

West Orange Zoning Board of Adjustment
Township of West Orange
66 Main Street
West Orange, New Jersey 07052

DR Project No.: 12210-001
August 02, 2024

**Re: JUSTIFICATIONS OF VARIANCES
PROPOSED MIXED COMMERCIAL DEVELOPMENT
470 EAGLE ROCK AVENUE (BLOCK 153, LOT 38)
TOWNSHIP OF WEST ORANGE, ESSEX COUNTY, NEW JERSEY**

An application has been filed for the above noted property with the West Orange Planning Board approval of a Preliminary and Final Major Site Plan with a d(3) conditional use variance for the fast food restaurant and approval of bulk “c” variances for maximum impervious coverage, location of parking in front yard, maximum number of façade signs, and maximum façade sign area. The subject property is located in the B-2 General Business (“B-2”) District.

I. PROPERTY DESCRIPTION

The subject property is a corner site identified as Tax Lot 38 on Block 153 fronting Eagle Rock Avenue to the north and Rosney Terrace to the west. The subject property has a total lot area of 45,713 square feet (1.07 acres), a lot width of 248.5 feet fronting Eagle Rock Avenue, and a width of approximately 182 feet along Rosney Terrace. The property is currently improved with a vacant 1-story frame building that was previously a commercial use (aka China Gourmet).

II. PROJECT DESCRIPTION

The purpose of this application is to demolish the existing building and develop the subject property with a new 1-story commercial building with 2 individual (but attached) restaurants, with a drive-up window for the proposed fast-food restaurant, and 50 surface parking spaces along all sides of the subject property. Signage will also be proposed for both restaurants, as well as landscaping along Eagle Rock Avenue, Rosney Terrace, and at the rear of the property.

III. CONDITIONAL USE

Per §25-24.2.b.2(i), the B-2 District permits fast food restaurants as a conditional use subject to the following;

1. A site plan, prepared by a New Jersey licensed architect or engineer, shall be submitted to the Planning or Zoning Board, as required by this chapter and state law, and the plan shall show all standards, established herein for fast

food restaurant operation as a conditional use, have been satisfied.

- A site plan of the proposed project from an NJ licensed engineer is submitted to the Zoning Board. **Project complies.**

2. No part of any building or structure used as a fast-food restaurant nor any driveway entrance or exit to or from the same shall be located within 500 feet of any line of any lot upon which is located another fast-food restaurant.

- The Township Zoning Code designs fast-food restaurant at the following: ***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.*
- The driveway on the subject property serving the fast-food use is located approximately 360 feet from the driveway to the shopping center housing a Jersey Mike's Subs and Chipotle, which appear to qualify as fast-food restaurants per the Zoning Code's definition. It should be noted that neither of these establishments are drive-thru. **Project does not meet the condition.**

3. No part of any building or structure used as a fast-food restaurant shall be located within 1,000 feet of any residential district boundary line

- The subject property and associated fast-food use abuts the R-6 residential zone to the south (rear property line) and the west (fronting Rosney Terrace). The properties to the north and east of the subject property are located within the B-2 and P-C zones. **Project does not meet the condition.**

4. The minimum size for any lot upon which any fast-food restaurant is located shall be 30,000 square feet, and the minimum street frontage of such lot shall be 200 feet. If a fast-food restaurant is located on a corner lot, the minimum street frontage on each street shall be 200 feet.

- The lot area meets the required threshold at 45,713 square feet and the lot width along Eagle Rock Avenue meets the required 200 feet at 223.45 feet. However, the frontage along Rosney Terrace is an existing width of 182.41 feet. **Project does not meet the condition.**

5. Combined entrance and exit driveways to and from any lot upon which is located a fast-food restaurant shall have an unrestricted width of not less than 24 feet nor more than 30 feet, shall be located not nearer than 20 feet

to any lot line and shall be so designed to avoid the need for any existing vehicle to back across or into any portion of a public sidewalk or street. One-way entrance or exit driveways shall have a minimum width of 18 feet.

- The widths of the two combined entrance and exit driveways are 30 feet. The western driveway is located approximately 28.4 feet from the property lot line and the eastern driveway is located approximately 30.58 feet from the side property line. No one-way entrance or exit driveways are proposed. **Project complies.**

6. The minimum distance between driveways on a lot upon which is located a fast-food restaurant shall be 100 feet, measured from the two closest driveway curbs.

- The distance between the driveways from the two closest driveway curbs is approximately 128.2 feet. **Project complies.**

7. The minimum distance of any driveway into the street, of a lot upon which a fast-food restaurant is located, from a street intersection shall be 100 feet, measured from the nearest end of the curb radius of the intersection to the nearest end of the curb radius of the driveway.

