

RESOLUTION
Township of West Orange
Planning Board
PB 24-19 TheWayMaker LLC/40 Eagle Ridge Way
Block: 106 Lot: 20.03; Zone: R-1
Decided on April 16, 2025
Memorialized on May 7, 2025
Application for Preliminary and Final Site Plan Approval Without Variances and Soil
Removal Permit

WHEREAS, TheWayMaker, LLC (Hereinafter the “Applicant”) made an application for Preliminary and Final Site Plan Approval without variances and for a Soil Removal Permit to construct a stormwater collection system, grading and landscaping located at 40 Eagle Ridge Way, also known as Block: 106; Lot 20.03 (the “Property”); and

WHEREAS, the Property is located in the R-1 Zoning District which permits a one-family home with accessory uses that include a pool and a pool house; and

WHEREAS, a properly noticed public hearing on the application was conducted on January 22, 2025, February 12, 2025, March 12, 2025, April 9, 2025, and April 16, 2025; and

WHEREAS, the Applicant was represented by Priscilla J. Triolo, Esq. of the firm Bittiger Elias, Triolo & Diehl, P.C.; and

WHEREAS, the Applicant provided testimony of Richard Cohn, Manager of TheWayMaker, LLC, Jesse Cokeley, P.E. of Colliers Engineering and Design, as a licensed New Jersey Engineer and Paul Grabowski, contractor; (the “Applicant’s Witnesses”); and

WHEREAS, Robert F. Simon, Esq. of the firm Herold Law, P.A., appeared for the Committee of Managers of Llewellyn Park (the “Objector”), and presented on behalf of the

Objector testimony from Eric Keller, P.E., of the Bowman Consulting Group Ltd. (“Objector’s Witness”); and

WHEREAS, in addition to the Development Application and Checklists the Applicant submitted the following plans to the Board as part the application package:

ITEM	SIGNED BY	DATE/REVISION
Colliers Engineering and Design, Site Plan (8 pages)	Jesse B. Cokeley, P.E.	9/17/2024
Stormwater Management Report	Jesse B. Cokeley, P.E.	9/16/2024
Omland & Osterkorn, Inc. Survey	Kiersten Osterkorn, P.E., L.S., P.P.	5/22/2024
Topographical Survey, Roberts Engineering Group	Ted W. Pivovarnick, PLS	2/10/2021
Geotechnical Data Report	Francisco Sanchez-Dominici, P.E.	2/27/2025

WHEREAS, Applicant submitted revised documents at the hearing that included a draft settlement agreement signed by Applicant’s Managing Member, Richard Cohn (who also signed the settlement agreement on behalf of Waystone Realty, LLC owner of 42 Eagle Ridge Way) dated April 16, 2025 that was represented by the Applicant to memorialize a private agreement between the Applicant, the owner of 42 Eagle Ridge Way and the Objector regarding enhancements to the proposed drainage system; and which settlement agreement contained an Exhibit A: Amended Landscape and Drainage Exhibit (Colorized grading and drainage plan with a proposed overlay modification marked A-1 at the hearing of April 16, 2025) and A-2: Sheet 2 of 9 from site plan submitted to the West Orange Zoning Board for 42 Eagle Ridge Way, West Orange, New Jersey showing additional landscaping and the location for a stormwater drainage ditch subject to the terms of the settlement agreement; and

WHEREAS, the Settlement Agreement was submitted to the Board, which includes Paragraph 5 of the Settlement Agreement that states that the Applicant's compliance with the Settlement Agreement shall be made as a condition of approval of the Application; and

WHEREAS, representatives of the public were provided with an opportunity to pose questions to the Applicant's Witnesses and had an opportunity to offer statements regarding the application; and

WHEREAS, the Board reviewed and considered the application, and the documents submitted therewith and the testimony of the Applicant's Witnesses and the testimony of the Witnesses in opposition to the application; and

WHEREAS, the Board also considered the testimony and filed review letters of its professionals at the hearing: Phillip Scott, P.E., C.M.E. of Matrix New World Engineering Progress report dated November 26, 2024, revised January 8, 2025, and report dated March 11, 2025; and, Gerald M. Haizel, P.P., A.I.C.P. of Nishuane Group, report dated November 29, 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 Site Plan Approval for a major development under the Township's Stormwater Management Ordinances relating to site work to construct a subsurface chamber infiltration basin in the rear yard, construct curtain drains and replace the macadam driveway with pervious pavers.
2. The property consists of a single-family home with an attached garage, an inground pool and a pool house located on approximately 2.067 acres.
3. Approximately 1.88 acres of the subject property has or will be disturbed to accommodate the pool building and inground pool which were under construction

and the drainage facilities, some of which have been constructed and others to be constructed as part of the within application.

