

**RESOLUTION**

**Township of West Orange**

**Planning Board**

**PB 22-13 West Crescent Realty, LLC / 14-16 Northfield Avenue**

**Block: 17 Lot: 62; Zone: B-1**

**Decided on March 1, 2023**

**Memorialized on April 12, 2023**

**C (2) Variance and Preliminary and Final Site Plan Approval**

**WHEREAS**, West Crescent Realty, LLC (Hereinafter the “Applicant”) has made an application for a c (2) Variance, conditional use approval, and Preliminary and Final Site Plan approval in order to convert an existing building to a mixed use of residential and commercial uses located at 14-16 Northfield Avenue, also known as Block: 17; Lot 62, in the B-1 Zone; and

**WHEREAS**, a properly noticed public hearing was conducted on March 1, 2023; and

**WHEREAS**, the Applicant was represented by William C. Sullivan, Jr., Esq. of Scarinci Hollenbeck Attorneys at Law; and

**WHEREAS**, the Applicant provided testimony by Jose A. Izquierdo, AIA, of JAI Architect LLC, , a licensed architect and planner in the State of New Jersey whose credentials were accepted by the Board; and

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

| ITEM                                                                                                    | SIGNED BY                      | DATE/REVISION |  |
|---------------------------------------------------------------------------------------------------------|--------------------------------|---------------|--|
| Survey                                                                                                  | Anthony J. Sereno, PLS         | 8/7/2022      |  |
| Site and Architecture Plan consisting of 10 pages: T01, T02, EC01, EC02, EC03, EC04, A01, A02, A03, A04 | Jose A. Izquierdo, AIA, PP, JD | 2/16/2023     |  |
| Application                                                                                             | Menachem Halberstam, Principal | 10/6/2022     |  |
| Sustainability Checklist                                                                                | Jose A. Izquierdo, AIA, PP, JD | 7/6/2022      |  |

**WHEREAS**, representatives of the public asked questions of the witnesses and had an opportunity to offer statements in regard to the application; and

**WHEREAS**, the Board reviewed and considered the application, testimony and documents submitted therewith; and

**WHEREAS**, the Board also considered the input of its professionals at the hearing; and

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

1. The Applicant is requesting preliminary and final site plan approval with variance relief and conditional use approval for development of the existing three story building from all non-residential uses to a mix of commercial retail uses on the ground floor and residential units on the upper floors and create an indoor parking area in the rear portion of the ground floor with seven vehicular parking spaces and a bicycle parking area..
2. Testimony established that Applicant seeks conditional use approval for the mixed use in the downtown section of the Township.
3. The property is located on Northfield Avenue and the surrounding area is characterized by other business uses and parking lots.
4. The proposed residential units will consist of twelve apartments on the second and third floors with one unit reserved for a Superintendent consisting of: four (4) one-bedroom apartments on the Northfield Avenue side of the building, two (2) studio apartments and six (6) loft apartments.
5. There is a separate entrance providing access to the residential units.
6. The building driveway is undersized and currently vehicles pulling into the rear of the site have to back out onto Northfield Avenue.
7. The Applicant will demolish the one story portion of the building in the rear and create additional green space which reduces lot coverage.
8. The Applicant will create an indoor parking area at the rear of the ground level that is currently considered warehouse space.
9. The retail spaces will have store rooms in the rear with bathrooms.
10. The design includes a lobby in the center of the first floor to allow access to the apartments above.
11. The roof is old and is not designed to will not sustain the weight of solar panels.
12. The front façade of the building will be repaired and restored with the exception of one section of the building that cannot be repaired (The second section from the left) and will maintain the scale and character of the original building.
13. There will be five (5) lights illuminating the driveway, three (3) lights in the green area, eight (8) lights on the right side and four (4) lights in the front.
14. The environmental upgrades will include all energy star appliances with each apartment having its own laundry, heat and air conditioning.
15. The basement is unfinished and floods, but the testimony was that the flooding problem will be fixed and the basement area will allow the tenants storage and will also be used as a garbage area next to the elevator.
16. The Superintendent will take out the residential trash and the commercial tenants will remove their own trash to a dumpster behind the building.