- The curb radius of the western driveway is located approximately 17 feet from the Rosney Terrace intersection. **Project does not meet the condition.**

8. All fast-food restaurants shall provide suitable areas for storage of trash, designed and constructed to allow no view of the trash storage from the street, to prevent trash from blowing around the site onto adjacent properties or public rights-of-way and to permit safe removal of trash.

- The proposed trash storage located at the southeast corner of the property will be enclosed with a masonry trash enclosure and a chain link gate. **Project complies.**

9. All fast-food restaurants shall provide parking in accordance with § 25-12.2b.

- Fast food restaurants and restaurants have the same parking standard of 1 space for each 3 seats or stools. Given the fast-food restaurant offers 18 seats and the restaurant offers seats, a minimum of 35 parking spaces is required. The project proposes 50 parking spaces. **Project complies.**

10. Any lot on which is located a fast-food restaurant must comply with the front yard, side yard, and rear yard requirements for the B-1 or B-2 District in which the lot is located

- The proposed fast-food restaurant complies with the front, side, and rear yard requirements for the B-2 District. **Project complies.**

IV. VARIANCE JUSTIFICATION AND PROOFS

D(3) Conditional Use Variance: The proposed project does not meet several of the conditional use requirements as outlined above. Accordingly, the project necessitates a conditional use variance pursuant to N.J.S.A. 40:55D-70.d(3). The Board of Adjustment has jurisdiction to grant such variance based on the proofs as established in *Coventry Square vs. Westwood Zoning Board of Adjustment*, 138NJ285(1994). The New Jersey Supreme Court noted that conditional uses, even when they do not meet with all of the requisite conditions, are nonetheless compatible uses in the zone. The burden of proof is related to whether the site can accommodate the problems or impacts associated with the use even though the conditions and ordinances established to address said impacts are not satisfied.

The majority of the conditions not satisfied under the proposed development are from a metric standpoint, wherein the intent of the limitation or requirement are satisfied from an operational or site circulation standpoint despite a specific numerical threshold not being met.

- Regarding condition 2, the intent of the ordinance seems to be to prevent a given corridor from being dominated by the fast-food use wherein regular curb cuts and heavier/irregular traffic flows associated with drive-thru functions may accumulate and result in collective negative impacts along the corridor as a whole. While there are other restaurants that meet the Town's definition of fast-food within 500 feet of the subject property, neither of the noted uses have a drive-thru function and both are consolidated within one larger strip-mall property that is significantly set back from the right-of-way and has multiple access driveways along multiple corridors, therefore mitigating potential traffic implications that may arise from the proposed fast-food use. The project site is located a sufficient distance (approximately 386 feet) from the existing establishments and provides driveway access from the opposite side of the corridor, therefore no substantially negative impacts to overall corridor circulation are anticipated. Additionally, there are no other existing drive-thru uses within 1,000 feet of the site.
- Similarly, condition 3 in the ordinance establishes a buffer between fast-food uses and residential zones in what is likely an effort to mitigate impacts of a higher-volume use on a nearby low-density residential zone. While the proposed project abuts a residential zone and use to the south and west (across Rosney Terrace), the project does not provide any curb cuts or access points on the Rosney Terrace right-of-way

in order to maintain efficient and lower traffic volumes on the residential street. Additionally, the queuing for the proposed drive-thru is set back from the rear property line by approximately 20.8 feet and is buffered from the rear property line by landscape screening and a bypass lane so that temporarily idling cars do not result in an increase in noise or light pollution to the neighboring properties.

- The project partially satisfies condition 4 in that it greatly exceeds the minimum lot area requirement and meets (and exceeds) the 200-foot frontage requirement along Eagle Rock Avenue. However, the subject property does not provide 200 feet of frontage along the Rosney Terrace right-of-way, where the current lot has 182.41 feet of frontage. Again, the intent of this requirement is likely to ensure frontages for this use can accommodate the necessary curb-cuts for a fast-food operation without creating detrimental impacts on traffic flows and circulation patterns. The total lot frontage between both streets is in excess of 400 feet (the combined frontage requirement for 2 rights-of-way), where the existing total is 405.86 feet between the two rights-of-way. Additionally, as there are no curb-cuts proposed on the deficient frontage along Rosney Terrace, the project does not create negative impacts on traffic flows for this street and therefore the intent of the requirement is preserved through the proposed site design.
- The final condition, condition 7, that the proposed project does not satisfy is the 100-foot setback of a driveway for a fast-food use from an intersection. As fast-food uses typically front commercial corridors, it is likely that the condition was considered as a measure to prevent egress into/out of a fast-food site from disrupting the flow of traffic from an active or high-volume intersection, as it is common to see fast-food uses proposed at the corner of multiple active commercial roadways. Impacts on intersections with timed traffic signals could conceivably be detrimental should the interior site circulation not accommodate a significant enough queue to bring cars quickly out of the main right-of-way. Despite not having a sufficient setback from the intersection per the requirement, the site provides substantial room for queuing of the drive-thru as it allows vehicles to wrap around the back of the building in order to access this function. The formal drive-thru lane accommodates 8 cars with room for up to an additional 6 cars in the western drive aisle without any disruption to entrance/exit movements at the egress point/curb cut. Additionally, as previously stated the road intersecting the commercial corridor is Rosney Terrace, a lower volume street serving a single-family residential neighborhood that is not signalized and allows vehicles to make turns freely onto Eagle Rock Avenue. The lack of setback of the proposed driveway is not likely to create substantial impacts to the flow of traffic from this street and therefore the intent of the condition is not undermined by the proposed site design. It is also worth noting that the project

