

February 25, 2025
Via FedEx 2-Day & Newforma

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

Attn: Diana Chandler-Zimmermann
Zoning Board Secretary

**RE: MPB Realty, LLC
Proposed Popeye's & IHOP Restaurant
Block 153, Lot 38
470 Eagle Rock Avenue (CR 611)
Township of West Orange
Essex County, New Jersey
DEC# 1021-99-025
CME File No. VWRZ0153.01 (60002)
CME File No. WRZ0153.V01**

Dear Ms. Chandler-Zimmermann,

On behalf of the Applicant, MPB Realty, LLC, this letter shall serve as the formal resubmission to the Township of West Orange Zoning Board of Adjustment towards issuance of Preliminary and Final Site Plan Approval for the above referenced project. Enclosed please find the following documents:

- Five (5) copies of the Required Regulatory Approvals List, prepared by our office;
- Five (5) copies of the Verification of Taxes & Sewer Charges Paid, dated 12/11/2024;
- Five (5) copies of the Affidavit of Ownership, dated 7/1/2024;
- Five (5) signed and sealed copies of the Environmental Impact Statement, prepared by our office, dated June 2024, last revised February 2025;
- Five (5) copies of the Justifications of Variances, prepared by Dresdner Robin, dated 2/24/2025;
- Five (5) signed copies of the Acoustical Evaluation, prepared by Lewis S. Goodfriend & Associates, dated 2/3/2025;

- Five (5) signed and sealed copies of the Drainage Statement, prepared by our office, dated June 2024, last revised February 2025;
- Five (5) signed and sealed copies of the Tree Removal Report, prepared by our office, dated February 2025;
- Five (5) signed and sealed copies of the Boundary and Topographic Survey, prepared by Dynamic Survey, LLC, dated 5/13/2021; and
- Five (5) signed and sealed copies of the Preliminary and Final Site Plan drawings, prepared by our office, dated 6/7/2024, last revised 2/24/2025.

The enclosed documents have been provided to address the review comments provided in the following review letters:

- Planning Review #1 Letter, prepared by Christopher N. Dochney, PP, AICP of CME Associates, dated 10/29/2024
- Engineer Review #1 Letter, prepared by John J. Hess, PE, PP, CME of CME Associates, dated 10/31/2024

In order to facilitate your review, below please find an itemized response to the aforementioned letters:

Planning Review #1 Letter, prepared by Christopher N. Dochney, PP, AICP of CME Associates, dated 10/29/2024

Planning Comments

- a. *The applicant should discuss the proposed project, addressing the general scale and scope of improvements proposed for the site. The plans indicate that the existing building is to remain, but the parking areas are to be removed and replaced. What are the extents of renovations of existing improvements and what is proposed to be entirely new construction?*

Testimony will be provided.

- b. *We note that this is not the first application for a drive-thru facility on this property, and that earlier this year an application on this site was dismissed by the Board without prejudice. The applicant should provide testimony addressing any similarities and differences between the previous application before the Board, and the application that is now before the Board.*

Testimony will be provided.

- c. *The application as proposed will require a d-3 conditional use variance for non-compliance with four of the conditional use requirements for a fast food restaurant in the B-2 business district. With any 'd' variance, the applicant has an enhanced burden of proof to demonstrate that both the positive and negative criteria can be satisfied before the Board can grant a 'd' variance:*

- i) *Positive Criteria: The applicant must show that the site remains suitable for the proposed use despite not satisfying the conditional use requirements.*

- ii) *Negative Criteria: The applicant must show that the proposed use will not have a substantial detrimental impact on the public good, and will not substantially impair the intent and purpose of the zone plan.*

Testimony will be provided.

- d. *With this being a 'd-3' conditional use variance, and not a traditional 'd-1' use variance, the applicant does not necessarily need to show special reasons to grant the variance, or that the site is suitable for a fast-food restaurant in general. In accordance with the standards set in the Coventry v. Westwood case, the focus of the Board in applying the positive and negative criteria should be on the deviations from the conditional use requirements rather than on the proposed use overall. As a conditionally permitted use a fast food restaurant is considered suitable for this site, if the conditions were met. The applicant must show that the site continues to be suitable for a fast food restaurant, and that the site can accommodate any problems associated with the use.*

Testimony will be provided.