4. When the pool building and inground pool construction began less than an acre of land was anticipated to be disturbed; however, during construction it was determined that more than an acre was disturbed, and site work was stopped pending approval from the Planning Board.
5. TheWayMaker, LLC owns 40 Eagle Ridge Way and Richard Cohn, the manager, resides there with his wife and son.
6. Mr. Cohn and his family, residents of West Orange since 1997, moved to 40 Eagle Ridge Way in May of 2021 and began designing a pool and pool house. They applied for and received permits for the construction of both the pool and pool house.
7. Applicant hired Grabowski Construction to perform the site improvements and as part of the improvements, during excavation, the contractor created a temporary berm to act as a moat.
8. Also, during the course of construction, a boulder wall was built up as an interim measure until the storm water system could be installed and then the plan shows that the wall area would be reduced to two tiered walls, each below the maximum height permitted by Code.
9. Hudson-Essex-Passaic Soil Conservation District (“HEPSCD”) issued instructions to the Applicant to clean out the drainage ditch located on the property and install riprap in the stormwater ditch and at the conduit outlet.

10. The Applicant's contractor, Paul Grabowski, testified that he cleaned out the drainage ditch, placed riprap and replaced 2-12" clay drainage pipes that were broken and blocked with debris with a 36" concrete elliptical pipe.
11. The Objector's engineer, Mr. Keller, testified and provided exhibits as to what he characterized as a more direct and voluminous flow of water downhill into Llewellyn Park properties subsequent to the installation of the new 36" pipe.
12. Testimony from the Applicant's Engineering Expert, Jesse Cokeley, P.E. established that the Applicant submitted a storm water management site plan that included a drainage plan.
13. Originally the project was believed to be a minor development and so Applicant installed a permitted dry well system to capture the required 3" of rainfall displacement created by the construction of the pool and pool house (and the outfall of the boulder wall.)
14. When it was determined by Township officials that the project was a major development, the requirements for stormwater management as per the DEP regulations and Township Ordinances required the system to include peak flow drainage for a 2-year, 10 year, and 100-year storm and ground water recharge. Therefore, a new underground system was designed and Applicant further proposed to replace the impervious driveway pavement with pervious pavers.
15. Engineering expert Cokeley testified that the stormwater management system submitted with the Application is designed to maintain 100% of the average recharge volume and that it meets or exceeds the required run-off for a 2-, 10- and 100-year storm.

16. The plans and testimony also establish that the existing boulder wall will be partially removed, and the area graded, and a second tier wall will be added so that the maximum height of either wall will be below four feet high.
17. Mr. Cokeley also testified that it was his opinion that the stormwater drainage ditch is not regulated water in accordance with N.J.S.C. 7:13-2.2 and submitted an opinion letter dated April 16, 2025 into the record.
18. Mr. Cokeley confirmed that they can address or comply with all of the Planning Board Consulting Engineer's comments and requests set forth in the report dated November 26, 2024, and revised January 8, 2025.
19. In response to the Planning Board Consulting Engineer's concerns about stormwater runoff towards Llewellyn Park from the new elliptical pipe and outlet controls from the seepage pits, the Applicant put forth a design (as further described in the Settlement Agreement dated April 16, 2025 submitted by the Applicant) that will remove the elliptical pipe located at the end of the ditch in its entirety and replace it with riprap and at least two check dams along with doubling the size of the scour hole in the area so depicted on Exhibit A of the Settlement Agreement (Exhibit A-1 submitted to the Board).
20. The geotechnical study performed by Applicant (report dated February 27, 2025) supports the use of the proposed storm water system.
21. Phillip Scott, PE, the Planning Board's Consulting Engineer, testified that the Applicant's proposed design for the storm water management system is not in the area of steep slopes and that the work proposed by Applicant, including removal of

the elliptical pipe, does not require a steep slope variance and the Board accepts the testimony of Mr. Scott.

