

OK yes
APR 1909

PB 19-09
TOWN OF WESTFIELD
APPLICATION

45 day
review 9/22/19
12 day
date is 1/3/20

I. Identification:

This appeal is from (applicant's name) 440 North Avenue East LLC
street address 108 North Union Avenue, Suite 5, Cranford, NJ 07016
(telephone) (908) 301-1000 (fax) (908) 276-4322
email: needlepointhomes@gmail.com

for property in Westfield, NJ located at 440 North Avenue East

II. To: (check one)

Planning Board Board of Adjustment
Board Secretary: Ms. Linda Jacus 908-789-4100 extension 4602
Both Boards: 959 North Avenue West, Westfield, NJ 07090: FAX 908-789-4113

III. For a Hearing For: (Check all applicable)

Specific Applicable Sections of the Westfield L.U.O. for:
Submission Requirements Checklists

Procedures

<input checked="" type="checkbox"/> *C variances	4.03A, 9.02, 9.03, 9.11	4.04, 7.01C, 7.01D, 8.03, 8.04, 8.06, 8.13, 8.14
<input type="checkbox"/> *D variances	4.03A, 9.02, 9.03, 9.11	4.04, 7.01C, 7.01D, 8.03, 8.04, 8.06, 8.13, 8.14
<input type="checkbox"/> Conceptual Site Plans & Subdivisions	9.04	8.07
<input type="checkbox"/> Minor Site Plan	9.02, 9.03, 9.08	8.06, 8.08, 8.13, 8.14, 8.23
<input checked="" type="checkbox"/> *Preliminary Major Site Plan	4.03C, 9.02, 9.03, 9.09	4.04, 8.04, 8.06, 8.10, 8.13, 8.14, 8.19, 8.23
<input checked="" type="checkbox"/> Final Major Site Plan	9.02, 9.03, 9.10	8.06, 8.11
<input type="checkbox"/> Minor Subdivision	9.02, 9.03, 9.05	8.01, 8.06, 8.09, 8.13, 8.14, 8.23
<input type="checkbox"/> *Preliminary Major Subdivision	4.03D, 9.02, 9.03, 9.06	4.04, 8.01, 8.04, 8.06, 8.10, 8.13, 8.14, 8.19, 8.23
<input type="checkbox"/> Final Major Subdivision	9.02, 9.03, 9.07	8.06, 8.11
<input type="checkbox"/> **Conditional Use	9.02, 9.03	4.04, 8.06, 8.13, 8.14
<input type="checkbox"/> *Structure in street, drainage way, flood basin, reserved area	4.03F, 7.01E2	4.04, 7.01E, 8.04, 8.06, 8.13, 8.14
<input type="checkbox"/> *Structure on lot not abutting street	7.01F2	4.04, 7.01F, 8.04, 8.06, 8.13, 8.14
<input type="checkbox"/> *Board of Adjustment "a" appeal/ administrative officer error	7.02B2 & 3	7.02A & B, 8.04, 8.06, 8.13, 8.14
<input type="checkbox"/> *Board of Adjustment "b" appeal/ interpretation ordinance/map	4.03B, 7.02C1 & 2 & 3	4.04, 7.02A & C, 8.04, 8.06, 8.13, 8.14
<input type="checkbox"/> Residential cluster	9.02, 9.03, 9.06, 8.12, 11.03F	8.13, 8.14

*Public noticing is required pursuant to Section 4.03 & 4.04 ** A major site plan review is also required with a conditional use application

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IV. Application Description: Briefly describe the nature and scope of this application, including proposed uses and improvements. All subdivision appeals must state the present and proposed number of lots.

See attached Addendum

V. Reasons: Briefly summarize the reasons why you believe this appeal should be granted.

See attached Addendum

VI. Property Description: Please provide the following information about the property, which is the subject of this appeal.

•Enclose a scaleable (full size) copy of a location survey of the property; showing the surveyors name and license number, and date of survey, if this information is not otherwise provided on a site plan or subdivision plat. Survey can be no more than 2 years old.