- e. *It appears that the general intent of the conditional use requirements for fast food restaurants is to limit the impacts of driveways and drive-thru services on the circulation network of the Township for both vehicles and pedestrians, and to limit the impacts of these uses on existing residences. These types of uses tend to have higher traffic impacts during peak hours than other commercial uses, and a high turnover of vehicles entering and exiting the properties which can cause issues with traffic flow.*

Testimony will be provided.

- f. *Outside of the conditional use requirements, it appears that the proposed fast food restaurant satisfies all the standards for a drive-thru service, including signage and space for stacking of vehicles.*

Information. No response required.

- g. *The application as proposed will also require several bulk or 'c' variances. The applicant must satisfy both the positive and negative criteria for each of these variances as well:*
 - i) *Positive Criteria: The applicant must show that either there is an undue hardship (practical difficulty) in conforming to the code, or that the proposed conditions represent a preferable alternative to conforming to the standards of the code, and that the benefits of the deviation would outweigh any detrimental impacts.*
 - ii) *Negative Criteria: The applicant must show that the variance can be granted without substantial detriment to the public good, and without substantially impairing the intent and purpose of the zone plan.*

Testimony will be provided.

- h. *The applicant should address the potential impacts specifically of the drive-thru use to the adjacent residences, in terms of both the visual and potential noise impacts of the use.*

Testimony will be provided.

- i) *We note that the acoustical report provided by the applicant indicates that the proposed uses will comply with state noise regulations, however the technical nature of the report may be difficult to understand. The applicant should discuss the anticipated sound impacts in as plain and practical terms as possible.*

Testimony will be provided.

- ii) *The acoustical report recommends that the fence between the restaurants and the residential uses be constructed of two layers of ¾" plywood, while the site plans show a board on board fence with alternating 1"x4" vertical wood slats. The applicant should discuss how the difference in proposed fencing may impact sound attenuation.*

The Site Plan (Sheet 5 of 23) and Construction Details (Sheet 16 of 23) have been revised to propose a six (6) foot high vinyl sound fence with no gaps as recommended by the acoustical report.

- i. *The proposed garbage dumpster will be located in the southeast corner of the property, 9.4 feet from the rear property line and adjacent to an existing residential lot. The applicant should discuss the methods for collecting garbage, and the anticipated timing and frequency of collection.*

The trash enclosure was relocated to be 28.9' from the rear property line. Testimony will be provided regarding the methods of collection and frequency.

- j. *The applicant should address the proposed landscaping for the site.*
 - i) *Several existing trees along the property lines are proposed to be retained, however it appears that much of the drip line of these trees and likely the root structure will be within the areas of disturbance. The applicant should address the measures that will be taken to protect those trees during construction as they serve as a portion of the proposed buffering between the commercial and residential uses. Minimal details have been provided in the plans.*

As requested by the Board Engineer, the existing trees along the southern property line are invasive and will be removed. The Demolition and Tree Removal Plan (Sheet 4 of 23) has been revised accordingly.

- ii) *There is no landscaping proposed along the eastern property line, where many existing trees will be removed. There is a narrow space between the existing sidewalk on the property line and the proposed parking areas. The applicant should discuss the potential to include some landscaping in this area, and the potential of shifting the proposed retaining wall to create adequate space for plantings.*

Plantings have been provided along the eastern property line.

- iii) *The applicant should discuss anticipated maintenance of trees and plantings in the rear of the property. There appears to be an existing fence at the property line, and a new fence is also proposed in the area, and some trees are proposed to be planted in between the fences.*

All invasive species of trees shall be removed from the southern property line as requested by the board engineer and shown on the Demolition and Tree Removal

Plan (Sheet 4 of 23). The existing fence is to be removed and replaced with a proposed six (6) foot high white vinyl sound fence.

- iv) *In general, we have concerns about maintenance in the rear yard area. Having two fences along the same property line with what appears to be as little as 3 feet of space between them may create an area where maintenance will be difficult at best, and is unlikely to occur.*

Please see previous response.

- k. *There are no sidewalks proposed for Rosney Terrace ROW. The applicant should address the potential to include sidewalks on this street. We note that no sidewalks currently existing along this frontage or elsewhere down the street.*

The Site Plan drawings have been revised to propose a sidewalk within the Rosney Terrace right-of-way.

- l. *A detail is included in the site plan package for a “drive-thru canopy with speaker and conference board”. It is not clear what is intended by the “conf board” portion of this structure. This is not noted to be a menu board, and the speaker is relatively small at the base of the structure. Will there be any messages or signage attached to the face of the structure? Other than the speaker and the canopy, the structure is a +/- 40 s.f. wall.*

The Construction Details (Sheet 18 of 23) has been revised to remove the reference to “conf. board”. No messages or signage will be attached to the structure.

