

RESOLUTION

Township of West Orange

Planning Board

PB 24-06 410 Main Street Holdings, LLC/ 410 Main Street

Block: 113 Lots: 262, 264 and 308; Zone: B-2

Decided on December 11, 2024

Memorialized on January 8, 2025

**Denial of Application for Conditional Use, Preliminary and Final Major Site Plan
Approval and Variance Approvals to Permit a Mixed-Use Development**

WHEREAS, 410 Main Street Holdings, LLC (Hereinafter the “Applicant”) has made an application for conditional use, major site plan approval, and variance relief for the proposed new three-story mixed use building at property located at 410 Main Street, also known as Block: 113; Lots 262, 264 and 308 (the “Property”), in the B-2 commercial zone; and

WHEREAS, a properly noticed public hearing was conducted on June 5, 2024, August 7, 2024 September 4, 2024, October 9, 2024, November 6, 2024, December 4, 2024 and December 11, 2024; and

WHEREAS, the Applicant was represented by Jason Tuvel, Esq. and Benjamin Wine, Esq. of the firm Prime & Tuvel; and

WHEREAS, the Applicant provided testimony of Brittany Klimm, R.A. of Mistry Design and Yogesh Mistry, R.A. as a professional architect; Aliasgar Rangwala, PE, of SMBT Consultants of East Brunswick as a professional engineer; Mallory Clark PPM, AICP as a professional planner, and, Harold K. Maltz, PE. of Hamal Associates as a professional traffic engineer (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
Topographic Survey	Allstate Mapping & Layout	6/3/2023
Architectural Plans	Mistry Design	12/23/2023 revised 8/21/2024
Site Plan (13 sheets)	SMBT Consultants	1/16/2024 revised 8/23/2024
Traffic Report	Hamal Associates, Inc.	1/12/2024
Stormwater Report	Aliasgar M. Rangwala, P.E.	8/23/2024

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 Planning Report by Paul Grygiel AICP, PP, Township Planner dated April 10, 2024 Engineering Memorandum by John J. Hess, PE, PP, CME of CME Associates dated April 18 2024, July 30, 2024 and August 28, 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 conditional use, that being a new mixed-use building, as well preliminary and final major site plan approval and variance relief.
2. The Property is 11,936 square feet (0.274 acres) in area and is located at the southwestern corner of the intersection of Main Street and Park Drive North.

3. The Applicant is proposing to construct a new three-story mixed-use building with ground floor commercial space and parking on the property located on the West side of Main Street.
4. The property has 139.95 feet of frontage on Main Street and 84.46 feet of frontage on Park Drive North.
5. Until recently, the property was developed with a 2.5 story frame residential building and other improvements such as walkways, steps, porch, a rear shed, and a patio.
6. The improvements on the site were demolished and the site is currently vacant.
7. The area surrounding the subject property is developed with a mix of land uses including commercial and residential, mixed-use buildings are located along Main Street, as are educational and institutional uses. There are residential uses to the west along Park Drive and other streets to the west and east of Main Street.
8. The Applicant proposes to construct a three-story mixed-use building with 12 apartment units on the upper floors (six dwelling units on each floor) and 900 square feet of commercial space.
9. Applicant also proposes related site improvements including stormwater management infrastructure, landscaping, and lighting improvements.
10. The proposed apartments consisted of eight (8) two-bedroom units and four (4) one-bedroom units.
11. Three building entrances are proposed on the ground floor on Main Street: the commercial space, a trash room and residential lobby. An exit door is proposed in the rear of the building, which will connect to a sidewalk between the building and the western property line.

12. A parking garage is proposed on the ground floor of the building, which would be accessed by a driveway on Park Drive North.
13. Fourteen (14) parking spaces, including two electric vehicle charging spaces, one of which is also an accessible space, are proposed.
14. Landscaping is proposed on each side of the building.
15. Proposed lighting includes eight (8) wall-mounted fixtures (six on Main Street façade and two on the Park Drive North façade flanking the garage door), one full cutoff wall pack above the rear exit door on the west façade and 16 LED luminaires in the garage.
16. A trash and recycling room is proposed on the south end of the ground floor of the building, with access directly from Main Street.
17. Applicant revised the appearance of the building after suggestions from the Board and designed a more enhanced façade, added more single windows, and arched upper windows with more articulation and added awnings (instead of tinted windows) to camouflage the trash room. The Applicant also wrapped the front façade around to the rear and created a more elaborate cornice.
18. The Applicant's architect testified that the decision to keep part of the retaining wall in the front was to break up the façade and camouflage the utility space.
19. In response to suggestions by the Board, Applicant again revised the architectural plans to add an 800 sq. ft. green roof area constructed with plastic trays and plants to absorb rainwater and provide a cool roof.
20. Also, in response to Board suggestions, Applicant reconfigured the trash room to be located to the left of the lobby (and away from the commercial space) which in turn created an additional parking space (bringing the total parking spaces from 13 to 14).

21. Trash and recycling will be picked up private hauler and which will be picked up by the trash/recycling contractor on Main Street.
22. The proposed building is 25,700 square feet and within that space, 900 square feet is the commercial space.
23. Applicant's engineering expert testified that the previous structure on the lot was 3,546 sq. ft. of impervious coverage and the proposed building would be over 10,000 square feet of impervious coverage.
24. Applicant's engineer testified that the grading of the property is ADA compliant; however, he clarified that because of the existing conditions, relief under ADA standards is given. In actuality, due to the existing slope of the property, nothing can bring the sidewalk into ADA compliance.
25. The existing storm water flows to the sidewalk on Main Street and the proposed design will catch more than 95% of all storm water, while storing the storm water under ground and slowly releasing the storm water into an existing catch basin which will improve the existing conditions.
26. All of the roof drains are connected to the storm drains and inlets and surface water will be captured and discharged into the drainage system.
27. While the engineer admitted that he did not take into account the brook and its potential to overflow located at the top of Park Drive North in the storm water calculations, he opined that any water that would flow from that brook overflow would be captured by the proposed drainage system if it does flow onto the property.
28. The lighting plan complies with the Township requirements as to foot candles and will not bleed outside the property boundaries.

29. Most of the trees on the north side of the building will be removed and Applicant will plant evergreen trees of different sizes along the south side of the building (15' to 20' high with a 4' spread) along the entire width of the neighboring building and shrubs 8' high and wide. Along the west side of the property will be trees of varying height and on the east side will be Boston Ivy along the retaining wall. The Applicant's engineer testified that the proposed trees, once they have matured, will fill the side setback.
30. The dimensions of the sidewalk on Main Street at the area of the retaining wall range in width between 6.06' to 5.16' where the ADA requires 5' width to be compliant.
31. At the request of the Board, Applicant agreed to install both a visual and audible pedestrian warning alarm for vehicles entering and exiting the parking garage.
32. At the suggestion of the Board, Applicant added additional illumination at the rear wall (four more wall sconces) which will be low intensity and point downward.
33. Applicant's traffic engineer, Harold Maltz, testified that the traffic trips generated by both the residential units and potential commercial use will not have any impact on traffic as trip generation from the use would be negligible.
34. The Applicant's traffic engineer testified that RSIS standards take into account household characteristics, access to mass transportation, geographic constraints and off-site parking options.
35. Mr. Maltz testified that typically one-bedroom units do not generate more than one vehicle per household.
36. Mr. Maltz also noted that directly in front of the proposed building is a New Jersey Transit bus stop.

