



**Consulting & Municipal
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October 29, 2024

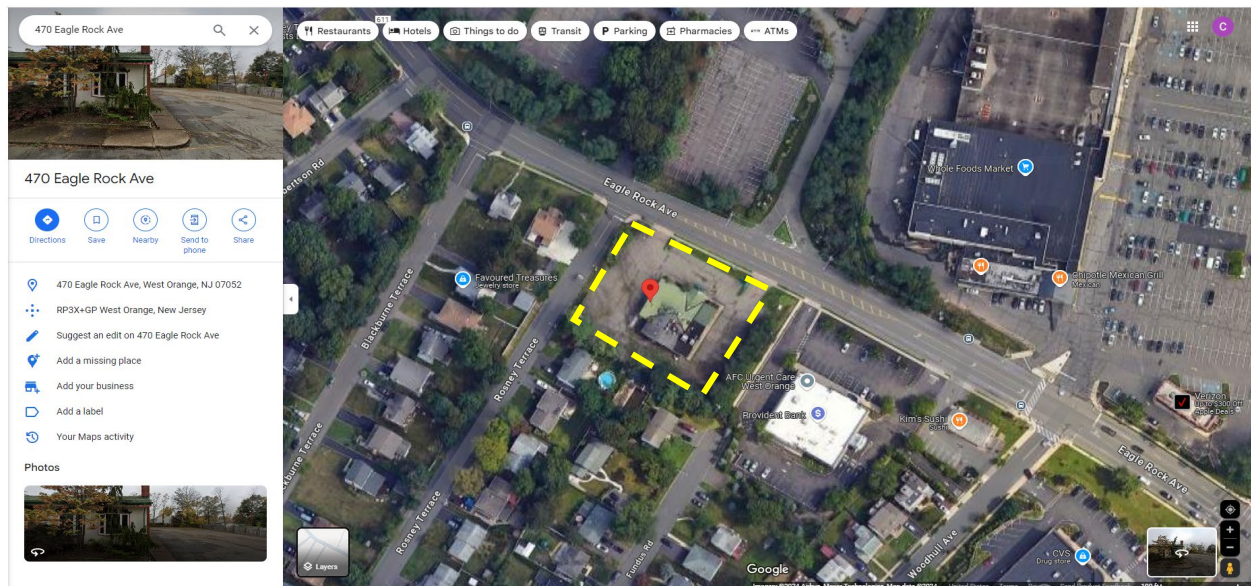
West Orange Township – Zoning Board
66 Main Street
West Orange, NJ 07052

Re: MPB Realty LLC – Planning Review #1
470 Eagle Rock Avenue
Block 153, Lot 38
Zone: B-2
Our File No. WRZ0153.V01

Dear Chairman and Board Members:

1. Summary

The property is located on Eagle Rock Avenue and Rosney Terrace. The 1.07 acre property is developed with the former China House restaurant. The applicant proposes to repurpose the existing building to house two restaurants – an IHOP and a Popeyes that will include a drive-thru window. D-3 conditional use variance relief is required to permit a fast-food restaurant within 500 feet of another fast food restaurant, within 1,000 feet of a residential district, to have a driveway within 100 feet of an intersection, and on a corner lot with insufficient frontage. Additional variances are required for impervious coverage, signage, and parking in a front yard.



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NJ CERTIFICATE OF AUTHORIZATION NO. 24GA28359000

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2. Project and Property Description

The subject property is located on the southeast corner of the intersection of Eagle Rock Avenue (CR 611) and Rosney Terrace in the northern end of the Township. The 45,713 square foot (1.07 acre) property is currently developed with a commercial building that was previously used as the China House restaurant, and its associated parking lot. The site has two driveway access points onto Eagle Rock Avenue, and no access onto Rosney Terrace. There are sidewalks along the frontage of Eagle Rock Avenue, but no sidewalks on Rosney Terrace.

The applicant is proposing to renovate the existing restaurant building on the property and repurpose the structure to be used as both an IHOP restaurant on the west side, and a Popeye's fast-food restaurant on the east side. An addition of 300 s.f. is proposed in the rear of the building within the IHOP space. The Popeye's would include drive-thru service. The IHOP restaurant would include 88 dine-in seats, while the Popeye's would be indicated to have 18 seats for patrons inside the space.

The existing parking areas around the building are proposed to be removed and replaced. Access to the site would come from the same two existing driveways onto Eagle Rock Avenue, with the western driveway (closer to IHOP) being a right turn in / right turn out driveway, and the eastern driveway (closer to Popeye's) allowing both left and right turns in and out. 50 total parking spaces are proposed around the building, and the drive-thru lane for Popeye's appears to have stacking space for approximately 9-10 vehicles. A new dumpster enclosure is proposed in the southeast corner of the property.

