

RESOLUTION

Township of West Orange

Planning Board

PB 24-15 3135WO, LLC/31-35 Harrison Avenue

Block: 141 Lot: 1; Zone: B-1

Decided on January 8, 2025

Memorialized on _____

Application for Preliminary and Final Major Site Plan Approval with Bulk Variances to build an addition to the rear of the existing commercial business.

WHEREAS, 3135WO, LLC (Hereinafter the “Applicant”) has made an application for Preliminary and Final Major Site Plan approval with Variances to build a one-story, 2,026 s.f. addition at the rear of the existing commercial building located at 31-35 Harrison Avenue, also known as Block: 141; Lot 1 (the “Property”), in the B-1 Retail Business zone; and

WHEREAS, a properly noticed public hearing was conducted on January 8, 2025; and

WHEREAS, the Applicant was represented by John R. Dusinberre, Esq.; and

WHEREAS, the Applicant provided testimony from Luis Crespo, Managing Member of 3135WO, LLC, Anthony Marucci of Marucci Engineering Associates, LLC, as a professional engineer and professional planner, and Joseph L. Haines, AIA of Dassa Haines Architectural Group, LLC, as a professional architect; and

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

ITEM	SIGNED BY	DATE/REVISION
Combined Site Plan and Architectural Plans (3 sheets)	Joseph L. Haines, AIA, PP.	10/16/2024
Property Survey	George J. Anderson	3/21/2023

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 review memos dated September 6, 2024 from Philip Scott,, P.E., CME (Township Engineer) and a Planner's Report by Gerard M. Haizel, PP, AICP, Principal of Nishaune Group, Township Planning Consultant dated September 6, 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 construct a 2,130 SF addition to the rear of the existing commercial business so to expand their existing printing and embroidery business.
2. The proposed addition will include a new entry on the western frontage, enclosed by a 6' wide double door, for the purpose of receiving deliveries and shipping orders.
3. The subject property is an irregular-shaped lot, which encompasses a total of 7,513 SF (0.17 acres)
4. The site is located on the western side of Harrison Avenue, between Maple and Kirk Streets and is improved with a one-story commercial building which is situated on the eastern side of the site, adjacent to the street frontage.
5. The existing building contains three (3) separate store fronts that have been combined for the single use of the existing business.

6. There is one (1) existing parking space located in a paved driveway on the southern side of the existing building, which is accessible directly off Harrison Avenue. The rear of the site immediately behind the existing building is covered with gravel, while the remainder of the site, which extends to the west, is unimproved. There is a gradual increase in grade towards the rear of the site.
7. Applicant testified that there has always been one parking space for the property (a pre-existing condition) and that the managing partner (Louis Crespo) is the only one who uses the space for deliveries and which can be made available for outside deliveries to the site when needed.
8. The business is open Monday-Friday, 9AM to 5PM.
9. Deliveries to the site are from UPS, USPS, and FedEx, which typically have no problem with street parking directly in front of the property due to the fact that parking there is limited to one hour.
10. The business, which is a T-shirt printing business, is currently done manually but with the new addition, the business will have space to install an automated printer to increase efficiency and maintain the business in West Orange. No employees will be reduced due to the new automated equipment.
11. The project will require the removal of 4 trees and while the Applicant will abide by the Township Tree Ordinance, Applicant is open to working with the Township Forester to plant street trees as suggested by the Forester.
12. The property topography grades up in the rear and therefore following the SPRAB meeting the Applicant revised the plans to include a 2 ft. high retaining wall to retain

the water runoff on the subject property and grade the driveway to direct the runoff to the street and not the neighboring property.