•Street address: 440 North Avenue East

Zone district: GB-2 Block No.: 3202 Lot No. 7

•Dimensions of lot: 120' x 150' Area of lot: 18,000 square feet

•Use of premises present: vacant lot
Proposed: commercial office building

The proposed use is: permitted by ordinance a conditional use which has been granted by the Planning Board or Zoning Board of Adjustment
 a use permitted by variance a nonconforming (i.e. "grandfathered") use not a permitted use

Name of Owner: 440 North Avenue East LLC Telephone No. (908) 301-1000
Street address of Owner 108 North Union Avenue, Cranford, NJ 07016

•Does the above owner also own any property that abuts the subject property?
 No Yes If yes, address: _____

If yes, is the abutting property subject to the Loechner-Campoli rule of merger? No Yes (If you don't know, check with the Tax Assessor in the Municipal Building.)

•Are there any present deed restriction(s) which affect this property? No Yes If yes, attach copy of deed, including language of restriction(s).

•Are there any pending proceedings, concerning the property which is the subject of this application, before any federal, state, or local board of authority? No Yes If yes, list here and attach a brief description of each.

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VII. Attorney Identification: Private individuals, or sole proprietors may represent themselves (i.e. present the application) before the Board. All other categories of applicants must be represented by an attorney. (reference: 1998 Cox - pages 477 & 478)

If applicant (or owner) is to be represented by an attorney, please furnish the following information:

Attorney's name: Joseph J. Triarsi, Esq. Telephone No. (908) 709-1700
Attorney's firm: Triarsi Betancourt Wukovits & Dugan, LLC Fax No: (908) 272-4477
Street address 186 North Avenue East, Cranford, NJ 07016 email: jjt@tbwdlaw.com

VIII. Notarization:

I/We, the undersigned applicant(s) do hereby grant permission for the members of the Planning Board, and the Zoning Board of Adjustment, their Attorney and the Zoning Officer of the Town of Westfield, NJ to enter upon the property which is the subject of this application, during all daylight hours during the pendency of this application. Permission to enter structures will be given for a mutually agreeable time.

I hereby depose and say that all the above statements and the statements contained in the papers submitted herewith are true and correct.

440 NORTH AVENUE EAST LLC


By: Steven Needle (Applicant)

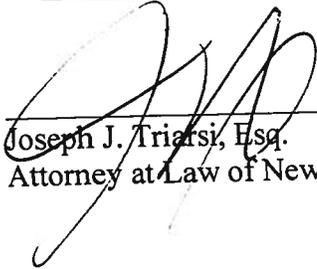
Print Name : 440 North Avenue LLC

Address: 108 North Union Avenue, Suite 5
Cranford NJ 07016

Business phone: (908) 301-1000

Sworn and Subscribed to before me

this 21st day of June, 2019


Joseph J. Triarsi, Esq.
Attorney at Law of New Jersey

IX. Do not write in the following spaces:

TO BE COMPLETED BY THE ZONING OFFICER:

• To the best of my knowledge and belief, this application is complete and correct.

• This application is currently the subject of a:

- _____ Zoning violation notice, No. _____, copy enclosed.
- _____ Municipal Court complaint, docket No. _____, copy enclosed.
- _____ Other pending action, (describe) _____
- _____ None of the above

Signature

TO BE COMPLETED BY THE BOARD SECRETARY:

Has there been any previous appeals(s) involving these premises?
 No Yes If yes, attach copies of resolution(s)

TO BE COMPLETED BY THE COMPLETENESS DESIGNEE:

Application accepted as complete on 9/5/19


Signature

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ADDENDUM TO ZONING APPLICATION
RE: 440 North Avenue LLC
440 North Avenue, Westfield, NJ

IV: Application Description:

This is a re-submission of a previously approved application to permit construction of a three-story Colonial style office building containing a gross area of 12,193 square feet inclusive of the building core which totals 3,011 square feet, on property located and commonly known as 440 North Avenue East, Westfield, NJ, being Block 3202, Lot 7.