- m. *We defer any comment on grading, drainage, utilities, and stormwater management to the Board Engineer.*

This letter provides an itemized response to the comments issued by the Board Engineer.

- n. *The applicant should address the status of any necessary outside agency approvals.*

Testimony will be provided.

Engineer Review #1 Letter, prepared by John J. Hess, PE, PP, CME of CME Associates, dated 10/31/2024

B. DESIGN COMMENTS

1. *Based on our review, we find that the following items from the Township’s Site Plan/Subdivision Checklist must be addressed:*

- a) *Item #7 - Proof that taxes are current.*

Enclosed please find the Verification of Taxes & Sewer Charges Paid.

- b) *Item #11 - Date of current property survey.*

Enclosed please find the Boundary and Topographic Survey, dated 5/13/2021.

- c) *Item #14 - Affidavit of ownership.*

Enclosed please find the Affidavit of Ownership;

- d) *Item #20 - Copy and/or delineation of any existing or proposed deed restrictions or covenants.*

There are no known existing or proposed deed restrictions or covenants.

- e) *Item #21 - Any existing or proposed easement or land reserved for or dedicated to public use.*

Any known easements and/or dedications are depicted on the enclosed Site Plan drawings and Survey. Should additional easements and/or dedications be required, they will be depicted on a future revision of the Site Plan drawings.

- f) *Item #23 - List of required regulatory approvals or permits.*

Enclosed please find the Required Regulatory Approvals List.

- g) *Item #52 - Plans and legal documents for compliance with West Orange COAH Ordinances.*

The Applicant's Attorney will provide this information under separate cover as a condition of approval.

- h) *As required by NJAC 13:40-7.2(a)1, a signed and sealed copy of a survey of the property being developed must be submitted to the Board with the site plan submission.*

Enclosed please find the Boundary and Topographic Survey.

2. *The Applicant has not requested any waivers in support of this application.*

Information. No response required.

3. *It states on the plans that the IHOP restaurant will be open 24 hours a day, 7 days a week while the Popeye's restaurant will be open 10:30 am to 11:00 pm from Sunday to Thursday and 10:30 am to 11:30 pm on Friday and Saturday.*

The IHOP restaurant hours of operations have been revised to be from 6:00 AM to 12:00 AM seven days a week. The Popeyes hours remain unchanged.

4. *The Applicant should address the Board regarding the proposed frequency and hours for deliveries to each restaurant.*

Testimony will be provided.

5. *The Applicant should address the Board regarding the proposed frequency and hours for trash pickup at the site.*

Testimony will be provided.

6. *The architectural plans show bollards at several locations along the rear of the building. Therefore, the bollards must be shown on sheet 5.*

The Site Plan (Sheet 5 of 23) has been revised to propose bollards in accordance with the architectural plans.

7. *It shows on sheet 5 of the site plan drawings that the proposed electric vehicle parking space will be located along the westerly side of the building. It is our recommendation that the electric vehicle charging station be located adjacent to one of the handicap accessible parking spaces so that it will be accessible for people with disabilities.*

The Site Plan (Sheet 5 of 23) has been revised to provide an accessible electric vehicle charging station with an accessible route to the proposed building.

8. *It shows on sheet 5 that a 10'x25 masonry trash enclosure is proposed at the southeast corner of the site. The Applicant should provide testimony to the Board to demonstrate that the proposed trash enclosure will have adequate capacity to accommodate the trash and recyclables that will be generated from each restaurant.*

The trash enclosure was relocated to be 28.9' from the rear property line. The trash enclosure now consists of three (3) separate 10' x 10' staggered enclosure areas. Testimony will be provided regarding the methods of collection and frequency.

9. *It shows on sheet 5 that the proposed trash enclosure will be located close to the rear property line. We note that the property in question abuts an existing residential neighborhood. The Applicant should address the Board regarding the anticipated frequency and hours of pickup. Our office is concerned with the potential noise and odor impacts on the adjoining residential properties.*

The trash enclosure was relocated to be 28.9' from the rear property line. The trash enclosure now consists of 3 separate 10' x 10' staggered enclosure areas. Testimony will be provided regarding the methods of collection and frequency.