proposes to reuse the two existing curb-cuts and driveways for the site. The site has operated with said non-conforming curb cut for a restaurant use previously without any known nuisance or substantial detriment to general welfare and safety.

V. Bulk “c” Variances

The project requests bulk “c” variances for maximum impervious coverage, location of parking at the front yard, maximum number of façade signs, and maximum façade sign area, concrete curbing within 5 feet of a structure, minimum landscape abutting a residential zone, loading space requirements and tree replacement requirements which may be granted pursuant to N.J.S.A. 40:55D-70.c.(2), wherein the benefits of the proposed project would substantially outweigh any detriments.

Maximum Impervious Coverage: The project proposes an impervious surface coverage of 76.3% where a maximum impervious coverage of 60% is permitted in the B-2 District. The existing site conditions have a non-conforming 80.5% impervious coverage which will be reduced through the proposed project but will remain non-compliant. The proposed coverage includes partial removal of the existing impervious surface for shrubs, screening trees and ornamental plantings along the south, east, and north of the subject property, thus substantially improving the existing conditions by providing a green buffer from the adjacent residential uses. The reduction in pervious coverage will improve the conditions along these property lines while also improving the aesthetic character of the site along the Eagle Rock Avenue corridor. Additionally, the proposed project will reinvigorate a vacant, deteriorating site along an active commercial corridor through its redevelopment and therefore the benefits of the proposed impervious coverage will outweigh the detriments.

Location of Parking in Front Yard: The project proposes parking in the front yard of the property, where off-street parking is only permitted in the rear or side yards in the B Districts per Section 25-12.1.I. The front yard parking is an existing non-conforming condition as the existing site shows 11 parking spaces fronting Eagle Rock Avenue. The additional parking spaces provided within the front yard are anticipated to be needed as two individual restaurants may yield a slightly higher parking demand on site than a singular restaurant use. The proposed parking at the front will improve the existing condition by reducing the number of non-conforming spaces to a total of 10 spaces, including 2 ADA accessible spaces. New front yard landscaping will be added to help visually buffer this area from the roadway, and a painted crosswalk from this area to the front door of the proposed building will be added to ensure safe pedestrian access from the spaces to the restaurants. Additionally, other commercial properties along the corridor including the property immediately east of the site have existing non-conforming front yard parking, and therefore the variance will not create a substantial detriment to the existing

corridor as it is consistent with other commercial properties. Overall, the benefits of the front yard parking location will outweigh the detriments.

Maximum Number of Façade Signs: The project proposes four façade signs for the fast-food restaurant and four façade signs for the full-service restaurant, where a maximum of one façade sign is permitted. The property is located on a corner lot so the additional signs are intended to be visible from both rights-of-way to improve wayfinding. Additionally, the proposed signs will only be visible to the north (Eagle Rock Avenue), west (Rosney Terrace), and east of the property and will not be visible to the residential properties to the south (rear). The proposed signage packages are consistent with the tenants, who are national brands and provide consistent signage and wayfinding across their locations.

Maximum Façade Sign Area: The project proposes a total sign area of 233.3 square feet for the two restaurant uses, where a maximum of 120 square feet is permitted. The total area is split among several (8) smaller signs as noted above and therefore the impact if the congregate sign area will not be felt at the level of numerical deviation from the standard. No one individual sign is in excess of the maximum sign area restriction and therefore the overall proposed sign package will present as consistent with the associated uses along a typical commercial roadway.

Concrete Curbing within 5 Feet of a Structure: §25-12.1.B mandates that no concrete or granite block curb may be within 5 feet of a structure whereas the project proposes a concrete curb directly abutting the building edge on the eastern façade. This curb lines the drive-thru window and aisle and is necessary to protect the structure and moving vehicles from clipping the building or drive-thru window when using the drive-thru lane. The benefits of prioritizing overall site safety and public welfare outweigh the detriments.

