

RESOLUTION

Township of West Orange

Planning Board

PB 24-14 172-174 Main Street LLC/172-174 Main Street

Block: 89 Lot: 6; Zone: B-1

Decided on July 2, 2025

Memorialized on July 16, 2025

Application for Conditional Use, Preliminary and Final Major Site Plan Approval with Bulk Variances to construct a third-floor addition to the existing two-story building and convert the building to a mixed-use development.

WHEREAS, 172-174 Main Street, LLC (Hereinafter the “Applicant”) has made an application for Conditional Use approval and Preliminary and Final Major Site Plan approval with Variances to construct a third-floor addition to the existing two-story commercial building and to convert the building to a mixed use development which is a permitted conditional use in the B-1 Zone located at 172-174 Main Street, also known as Block: 89; Lot 6 (the “Property”), in the B-1 Retail Business zone; and

WHEREAS, a properly noticed public hearing was conducted on February 5, 2025, April 2, 2025, May 7, 2025, and July 2, 2025; and

WHEREAS, the Applicant was represented by Tyler Zeberl, Esq.; and

WHEREAS, the Applicant provided testimony from Maurice Cox, Managing Member of 172-174 Main Street, LLC; Donna Bullock, P.E. of Morgan Engineering & Surveying, as a professional engineer; Patrick Downey, P.E. of Dynamic Traffic as a professional traffic engineer, John McDonough P.P., professional planner; and Jason Peist, AIA, of Jason Peist Architect, LLC as a professional architect; and

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

ITEM	SIGNED BY	DATE/REVISION
Preliminary & Final Major Site Plan (4 pages)	Donna M. Bullock, P.E.	1/21/2025 revised 6/17/2025
Property Survey	N.E. Breid & Company	3/13/1989
Architectural Plans (8 Pages)	Jason Peist, AIA	6/26/2024 revised 6/12/2025
Traffic Report	Corey Chase, P.E.	2/18/2025
Boundary and Topographic Survey	David J. Von Steenburg, P.L.S	June 12, 2025

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, including testimony from Peter Steck, Professional Planner; Eric Buckley, AIA and

WHEREAS, the Board reviewed and considered the Application, and the documents submitted therewith, the testimony of the Witnesses and members of the public; and

WHEREAS, the Board also considered the testimony and filed review letters of its professionals at the hearing, including review memos dated August 13, 2024, from Phillip Scott,, P.E.C.M.E., Matrix New World (Township Engineer), a Planner's Report by Gerard M. Haizel, PP, AICP, Principal of Nishaune Group and addendum to the report by Gerald M. Haizel, PP, AICP dated April 2, 2025, Township Planning Consultant dated September 24, 2024, and Addendum to Matrix New World report dated April 1, 2025 by Phillip Scott, P.E., C.M.E. and Engineering Review No. 2 dated June 30, 2025 by Phillip Scott, P.E., C.M.E.;

NOW THEREFORE, the Board makes the following findings of fact, based upon the evidence presented at its public hearing, at which a record was made:

1. The Applicant is requesting approval for Preliminary and Final Major site plan approval with c variances to construct a third-floor addition to an existing two (2) story building and convert the building into a mixed-use building.
2. The proposed mixed-use building will contain 2,824 sq. ft. of office space on the first floor, which will be sub-divided into two (2) tenant spaces, and a total of seven (7) residential units on the 2nd and 3rd floors.
3. Twenty-five (25) on-site parking spaces will be provided.
4. Mixed-use development is permitted as a conditional use in the B-1 District if specific conditions are met.
5. The conditions required for a mixed-use development in a B-1 and B-2 District are:
(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 §25-4.2b2()(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 sq. ft., and the minimum frontage of such lot shall be 50 feet.
6. The proposed development meets all the conditional use requirements.
7. The site is a 15,176.6 square foot (.348 acre) lot located on the western side of Main Street, between Edsonia Terrace and Park Way.
8. The existing building is a two-story commercial building that is currently vacant and appears dilapidated.