10. *It states in the Acoustical Evaluation that that Lewis S. Goodfriend & Associates (LSG & A) understands that a 6 ft tall board on board is proposed at the south and west sides of the site. However, that plans do not show that a fence is proposed. This discrepancy must be resolved. In addition, the Acoustical Evaluation recommends constructing the fence with two layers of ¾ inch plywood with overlapping joints, with the two layers on the same side of the supports.*

The Site Plan (Sheet 5 of 23) and Construction Details (Sheet 16 of 23) have been revised to propose a six (6) foot high vinyl fence with no gaps as recommended by the acoustical report.

11. *It states on page 12 of the Environmental Impact Statement that a 2,500 gallon grease trap is proposed for each building. However, the plans show that only one building is proposed. This discrepancy must be resolved. In addition, a detail of the proposed grease trap must be added to the plans.*

The Environmental Impact Statement has been revised to eliminate the discrepancy, one grease trap is proposed for each use. The Construction Details (Sheet 17 of 23) provides a detail of the proposed grease trap.

12. *Sheet 5 shows a stop bar where the easterly drive aisle intersects the drive aisle along the front of the building. In our opinion, a stop bar at this location is unnecessary and should be removed.*

The Site Plan (Sheet 5 of 23) has been revised to eliminate the referenced stop bar.

13. *Sheet 5 should be revised to label all of the proposed on-site traffic signs.*

The Site Plan (Sheet 5 of 23) has been revised to label all proposed on-site traffic signs.

14. *The plans should be revised to include the following details:*

- a) Type A Inlet.*
- b) Concrete encasement of pipes.*
- c) Traffic sign post.*

The Construction Details (Sheet 17 of 23) has been revised to provide the requested details.

C. STORMWATER MANAGEMENT COMMENTS

1. *The proposed development will result in the disturbance of more than 1 acre. As a result, it is classified as a Major Development and is subject to the stormwater management requirements set forth in §25-29.4 of the Ordinance.*

Information. No response required.

2. *The plans show that there will be reduction in the motor vehicle surface coverage at the site. Therefore, the required water quality standards have been met by the Applicant. In addition, the project is delineated on the State Plan Policy Map as a Metropolitan Planning Area (PA-1). Therefore, the project is exempt from complying with the groundwater recharge requirements of the Ordinance.*

Information. No response required.

3. *Our office has reviewed the Stormwater Management Operation and Maintenance Manual and find it to be satisfactory.*

Information. No response required.

4. *The Stormwater Management Operation and Maintenance Manual and any future revisions must be recorded upon the deed of record for the property. Prior to recording, the form of the deed must be approved by the Board Attorney and our office.*

Acknowledged. The Applicant will coordinate recording under separate cover.

5. *It shows on sheet 4 that a Type 'A' inlet currently exists behind the existing building. The Applicant should clarify how this inlet is piped offsite. The location of the discharge from this inlet could affect the Existing Drainage Area Map in the Drainage Statement.*

Our office conducted an additional site visit to the property and were unable to locate the discharge from the existing inlet due to it being filled with debris. The Demolition and Tree Removal Plan (Sheet 4 of 24) has been revised to note the "Contractor to confirm discharge

point of inlet and report back to engineer of record". Should the drainage design require revision once the debris is removed from debris, the updated information will be provided as part of a future revision.

D. TRAFFIC COMMENTS

1. *The Applicant should address the Board regarding where drive-thru customers will park if requested by an employee due to longer waiting times for the food order.*

Testimony will be provided.

2. *The Applicant should address the Board regarding their plans to provide a loading space as required by §25-12.3 of the Ordinance.*

Testimony will be provided.

3. *Sheet 19 includes a vehicle circulation plan for a WB-50 tractor trailer. The plan shows that the truck will only access the front of the site. The Applicant should address the Board on how deliveries will be made to each restaurant without obstructing circulation at the site, including access to the handicap parking spaces.*

Testimony will be provided.

E. LANDSCAPING AND FORESTRY COMMENTS

1. *Every development application shall submit a tree removal and replacement plan, in accordance with the newly adopted Tree Ordinance. The Applicant has indicated trees to be removed on sheet 12 of 22; however, replacement calculations should be provided, as specified in Table 'A' of the newly adopted Tree Ordinance.*

The Demolition and Tree Removal Plan (Sheet 4 of 24) has been revised to provide tree removal and replacement calculations in accordance with the referenced Tree Ordinance.