37. Approximately a tenth of a mile, at Harrison Street and Eagle Rock Avenue is municipal lot #1 which has both metered parking spaces and 28 permit parking spaces for 24-hour parking. Applicant's traffic engineer testified that the police department confirmed that there were 16 open permit parking spaces available as of the date of his testimony and Applicant intends to re-imburse any tenant that parks in one of the permitted parking spaces.
38. Based upon the fact that the one-bedroom units have limited parking demands typically, that there is a bus stop in front of the building and that sufficient 24 hour parking is available in the municipal lot #1 , under RSIS guidelines, the Applicant's expert testified that on-site parking available at the building are sufficient.
39. Mr. Maltz testified that the 23-foot drive aisle in the parking garage is sufficient width for two-way traffic to pass side by side.
40. Applicant supplemented the parking options by securing an agreement with Bethany Church, across the street from the property for a total of ten (10) parking spaces.
41. Applicant further advised that through communication with the Essex County Planning Division that due to Main Street being a County Road that the County would work with the Applicant and is agreeable to the installation of a lighted crosswalk to allow safer crossing to pedestrians from the west side of Main Street to the east side of Main Street.
42. The project requires twenty-five (25) on-site parking spaces with fourteen (14) on-site parking spaces proposed and 10 available parking spaces across the street at Bethany Church and any over-flow at the Municipal Lot at the corner of Harrison and Eagle Rock Avenue.

43. The neighbors on Park Drive North and South provided testimony that there is currently a significant parking problem on Park Drive North and South due to the fact that many of the homes on that loop do not have driveways and currently there is no restriction to limit parking to those residents.
44. The commercial space of 900 feet limits the type of businesses that can realistically occupy in the provided space such that Applicant agreed to a condition that the space be limited to office use only; however, there was no on-site parking for that office use.
45. The Board took note that during the pendency of the application that a serious pedestrian versus vehicular accident occurred on Main Street at the location of the proposed project.
46. N.J.S.A. 40:55D-67 governs the Board's review of the application for Conditional Use. N.J.S.A. 40:55D-67a. provides that a zoning ordinance may provide for conditional uses to be granted by the planning board according to definite specifications and standards which shall be clearly set forth with sufficient certainty and definiteness to enable the developer to know their limit and extent. N.J.S.A. 40:55D-67b. provides that the review by the planning board of a conditional use shall include any required site plan review pursuant to N.J.S.A. 40: 55D-37 to 40:55D-59.
47. A conditional use is defined under the MLUL (N.J.S.A. 40:55-D-3) as a use permitted in a particular zoning district only upon a showing that such a use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in the zoning ordinance, and upon the issuance of an authorization therefor by the planning board. If a planning board finds compliance with the specified

standards of the ordinance for the specific proposed conditional use, it will be required to approve the application. Exxon Co. U.S.A. v. Livingston Tp. In Essex Cty, 199 N.J. Super. 470, 477 (App. Div. 1985).

48. Chapter 25, Section 24.2(b)(2)(m) of the Township of West Orange Municipal Code, sets forth the conditions that are required for a mixed-use development in a B-1 and B-2 District as follows:

- (1) Permitted uses on the ground floor of a mixed-use development shall include the following permitted uses in the B-1 and B-2 Districts: retail store, personal service store or studio, office, business or vocational school, restaurant, bar, massage, bodywork or somatic therapy establishment, and fitness center/health club.
- (2) One or more dwelling units shall be permitted on the upper floor(s) above any of the permitted ground floor uses in §25-24.2b2(m)(1).
- (3) Access to upper floor uses shall be provided by means of a separate entrance than provided for ground floor uses.
- (4) Minimum lot area shall be 5,000 square feet, and the minimum street frontage of such lot shall be 50 feet.

14. Applicant complies with all of the conditional use standards.

15. Applicant requires the following variance relief:

SECTION/REQUIREMENT	PERMITTED/REQUIRED	PROPOSED	
25-7.1 Minimum Front Yard-			
Main Street	25 ft	5 ft.	
Park Drive North	25 ft	5.14 ft	
25-7.1 Minimum side yard	10 ft.	5.22 ft.	
25-7.1 Minimum rear yard	30 ft.	8.16 ft	
25-7.1 Maximum building height (Stories/Feet)	2.5/35 ft	3/34.34 ft	
25-7.1 Maximum building coverage	60%	73%	
25-7.1 Maximum lot coverage	60%	82%	
25-12.2a1 Minimum off-street parking spaces	25	14	

16. 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.

17. 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.
18. Applicant requested waivers from Item #'s: 20 (Delineation of existing or proposed for or dedicated to public use), 21 (Any existing or proposed easement or land reserved for dedicated public use), 22 (Development stages or staging plans), 28 (All existing street, water courses, flood points, wetlands or other environmentally sensitive areas on and within 200’ of the site), 29 (Existing right-of-way and/or easements on and within 200’ of tract), 42 (Proposed street names), 49 (Vehicular and pedestrian circulation patterns) and 52 (Plans and legal documents for compliance with West Orange COAH Ordinances.)
19. Applicant is also seeking a design waiver for the required 24 drive aisle width as they are proposing a 22 ft. wide drive aisle in the garage.
20. The proposed units consist of four (4) one-bedroom units and eight (8) two-bedroom units.

21. The Board Planner, Gerard Haizel, testified that the proposed project would be the largest building in the area with only the Senior Building located a block away being larger.
22. Mr. Haizel further testified that parking was driving the design of the building because to achieve the necessary depth for parking the building had to cover most of the lot, but a smaller building would be more fitting.
23. Mr. Haizel expressed concern about the limited on-site parking, especially in comparison to the limited residential parking in the immediate vicinity.
24. Mr. Haizel also noted that the other buildings on Main Street in the area were significantly smaller than the proposed building and the length of the proposed building reinforces that size factor.
25. The majority of the Board members opined that the proposed building with 12 apartment units was too large for the site as they were concerned about the lack of parking provided on site and that there was no available on-site parking for the commercial space.
26. A majority of the Board members opined that the scale of the building and the close setback to Main Street was not in keeping with the other buildings in the area.
27. Most Board members were concerned about the safety of the tenants crossing Main Street to access parking, even with a crosswalk added to the area.
28. Board members did not find that the option of parking at the municipal lot a block away was a realistic option for the residents as they believed that rather than walk late at night or in inclement weather the most likely action taken by residents that did not have on-site parking was to park on the already over-crowded North and South Park Drive.

29. Board members did not find Applicant's traffic expert to be credible and further noted that the expert offered no opinion as to the effect of delivery trucks, which are a daily use for residents, Uber and Lyft pick-ups and drop offs and other vehicles arriving and leaving the site could be reasonably accommodated.
30. Board members found the five-foot setback to a residential neighborhood where twenty-five feet was required and the lot coverage which was greater than 20% of what is permitted in the zone did not allow for sufficient light, air, and open space.

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

1. This application meets all the zoning conditions for a mixed-use development in a B-2 District as set forth in the Township of West Orange Land Use Regulations Ordinance, §25-24.2b.(m).
2. As for the requested variance relief; however, Applicant fails to establish that the c(2) criteria has been met as the detriments of the project substantially outweigh the benefits due to lack of required parking, lot coverage, and setbacks which do not allow for sufficient light, air and open space.

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Township of West Orange that while Applicant met all zoning conditions for a Mixed Use Development in a B-2 Zone, and the required proofs for approval of the c(1) and c(2) variances for the site 410 Main Street Holdings, LLC for property located at 410 Main Street were NOT established and therefore the Application is hereby DENIED.

The undersigned secretary certifies the decision set forth herein was made by this Board on December 11, 2024 and memorialized herein pursuant to N.J.S.A. 40:55D10(g) on January 8, 2025.



