

September 8, 2025
Via Hand Delivery & TonicDM

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 Justifications of Variances, prepared by Dresdner Robin, dated 2/24/2025, last revised 9/5/2025; 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 8/22/2025.

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

- Planning Review #2 Letter, prepared by Christopher N. Dochney, PP, AICP of CME Associates, dated 3/17/2025
- Engineer Review #2 Letter, prepared by John J. Hess, PE, PP, CME of CME Associates, dated 3/11/2025

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

Planning Review #2 Letter, prepared by Christopher N. Dochney, PP, AICP of CME Associates, dated 3/17/2025

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 was provided regarding the proposed project.

- b. *We note that this is not the first application for a drive-thru facility on this property, and that **last 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 was provided regarding similarities between the previous application.

- 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 regarding the positive and negative criteria for the D-3 conditional use variance.

- 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 regarding the proposed D-3 Use Variance.

- 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.*

Information. No response required.

- 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.*

The Township has revised §25-11.14 of its ordinance regarding Drive-up Windows. Per the latest ordinance, this project now requires a waiver from §25-11.14.j, as the subject property is 1.05 acres whereas a minimum of 5.00 acres is 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 regarding the positive and negative criteria for the requested variances.

- 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 was provided regarding the proposed visual screening. Additional testimony will be provided by the acoustical expert regarding the potential noise impacts.

- 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 regarding the Acoustical Report.

- 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 revised plans now show a solid vinyl fence, and the revised acoustical report reflects this. The report no longer recommends the plywood. The applicant should address the reasoning behind this revision.***

Testimony was provided regarding the revision to solid vinyl fence. Additional testimony will be provided by the acoustical expert regarding the proposed noise buffering.

- i. *The applicant should discuss the methods for collecting garbage, and the anticipated timing and frequency of collection. **The proposed location of the dumpsters has shifted to be 28.9 feet from the property line.***

Testimony was provided regarding the proposed methods for trash collection.

- 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.*

Testimony was provided regarding the existing trees.

- 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. **A row of switch grass is now proposed between the parking and the ROW.***

Information. No response required.

- iv) The revised plans indicate that the existing fence is to be removed, and only one fence will now be located between the two properties.*

Information. No response required.

- k. A sidewalk is now proposed within the Rosney Terrace ROW.*

Information. No response required

- 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 applicant has clarified that this is not a “conference board” and is only a canopy above the speaker.***

Information. No response required.

- 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 was provided regarding all necessary outside agency approvals. The approvals will be provided to the Township upon receipt.

Engineer Review #2 Letter, prepared by John J. Hess, PE, PP, CME of CME Associates, dated 3/11/2025

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 #52 – Plans and legal documents for compliance with West Orange COAH Ordinances.*

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

- 2. 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.*

Information. No response required.

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

Testimony was provided regarding the proposed deliveries.

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

Testimony was provided regarding the proposed trash collection operations.

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 Drainage Statement and find it to be acceptable.*

Information. No response required.

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

Information. No response required.

5. *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.*

The Applicant's Attorney will coordinate recording as a condition of approval.

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 was provided. The Site Plan (Sheet 5 of 23) has been revised to provide a dedicated "pull ahead" parking space.

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 was provided regarding the proposed loading operations.

3. *Sheet 21 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 was provided regarding the proposed deliveries.

E. LANDSCAPING AND FORESTRY COMMENTS

1. *As stipulated in Section 25-12.1(o) and Section 28-4e.8., the Applicant must provide shade trees to create 50% shade for the parking areas within twenty-five (25) years; whereas it does not appear that the proposed landscaping will comply.*

Testimony was provided regarding the requested waiver. Additional testimony will be provided by the Planner.

2. *It appears a label is missing for the proposed shrub grouping south of the trash enclosures. Review and revise the plans to prevent confusion during construction.*

The Landscape Plan (Sheet 9 of 23) has been revised to provide the missing label.

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.*

Testimony was provided regarding the requested variance. Additional testimony will be provided by the Planner.

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 for proposed E-1.*

The Lighting Details (Sheet 15 of 23) provides the proposed Kelvin light color temperature for the proposed E-1 light. It will be 5000K as it is an emergency light, not to be used for regular site illumination.

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, PE

Enclosures

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