This application was previously approved as submitted by the Planning Board of the Town of Westfield on April 1, 2011. Notwithstanding the fact that the application was approved, economic conditions existing at the time militated against its construction and the project was never commenced. The applicant seeks to have the same proposal approved by this Board as was the subject of the earlier approval. A copy of the Resolution approval by the Planning Board is attached hereto as Exhibit A.

The site is presently vacant. The proposed use of the property is a principal permitted use in the GB-2 zone. Variances are necessitated as a consequence of the application being deficient in off-street parking. This deficiency results from the inclusion of the core area which is neither habitable nor intended or suited for occupancy, in the calculation for the off-street parking requirement.

The proposed structure is a frame and masonry building, 57' x 110' in size, and will contain two floors of general office space to be subdivided as per the need of prospective

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tenant(s). The second floor's habitable space contains 4,978 square feet. The third floor will contain 4,204 square feet of habitable space. There is no habitable floor area on the first floor. The first floor consists exclusively of a small lobby, elevator, elevator room, and staircase (the core area). This core area continues through the second and third floors and totals 3,011 square feet of gross floor area.

The habitable floor area in the proposed building is the gross area of 12,193 square feet minus the 3,011 square feet core area, for a net area available for use and occupancy of 9,182 square feet. The granting of this application would result in the construction of a new office building of Colonial architecture for general office space on a State highway on a lot in need of substantial improvement.

V: Reasons:

The applicant has been advised by the Zoning Officer that the proposed use violates the provisions of Section 17-02 (C)(5)(c) Parking Required by Use, and Section 17-04(A) Parking Stall Size as several of the proposed parking spaces are undersized, 9' x 16', for compact vehicles. In all other respects, the use and the bulk requirements of the zoning ordinance are fully satisfied and complied with.

The applicant contends that this application is an appropriate subject for the grant of C2 variances in that the purposes of the MULU, the Westfield Zoning Ordinance, and the Westfield Master Plan would be advanced by this deviation from the zoning ordinance

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requirement, and that the benefits of the deviation would substantially outweigh any detriment. Furthermore, that the granting of the variance as requested will be without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance of the Town of Westfield.

Among the reasons urged in support of this application are the following:

- (1) The use is a principally permitted use under the ordinance and in the zone in which it exists and therefore is an appropriate use of this land.
- (2) The use is consistent with the recommendations of the Master Plan of the Town of Westfield and the location is particularly suitable for this use.
- (3) The granting of the variance would result in the re-development of an area of the Town in need of new construction and revitalization and is one which is compatible with the present zoning ordinance and the Master Plan.
- (4) The proposed structure is aesthetically appealing and of an appropriate size given the size of the parcel which contains 18,000 square feet.
- (5) The variance and construction of the proposed building would reduce impervious coverage on the site by 16% and would add greenery and plantings in an area where none presently exist.

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- (6) The proposed structure will be constructed a “green” building utilizing “green” construction techniques and products.
- (7) The proposed structure would increase the value of the surrounding properties, and would replace an eyesore, with a substantial tax ratable without the necessity of the Town providing additional municipal services.
- (8) The parcel is located on Route 28 and will utilize existing curb cuts. The traffic anticipated to be generated by the proposed use will be minimal and will not significantly impact traffic conditions on Route 28.
- (9) The proposed use would generate considerably less traffic than the former use as a diner or other permitted uses. Although the former diner has not been in use for almost 25 years, the applicant contends that the replacement of that use and the construction of an office building will result in a decrease in trip generation to and from the subject property. This zone permits retail use inclusive of sit down and take out restaurants. These types of use will generate higher traffic volumes than the proposed office use. Furthermore, the proposed use generates significant traffic volume only twice per day – in the morning and in the evening. After the close of business, there will be little, if any, traffic, and on weekends there will be virtually none.