Jamilet Baquerizo Vite
Planning Board Secretary

Vote Action Taken by the Board on December 11, 2024:

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

Vote on Memorialization on January 8, 2025:

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

PRIME TUVEL & MICELI

By: Benjamin T.F. Wine, Esquire

N.J. Attorney ID No. 289902018

1 University Plaza, Suite 500

Hackensack, NJ 07601

Attorney for Plaintiff, 410 Main St Holdings LLC

410 MAIN ST HOLDINGS LLC	:	SUPERIOR COURT OF NEW JERSEY
	:	ESSEX COUNTY
<i>Plaintiff,</i>	:	CIVIL PART - LAW DIVISION
	:	
v.	:	DOCKET NO.
	:	
TOWNSHIP OF WEST ORANGE	:	Civil Action
PLANNING BOARD	:	
	:	COMPLAINT IN LIEU OF
	:	PREROGATIVE WRITS
<i>Defendant.</i>	:	
	:	

Plaintiff, 410 Main St Holdings LLC (hereinafter referred to as the “Applicant” and/or “Plaintiff”), by and through its undersigned counsel, Benjamin T.F. Wine, Esquire, of the firm of Prime Tuvell & Miceli, hereby presents this Complaint in Lieu of Prerogative Writs against Defendant, Township of West Orange Planning Board (hereinafter referred to as the “Board” and/or “Defendant”), and, as such, respectfully avers as follows:

OPERATIVE FACTS

I. The Parties and the Property

1. Plaintiff is the owner of certain real property located at the corner of Main Street and Park Drive North in the Township of West Orange, Essex County, State of New Jersey, and designated as Block 113, Lots 262, 264, and 308 on the Township of West Orange Tax Map (hereinafter collectively referred to as the “Property”).

2. The Board is the duly constituted Planning Board of the Township of West Orange (hereinafter referred to as the “Township”), performing the duties and powers of a planning board

pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. (hereinafter referred to as the “MLUL”).

3. The Property is located on Main Street and situated in the City’s General Business District (hereinafter referred to as the “B-2 Zone”) as set forth the Township’s Zoning Ordinance (hereinafter referred to as the “Zoning Ordinance”).

4. The Property is made up of three (3) tax lots. The Property measures 11,936 sq. ft. and is situated on the southwest corner of Main Street and Park Drive North. The B-2 Zone allows for mixed-use development as a conditional use under §25-24.2(b)(2)(m) of the Zoning Ordinance on lots measuring 5,000 sq. ft. or larger under the following conditions: (1) Permitted uses on the ground floor of a mixed-use development shall include the following permitted uses in the B-1 and B-2 Districts: retail store, personal service store or studio, office, business or vocational school, restaurant, bar, massage, bodywork or somatic therapy establishment, and fitness center/health club; (2) One or more dwelling units shall be permitted on the upper floor(s) above any of the permitted ground floor uses in § 25-24.2b2(m)(1); (3) Access to upper floor uses shall be provided by means of a separate entrance than provided for ground floor uses; and (4) Minimum lot area shall be 5,000 square feet, and the minimum street frontage of such lot shall be 50 feet. The Board took jurisdiction of the Application (hereinafter defined) upon its determination that the Applicant meets the above-referenced conditions.

5. The Property is adjacent to a mixture of single-family, commercial, and multifamily uses.

6. The Property is currently vacant.

II. The Application

7. Plaintiff filed an application with the Board on or about January 29, 2024 for

preliminary and final major site plan approval along with conditional use approval and bulk variance relief pursuant to N.J.S.A. 40:55D-70(c) (hereinafter referred to as “Application”).

8. The Application proposed to develop the Property with a three- (3) story mixed-use development consisting of an approximately 900 sq. ft. commercial unit and 14 indoor parking spaces on the ground floor, with 2 floors containing 12 residential units above, along with other related site improvements (hereinafter referred to as the “Proposed Development”).

9. Throughout discussions with the Board’s consultants and in a meeting with the Downtown West Orange Alliance, it was determined that it would be impractical and undesirable to develop the Property with one of the permitted uses, and that the site was appropriate for the conditionally permitted use proposed. The Property is also located on the border between standard single-family residential areas and the more transit-oriented B-2 Zone on Main Street. The Property had also been the subject of a number of development conversations over the years, none of which came to fruition.

10. Plaintiff’s plan met the conditional use criteria, but due to unique characteristics of the Property required bulk variance relief.

11. The bulk variances required as part of the Application included:

- a. Front yard setback (Main Street) less than required; 25 ft. required; 5 proposed.
- b. Front yard setback (Park Drive North) less than required; 25 ft. required; 5.14 ft. proposed.
- c. Side yard setback (ground floor) less than required; 10 ft. required; 5.22 ft. proposed.
- d. Rear yard setback less than required; 30 ft. required; 8.16 ft. proposed.

- e. Number of stories greater than permitted; 2.5 stories permitted; 3 proposed.
- f. Building coverage greater than permitted; 40% permitted; 73% proposed.
- g. Lot coverage greater than permitted; 60% permitted; 82% proposed.
- h. Number of parking spaces less than required; 25 spaces required; 14 proposed.

12. Single-family residential, as existed prior to demolition, is not a permitted use in the B-2 Zone, nor is multi-family residential permitted without a commercial component.

III. Procedural History

13. The Board held a hearing on the Application over six dates: June 5, 2024, August 7, 2024, September 4, 2024, November 6, 2024, December 4, 2024 and December 11, 2024 (hereinafter referred to collectively as the “Hearing”).

14. Plaintiff presented testimony of the following witnesses during the Hearing:

- a. Brittany Klimm, RA and Yogesh Mistry, RA, licensed architects;
- b. Aliasgar Rangwala, PE project engineer;
- c. Harold Maltz, PE, traffic engineer; and
- d. Mallory Clark, PP, AICP, professional planner.

15. The credentials of Plaintiff’s witness were accepted by the Board without objection. In addition, Plaintiff’s witnesses were available for and subjected to extensive cross-examination by the Board, its professionals, and by various other members of the public.

16. On June 5, 2024, the Board held the initial Hearing. Plaintiff was represented by Jason R. Tuvel, Esq. Plaintiff had Ms. Klimm sworn in as a licensed architect and presented testimony regarding the Proposed Development to the Board.

17. Ms. Klimm oriented the Board to the Property’s location; it being situated on the

west corner of Main Street and Park Drive North. She testified to the drastic grade change along the Property as it moves to the rear west on Park Drive North, with the grade rising approximately 15 ft. from Main Street to the rear. She testified that there is currently a retaining wall along Main Street which would be eliminated with the Proposed Development to open up the neighborhood commercial portion of the Proposed Development. She also walked the Board through the bulk standards of the B-2 Zone and the Proposed Development.

18. Ms. Klimm also described the overall site development, as well as the proposed traffic and pedestrian flow to and from the Property. She also testified to the floor plans, unit breakdowns and sizes, and exterior building materials.

19. Ms. Klimm testified to the building height, and that although the Proposed Development is technically a 3-story building, from the rear it appears as a 2-story building due to the substantial grade change.

20. Ms. Klimm also testified that the Proposed Development meets all required building and safety codes and would be fully sprinklered and ADA accessible. She also testified to the energy efficient measures included in the Proposed Development.

21. Ms. Klimm also testified that the Proposed Development meets the conditional use requirements as it has a 900 sq. ft. commercial space on the ground level and a separate entrance for the residential component of the Proposed Development.

22. Ms. Klimm testified that the parking would be screened from view of neighboring properties. She also testified that the driveway entrance is located along Park Drive North to prevent vehicle entry onto the busier Main Street, and that the garage doorway is 22 ft. wide to allow vehicles to enter and exit at the same time.

23. Ms. Klimm also responded to questions from the Board that a taller building would

not necessarily allow for increased parking due to the Property topography, and would then trigger a height variance pursuant to N.J.S.A. 40:55D-70(d)(6), thereby shifting jurisdiction to the Zoning Board of Adjustment.