17. 335 Valley Road is a pizzeria around the corner from the Applicant's building and has an existing license to allow vehicles to pass through the Applicant's property to make deliveries to the rear of the restaurant.
18. All parking spaces will be inside the building (Total of seven (7)) and will include two electric charging stations and two make ready spaces.
19. Applicant agreed with the suggestion of the Board to remove the two exterior parking spaces shown on the plans.
20. The Applicant has secured twelve (12) off site spaces for the residents of the building at the Valley Road and Main Street municipal parking lot for the next five (5) years to be paid by the owner of the building. (Each year the owner will advise the Township of the number of parking spaces required for the tenants, up to 12 total.)
21. The property as currently exists has only a 1.8 feet of existing rear yard setback but with the removal of the section at the back of the building the setback will be improved to 5.6 feet.
22. With the removal of the portion of the building the building coverage would be reduced from an existing 67.5% to 56.24% which would then be in compliance with the maximum allowed lot coverage of 60%.
23. The application requires the following bulk variance (c (2)) relief from the Board:

| Section                                           | Required | Existing | Proposed |
|---------------------------------------------------|----------|----------|----------|
| 25-12.2 Minimum required number of parking spaces | 24       | N/A      | 7        |

24. 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.

25. 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. This application requires the following variance relief, as well as site plan approval:

| Section                                           | Required | Existing | Proposed |
|---------------------------------------------------|----------|----------|----------|
| 25-12.2 Minimum required number of parking spaces | 24       | N/A      | 7        |

2. Testimony established that the parking, which currently does not exist on site, will be increased to seven (7) parking spaces inside the building with an additional 12 parking spaces having been secured in the local municipal lot for the next five years which improves the currently lack of parking at the site and allows for a turn-around space on site so that vehicles do not have to back out onto Northfield Avenue.

3. The Applicant met all of the conditions of §25- 24.2(2) (m) relating to Conditional Uses as pertains to mixed use Development in a B-1 zone as Applicant provided testimony that they would limit the commercial space to only those permitted by the ordinance (Such as retail store, personal service store, etc.), they are proposing one or more dwelling units on the upper floors above the permitted ground floor uses, the access to the upper floors is by means of a separate entrance than provided for the ground floor uses and the minimum lot area is greater than 5,000 square feet (They have over 11,000 square feet) and frontage that is more than the 50 feet minimum required.
4. With respect to the negative criteria under the MLUL, the Board finds that entry into the property will be improved both with the turnaround space and the driveway striping to allow safer and more efficient access by emergency vehicles.
5. The project meets the goals of the Master Plan as it fulfills the goals and objectives including, creating a more efficient use of space and will promote a desirable visual environment through creative development.

**NOW THEREFORE** be it resolved by the Planning Board of the Township of West Orange that parking variance, conditional use approval, and preliminary and final site plan approval for the modification of the building for use as a mixed use retail and residential building for the application of West Crescent Realty, LLC for property located at 14-16 Northfield Avenue, is determined as follows:

1. The Board grants the following bulk variance relief pursuant to N.J.S.A. 40:55D-70 c (2):

| 2. Section                                        | Required | Existing | Proposed                     |
|---------------------------------------------------|----------|----------|------------------------------|
| 25-12.2 Minimum required number of parking spaces | 24       | N/A      | 7* (See conditions #23 & 24) |

2. Preliminary and final site plan approval is granted to West Crescent Realty, LLC for the internal modifications to the structure to create two retail/commercial spaces on the first floor and twelve (12) residential units consisting of four (4) one-bedroom apartments, two (2) studio apartments and six (6) loft apartments with one apartment reserved for the building superintendent along with the variance approval and conditional use approval set forth above.
3. Waivers granted include Application Item numbers: 27 (Property owners and lines of all parcels within 200' identified on most recent tax map sheet), 29 (Existing right of way and easements), 31 (Existing and proposed contour intervals based on U.G.S. & G.S. datum. Contours to extend at least 200' beyond property), 33 (Existing system of drainage of subject site and any larger tract or basin of which it is a part, 34 (Drainage Area Map), 35 (Drainage Calculations), and, 36 (Proposed utility infrastructure plans) and minimum aisle width (§25-12.1h).