22. Mr. Scott also confirmed that there was stormwater flowing through the 36" elliptical pipe and a source of that water appeared to be from Crystal Pointe, the townhouse community located across the street from the Applicant's property.
23. Mr. Scott confirmed that the proposed stormwater management system complies with the Township Ordinances for stormwater management and the Board accepts the testimony of Mr. Scott that the proposed system adequately captures the storm water created by the soil disturbance created on Applicant's property.
24. In addition to the proposed stormwater system, that complied with the Township's Ordinances for stormwater management as to the Applicant's property and proposed improvements the Applicant's engineer worked with the engineer retained by the Objectors and proposed additional enhancements to the stormwater management system that include installing a second curtain drain on the lawn area adjacent to the second wall tier, doubling the size and depth of the scour hole at the end of the stormwater drainage ditch where the outfall structure adjacent to the previously installed seepage pits daylights, addition of riprap stones, and incorporating check dams adjacent to the scour hole; planting a mix of groundcovers and evergreen shrubs, with amount/types/species identified on Exhibit A of the Settlement Agreement as soon as possible (no later than the next planting season), planting a mix of groundcovers, trees and evergreen shrubs on 42 Eagle Ridge Way (as per agreement with owner of 42 Eagle Ridge Way) as per Exhibit B of the Settlement Agreement; and, removing the elliptical pipe located at

the end of the ditch in its entirety and replacing it with riprap and at least two check dams in the area as per Exhibit A of the Settlement Agreement (additional details regarding the timing of the proposed additional work are set forth in the Settlement Agreement and demonstrate that Applicant intends to make immediate efforts to implement the additional enhancements offered to the drainage system), and relocating the drainage ditch from the Applicant's property onto neighboring property, 42 Eagle Ridge Way, in accordance with the terms of the Settlement Agreement (which takes note of DEP requirements).

25. Neither the Township Engineer nor the Planning Board Consulting Engineer was a participant in the Settlement Agreement offered by the Applicant at the hearing; and as such, the Township Engineer and Planning Board Engineer did not offer any opinion or come to any conclusions that the proposed stormwater management enhancements would remedy the drainage issues complained about by the residents of Llewellyn Park other than to state that the proposed enhancements did not require variances and they appeared to be beneficial to the overall plan.
26. The Objectors (Llewellyn Park residents and Committee of Managers of Llewellyn Park) did not offer testimony in opposition to the proposed Settlement Agreement offered by the Applicant and did not present any expert or rebuttal testimony in opposition to the enhanced plans (Exhibits A-1 or A-2) submitted at the hearing of April 16, 2025 (as the Objector stated to the Planning Board that the work contemplated by the exhibits to the Settlement Agreement had been agreed to by the Objector and the Applicant) or to the testimony of the Applicant's Expert Engineer Cokeley (who confirmed that the work contemplated by the exhibits to

the Settlement Agreement was appropriate in an effort to control stormwater runoff into Llewellyn Park).

27. 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.

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

1. As more than one acre of land is being disturbed for improvements consisting of the pool house, inground pool, and storm water management system, the Application is considered a Major Site Plan under the Township's Stormwater Management Ordinances.
2. The proposed application complies with and meets all the standards of the Township ordinance and N.J.S.A. 40:55D-50a .

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Township of West Orange grants approval for Preliminary and Final Site Plan Approval without variances and for a Soil Removal Permit to construct a stormwater management system, driveway replacement,

grading, final boulder walls, and landscaping consistent with the Applicant's site plan and exhibits presented to the Planning Board; and

IT IS FURTHER RESOLVED that the approval granted to TheWayMaker, LLC, is subject to the following terms and conditions:

1. The Applicant shall comply with all applicable Township, County, State and Federal laws, ordinances, regulations, and directives, including without limitation, obtaining all applicable local, state, and federal approvals, or permits. Without limitation of the foregoing, prior to the signing of the approved site plans, and prior to the commencement of any land disturbance or construction but excluding interior renovations, the Applicant shall submit to this Board, with a copy to the Board Engineer, proof that it has obtained all required governmental land use approvals for the Stormwater Management System and driveway, landscaping, removal of the concrete pipe (replacing it with riprap and a minimum of two check dams), enlargement of the scour hole, and construction of the two-tiered boulder wall.
2. If another governmental entity or agency grants a waiver or a variance inconsistent with the terms of this Resolution of Approval or materially affecting the plans and/or exhibits submitted by the Applicant, which has the impact of vacating this approval of the stormwater management system or the conditions attached, then the Applicant shall re-apply to this Board respecting the same and this Board shall have the right to view that issue as it relates to this approval and these conditions and modify and amend same, if appropriate. This condition shall not apply to the terms of the private Settlement Agreement between the Applicant and Objector.