24. The Board professionals made comments that canopies could be installed rather than black-out windows to screen the parking areas and that as a condition of approval a term be added to the lease clarifying that the “1-bedroom plus den” units could not use the den as a second bedroom.

25. The matter was continued at a Board meeting held on August 7, 2024 with preservation of notice. Benjamin T.F. Wine, Esq. appeared as Plaintiff’s counsel at this hearing. At this meeting, Ms. Klimm was recalled to testify. She testified to a changed façade that better integrates with other historic buildings along Main Street, including bringing the main building entrance on to Main Street with wider sidewalks along with changes to the window sizes, designs and locations.

26. Ms. Klimm responded to questions from the Board regarding the trash room and roof access. Ms. Klimm also responded to questions from the Board professionals regarding trash location and pick up. Ms. Klimm also responded to questions as to whether a green roof was considered.

27. The application was open to public questions of the architect, and Ms. Klimm responded to questions from the public regarding the artistic rendering, the warning lights and sound from the garage door, and the building height. Ms. Klimm also responded to a question from the public regarding the side yard setback to clarify that although at ground level, the setback is only 5 ft., at the upper residential levels which are at level with the neighboring residential properties, the Proposed Development does meet the 10 ft. setback requirement.

28. Next the Plaintiff called upon its professional engineer, Aliasgar Rangwala to testify. Plaintiff had Mr. Rangwala sworn in as a licensed engineer and accepted as a professional to present testimony regarding the Proposed Development.

29. Mr. Rangwala testified to the plans he prepared, with revision date May 16, 2024. He testified to the proposed setbacks and coverages for the Proposed Development. He also testified to the improvements in stormwater management proposed, which would result in collecting 95% of all stormwater on the Property which will slowly empty into the sewer system.

30. Mr. Rangwala also testified that due to Property conditions related to the grade, it is impossible to create a fully ADA compliant sidewalk.

31. Mr. Rangwala also testified to proposed site conditions, including the landscaping plans with new trees and shrubs acting as a buffer to neighboring residential properties.

32. Mr. Rangwala also testified to the exterior and interior lighting plan, which complies with the Township's lighting requirements.

33. Mr. Rangwala also responded to questions from the Board regarding the setbacks as well as the slope of the Property and at the garage exit. He also testified that all of the down spouts will be connected to the underground stormwater system.

34. Mr. Rangwala responded to questions from the Board professionals regarding the stormwater detention system.

35. The hearing was opened for questions from the public, and Mr. Rangwala responded to several questions regarding utility connections, stormwater management, the landscaping plan, and sidewalk replacement.

36. The Application was then carried to the September 4, 2024 meeting with preservation of notice.

37. At the September Hearing, the Applicant recalled its Architect, and this time testimony was given by Yogesh Mistry of Mistry Design.

38. Mr. Mistry was sworn in and accepted as a licensed architect.

39. Mr. Mistry testified to plan updates, specifically the addition of a green roof element that had been requested by the Board, totaling 1,600 sq. ft. of green infrastructure. Mr. Mistry also testified to the relocation of the trash room and lobby area, in response to prior comments from Board planner Mr. Haizel, shifting the trash area more interior to the building.

40. Mr. Mistry also testified that with the proposed changes, one unit would be changed from a “1-bedroom plus den” to a 1-bedroom. He also testified to the inclusion of an ADA bathroom in the commercial unit, in response to a prior comment from the Board.

41. Mr. Mistry also testified to changes in the exterior lighting, including warning lights near the entrance of the parking garage.

42. Mr. Mistry also testified that the design layout change allowed for the addition of a 14th parking space in the garage.¹

43. Mr. Mistry responded to questions from the Board and the public related to the plan revisions.

44. Plaintiff next offered Harold Maltz, who was sworn in and accepted as an expert in the field of traffic engineering.

45. Mr. Maltz testified to the trip generation analysis and site parking analysis prepared by his firm.

46. Mr. Maltz testified that Park Drive North is a one-way traffic street where traffic is not permitted on the left side (the Property side) of the street. He also testified that Main Street

¹ In the initial iteration of the Application, only 13 parking spaces were provided.

measures 46 ft. wide with two-way traffic and a 25mph speed limit. There is no parking permitted on the streets in the early morning hours (2am-5am).

47. Mr. Maltz testified that bus stops exist in front of the Property along Main Street and immediately across Main Street, and that the Property is in a prime corridor for transit-oriented development.

48. Mr. Maltz testified to the trip generation analysis he prepared. Mr. Maltz testified that under Institute of Transportation Engineers (“ITE”) standards, 12 residential units would produce 5 peak hour morning trips (4 out trips and 1 in trip) and in the evening hours it would generate 6 peak hour trips. He also testified that for the commercial unit, he calculated separately for office use and retail as it is currently undecided. For both retail and office, there are 2 trips calculated in morning peak hours while the retail (higher) generates 6 evening peak hour trips. Mr. Maltz testified this gives a total of 7 morning peak hour trip and 12 evening peak hour trips for the Proposed Development. This is an average of 1 trip every 5-9 minutes during peak travel hours, and less during off-peak times.

49. Mr. Maltz testified that the calculated trip generation is deemed inconsequential for any impact on Main Street or Park Drive traffic.

50. Mr. Maltz also testified to the parking study. He testified there are 14 proposed spaces for 12 residential units and 1 commercial space. Pursuant to the State of New Jersey Residential Site Improvement Standards (“RSIS”) and Township standards, the Proposed Development would require 27 parking spaces, and taking the EV credit that results in 25 parking spaces required, or a deficiency of 11 parking spaces.

51. Mr. Maltz testified that RSIS standards state the number of parking spaces required based upon the number and size of units, as well as the availability of on-street parking and

access to mass transit options. Mr. Maltz testified that the Proposed Development is in close proximity to multiple bus stops. The New Jersey Transit Publication Planning for Transit Friendly Land identifies parking reductions for residential and commercial developments within a ¼ mile of public transit, resulting in a 10% reduction in demand for parking. Taking the 10% reduction from the Proposed Development results in real parking demand of only 22 spaces, meaning the actual parking deficiency is only 8 spaces.

52. Mr. Maltz further testified that there is a municipal lot to the North off Main Street, the Plaintiff would work with the Township to obtain permits for any added parking needed.

53. Mr. Maltz also testified that the bus stop on Main Street is not properly painted and extends 32 ft. past the required distance, and that correcting this issue would create increased on-street parking.

54. Mr. Maltz responded to questions from the Board regarding RSIS standards and his methodology of preparing the traffic and parking analysis reports. He also responded to questions regarding a possible lease of parking space from Bethany Church, right across from the Property on Main Street. Mr. Maltz also testified that he has no concerns with the proximity of the garage entrance to the intersection of Park Drive and Main Street.

55. Mr. Maltz responded to questions from the Board professionals regarding general parking availability on Main Street and Park Drive. Mr. Maltz was also asked if it would be better to have the garage entrance on Main Street, to which the Applicant clarified that in conversations with Essex County, a curb cut would not be permitted along Main Street.

56. Mr. Maltz also responded to questions from the public regarding on-street parking and local traffic congestion. Mr. Maltz also testified that the Proposed Development is deemed a low trip generator by ITE standards and would have a negligible impact on local parking and

traffic.

57. The Application was carried to the November 6, 2024 meeting with preservation of notice. At the hearing the Applicant reviewed all plan changes to date based upon comments from the Board and its professionals. The Applicant called upon Mallory Clark, professional planner, to testify. Ms. Clark was sworn in and accepted as an expert in professional planning.