Most of the existing trees on the property are proposed to be removed to allow for the expansion of the parking areas, while some trees that are located partially on the property and partially on adjacent parcels will remain around the perimeter of the site. New landscaping is proposed along the periphery of the site, along the drive-thru lane, and around the building as foundation plantings. New lighting is also proposed along the building facades, and around the parking lot and drive-thru lane.

Signage for the businesses are proposed in a 50 s.f. 16-foot high freestanding sign along the Eagle Rock Ave frontage, and through several building mounted façade signs along the north, east, and western facades of the building.

The site is surrounded by a mixture of commercial uses and residential uses. To the east along the Eagle Rock Avenue frontage are smaller scale commercial uses, including professional offices, an urgent care medical facility, a bank, and a sushi restaurant. North of the site across Eagle Rock Ave are larger commercial and institutional uses, including the Whole Foods shopping center which includes a Chipotle and Jersey Mikes fast food restaurant along the frontage. Also across the street is the Mayfair Farms banquet hall / event space. To the west and south of the site are primarily single-family residences.



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3. Zoning Compliance

The property is located within the B-2 Business district of the Township.

Use Requirements

A restaurant is a permitted principal use in the district.

Fast Food restaurants are a conditionally permitted use in the B-2 district, subject to the following conditional use requirements:

(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. – 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. – ***Does not comply. A Jersey Mike's restaurant is approximately 150 feet away.***

(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. – ***Does not comply. A residential district is immediately west of the property, and approximately 50 feet south of the property.***

(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. – ***Does not comply. The frontage along Rosney Terrace is 182.4 feet.***

(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. – 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. – 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.



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– Does not comply. The western driveway is 13 feet from the Rosney Terrace intersection.

(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. – Complies

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

A d-3 conditional use variance will be required as the proposed use does not conform to all of the conditional use requirements.

Bulk Requirements

All development in the B-2 district is subject to the following bulk regulations:

B-2 Zone Bulk Requirements			
	Required	Proposed	Variance
Minimum Lot Area	10,000 s.f.	1.07 acres	No
Minimum Front Yard	30 feet	55.6 feet	No
Minimum Side Yard	25 feet	76 feet (st) 89.3 feet (st)	No
Minimum Rear Yard	30 feet	46.6 feet	No
Maximum Building Coverage	40%	13.5%	
Maximum Impervious Coverage	60%	76.3%	Yes
Maximum Building Height	2.5 story / 35 feet	23 feet	No

Parking & Loading

Restaurants require off-street parking at a minimum ratio of 1 space per 3 seats, or 1 space per 45 s.f. of space devoted to patron use, whichever is greater.

- IHOP



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- 88 seats / 3 = 30 spaces required; or
 - 1,506 s.f. / 45 = 34 spaces required
- Popeyes
 - 18 seats / 3 = 6 spaces required; or
 - 664 s.f. / 45 = 15 space required
- 49 total parking spaces are required.
- 50 parking stalls are proposed + one space as EV charging space credit = 51 parking stalls

Signage

One façade sign per business is permitted, with a maximum sign area of 120 square feet.

- IHOP – 4 façade signs proposed, with a total area of 94.2 square feet.
- Popeye's – 4 façade signs proposed, with a total area of 139.1 square feet.

One freestanding sign is permitted with a max height of 16 feet and a maximum sign area of 50 square feet.

- One freestanding sign is proposed, at a height of 16 feet and sign area of 50 s.f.

4. Variances & Waivers Required

It appears that the following conditions are not in compliance with the Township's land development regulations and may require variance or design waiver relief from the Board to permit the project as proposed:

Variances:

- a. **§25-24.2.b.2(i) Conditional Use** – The following conditional use standards are not met. These are d-3 conditional use variances:
 - 1) The Popeyes will be located within 500 feet of the lot that contains another fast food restaurant.
 - 2) The Popeyes will be located within 1,000 feet of a residential district.
 - 3) The Popeyes has less than 200 feet of frontage on a corner lot.
 - 4) An entrance driveway will be located less than 100 feet from an intersection.