13. The existing basement will remain the same and the new addition will allow the business to create a showroom in the front and a retail entrance on the side. (Currently, customers walk directly into the management office.)
14. There will be no additional storm water runoff as the new addition will capture the storm water and will direct it to the roof drain system.
15. The proposed addition will be built on a slab on grade and will be setback 6.25 feet and 5.3 feet from the northern and southern property lines respectively, and 30.8 feet from the western (rear) property line.
16. The area surrounding the subject property is developed with an autobody repair shop to the south and retail stores to the north and to the rear residential properties.
17. Applicant requested the following waivers from the Township Site Plan/Subdivision Checklist: Item 4- A key map at specified scale showing location of tract with reference to surrounding properties, streets and municipal boundaries within 500' if applicable, Item 31: Existing and proposed contour intervals based on U.G.S. and G.S. datum, Item 44: Lighting Plan and details, Item 45: Landscape plans and detailed prepared by a professional landscape architect and Item 46: Solid waste management plan.
18. The Application requires the following variance relief from the Board:

SECTION/REQUIREMENT	PERMITTED/REQUIRED	PROPOSED
25.71 Minimum side yard	6 feet each side	5'4" feet (South Side)

25-12.2b.1 Minimum number of parking spaces	18 Spaces	1 Space
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19. 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.

20. 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 setback and parking satisfy the c (1) criteria as there are pre-existing conditions as to on-site parking.
2. The requested parking variance satisfies the c (2) criteria because the project as a whole advances the purpose of the MLUL as the project presents special reasons under the MLUL, specifically paragraph a. (advancing the welfare of the community to allow the business to remain active and improve efficiency), i. (desirable visual environment as the new space will allow for a more attractive business enterprise) and most importantly paragraph g. (to provide sufficient space for commercial uses as the addition will allow the commercial entity to be more efficient and continue to thrive in the community.)
3. The benefits of the project outweigh any negatives and presents no substantial detriment to the public good.
4. Waivers for items 4 (key map), 31 (contours), 44 (lighting plan), and 45 (landscape plan) may be waived as they are inapplicable to this application and 46 (solid waste management plan) as Applicant supplied the information in testimony as to the solid waste management plan.

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Township of West Orange that approval for Preliminary and Final Major site plan with requested waivers of Items Numbered 4, 31, 44, 45 and 46 and with c variances is granted to build a one-story, 2,026 s.f. addition at the rear of the existing commercial building located at 31-35 Harrison Avenue, also known as Block: 141; Lot 1 (the “Property”), in the B-1 Retail Business zone; and

IT IS FURTHER RESOLVED that the approval granted to 3135WO, 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 Matrix Report dated September 6, 2024, unless expressly modified by the terms of this Resolution.
7. Applicant will abide by the Township Tree Ordinance and will plant street trees as recommended by the Forester as full or partial satisfaction of any required tree planting under the Tree Ordinance.
8. Applicant will submit an informal soil erosion plan, satisfactory to the Township Engineer, adequately detailing measures to be taken for controlling soil erosion during construction.
9. Applicant will clean out and maintain roof drainage laterals.
10. Applicant's engineer to submit confirmation that there will be less than 5,000 sf of soil movement. If more than 5,000 sf of soil is distributed, the Applicant must apply for a soil erosion and sediment control permit from the Hudson Essex Passaic Soil Conservation District.

11. Applicant must install and maintain a sign alerting pedestrians to the active driveway on the property which form and location must be reviewed and approved by the Downtown Alliance and Pedestrian Safety Commission.
12. The number and size of flammable material storage cabinets shall be determined by the Fire Official.
13. An additional exit door shall be added to the southerly side rear of the new construction.
14. Two (2) ventilation fans (up to 24") shall be installed in the addition section of the building.
15. The Applicant shall list all conditions of approval onto a final site plan submission prior to the submission of the building permit.

The undersigned secretary certifies the decision set forth herein was made by this Board on January 8, 2025, and memorialized herein pursuant to N.J.S.A. 40:55D10(g) on _____.

Jamilet Baquerizo Vite
Planning Board Secretary

Vote Action Taken by the Board on January 8, 2025:

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

Vote on Memorialization on January 22, 2025:

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