58. Ms. Clark testified that the Proposed Development is in the B-2 Zone where mixed-use developments are a permitted conditional use. Ms. Clark testified that the required conditions for a mixed-use development are: (1) the ground floor must contain a permitted commercial use; (2) dwelling units are permitted above the ground floor; (3) access to the upper floor residential units must be separate from access to the commercial space; and (4) the lot size must exceed 5,000 sq. ft. with 50 ft. of lot frontage. Ms. Clark confirmed on the record that the Proposed Development met all of these conditions.

59. Ms. Clark testified that the general permitted uses in the B-2 Zone are more traditional commercial uses that require a substantial amount of surface parking to serve the use. The Proposed Development does not propose high traffic commercial space and therefore has a lesser need for parking than the other contemplated permitted uses. She testified that the B-2 standards do not align with the goals of the Master Plan as it relates to the conditional uses in the B-2 Zone, and that the Proposed Development is in line with the goals of the Master Plan.

60. Ms. Clark also testified that due to the irregular shape of the Property, its drastic grade change, and its siting on a corner; in order to comply with all of the bulk requirements of the B-2 Zone, any application would be limited to a 3,000 sq. ft. building footprint with 8,000 sq. ft. of open area, which does not align with modern development standards for mixed-use development.

61. Ms. Clark compared the Property to development standards for mixed-use development within the Township's Downtown Redevelopment Plan (the "DRP") Edison Mixed Use Residential Zone ("E-MR Zone") standards. She testified that in the E-MR Zone, which also contemplates mixed-use development along main thoroughfares, the DRP provides for 0 ft. front yard and 3 ft. side yard setbacks. Combined with the coverage requirements, development pursuant to those standards would allow for a 7,100 sq. ft. building footprint on the subject Property.

62. Ms. Clark also testified regarding the Central Valley Corridor Redevelopment Plan (the "CVCRP"), which requires a 7 ft. front yard setback, 10 ft. rear yard setback, and 4 ft. side yard setbacks. Ms. Clark testified that applying those standards to the subject Property would result in an 8,300 sq. ft. building footprint.

63. Ms. Clark utilized the DRP and the CVCRP as examples of the two other districts in the Township where mixed-use development is contemplated.

64. Ms. Clark also testified regarding the story variance, and that although the B-2 Zone limits development to 2.5 stories, the Proposed Development presents as three stories along Main Street where there are other three- (3) story developments, but along Park Drive North, where the properties are residential, it presents as 2.5 stories due to the significant grade change.

65. Ms. Clark testified to the side yard setback variance sought, stating that although 10 ft. is required and the Proposed Development is providing 5.22 ft. at ground level, the upper floors provide the full 10 ft., and the ground floor is screened by dense landscaping. In addition, Ms. Clark testified that while the required front yard setbacks are 25/30 ft., the Proposed Development is contemplated at 5 ft. which is more in line with expected setbacks for mixed-use development, especially along Main Street. Ms. Clark testified that the Proposed

Development is still consistent with median setbacks in the area and the Township is better served connecting the Proposed Development to the streetscape rather than having an incongruous setback.

66. Ms. Clark also testified regarding the parking variance, that 25 spaces are required and 14 are proposed. She testified that this deficit has been addressed through a co-parking agreement with Bethany Church across the street and the availability of permits in the municipal lot, which Plaintiff would venture to secure for the occupants of the Proposed Development as needed. Ms. Clark further testified that the Township Ordinance allows for off-site parking within 250 ft. of the subject property, with which the Proposed Development complies.

67. Ms. Clark testified to some of the benefits associated with the Proposed Development, including the improved stormwater detention system, green roof system, and improvement of a vacant lot with attractive development, and improvements to the sidewalk and crosswalk. Ms. Clark also testified that the Proposed Development meets objectives 9, 11, and 13 of the Township's Master Plan.

68. Ms. Clark testified that pursuant to the c(2) balancing test, an applicant must show that the benefits associated with the Proposed Development substantially outweigh the detriments, if any. Ms. Clark testified that she believes the Proposed Development meets that test.

69. Ms. Clark responded to questions from the Board regarding the ground floor setbacks, stating that in a perfect world the Proposed Development would comply at the ground floor, but the proposed footprint allows for more parking and better circulation which in her opinion was a better benefit, especially given the Board's and the public's focus on trying to achieve parking compliance. Ms. Clark also responded to questions regarding the impact to

stormwater runoff with the implementation of a green roof.

70. Ms. Clark also responded to questions from the public, testifying that the Proposed Development does allow for “light, air and open space” to occupants and neighbors. Ms. Clark also testified in response to a question from a member of the public that the Proposed Development is density-compliant.

71. The public hearing was then adjourned to the December 4, 2024 date with preservation of notice. At the December 4, 2024 hearing, Ms. Clark testified again to the public benefits associated with the Proposed Development, specifically the improvements in stormwater, green roof, beautification of the property, and bringing the corner of the Main Street corridor more in line with other uses. She also testified to the safety improvements for pedestrians proposed related to the garage and crossing Main Street; specifically, that the Applicant reached out to Essex County and were advised that the addition of a crosswalk across Main Street would be a welcome addition irrespective of the subject Application in order to connect pedestrians to the bus stops on both sides of Main Street.

72. Ms. Clark again answered questions from the Board and public, primarily related to parking and the use of Bethany Church and municipal lot for additional parking.

73. The Application was opened for public comment, where several members of the public voiced their concerns and some in support of the Proposed Development.

74. The Hearing was then adjourned to December 11, 2024 with preservation of notice.

75. At the December 11, 2024 hearing, Mr. Wine delivered a closing argument. The Board then entered into deliberation and a vote, whereby a motion to deny the Application was made and succeeded with a vote of 6-3.

IV. The Resolution

76. On January 8, 2025 the Board memorialized its decision on the Application by way of written resolution (hereinafter referred to as the “Resolution”). The Resolution is annexed hereto as **Exhibit A**.

77. The Resolution omits relevant facts that would more accurately portray the testimony, evidence and comments presented at the Hearing.

78. First, the Resolution (paragraphs 23-25) in citing support for the denial states: “Mr. Haizel testified that the proposed project would be the largest building in the area with only the Senior Building located a block away being larger.” This statement is something of an understatement as the Senior Building is significantly larger. The Resolution further quotes Mr. Haizel to state “[He] further testified that parking was driving the design of the building because to achieve necessary depth for parking, the building had to cover most of the lot.” But also “Mr. Haizel expressed concern and the limited on-site parking....” Reading these statements together, it is clear the Board was looking for something impossible, seeking a smaller building, which then creates a smaller footprint for parking, which only exacerbates the issue of limited parking. This was one of the points articulated well by Ms. Clark in explaining that the B-2 Zone standards do not make sense or align with the Master Plan for a mixed-use development.

79. Second, the Resolution states in point 26: “A majority of Board members opined that... the close setback to Main Street was not in keeping with other buildings in the area.” This too is incorrect. Plaintiff’s Architect and Planner both testified that nearby development on Main Street had similar setbacks and were in fact more stories, and that each residential property along Park Drive North had side yard setbacks of 5 to 7 ft. It was also noted in testimony the Property today has a retaining wall along Main Street with the same setback. Plaintiff’s planner testified that by bringing the building setback to street level, it would be an improvement for site

circulation.

80. The Resolution also states: “Board members did not find Applicant’s traffic expert to be credible.” This is being offered without the Board having heard from an objecting traffic engineer or there being any testimony on record in opposition to Mr. Maltz’s testimony. The Board is free to disagree with an expert, but “must do so in reliance on contrary expert testimony rather than “bare allegations or unsubstantiated beliefs.” See N.Y. SMSA, at 338 (citing Cell S. of N.J., Inc. v. Zoning Bd. of Adj., W. Windsor, 172 N.J. 75, 87 (2002)).