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- b. **§25-Attachment 3 Impervious Cover** – The maximum permitted impervious cover of 60% will be exceeded. 76.3% is proposed.
- c. **§25-8.1.a Accessory Uses** – No accessory structures or uses are permitted in a front or side yard, where the parking lot is proposed within the front yard.
- d. **§25-8.1.b Accessory Structures** – Accessory structures are required to be setback a minimum of 10 feet from any property line, where the garbage dumpster will be 9.4 feet from the rear property line.
- e. **§25-11.3.a Buffer** – A buffer of at least 50 feet in width is required where a non-residential use abuts a residential use in a residential district. A buffer of 8.8 feet is proposed along the southern boundary line. However, it is not clear whether or not this applies, as it appears that the two residential properties immediately to the south are also located in the B-2 district and not in a residential district.
- f. **§25-12.1.b Curbing in Parking Lot** – Parking lots are required to be enclosed by a concrete curb and be a minimum of 5 feet away from any building walls, where the drive-thru curb will be directly adjacent to the building.
- g. **§25-12.1.l Parking in Front Yard** – Parking is not permitted in a front yard.
- h. **§25-12.3.a.2 Loading** – At least one off-street loading space is required, where no designated loading space is provided.
- i. **§25-14.3 Lighting** – A minimum of 2.0 footcandles is required to be maintained in parking areas, where lighting levels will be as low as 0.6 footcandles in portions of the parking lot.
- j. **§25-15.3.C.2.b Signage** – One façade sign per business is permitted, where 8 façade signs are proposed, 4 for each business.
- k. **§25-15.3.C.2.b Signage** – The maximum permitted sign area for façade signs is 120 s.f., per business, where 139.0 s.f. of façade signage is proposed for the Popeye's.
- l. **§25-27.8.g Tree Replacement** – With the removal of trees on site, a minimum of either 109 2" caliper trees or 49 2.5" caliper trees is required as replacement trees. 41 total new trees are proposed on site.

5. Master Plan Considerations

The Township's Master Plan was last updated in 2019. The following goals, objectives, and recommendations from the Master Plan may have relevance to this application:



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- Ensure that the public's safety is secured;
- Provide sufficient space for balanced growth and development;
- Ensure safe and efficient transportation and circulation routes;
- Promote a desirable visual environment;
- Encourage development and redevelopment that is compatible with the suburban character of the Township;

The Master Plan makes one specific recommendation regarding fast food restaurants, and that is to permit drive-thru windows as a customary accessory use, but also to provide standards to regulate their use.

A recommendation is also made in the Master Plan to improve the appearance of Eagle Rock Avenue, in particular near the intersection with Pleasant Valley Way.

6. Planning Comments

- a. The applicant should discuss the proposed project, addressing the general scale and scope of improvements proposed for the site. The plans indicate that the existing building is to remain, but the parking areas are to be removed and replaced. What are the extents of renovations of existing improvements and what is proposed to be entirely new construction?
- b. We note that this is not the first application for a drive-thru facility on this property, and that earlier this year an application on this site was dismissed by the Board without prejudice. The applicant should provide testimony addressing any similarities and differences between the previous application before the Board, and the application that is now before the Board.
- c. The application as proposed will require a d-3 conditional use variance for non-compliance with four of the conditional use requirements for a fast food restaurant in the B-2 business district. With any 'd' variance, the applicant has an enhanced burden of proof to demonstrate that both the positive and negative criteria can be satisfied before the Board can grant a 'd' variance:
 - i. Positive Criteria: The applicant must show that the site remains suitable for the proposed use despite not satisfying the conditional use requirements.
 - ii. Negative Criteria: The applicant must show that the proposed use will not have a substantial detrimental impact on the public good, and will not substantially impair the intent and purpose of the zone plan.



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- d. With this being a 'd-3' conditional use variance, and not a traditional 'd-1' use variance, the applicant does not necessarily need to show special reasons to grant the variance, or that the site is suitable for a fast-food restaurant in general. In accordance with the standards set in the *Coventry v. Westwood* case, the focus of the Board in applying the positive and negative criteria should be on the deviations from the conditional use requirements rather than on the proposed use overall. As a conditionally permitted use a fast food restaurant is considered suitable for this site, if the conditions were met. The applicant must show that the site continues to be suitable for a fast food restaurant, and that the site can accommodate any problems associated with the use.
- e. It appears that the general intent of the conditional use requirements for fast food restaurants is to limit the impacts of driveways and drive-thru services on the circulation network of the Township for both vehicles and pedestrians, and to limit the impacts of these uses on existing residences. These types of uses tend to have higher traffic impacts during peak hours than other commercial uses, and a high turnover of vehicles entering and exiting the properties which can cause issues with traffic flow.
- f. Outside of the conditional use requirements, it appears that the proposed fast food restaurant satisfies all the standards for a drive-thru service, including signage and space for stacking of vehicles.
- g. The application as proposed will also require several bulk or 'c' variances. The applicant must satisfy both the positive and negative criteria for each of these variances as well:
 - i. Positive Criteria: The applicant must show that either there is an undue hardship (practical difficulty) in conforming to the code, or that the proposed conditions represent a preferable alternative to conforming to the standards of the code, and that the benefits of the deviation would outweigh any detrimental impacts.
 - ii. Negative Criteria: The applicant must show that the variance can be granted without substantial detriment to the public good, and without substantially impairing the intent and purpose of the zone plan.
- h. The applicant should address the potential impacts specifically of the drive-thru use to the adjacent residences, in terms of both the visual and potential noise impacts of the use.
 - i. We note that the acoustical report provided by the applicant indicates that the proposed uses will comply with state noise regulations, however the technical nature of the report may be difficult to understand. The applicant should discuss the anticipated sound impacts in as plain and practical terms as possible.
 - ii. The acoustical report recommends that the fence between the restaurants and the residential uses be constructed of two layers of $\frac{3}{4}$ " plywood, while the site plans