9. The existing building is setback 125.7 feet from the eastern (front) property line on Main Street, 6.8 feet from the rear property line and 12.9 feet and 8.6 feet from the northern and southern property lines respectively.
10. No changes to the footprint of the existing building are proposed.
11. The area surrounding the subject property is a retail business district and to the rear are one-family residences.
12. Applicant presented testimony from its engineer, Donna Bullock, that of the six properties on either side of the property in question on Main Street, four were taller than the proposed building.
13. The front yard of the building is currently paved and striped with parking stalls- plans show the parking stalls arranged into two rows along the northern and southern sides of the front yard with 20 standard parking spaces, two (2) parking spaces and one ADA van-accessible space for a total parking space count of 25 spaces (which includes the EV credit).
14. There is a gradual decrease in grade from the rear to the front of the site and to accommodate this change in grade, there is an existing paved area around the front and side perimeter of the building.
15. The first floor will be subdivided into two separate office spaces, each with separate entrances. Applicant's representative, Maurice Cox, testified that one of the offices will house his medical business (True Allied) which is currently located at 105 Main Street and the other space will be dedicated office space.
16. The current building is dilapidated and is just a shell- Applicant seeks to rehabilitate the existing building to create a more aesthetically pleasing and useful building.

17. Applicant proposes to gut the existing interior of the building and to construct a new 3,229 sq. ft. third floor with a floor area of 2,950 sq. ft.
18. The entry to the residential units on the 2nd and 3rd floor will be accessible from the existing staircase that will extend to the new third floor. There are three (3) apartments proposed on the 2nd floor, including two(2) two-bedroom apartments measuring 1,034 square feet and 1,100 square feet and one studio apartment measuring 600 square feet. There are four (4) apartments proposed for the third floor, including two (2) one-bedrooms, each measuring 800 square feet, and two (2) studios each measuring 600 square feet.
19. In response to questions from the Board and public regarding emergency egress from the third floor, Applicant modified the plans to include fire escapes as required by Ordinance and which are Code compliant and do not require a variance.
20. Testimony from the Applicant's architect, Jason Peist, confirmed that the building did not require an elevator due as the building square footage does not exceed the requirements where an elevator would be required.
21. With the proposed third floor, the building's height will be 34.5 feet, which is within the allowable building height for the zone.
22. The exterior improvements include an updated façade with stone and wood for a clean and contemporary look.
23. In response to concerns from members of the public regarding privacy concerns, Applicant agreed to install privacy film on the third-floor rear windows.
24. The roof design includes a parapet wall to hide the HVAC equipment, and the Applicant modified the plans (dated June 17, 2025) to move the HVAC equipment to

- be positioned closer to the front of the building with a sound insulation partition wall to minimize sound to the rear neighbors.
25. A mechanical lift for ADA accessibility will be provided in front of the building from the parking lot.
 26. The proposed parking lot originally provided 22 standard parking spaces but was changed at the request of the Board to remove one space to allow for safer turning egress, one ADA space and two EV spaces (where one was originally proposed), therefore, 25 parking spaces are provided on site.
 27. The Board Engineer, Phillip Scott, P.E., C.M.E. pointed out that the proposed ADA parking space would not have the required slope and therefore Applicant agreed to a condition that the parking lot would be re-graded to provide the required slope for the ADA parking space.
 28. Applicant requested the following waivers from the Township Site Plan/Subdivision Checklist Items: 9 (certification blocks), 10 (monumentation), 11 (date of current survey), 13 (metes and bounds description), 14 (acreage), 18 (Location and dimensions of any existing or proposed streets), 20 (Copy and/or delineation of any existing or proposed deed restrictions), 23 (List of required regulatory approvals or permits), 30 (Topographical features of subject property from USGS map), 31 (Existing and proposed contour intervals based on U.G.S. & G.S. datum), 36 (Proposed utility infrastructure plans, including sanitary sewer, water, storm water management, telephone, electric and cable TV), 39 (Spot and finish elevations at all property corners), 40 (Construction details as required by Ordinance), 49 (Vehicular and

pedestrian circulation patterns), and 52 (Plans and legal documents for compliance with West Orange COAH).

29. Applicant's request for waivers of checklist Items 9 through 11 are not applicable because there is no subdivision associated with the application and 18, 23, 30, and 31, have either been satisfied by the Applicant or are not applicable as per the reports of Phillip Scott, P.E.,C.M.E. dated April 1, 2025 and Gerard Haizel, P.P. dated April 2, 2025.