81. The Resolution also states: “Applicant fails to establish the c(2) criteria has been met as the detriments of the project substantially outweigh the benefits due to lack of required parking, lot coverage, and setbacks which do not allow for sufficient light, air and open space.” Again, Plaintiff contends this is a misapplication of the standard. At no point did the Board hear from an objecting planner to counter Ms. Clark’s planning testimony, and even when the Board’s planner suggested he had concerns about the size of the Proposed Development, there was no testimony regarding the planning proofs. Moreover, the Applicant addressed every one of the Board’s voiced concerns – a fact appreciated by several Board members on record during deliberation – over the course of the six Hearing dates and multiple plan revisions.

82. The Resolution is bare of details to counter Plaintiff’s expert testimony, and that is for good reason, as there was no such testimony. Reviewing the six public hearings, the opposition primarily came from the public who voiced concerns about traffic and safety issues along Main Street, neither of which would be impacted by this Proposed Development, and which were expressly addressed by the Applicant’s experts.

83. The Resolution further fails to address the fact that the Board’s planner testified that he thinks “this is a good use for the site and...it’s in keeping with the master plans and

ordinance” and will help “enliven this strip” and “calm the [zooming] a bit.” These are all statements in favor of Plaintiff’s Application.

84. The minimal findings set forth within the Resolution are wholly inconsistent with the evidence and testimony presented by Plaintiff and Plaintiff’s professionals. Further, they are not supported by the evidence in the record.

COUNT I
The Board’s Denial of the Application was
Arbitrary, Capricious and Unreasonable.

85. Plaintiff incorporates all of the foregoing paragraphs by reference as if same were fully set forth at length herein.

86. The request for bulk variance relief was justified because the evidence demonstrated that the Property could sufficiently accommodate a mixed-use development while being essentially compliant with the bulk requirements set forth in comparable zones.

87. Plaintiff presented credible testimony by a professional planner that the Proposed Development would meet the positive and negative criteria for variances requested.

88. The Board’s own planner indicated that the attempt to provide additional parking on-site is what was driving the majority of the variance requests; something the Board expressly desired.

89. However, the Board did not provide any factual findings or legal conclusions in support of its outright disregard for the proofs presented by Plaintiff.

90. There is simply no credible evidence in the record to contradict Plaintiff’s satisfaction of the statutory criteria for the relief requested.

91. The individual actions, as well as the totality of the actions, of the Board in denying the Application, failed to account for the weight of the evidence and proofs established by

Plaintiff and Plaintiff's professionals and constituted an arbitrary, capricious, and unreasonable exercise of official authority by the Board.

92. The Board failed in its exercise of authority pursuant to statutory and governing law to consider the weight of the evidence before it, without any proper basis, and failed to make a determination based upon applicable statutory criteria.

93. The Board arbitrarily and unreasonably ignored the absence of conflicting evidence and wholly disregarded the weight of the evidence established by Plaintiff and Plaintiff's professionals.

94. The Board utterly failed to acknowledge that Plaintiff met the specific statutory criteria necessary for the variance relief requested.

95. Plaintiff's interests have been adversely affected by the Board's arbitrary application of its zoning and land use powers, which have been exercised in violation of the MLUL, other statutory provisions, and governing case law.

96. The denial of the Application was not supported by any credible evidence and was arbitrary, capricious, and unreasonable, and contrary to both fact and law.

WHEREFORE, Plaintiff respectfully request that this Honorable Court enter judgment against Defendants as follows:

- A. Declaring that the Board's denial of the Application was arbitrary, capricious, unreasonable and contrary to the MLUL, the Zoning Ordinance, and the lawful rights of the Plaintiff;
- B. Declaring that the Resolution memorialized by the Board was arbitrary, capricious, unreasonable and contrary to the MLUL, the Zoning Ordinance, and the lawful rights of the Plaintiff;
- C. Granting Plaintiff preliminary and final major site plan and conditional use approval and bulk variance relief, which approval shall expressly include the right of Plaintiff to develop the Property with a three (3) story, mixed-use building with 12 residential units and approximately 900 sq.ft. of commercial

space; and

- D. Awarding such other and further relief as this Honorable Court may deem equitable and just, including attorney's fees and costs of suit.

COUNT II

**The Resolution Adopted by the Board
was Arbitrary, Capricious, and Unreasonable.**

97. Plaintiff incorporates all of the foregoing paragraphs by reference as if same were fully set forth at length herein.

98. The Resolution adopted by the Board failed to accurately depict the Hearing before the Board and the evidence and testimony presented by Plaintiff as set forth in the record.

99. The Resolution further failed to set forth any substantive analysis of the statutory criteria in relation to the specific relief sought by Plaintiff in connection with the Application.

100. The Resolution provided no factual findings or legal conclusions in support of the Board's outright disregard for the specific relief sought by Plaintiff in connection with the Application.

101. The individual actions, as well as the totality of the actions, of the Board in adopting the Resolution failed to account for the weight of the evidence and proofs established by Plaintiff and Plaintiff's professionals and constituted an arbitrary, capricious, and unreasonable exercise of official authority by the Board.

102. The Board failed in its exercise of authority pursuant to statutory and governing law to consider the weight of the evidence before it, without any proper basis, and failed to make a determination based upon applicable statutory criteria.

103. The Board arbitrarily and unreasonably ignored the planning testimony of Plaintiff's expert in favor of inferior evidence and gave unconscionable weight to public comment from non-experts.

104. Separately, despite the undisputed proofs which demonstrated that the Application could be granted in its entirety, the Board arbitrarily, capriciously, and unreasonably adopted the Resolution, which did not include accurate factual findings or legal conclusions.

105. Plaintiff's interests have been adversely affected by the Board's arbitrary application of its zoning and land use powers, which have been exercised in violation of the MLUL, other statutory provisions, and governing case law.

WHEREFORE, Plaintiff respectfully request that this Honorable Court enter judgment against Defendants as follows:

- A. Declaring that the Board's denial of the Application was arbitrary, capricious, unreasonable and contrary to the MLUL, the Zoning Ordinance, and the lawful rights of the Plaintiff;
- B. Declaring that the Resolution memorialized by the Board was arbitrary, capricious, unreasonable and contrary to the MLUL, the Zoning Ordinance, and the lawful rights of the Plaintiff;
- C. Granting Plaintiff preliminary and final major site plan and conditional use approval and bulk variance relief, which approval shall expressly include the right of Plaintiff to develop the Property with a three (3) story, mixed-use building with 12 residential units and approximately 900 sq.ft. of commercial space; and
- D. Awarding such other and further relief as this Honorable Court may deem equitable and just, including attorney's fees and costs of suit.

COUNT III

The Denial of the Application by the Board and the Memorializing Resolution Constituted an Abuse of Discretion.

106. Plaintiff incorporates all of the foregoing paragraphs by reference as if same were fully set forth at length herein.

107. The individual actions, as well as the totality of the actions, of the Board were arbitrary, capricious, unreasonable, and otherwise without basis in law or fact, and contrary to

the Board's statutory obligations and the lawful rights of Plaintiff.

108. Plaintiff's interests have been adversely affected by the Board's arbitrary and irrational application of its planning, zoning, and land use powers, which have been exercised by indirection and in violation of governing law.

109. The Board's actions in denying the Application and adopting the Resolution, despite the overwhelming and uncontroverted testimony and evidence presented by Plaintiff, were contrary to the fundamental principles of sound planning, violated the spirit and intent of the MLUL, and constituted an abuse of discretion.

