zone.

- Permitted uses within the O-R zone are as follows:
- Office Building



- Post Office
- Civic Center, limited to assembly and noncommercial indoor recreation facilities
- Research Laboratory

Permitted Accessory Uses include:

- Required accessory parking
- Required accessory trucking loading spaces
- Private garage
- Signs
- Restaurant
- Bar

Permitted Conditional Uses include:

- Commercial antenna

The following are the bulk standards for the O-R zone:

- Maximum Height: 2.5 stories and not to exceed 35 feet
- Minimum Lot Area: 5 acres
- Minimum Front Yard: 100 feet
- Minimum Side Front Yard - Corner Lot: 100 feet
- Minimum Side Yards: 75/75 feet, and 100 feet to the nearest residence
- Minimum Rear Yard: 75 feet, and 100 feet to the nearest residence
- Maximum Building Coverage: 20%
- Maximum Lot Coverage: 30%
- Minimum Spacing between Buildings: 150 feet

Definitions (§25-4)

LOT COVERAGE - Shall mean 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.

PUBLIC UTILITY BUILDING OR STRUCTURE - Shall mean a building or structure necessary for the furnishing of utility services, such as electric, gas, telephone, water and sewer, to the public.

SITE PLAN, MAJOR - Shall mean any development plan for one or more lots that does not meet the definition of a minor site plan, as defined herein.

SITE PLAN, MINOR - Shall mean any development plan of one or more lots that does not involve planned development, any new street, or the extension of any off-tract improvement, the cost of which is to be prorated pursuant to N.J.S.A. 40:55D-42; and proposes development that would require not more than five new parking spaces over and above the existing permitted spaces on the site, pursuant to the Township's zoning requirements; and proposes development of not more than 1,000 square feet of new building floor area.

Planning Comments

N.J.S.A. 40:55D-70(d) permits a Board of Adjustment “in particular cases for Special Reasons” to grant a variance to permit “a use or principal structure in a district restricted against such use or principal structure.” This represents the Positive Criteria of the statute. In addition, a showing of the Negative Criteria is necessary to obtain a “d” variance. The applicant must demonstrate that the proposed variance can be granted “without substantial detriment to the public good and will not substantially impair the intent and the purpose” of the Master Plan and Zoning Ordinance.

When considering the granting of a “d” variance, an applicant must demonstrate that special reasons are satisfied by either showing that the proposed use “inherently serves the public good” or that it promotes the general welfare because the proposed site is particularly suited for that use. It was held in *Medici v. B.P.R. Co.*, 107 NJ 1 (1987) that the only “special reasons” which can be considered are those which promote the general purposes of zoning, as listed in N.J.S.A. 40:55D-2. The court emphasized in *Burbridge v. Mine Hill Twp.*, 117 NJ 376 (1990), however, that the MLUL includes all the zoning purposes listed in N.J.S.A. 40:55D-2, not only the promotion of the general welfare. Therefore, each of these listed purposes may support an application for a “d” variance.

In the case of a D2 variance, the Board has the power to grant the expansion of a lawfully created pre-existing nonconforming uses in particular cases and for special reasons. Because the use is lawfully pre-existing, the applicant shall show the positive criteria related to the advancement to the Municipal Land Use Law, but does not need to demonstrate suitability, as the use already exists. In *Burbridge*



v. Mine Hill, the Court noted that applications to expand lawfully created preexisting nonconforming uses offer boards opportunities to impose conditions, frequently aesthetic, which will help integrate the use with its surroundings, an especially important consideration for uses which are thriving and therefore not likely to end soon.

When considering a d(6) height variance, the applicant must show the site is particularly suited for more “intensive” development and that the site can accommodate the potential problems associated with a height greater than that permitted by the ordinance.

In addition, a showing of the Negative Criteria is necessary to obtain a “d” Variance. The applicant must still demonstrate that the proposed variance can be granted “without substantial detriment to the public good and will not substantially impair the intent and the purpose” of the Master Plan and Zoning Ordinance.

Bulk “C” Variances

As previously noted, the application requires three “C” variances. The first is related to lot coverage, where the maximum lot coverage for the zone is 30%. 41% lot coverage is existing and 44% is proposed, related to the slab foundations for the electrical equipment and although, not specifically discussed within the application, the “drive paths” proposed.

A variance is also required for exceedance of the minimum side front yard for a corner lot. The requirement is 100 feet. The existing condition is 211.6 feet to Mount Pleasant Avenue and proposed to be reduced to 77.9 feet to the property line.

The third bulk variance is for the height of the proposed fence. The existing fence along the perimeter is six feet and the applicant proposes to construct a new fence eight feet in height. The Township of West Orange Zoning Code permits a maximum fence height of six feet under **§25-8.4 Walls and Fences.**

N.J.S.A. 40:55D-70c sets forth the criteria for a planning board to grant variance from bulk requirements of zoning ordinance. Two types of “c” variances can be granted:



(c) 1: in cases of hardship, such as “exceptional narrowness, shallowness or shape of specific piece of property,” or by reason of exceptional or unique topographic conditions, physical features, or an exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.

(c) 2: where the purposes of zoning would be advanced, and the benefits derived by the variance would outweigh any detriments.

The applicant must also meet the negative criteria of the statute for the granting of a “c” variance, wherein a variance can be granted only “without substantial detriment to the public good” and where it “will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.”

Conclusions

Respectfully submitted,

George Wheatle Williams, PP, AICP
Principal, Nishuane Group, LLC.

Erik DeLine, PP, AICP, LEED AP
Associate, Nishuane Group, LLC.