Minimum Landscaping Abutting a Residential Zone: The ordinance requires a landscape buffer along property lines where a nonresidential district and a residential district abut. §25-11.3a states that said landscape buffer should be no less than 20 feet, whereas the landscape buffer on the south (rear) property line abutting the R-6 zone provides a buffer of 8.8 feet. While the landscape buffer itself does not meet the 20-foot requirement, active site uses along this property line are buffered by an additional bypass drive lane at the rear of the property which will see minimal utilization throughout the day. This results in the nearest active site component, which is the drive-thru lane, being setback 20.8 feet from the property line therefore meeting the intent of the requirement in minimizing impacts of the commercial use on the adjacent residential property.

Loading Space: The ordinance requires the proposed project to provide one off-street loading space for the proposed uses. The current site plan does not provide a dedicated, striped loading space on the property but accommodates the off-street loading of the relevant truck model as made evident on sheet 19 of the Civil Site Plans, wherein circulation movements for a large delivery truck are provided. The delivery vehicle will not prevent the remainder of the site circulation from being functional in any way other than a temporary disruption to the front yard parking spaces. Both driveways will still be accessible and operable while any type of delivery overlaps business hours. Vehicles will still be able to access ample parking spaces (40 of the proposed 50) and the drive-thru lane. The site circulation meets the intent of the requirement by providing the ability to accommodate safe and efficient deliveries entirely off-street while maintaining site operations for patrons of the business.

Tree Replacement Requirements: The Township recently (June 2024) adopted new tree replacement standards in relation the to removal of on-site tree canopy. The Project Engineer (Dynamic Engineering) has provided the following analysis of the proposed tree replacement

- 50% of the tree canopy of a developed lot shall be preserved (Existing “canopy” is limited to perimeter landscaping as the majority of the site is occupied by surface parking)
Project preserves 12 out of 45 total (26%)
- Existing Trees 4”-6” must be replaced with one 2.5” tree
Project proposes 11 to be removed
- Existing Trees 6”-13” must be replaced with either two 4” trees or four 2.5” trees
Project proposes 17 to be removed
- Existing Trees 13”-22” must be replaced with either three 4” trees or six 2.5” trees
Project proposes 5 to be removed

The resulting requirement per the new standards is a replacement of (109) 2.5” caliper trees OR (49) 4” caliper trees and (11) 2.5” caliper trees. The current plans propose 42 trees and therefore the proposed project does not meet the new requirements. The Project Engineer will work with the Township to identify eligible properties elsewhere in the Township for replacement trees as required and will provide testimony as to the details of the final arrangement agreed upon with Township professionals. The inability to meet the new requirements is in large part due to the projects reuse of the overall existing site conditions wherein the majority of the existing surface parking area will be maintained and restriped, and therefore minimal space is available to accommodate shade trees onsite. The project does propose an increase in the size and substantial improvement to the overall

design of existing landscape areas including the priority of landscape screening along the south property line where a single-family home abuts the property. The proposed condition is a significant improvement from the existing site conditions both aesthetically and performance-wise and therefore the benefits outweigh the detriments.

Promotes the Purposes of the Municipal Land Use Law: The granting of the variances will advance the purposes of the Municipal Land Use Law and promote the general welfare.

- Granting the requested variances will guide the appropriate use and development of the property in a manner that will promote the general welfare consistent with N.J.S.A. 40:55D-2.a. through the provision of an appropriate commercial building on a lot that is compliant with conditional uses of the B-2 District.
- The proposed project will provide adequate light, air, and open space; consistent with N.J.S.A. 40:55D-2.c.
- The proposed project will promote a more desirable visual environment through creative development techniques consistent with N.J.S.A. 40:55D-2.i. by redeveloping the property and substantially improving the Eagle Rock Avenue streetscape and commercial character.

Negative Criteria

Granting the variances will not result in a substantial detriment to the general welfare. The project proposes to demolish an existing condemned building and provides a particularly beneficial use that is similar to its previous commercial use in developing two restaurants for residents and consumers of the community with improve onsite infrastructure, landscaping, circulation and overall aesthetic appearance.

Granting the variances will likewise not result in a substantial impairment to the intent and purpose of the zone plan or zoning ordinance. The proposed fast-food restaurant-use is compliant with the conditions of the B-2 District.

The proposed project is also consistent with the 2019 Master Plan Update in advancing several goals/objectives of the 2019 Master Plan Reexamination, including;

- *Objective 9. "Promote a Desirable Visual Environment"*
- *Objective 16. "Encourage Economic Development and Redevelopment That Is Compatible with the Suburban Character of the Township"*
- *Principle 2. "Properly Locate Public, Commercial/Retail, Industrial, Residential and Service Uses"*

CONCLUSION

The requested variances are justified and meet the positive and negative proof standards and therefore can be granted. The applicant reserves the right to supplement the foregoing reasons with expert testimony at the Planning Board Hearing.

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