WHEREFORE, Plaintiff respectfully request that this Honorable Court enter judgment against Defendants as follows:

- A. Declaring that the Board's denial of the Application was arbitrary, capricious, unreasonable and contrary to the MLUL, the Zoning Ordinance, and the lawful rights of the Plaintiff;
- B. Declaring that the Resolution memorialized by the Board was arbitrary, capricious, unreasonable and contrary to the MLUL, the Zoning Ordinance, and the lawful rights of the Plaintiff;
- C. Granting Plaintiff preliminary and final major site plan and conditional use approval and bulk variance relief, which approval shall expressly include the right of Plaintiff to develop the Property with a three (3) story, mixed-use building with 12 residential units and approximately 900 sq.ft. of commercial space; and
- D. Awarding such other and further relief as this Honorable Court may deem equitable and just, including attorney's fees and costs of suit.

COUNT IV

The Denial of the Application by the Board and the Memorializing Resolution are Unsupported by both Fact and Law.

110. Plaintiff incorporates all of the foregoing paragraphs by reference as if same were fully set forth at length herein.

111. The Board's decision must reflect the actual deliberations and specific findings of fact made by it in order to sustain the validity and propriety of same, and such deliberations and findings must be confined to the statutory review powers of the Board.

112. The Board's denial of the Application and the memorializing Resolution are defective and must not be allowed to stand as valid.

113. The Board's reasons for denying the Application are based on factors that were not to be considered by the Board.

114. Further, the factual findings and legal conclusions contained in the Resolution are unsupported by the evidence presented and the record established, make selective reference to the facts presented during the Hearing, are contrary to law, and erroneous, and confirm the arbitrary and capricious conduct exhibited by the Board in denying the Application.

115. The Board failed to make proper factual findings and legal conclusions in accordance with the MLUL, other statutory provisions, and governing case law.

116. The Board's actions of denying the Application and adopting the Resolution were arbitrary, capricious and unreasonable, otherwise without basis in law or fact, and unsupported and contrary to the Board's statutory obligations and the lawful rights of Plaintiff.

WHEREFORE, Plaintiff respectfully request that this Honorable Court enter judgment against Defendants as follows:

- A. Declaring that the Board's denial of the Application was arbitrary, capricious, unreasonable and contrary to the MLUL, the Zoning Ordinance, and the lawful rights of the Plaintiff;
- B. Declaring that the Resolution memorialized by the Board was arbitrary, capricious, unreasonable and contrary to the MLUL, the Zoning Ordinance, and the lawful rights of the Plaintiff;
- C. Granting Plaintiff preliminary and final major site plan and conditional use approval and bulk variance relief, which approval shall expressly include the

right of Plaintiff to develop the Property with a three (3) story, mixed-use building with 12 residential units and approximately 900 sq.ft. of commercial space; and

- D. Awarding such other and further relief as this Honorable Court may deem equitable and just, including attorney's fees and costs of suit.

COUNT V

The Denial of the Application by the Board and the Memorializing Resolution were *Ultra Vires*.

117. Plaintiff incorporates all of the foregoing paragraphs by reference as if same were fully set forth at length herein.

118. Plaintiff made extensive efforts to design the proposed development so as to minimize any negative impacts upon surrounding properties by stepping back the upper levels of the Proposed Development to create better conforming setbacks.

119. In denying the Application, the Board implicitly and expressly acknowledged that its opposition to the Application stemmed from public opposition to the Proposed Development. In so doing, the Board failed to effectuate the intent and purpose of the governing body as expressed within the Borough's Master Plan, and as set forth in detail above, thus usurping the powers of the governing body in contravention of the MLUL, other statutory provisions, and governing case law.

120. Moreover, the Board's concern regarding traffic and safety were only brought up after there had been a vehicular-pedestrian collision along Main Street, which was after Plaintiff's traffic expert had concluded testifying. This accident is even referenced in the Resolution (paragraph 45) and had no bearing on the subject Application and should have been given no weight. In fact, reasonable minds would conclude that this unrelated traffic accident unduly influenced the Board in coming to its decision on the subject Application.

121. As a result of the aforementioned *ultra vires* actions of the Board, Plaintiff has been,

and continues to be, injured and deprived of its rights as developer of the Property.

WHEREFORE, Plaintiff respectfully request that this Honorable Court enter judgment against Defendants as follows:

- A. Declaring that the Board's denial of the Application was arbitrary, capricious, unreasonable and contrary to the MLUL, the Zoning Ordinance, and the lawful rights of the Plaintiff;
- B. Declaring that the Resolution memorialized by the Board was arbitrary, capricious, unreasonable and contrary to the MLUL, the Zoning Ordinance, and the lawful rights of the Plaintiff;
- C. Granting Plaintiff preliminary and final major site plan and conditional use approval and bulk variance relief, which approval shall expressly include the right of Plaintiff to develop the Property with a three (3) story, mixed-use building with 12 residential units and approximately 900 sq.ft. of commercial space; and
- D. Awarding such other and further relief as this Honorable Court may deem equitable and just, including attorney's fees and costs of suit.

COUNT VI

The Board Failed in its Duty to "Turn Square Corners."

122. Plaintiff incorporates all of the foregoing paragraphs by reference as if same were fully set forth at length herein.

123. The Board owes a duty to the public to "turn square corners" as articulated by the Supreme Court in F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418 (1985).

124. By denying the Application, which denial was unsupported by the evidence and testimony presented, the Board improperly and unlawfully acted in violation of this doctrine.

125. The actions of the Board violated fundamental concepts of fairness.

126. As a result of the aforementioned defects and conduct by the Board, Plaintiff has been, and continues to be, injured and deprived of its rights as a business entity and developer of the Property.

WHEREFORE, Plaintiff respectfully request that this Honorable Court enter judgment against Defendants as follows:

- A. Declaring that the Board's denial of the Application was arbitrary, capricious, unreasonable and contrary to the MLUL, the Zoning Ordinance, and the lawful rights of the Plaintiff;
- B. Declaring that the Resolution memorialized by the Board was arbitrary, capricious, unreasonable and contrary to the MLUL, the Zoning Ordinance, and the lawful rights of the Plaintiff;
- C. Granting Plaintiff preliminary and final major site plan and conditional use approval and bulk variance relief, which approval shall expressly include the right of Plaintiff to develop the Property with a three (3) story, mixed-use building with 12 residential units and approximately 900 sq.ft. of commercial space; and
- D. Awarding such other and further relief as this Honorable Court may deem equitable and just, including attorney's fees and costs of suit.

COUNT VII

**In Denying the Application, the Board Improperly Rejected
the Testimony and Proofs Presented in Support of the Application.**

127. Plaintiff incorporates all of the foregoing paragraphs by reference as if same were fully set forth at length herein.

128. As set forth above and in the record, Plaintiff presented factual, lay, and expert testimony establishing that the Application, including bulk variances, could be granted in accordance with the requirements of the MLUL.

129. The record established is devoid of credible evidence or testimony that contradicts the evidence and testimony presented by Plaintiff's witnesses and the Board's own professional staff.

130. In reviewing the Application, the Board's professionals did not raise any significant issues that might support a denial.

131. While the Board may appropriately weigh or reject expert testimony, it may not do

so unreasonably, based only upon bare allegations, unsubstantiated beliefs or net opinion.

132. Plaintiff's expert testimony was clear, informative, and demonstrative of the necessary proofs.

133. The Board's rejection of the testimony and evidence presented by Plaintiff was improper, unsupported and in direct violation of the MLUL, other statutory provisions, and governing case law.

134. The failure of the Board to properly consider the evidence in support of the Application was a violation of law and contrary to the Board's statutory obligations and the lawful rights of Plaintiff.