3. In the event that any other required regulatory approval conflicts with the terms and conditions hereof, or materially alters the same, or the terms and conditions hereof are materially altered by any change in applicable law or regulation other than those municipal regulations for which change is prohibited by the Municipal Land Use Law (MLUL), or in the event Applicant or its successor or assigns construct or attempt to construct any improvement in conflict with or in violation of the terms of this approval, the Board hereby reserves the right to withdraw, amend or supplant the instant approval.
4. All construction, use and development of the property shall be in conformance with the plans approved herein, all representations of the Applicant and its witnesses during the public hearing, all exhibits introduced by the Applicant, and all terms and conditions of this resolution.
5. The Applicant shall pay all outstanding application fees and technical review fees, attorneys' fees for preparation of resolutions and attendance at special meetings, as well as any inspection fees that may be required hereunder. The Applicant shall pay any additional fees or escrow deposits which may be due and owing within thirty (30) days of the notification or this approval shall be deemed withdrawn.
6. All notes included in the approved plans, including notes required by this Resolution, shall be deemed conditions of approval having the same force and effect as conditions expressly set forth in this Resolution.
7. Applicant will comply with or address all of the Planning Board Consulting Engineer's comments and requests set forth in the report dated November 26, 2024, and revised January 8, 2025.

8. Applicant's engineer will supply the full calculations used in creating the plan modifications shown on A-1 submitted to the Board.
9. In accordance with Exhibit A-1 submitted at the hearing on April 16, 2025 by expert engineer Cokeley, the Applicant will remove the elliptical pipe in its entirety and replace it with a riprap lined ditch with stone check dams and install a double sized scour hole at the end of that ditch. Should this work to remove the concrete elliptical pipe and replace same with a riprap ditch require approvals from a municipal, county and/or state government, the Applicant will diligently file for these approvals, which filings shall not delay the work proceeding under the prior permit or on the approved stormwater management system, driveway and landscaping associated with 40 Eagle Ridge Way for which permits may proceed.
10. Applicant will install additional ground cover and landscaping as shown on A-1 submitted to the Board and as approved by the Township Forester and relocate the drainage ditch as provided in Exhibit B, subject to the terms of the Settlement Agreement.
11. The Planning Board makes no findings with respect to any work or enhancements intended to be implemented on the neighboring property located at 42 Eagle Ridge Way, other than to say that the proposed landscaping and potential drainage ditch re-location is as per the Settlement Agreement with the Llewelyn Park Board of Managers, the owner of 42 Eagle Ridge Way and Applicant and enforcement of that Settlement Agreement is between those parties.
12. The landscaping and drainage improvements identified in the exhibits to the Settlement Agreement presented and signed by Richard Cohn dated April 16, 2025

(revised and signed by Applicant's representative, Richard Cohn and Nicole Morrow, Chair of the Committee of Managers of Llewellyn Park on April 22, 2025 and attached hereto as Exhibit A) and shown on Exhibits A-1 and A-2 and must be satisfied by Applicant. Any work identified in the Settlement Agreement that requires NJ DEP approval shall be subject to the terms of the Settlement Agreement. Any additional agreements for improvements to Applicant's property that may be negotiated with Llewellyn Park after the date of this Resolution and not before the Board are not part of the site plan approval herein.

13. If the Applicant relocates the stormwater drainage ditch from 40 Eagle Ridge Way onto 42 Eagle Ridge Way via an easement agreement, a copy of that easement shall be supplied to the Secretary to the Planning Board for their records.
14. The boulder wall will be reduced in height by backfilling and creating two tiered walls within the height permitted by Code in accordance with the plans submitted for which Applicant's Engineer will be required to submit a certification that the walls can sustain the lateral soil loads due to backfill.
15. The Applicant shall list all conditions of approval onto a final site plan submission prior to the submission of the building permit.

The undersigned secretary certifies the decision set forth herein was made by this Board on April 16, 2025, and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on May 7, 2025.

Jamilet Baquerizo Vite
Planning Board Secretary

Vote Action Taken by the Board on April 16, 2025

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

Vote on Memorialization on May 7, 2025:

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