- (10) The proposed use will be serviced by two full movement driveways which will be constructed according to NJ DOT standards and will require only a minor access permit from the NJ DOT.
- (11) The variances that are necessary deal solely with off-street parking and are required as a consequence of the zoning ordinance not taking into account and/or allowing a credit for an untenable and unoccupied core area of a building wherein are located the elevator, elevator room, lobby and staircase. This core continues through each floor. It is noted that bathrooms are located in the core area on both the second and third floors

The applicant contends parking variances are appropriate and can be supported by a formula which would permit the reduction of the gross floor area by the unoccupied and untenable core area space. The total area devoted to the core of the building is 3,011 square feet and when the area that is deducted from the gross floor area (12,193 square feet), and the usable and habitable area is 9,182 square feet.

If the "Parking by Use" standard (one space for each 250 square feet) is applied to the adjusted usable/habitable area, 37 parking spaces are required.

The parking plan before the Board provides for 10 compact-sized automobiles to be parked under the structure, the total parking on site would increase from 36 to 41 parking spaces, a number in excess of that which would otherwise be required by the adjusted

Parking by Use requirement. Although the parking spaces are smaller, dimensions 8' x 16', the applicant contends that the smaller size is sufficient to accommodate the majority of vehicles currently on the roadway. The size of these parking spaces is typical for those allocated to compact car parking and, due to the fact they are below the building, it is anticipated that motorists will be conscious of the smaller size spaces as the same are typically found in garage or structured parking arrangements.

If the analysis of parking is undertaken based upon Parking by Zone, and utilizing the calculation for net floor area as hereinabove described, the ordinance would require 31 parking spaces. This requirement would be exceeded as 41 are provided.

The applicant calls to the Board's attention the fact that the subject property is located on a street where curbside parking is permitted on the northerly side and on sections of the southerly side within a few hundred feet of the premises in question. Further, the premises in question is a substantial distance from the retail center of Westfield and thus not likely to impact off-street parking in that area.

The applicant contends that the core area, which is unique to the design of the building, results in the creation of garage-type parking under the first floor of occupancy. The applicant will present testimony that the architecture and design of the building lends itself, and is ideal for the establishment of parking spaces for compact vehicles on the ground level, and has no negative effects on design, efficiency, use or safety, and furthermore, that it is an acceptable solution from a traffic engineering perspective.

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For the foregoing reasons, the applicant contends that the grant of the parking variances incidental to the development of the property in accord with this application is in the best interest of the Town, its zoning ordinances, and its Master Plan, and that the benefit derived by the development of the property in accord with the application will far outweigh any possible detriment and, for the foregoing reasons, the applicant specifically requests that the Board approve the application.

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TOWN OF WESTFIELD

LIST OF NEW C.40:55D-70 c AND d VARIANCES REQUESTED

SECTION 9.02: GENERAL REQUIREMENTS; SUPPORTING DOCUMENTATION

In addition to the submission requirements for the individual categories of applications in the following sections, all categories of applications, except for conceptual site plans and conceptual subdivisions, shall be required to submit a statement indicating all of the provisions of the Land Use Ordinance from which a waiver or variance is sought.

Note: This list must be consistent with the Variance Table, if otherwise required.

1.	Section: 17-02(C)(5)(c)	Nature of Deficiency: Parking required by use	Permitted: 49	Present: 37	Proposed: 41
2.	Section: 17-04(A)	Nature of Deficiency: Parking space size	Permitted: 9' x 18'	Present: N/A	Proposed: 9' x 16'
3.	Section: 16.04E5	Nature of Deficiency: Front yard depth deficiency for freestanding sign	Permitted: 20' front yard	Present: —	Proposed: 19.72' front yard
4.	Section:	Nature of Deficiency:	Permitted:	Present:	Proposed:
5.	Section:	Nature of Deficiency:	Permitted:	Present:	Proposed:
6.	Section:	Nature of Deficiency:	Permitted:	Present:	Proposed:
7.	Section:	Nature of Deficiency:	Permitted:	Present:	Proposed:

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TOWN OF WESTFIELD
REQUIREMENTS AND VARIANCES SUMMARY TABLE PER SECTION 911 B.7.