30. The Application requires the following variance relief from the Board:

SECTION/REQUIREMENT	PERMITTED/REQUIRED	PROPOSED
25.7.1 Maximum Building Height/Stories	2.5 Stories/35-feet	3-Stories/34.5-feet
25- 7.1 Minimum Rear Yard Setback	30-feet	6.8-feet (Existing Non-Conforming)
25-7.1 Maximum Lot Coverage	75%	87.2% (Existing Non-Conforming Condition)

31. 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.

32. N.J.S.A. 40:55D-60 permits a planning board to grant variances from the bulk regulations of a zoning ordinance and other zoning deviations that do not require a “d”

variance as part of site plan or subdivision review. The variance proofs are the same as for “c” variances as set forth in N.J.S.A. 40:55D-70. A c (2) variance may be granted when the purposes of zoning are advanced and the benefits of deviating from the ordinance requirements outweigh any detriments. The benefits derived from granting a “c (2)” variance must include benefits to the community as a whole, not just the applicant or property owner. A “c” variance must address the “negative criteria,” and affirmatively demonstrate that the variance can be granted “without substantial detriment to the public good” and “without substantial impairment to the intent and purpose of the zone plan and zoning ordinance” of the municipality.

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

1. The requested variances for rear lot setback and maximum lot coverage satisfy the c (1) criteria as these are pre-existing conditions that have existed since the building was constructed at a time when the Code permitted such conditions.
2. The variance for the third story satisfies the c (2) criteria because the project as a whole advances the purpose of the MLUL as the project presents special reasons under the MLUL N.J.S.A. 40:55D-2, specifically paragraphs a) advancing the general welfare because the building is being restored and renovated; g) provides sufficient space for a variety of residential and commercial uses with easy access to public amenities, is in a walkable location which creates less reliance on automobiles; i.) provides a desirable visual environment by bringing the building more into harmony with the surrounding area and providing aesthetic enhancements to both the building and parking area; and

- m) promotes more efficient use of the land because restoration of the building, rather than fully demolishing the building, has a lesser negative effect.
3. The benefits of the project outweigh any negatives and present no substantial detriment to the public good.
 4. Waivers for items number: 9 (certification blocks), 10 (monumentation), 11 (date of current survey), 13 (metes and bounds description), 14 (acreage), 18 (proposed streets), 21 (proposed easements), 22 (development stages), 23 (regulatory approvals), 30 (topographical features), 31(contour intervals), 32 (wooded areas), 34 (drainage area map), 39 (soil erosion and sediment control plan), 40 (construction details), 41 (road and paving cross-sections), 42 (proposed street names), and 43 (new block and lot numbers), are appropriate because the above items are not applicable to the proposed project. (Applicant's request for waiver of items 20 and 52 are denied as the project includes affordable housing.)
 5. .

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Township of West Orange that approval for Preliminary and Final Major site plan with requested waivers of Items Numbered 9, 10, 11, 13, 14, 18, 21, 22, 23, 30, 31, 32, 34, 39, 40, 41, 42, 43, and 45, and with c variances is granted to; and

IT IS FURTHER RESOLVED that the approval granted to 172-174 Main Street, LLC, is subject to the following terms and conditions:

1. The Applicant shall comply with all applicable Township, County, State and Federal laws, ordinances, regulations, and directives, including without limitation, obtaining all applicable local, state, and federal approvals, or permits. If another governmental entity

or agency grants a waiver or a variance affecting the plans and/or exhibits submitted by the Applicant, this approval or the conditions attached to it, then the Applicant shall re-apply to this Board respecting the same and this Board shall have the right to view that issue as it relates to this approval and these conditions and modify and amend same, if appropriate.

2. In the event that any other required regulatory approval conflicts with the terms and conditions hereof, or materially alters the same, or the terms and conditions hereof are materially altered by any change in applicable law or regulation other than those municipal regulations for which change is prohibited by the Municipal Land Use Law (MLUL), or in the event Applicant or its successor or assigns construct or attempt to construct any improvement in conflict with or in violation of the terms of this approval, the Board hereby reserves the right to withdraw, amend or supplant the instant approval.
3. All construction, use and development of the property shall be in conformance with the plans approved herein, all representations of the Applicant and its witnesses during the public hearing, all exhibits introduced by the Applicant, and all terms and conditions of this resolution.
4. The Applicant shall pay all outstanding application fees and technical review fees, board attorney fees for preparation of the resolution, as well as any inspection fees that may be required hereunder. The Applicant shall pay any additional fees or escrow deposits which may be due and owing within thirty (30) days of the notification or this approval shall be deemed withdrawn.

