

Resolution
Township of West Orange Planning Board
PB-21-09 – Sherwin Williams Paints
Block: 116.02; Lot: 1.01; Zone: E-C (Downtown Redevelopment Plan)
217 Main Street
Decided on November 3, 2021
Memorialized on December 1, 2021
Amended Site Plan Approval and Variances for Limited Site Modifications Related To Signage For One
New Tenant On The Property

WHEREAS, Sherwin Williams Paints (hereinafter the "Applicant") is seeking amended site plan approval and variances for limited site modifications related to signage for one new tenant on an existing multi-tenant retail building on the property located at 217 Main Street, in the Edison Commercial ("E-C") zone of the Downtown Redevelopment Area, also known as Block: 116.02; Lot: 1.01; and

WHEREAS, a properly noticed public hearing was conducted on November 3, 2021; and

WHEREAS, the Applicant was represented by Jeffrey A. Zenn, Esq. of Cullen and Dykman LLP ; and

WHEREAS, the Applicant provided testimony by Marc Milask and Katie Allinson, of Accent Graphics, Inc. and Robert White, representative of the Applicant; and

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

<u>SUBMISSIONS</u>		
<u>ITEM</u>	<u>SIGNED BY</u>	<u>DATE/REVISION</u>
Sign plans (3 sheets)	(not signed)	4/9/20
Boundary and Topographic Survey	Jeffrey D. Bunce, PLS	6/11/21
ALTA/NSPS Land Title Survey	Nickolas R. Fusco, PLS	11/8/17

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 seeking amended site plan approval and variances for limited site modifications related to signage for one new tenant on the property.
2. Building mounted signage is proposed on one storefront that will be occupied by a Sherwin Williams store. The sign would be located above the store entrance and would

be 20.56 square feet in area. Its width will be 11.375 feet and its height will be 1.75 feet. The sign is proposed to be internally illuminated.

3. The existing two-sided monument sign along Main Street is proposed to be refaced to include signage for the existing CVS, the proposed Sherwin Williams store, and a third tenant, Family Dollar. The sign plans indicate the Sherwin Williams sign will be 1.33 feet high by approximately 4 feet wide, for an area of approximately 5.32 feet. The existing monument sign exceeds the maximum permitted height of eight feet but as it not being changed, a variance is not required. It is noted the Planning Board approved the same variance for the other tenants of the building at its September 1, 2021 meeting. No other changes are proposed to the exterior of the building, to the layout of the parking lot or to site circulation.
4. The Municipal Land Use Law (MLUL) at N.J.S.A 40:55D-60 allows a planning board to grant variances ancillary to site plan approval, or in this instance, pursuant to a deviation from a redevelopment plan standard. The proofs are the same as N.J.S.A 40:55D-70c, which permits a board of adjustment to grant variances from the bulk regulations of a zoning ordinance and other zoning deviations that do not require a “d” variance. A “c(1)” variance is for cases of hardship due to factors such as shape or topography, or due to “an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.” A “c(2)” variance may be granted where 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 applicant also 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.
5. The application requires the following bulk variance relief from this Board:

VARIANCE REQUIRED

<i>“c” Variance</i>			
SECTION/REQUIREMENT	PERMITTED /REQUIRED	EXISTING	PROPOSED
Downtown Redevelopment Plan signage requirements – internal illumination	Not permitted	None	Proposed

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

1. **VARIANCE REQUIRED**

<i>“c” Variance</i>			
SECTION/REQUIREMENT	PERMITTED /REQUIRED	EXISTING	PROPOSED
Downtown Redevelopment Plan signage requirements – internal illumination	Not permitted	None	Proposed

2. The Municipal Land Use Law (MLUL) at N.J.S.A 40:55D-60 allows a planning board to grant variances ancillary to site plan approval, or in this instance, pursuant to a deviation from a redevelopment plan standard. The proofs are the same as N.J.S.A 40:55D-70c, which permits a board of adjustment to grant variances from the bulk regulations of a zoning ordinance and other zoning deviations that do not require a “d” variance. A “c(1)” variance is for cases of hardship due to factors such as shape or topography, or due to “an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.” A “c(2)” variance may be granted where 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 applicant also 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.
3. Under the c(2) criteria, the Applicant must demonstrate that in a particular instance relating to a specific piece of property, the purposes of the Act would be advanced by allowing a deviation from the Zoning Ordinance requirements and that the benefits of any deviation will substantially outweigh any detriment.
4. These tests specifically enumerated above constitute the affirmative proofs necessary in order to obtain "bulk" variance relief, under Section c(2).
5. Also, an applicant for these variances must show that the proposed relief sought will not cause a substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance. The burden of proof is upon the Applicant to establish that these criteria have been met.
6. The Municipal Land Use law would be advanced by the deviation of illumination of the sign within the shopping center as it will bring the land up to modern times, this deviation will also outweigh any detriment as it will allow for better visibility and safety of the area. The benefits of the deviation listed above are as follows: better advertising, safety and visibility of the store and sign. None of these benefits would outweigh any detriment to the Township.

NOW THEREFORE be it resolved by the Planning Board of the Township of West Orange that the amended application (PB-21-09) Amended Site Plan Approval and Variances for Limited Site Modifications Related To Signage For One New Tenant On The Property located at 217 Main Street (Block: 116.02; Lot: 1.01; Zone: E-C , Downtown Redevelopment Plan) is determined as follows:

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

Section/Requirement	Permitted/Required	Existing	Proposed
Downtown Redevelopment Plan signage requirements – internal illumination	Not Permitted	None	Proposed

2. Amended site plan approval is granted along with c variance approval.

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, 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 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 successors 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 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 shall list all conditions of approval onto a final plan submission.

8. Applicant shall center the proposed illuminated façade sign for Sherwin Williams.

The undersigned secretary certifies the decisions set forth herein was made by this Board on November 3, 2021, and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on December 1, 2021.

Diana L. Chandler-Zimmerman, Acting Board
Secretary

Vote on Action Taken by the Board on November 3, 2021:

BOARD MEMBER	MOTION	SECOND	AYE	NAY	ABSTAIN	ABSENT
Bagoff (Ch.)	X		X			
Guarino		X	X			
Smeraldo						X
Klein						X
McCartney			X			
McNair			X			
Wilkes (V.Ch)			X			

Vote on Memorialization on December 1, 2021:

BOARD MEMBER	MOTION	SECOND	AYE	NAY	ABSTAIN	ABSENT
Bagoff (Ch.)						
Guarino						
Smeraldo					X	
Klein					X	
McCartney						
McNair						
Wilkes (V.Ch)						