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show a board on board fence with alternating 1"x4" vertical wood slats. The applicant should discuss how the difference in proposed fencing may impact sound attenuation.

- i. The proposed garbage dumpster will be located in the southeast corner of the property, 9.4 feet from the rear property line and adjacent to an existing residential lot. The applicant should discuss the methods for collecting garbage, and the anticipated timing and frequency of collection.
- j. The applicant should address the proposed landscaping for the site.
 - i. Several existing trees along the property lines are proposed to be retained, however it appears that much of the drip line of these trees and likely the root structure will be within the areas of disturbance. The applicant should address the measures that will be taken to protect those trees during construction as they serve as a portion of the proposed buffering between the commercial and residential uses. Minimal details have been provided in the plans.
 - ii. There is no landscaping proposed along the eastern property line, where many existing trees will be removed. There is a narrow space between the existing sidewalk on the property line and the proposed parking areas. The applicant should discuss the potential to include some landscaping in this area, and the potential of shifting the proposed retaining wall to create adequate space for plantings.
 - iii. The applicant should discuss anticipated maintenance of trees and plantings in the rear of the property. There appears to be an existing fence at the property line, and a new fence is also proposed in the area, and some trees are proposed to be planted in between the fences.
 - iv. In general, we have concerns about maintenance in the rear yard area. Having two fences along the same property line with what appears to be as little as 3 feet of space between them may create an area where maintenance will be difficult at best, and is unlikely to occur.
- k. There are no sidewalks proposed for Rosney Terrace ROW. The applicant should address the potential to include sidewalks on this street. We note that no sidewalks currently existing along this frontage or elsewhere down the street.
- l. A detail is included in the site plan package for a "drive-thru canopy with speaker and conference board". It is not clear what is intended by the "conf board" portion of this structure. This is not noted to be a menu board, and the speaker is relatively small at the



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base of the structure. Will there be any messages or signage attached to the face of the structure? Other than the speaker and the canopy, the structure is a +/- 40 s.f. wall.

- m. We defer any comment on grading, drainage, utilities, and stormwater management to the Board Engineer.
- n. The applicant should address the status of any necessary outside agency approvals.

If you have any questions about this report, please do not hesitate to reach out to our office.

Sincerely,

CME Associates

Christopher N. Dochney – PP, AICP
Program Manager

CD

cc: MPB Realty LLC – Applicant
Matthew Bersch, PE. – Applicant's Engineer
Robert A Grimaldi – Applicant's Architect
Mallory Clark – Applicant's Planner
Lewis Goodfriend & Associates – Applicant's Acoustical Engineer



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7. Materials Submitted

The following materials have been submitted and reviewed in association with this application:

- Application form and submission checklists dated July 1, 2024;
- Two (2) page application cover letter from Jason Tuvel, Esq. dated August 12, 2024;
- Twenty-one (21) sheet set of site plan drawings prepared by Dynamic Engineering, dated June 7, 2024;
- Two (2) sheet set of architectural drawings prepared by G 141 Architecture, dated June 12, 2024;
- Acoustical Evaluation report, prepared by Lewis S. Goodfriend & Associates, dated June 17, 2024;
- Drainage statement for subject property, prepared by Dynamic Engineering, dated June 2024;
- Environmental Impact Statement, prepared by Dynamic Engineering, dated June 2024;
- Stormwater Management Operation and Maintenance Manual, prepared by Dynamic Engineering, dated June 2024;
- Traffic Impact Study, prepared by Dynamic Traffic, dated October 21, 2022, last revised June 4, 2024;
- Variance & Waiver Request List, prepared by Dynamic Engineering, dated June 7, 2024;
- Planning Report and Justification for Variances, prepared by Dresdner Robin, dated August 2, 2024;
- Tree Removal Report, prepared by Dynamic Engineering, dated June 2024;
- Solid Waste Management Plan, prepared by Dynamic Engineering, dated June 7, 2024;
- Copy of Resolution PB-97-18, dated October 8, 1997;
- Copy of Resolution dismissing previous application without prejudice, dated March 21, 2024;