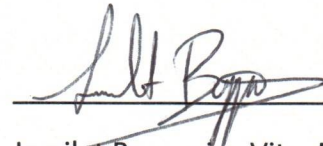
**AND IT IS FURTHER RESOLVED** that the above approval is subject to the following terms and conditions:

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 and/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 approvals.
2. 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.
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 taxes, tax liens, application fees and technical review fees, 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 agrees to comply with the recommendations and directives set forth in the reports of the Township Engineer and Planner.
8. Applicant shall list all conditions of approval onto a final site plan submission.
9. Applicant will eliminate the loading zone (As suggested at the hearing and agreed upon by the Township Engineer).
10. The indoor parking area will have two (2) electric charging stations and two (2) make ready spaces.

11. Applicant will comply with the request by the Township Engineer for lighting details on the plans.
12. Applicant will indicate on the plans the location of the dumpster placement behind the building and further agrees to enclose the dumpster.
13. Applicant agrees to tie the roof leaders into the stormwater system on Northfield Avenue.
14. As per the testimony at the hearing, Applicant will create a rain garden in the rear of the property and indicate the details for said rain garden on the plans.
15. Applicant agrees to execute the appropriate documents for compliance with the affordable housing requirements.
16. Applicant agrees to make the roof a light color.
17. Applicant will provide a copy of the existing license authorizing vehicles to enter their property to make deliveries to 335 Valley Road.
18. Applicant will remove both exterior parking spaces from the plan and will stripe the driveway area as a fire lane.
19. Applicant will label the garden gate on the plans.
20. The Applicant will work with the Director of Planning to determine the number and type of street trees that will be appropriate for the area with input from the Township Forester and with particular consideration taken that the tree roots of the species selected should be of the type that will not disrupt the sidewalk.
21. Applicant will supply the backing and K-turn template to the Township Engineer.
22. All traffic striping will be added to the plans.
23. The Applicant's current agreement with the Township regarding off-site parking shall be supplied and kept with the file.
24. If after five (5) years the Township does not renew the off-site parking for twelve (12) vehicles, Applicant will be required to return to the Planning Board to review parking.
25. The hours of delivery for the commercial entities shall be no earlier than 7AM and no later than 9PM.
26. The Fire Sub Code Official shall approve the plans.
27. Applicant will provide a pedestrian connection from the side entrances to the building to the sidewalk along the Northfield Avenue site frontage.
28. Any improvements that are proposed within the County of Essex right-of-way must conform to the County standards.
29. The plans shall be revised to include a landscape schedule which identifies the types of plantings that are proposed, the quantities of each and the size at planting with the further condition that the property owner will maintain the plantings in perpetuity.
30. The plans should be revised to indicate the proposed landscape bed treatment (ie. mulch or stone) and Applicant will work with the Board Engineer to develop the appropriate types of plantings for the area.
31. The Proposed Site Plan must be revised to identify the locations where an Apron Detail, Concrete Walkway Detail, Pavement Repair Detail and Drop Curb Detail are proposed.

32. The Apron Detail and the Concrete Walkway Detail will be revised to specify the proposed concrete strength.
33. The discrepancy between the Proposed Site Plan which shows wall mounted lights and 2 different isolux patterns will be highlighted for the Board Engineer as Applicant indicated sheet T02 provides.

The undersigned secretary certifies the decision set forth herein was made by this Board on March 1, 2023 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on April 12, 2023.

  
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Jamilet Baquerizo Vite, Planning Board  
Secretary

Vote Action Taken by the Board on March 1, 2023:

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

Vote on Memorialization on April 12, 2023:

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