5. All notes included in the approved plans, including notes required by this Resolution, shall be deemed conditions of approval having the same force and effect as conditions expressly set forth in this Resolution.
6. Applicant agrees to abide by all of the suggestions and directives set forth in the Matrix Report dated August 13, 2024, and April 1, 2025, and June 30, 2025, unless expressly modified by the terms of this Resolution.
7. Applicant will abide by the Township Tree Ordinance.
8. A white roof will be constructed.
9. The HVAC units on the roof of the building will be moved and consolidated at the front of the building (so to provide consideration to the neighbors behind the building.)
10. Applicant shall install and maintain a sound insulation partition wall to muffle the sound of the HVAC system on the roof.
11. No portion of the building may be used as an event space.
12. Applicant agrees to fully comply with the noise ordinance.
13. Applicant will mill, replace and restripe the entire parking lot.
14. The proposed lighting will not have any spillage onto neighboring properties.
15. Applicant agrees to clean out and confirm, to the satisfaction of the Township Engineer, that the existing storm water system is functioning as intended.
16. There shall be no exterior lights at the rear of the building.
17. All debris on site will be cleaned up and the site will be properly maintained free from debris.

18. The parking spaces will consist of 1 ADA space, 2 EV spaces, 21 standard spaces (so that one space at the front will be removed to allow better turning into and out of the site.)
19. Applicant will install and maintain car bumper stops to keep vehicles from overhanging onto the walkway.
20. Applicant will re-grade the slope for the ADA parking space and will submit plans showing that re-grading to the Township Engineer for approval.
21. Trench drain grates will be repaired or replaced to make sure they lay flat.
22. Applicant must replace the current wooden fence and replace the fence with a concrete or block wall.
23. Applicant will install a fence or some other control to prevent neighbors from parking in the parking lot.
24. Applicant must supply the lighting fixture table.
25. Applicant must supply the sewer calculations to the Township Engineer to demonstrate if there is sufficient sewer capacity and shall submit plans that show the connection point and that the lateral can handle the sewer connection (and any other calculations to satisfy 217 of the Matrix April 1, 2025 addendum report).
26. Applicant must change the sewer pipes from 8" to 12".
27. Applicant shall submit the grading plan for the driveway apron.
28. The Fire Sub Code Official shall evaluate the parking lot for fire lanes markings and Applicant shall abide by the direction of the Fire Code Official regarding that necessary striping.
29. Applicant shall submit a full-sized sheet demonstrating the sight triangle.

30. One unit shall be designated as an affordable housing unit and Applicant must designate and identify the specific unit, with a description as to the size of the unit and number of bedrooms to be filed in the form of a deed which shall be approved by the Township Attorney and Planning Board Attorney and shall be filed with the Registrar of Essex County.
31. Medical office use is limited to Unit 1 on the first floor (1436 sq. ft.) and there shall be no medical use in the second commercial space (1388 sq. ft.)
32. Applicant shall submit a shared parking plan for the medical office use and residential use.
33. Applicant will install and maintain privacy film on the rear third floor windows.
34. The Building Department and Fire Sub Code Official shall review the need for an elevator and additional means of egress and if either are required, Applicant must return to the Board regarding changes to the plan resulting from the addition of an elevator and/or an additional means of egress.
35. Applicant must make reasonable efforts to work with the rear neighbor for a one-time installation of trees and/or landscaping on the neighbor's property. (Should Applicant reach an agreement with neighbor to install landscaping it shall be the responsibility of the neighbor going forward to maintain that landscaping.)
36. No parking spaces may be leased to others (including trucks). Parking must be limited to patients, customers, residents and their guests of the building.
37. Applicant will work with Township Engineer to block access to the area behind the building from being accessible to the fire escape.

38. 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 July 2, 2025, and memorialized herein pursuant to N.J.S.A. 40:55D10(g) on July 16, 2025.

Jamilet Baquerizo Vite
Planning Board Secretary

Vote Action Taken by the Board on July 2, 2025:

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

Vote on Memorialization on July 16, 2025:

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