2. *The Applicant has proposed to preserve the trees along the southern property line; however, it appears most of the trees are invasive species, in poor condition and should be removed in accordance with the newly adopted Tree Ordinance. They consist of Ailanthus, which is the favorite host of the invasive Spotted Lanternfly, as well as Black Locust, another highly invasive species. Our office recommends shifting the proposed fence to be located either closer to the proposed curb or closer to the southern property line, to provide additional planting area for an improved landscaped buffer.*

The Demolition and Tree Removal Plan (Sheet 4 of 23) has been revised to remove the referenced trees and existing fence. The Landscape Plan (Sheet 9 of 23) has been revised to relocate the proposed fence to be along the property line and provide additional plantings to improve the landscaped buffer.

3. *In accordance with Section 25-12.1(o), provide shade trees to create 50% shade for the parking areas within twenty-five (25) years; whereas it does not appear the proposed landscaping will comply.*

The Applicant formally requests a waiver from compliance with this section. The proposed development reduces impervious coverage and proposes trees in compliance with the tree replacement ordinance. Testimony will be provided regarding the request for a waiver.

4. *Revise the plans to provide an alternative for the one (1) proposed ALS (Serviceberry) due to proposed Juniperus, as these two (2) species provide the required hosts for the Cedar Apple Rust fungus. To prevent this infection, one (1) of the host species is removed. Our office recommends single stem Redbud to replace ALS.*

The Landscape Plan (Sheet 9 of 23) has been revised accordingly.

5. *Our office does not recommend providing TC (Hemlock) due to Hemlock Woolly Adelgid, as well as its reduced performance in full sun locations. An alternative should be provided.*

The Landscape Plan (Sheet 9 of 23) has been revised accordingly.

6. *Revise the plans to provide shade trees along Rosney Terrace. Currently, the three (3) existing trees proposed to remain are a Flowering Pear at the corner, which is invasive and in poor condition, and two (2) Zelkova, which have poor form and are in decline. Our office recommends removing these trees and providing four (4) single stem Redbud along the Rosney Terrace.*

The Landscape Plan (Sheet 9 of 23) has been revised to remove the referenced existing trees and provided additional trees more suitable for their location next to the proposed sidewalk.

7. *The Applicant has proposed CXA (Appalachian Sedge) within the front yard landscaping; however, this species performs best in dry shaded locations. Instead, consider ornamental grasses, such as Blue Grama Grass, and flowering perennials, such as Catmint, Ornamental Onion, Black Eyed Susan, etc.*

The Landscape Plan (Sheet 9 of 23) has been revised accordingly.

8. *Revise the plans to increase the graphic size for proposed JVT (Taylor Juniper), as these appear to be smaller than a shrub.*

The Landscape Plan (Sheet 9 of 23) has been revised accordingly.

9. *Revise the plans to graphically depict mulch bed limits on the plans to delineate mulch beds from proposed sodded areas.*

The Landscape Plan (Sheet 9 of 23) has been revised to graphically depict mulch bed limits and sod areas.

F. LIGHTING COMMENTS

1. *In accordance with Section 25-14.3 of the Ordinance, a minimum of 2.0 footcandles is required for parking areas; whereas the applicant has proposed a minimum of 0.6 footcandles. Staff notes that this meets IES (Illuminating Engineering Society) standards.*

Information. No response required.

2. *Provide the manufacturer's catalog cuts for proposed light poles and provide full ordering information for all light fixtures and poles, to prevent confusion during construction. Also, indicate the proposed Kelvin*

light color temperature. Currently, it appears some fixtures are indicated to be 5,000 Kelvin, which our office does not find acceptable due to the unnatural bluish light of this color temperature.

The Lighting Plan (Sheet 10 of 23) has been revised to propose 4000 Kelvin fixtures. The Lighting Details (Sheets 13, 14 & 15 of 23) have been revised to provide manufacturer's catalog cuts and ordering information.

Please review the enclosed documents towards issuance of Preliminary and Final Site Plan Approval at your earliest convenience.

Should you have any questions, comments or require additional information, please do not hesitate to contact our office.

Sincerely,

DYNAMIC ENGINEERING CONSULTANTS, PC



Matthew J. Bersch, PE



Danny Goncalves

Enclosures

cc: Benjamin T.F. Wine, Esq. (via Newforma)
Ed Baksh (via Newforma)
Lawrence BenBassett (via Newforma)
Kevin Savage, PE, PTOE (via Newforma)
Robert A. Grimaldi, RA (via Newforma)
Mallory Clark, PP (via Newforma)
Michael J. Dick, INCE Bd. Cert. (via Newforma)