135. Plaintiff's interests have been adversely affected by the Board's arbitrary and irrational application of its planning, zoning, and land use powers, which have been exercised in violation of governing law.

136. The Board's actions relative to the Application were contrary to the fundamental principles of sound planning and violated the spirit and intent of the MLUL.

WHEREFORE, Plaintiff respectfully request that this Honorable Court enter judgment against Defendants as follows:

- A. Declaring that the Board's denial of the Application was arbitrary, capricious, unreasonable and contrary to the MLUL, the Zoning Ordinance, and the lawful rights of the Plaintiff;
- B. Declaring that the Resolution memorialized by the Board was arbitrary, capricious, unreasonable and contrary to the MLUL, the Zoning Ordinance, and the lawful rights of the Plaintiff;
- C. Granting Plaintiff preliminary and final major site plan and conditional use approval and bulk variance relief, which approval shall expressly include the right of Plaintiff to develop the Property with a three (3) story, mixed-use building with 12 residential units and approximately 900 sq.ft. of commercial space; and

D. Awarding such other and further relief as this Honorable Court may deem equitable and just, including attorney's fees and costs of suit.

COUNT VIII

The Denial of the Application by the Board and the Memorializing Resolution are in Contravention of the MLUL.

137. Plaintiff incorporates all of the foregoing paragraphs by reference as if same were fully set forth at length herein.

138. N.J.S.A. 40:55D-10g requires that "[t]he municipal agency shall include findings of fact and conclusions based thereon in each decision on any application for development and shall reduce the decision to writing."²

139. The minimal and selective factual findings and legal conclusions of the Board set forth on the record and contained within the Resolution reflected a disregard of the evidence and testimony presented by Plaintiff in support of the Application.

140. The Board completely ignored the testimony presented that the Proposed Development was in line with other mixed-use bulk standards and matched the setbacks of other properties along Main Street. The Board also ignored the testimony that at eye-level, the Proposed Development met the setback requirements to neighboring residential properties.

141. The Board also ignored testimony that all other commercial uses along the Main Street corridor are situated at the property line, the Applicant was meeting the neighborhood scheme with the Proposed Development variance request.

142. To this end, the Resolution explicitly attempts to justify the Board's decision based on concerns that were directly and adequately addressed by the Applicant at the Hearing.

143. Furthermore, the legal conclusions of the Board set forth on the record and contained within the Resolution are improper as a matter of law and are in direct violation of the

² See N.J.S.A. 40:55D-10g.

MLUL, other statutory provisions, and governing case law.

144. There is no credible evidence in the record to indicate that the variances sought by Plaintiff would cause substantial detriment to the surrounding properties or substantial impairment of the zone plan. Rather, the testimony and evidence demonstrated that despite the bulk variances, the Proposed Development would be able to comfortably comply with the required setbacks where it mattered, and would better fit in the immediate surrounding area.

145. The Board's denial of the Application and the Resolution memorializing its decision inappropriately relied upon issues unrelated to the specific relief requested by Plaintiff, and, as such, are in contravention of the MLUL.

WHEREFORE, Plaintiff respectfully request that this Honorable Court enter judgment against Defendants as follows:

- A. Declaring that the Board's denial of the Application was arbitrary, capricious, unreasonable and contrary to the MLUL, the Zoning Ordinance, and the lawful rights of the Plaintiff;
- B. Declaring that the Resolution memorialized by the Board was arbitrary, capricious, unreasonable and contrary to the MLUL, the Zoning Ordinance, and the lawful rights of the Plaintiff;
- C. Granting Plaintiff preliminary and final major site plan and conditional use approval and bulk variance relief, which approval shall expressly include the right of Plaintiff to develop the Property with a three (3) story, mixed-use building with 12 residential units and approximately 900 sq.ft. of commercial space; and
- D. Awarding such other and further relief as this Honorable Court may deem equitable and just, including attorney's fees and costs of suit.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully request that this Honorable Court enter judgment against Defendants as follows:

- A. Declaring that the Board's denial of the Application was arbitrary, capricious, unreasonable and contrary to the MLUL, the Zoning Ordinance, and the lawful rights of the Plaintiff;
- B. Declaring that the Resolution memorialized by the Board was arbitrary, capricious, unreasonable and contrary to the MLUL, the Zoning Ordinance, and the lawful rights of the Plaintiff;
- C. Granting Plaintiff preliminary and final major site plan and conditional use approval and bulk variance relief, which approval shall expressly include the right of Plaintiff to develop the Property with a three (3) story, mixed-use building with 12 residential units and approximately 900 sq.ft. of commercial space; and
- D. Awarding such other and further relief as this Honorable Court may deem equitable and just, including attorney's fees and costs of suit.

Respectfully submitted:

PRIME TUVEL & MICELI

Dated: February 28, 2025

By: /s/ Benjamin T.F. Wine
BENJAMIN T.F. WINE, ESQUIRE
Attorney for Plaintiff, 410 Main St Holdings, LLC

DESIGNATION OF TRIAL COUNSEL

Please take notice that, pursuant to Rule 4:5-1(c), BENJAMIN T.F. WINE, ESQUIRE, is hereby designated as trial counsel on behalf of Plaintiff, 410 Main St Holdings, LLC, in connection with the above-captioned matter.

PRIME TUVEL & MICELI

Dated: February 28, 2025

By: /s/ Benjamin T.F. Wine
BENJAMIN T.F. WINE, ESQUIRE
Attorney for Plaintiff, 410 Main St Holdings, LLC

CERTIFICATION PURSUANT TO RULE 4:5-1

The matter in controversy is not the subject of any other action pending in any court or of any other pending arbitration proceeding, and no other action or arbitration proceeding is contemplated. Furthermore, there are no other parties which need to be joined.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Respectfully submitted:

PRIME TUVEL & MICELI

Dated: February 28, 2025

By: /s/ Benjamin T.F. Wine
BENJAMIN T.F. WINE, ESQUIRE
Attorney for Plaintiff, 410 Main St Holdings, LLC

CERTIFICATION PURSUANT TO RULE 4:69-4

Verbatim hearing transcripts and/or recordings of Defendant, Township of West Orange Planning Board, relating to the application of Plaintiff, *410 Main St Holdings, LLC*, on dates June 5, August 7, September 4, November 6, December 4, and December 11, 2024 have been ordered. There are no other hearing transcripts that are known to be required. I accordingly certify that all necessary transcripts of local agency proceedings in this case, to the extent that they exist, have been ordered.

I further certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Respectfully submitted:

PRIME TUVEL & MICELI

Dated: February 28, 2025

By: /s/ Benjamin T.F. Wine
BENJAMIN T.F. WINE, ESQUIRE
Attorney for Plaintiff, 410 Main St Holdings, LLC

Civil Case Information Statement

Case Details: ESSEX | Civil Part Docket# L-001637-25

Case Caption: 410 MAIN ST HOLDINGS , LLC VS WEST ORANGE PLANNI

Case Initiation Date: 02/28/2025

Attorney Name: BENJAMIN T F WINE

Firm Name: PRIME & TUVEL, LLC DBA PRIME LAW

Address: 14000 HORIZON WAY STE 325
MOUNT LAUREL NJ 08054

Phone: 8562738300

Name of Party: PLAINTIFF : 410 Main St Holdings, LLC

Name of Defendant's Primary Insurance Company
(if known): Unknown

Case Type: ACTIONS IN LIEU OF PREROGATIVE WRITS

Document Type: Complaint

Jury Demand: NONE

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Does this case involve claims related to COVID-19? NO

Are sexual abuse claims alleged by: 410 Main St Holdings, LLC?
NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO
Medical Debt Claim? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

02/28/2025
Dated

/s/ BENJAMIN T F WINE
Signed