THIS TABLE MUST BE INCLUDED WITH ALL APPLICATIONS FOR "C" AND "D" VARIANCES, AND MUST BE SHOWN ON ALL REQUIRED SITE PLANS, SUBDIVISION PLANS, AND PLOT PLANS AND MUST BE SHOWN ON ALL REQUIRED VARIANCE APPLICATIONS. ALL RA, O, CBD and GB zone applications use the "Bulk and Lot Regulations" for the zone.

The below regulations are for all RS, RM and P zones applications. All RA, O, CBD and GB zone applications use the "Bulk and Lot Regulations" for the zone.

ZONE: **GB-2**
 APPLICANT: **440 NORTH AVENUE EAST LLC**

STREET ADDRESS: **440 NORTH AVENUE EAST**

REG. NO.	REGULATION	UNITS	REQUIRED		PROPOSED	
			REQUIRED	UNITS	USE SEPARATE LOT No.	VARIANCE?*
	Minimum gross area	sq. ft.	N/A		7	No
11.27 E.1	Minimum area within first ft. of depth	ft.	Prevailing setback		7	No
	Minimum width	ft.	N/A		7	No
	Minimum frontage	ft.	N/A		7	No
	Minimum depth	ft.	Prevailing		7	No
11.27 E.1	Minimum front yard (per Sections 12.03C & D & E)	ft.	10'		7	No
11.27 E.2	Minimum side yard	ft.	10'		7	No
11.27 E.3	"	ft.	10'/1962*		7	No
11.27 E.5	Minimum rear yard	ft.	40%		7	No
	Maximum building coverage (without deck)	%	N/A		7	No
	Maximum building coverage (with deck)	%	N/A		7	No
	Maximum FAR or total habitable floor area	%	N/A		7	No
	Maximum building height	ft.	3 stories/40'		7	No
11.27 E.4	Maximum all improvements coverage	%	90%		7	No
11.27 E.6	Other: front yard landscaping		Required		7	No
17.02 D	Other: barrier-free parking		2		7	No
17.02 E	Other: loading spaces		0		7	Yes
17.04 A	Other: parking stall size		9' x 18' (w/2" over)		7	No
17.05 B	Other: 2-way aisle width		20' minimum		7	No
17.05 C	Other: Access aisle width		24' minimum		7	No
17.05 G	Other: County and State compliance		Required		7	No
17.10 C	Other: Max illumination at property line		0.5 FC		7	No
17.10 E	Other: Max height of light fixture		15'		7	No

NOTE: This table must be consistent with the two variance lists, if they are included in the application.

* Single star all variances which are new variances, i.e. are not pre-existing, non-conforming conditions which will continue.

TOWN OF WESTFIELD
UNION COUNTY NEW JERSEY

AFFIDAVIT OF OWNERSHIP

I, **STEVEN NEEDLE OF 440 NORTH AVENUE EAST LLC**, of full age, being duly sworn

according to law, do hereby certify that I am the (check one) owner or duly authorized officer of the owner (as listed on the application form), of the following property which is the subject of the within application to the Westfield Planning Board or Zoning Board of Adjustment:

Block & Lot (s) **Block 3202, Lot 7**
Street Address(es) 440 North Avenue East, Westfield, NJ 07090

Check one:

1. As the owner (or officer of), I am the Applicant in the within application.
2. As the owner (or officer of), I am not the Applicant. I certify that I have reviewed and consent to the within application and that the information contained herein is true and correct to the best of my knowledge. I authorize the following entity/individual to act as the Applicant in making this application:

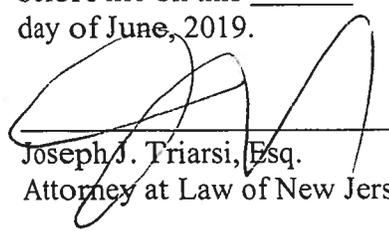
a. Authorized Individual/Entity: _____

b. Authorized Individual/Entity Interest in Property (i.e., Tenant, Contract Purchaser): _____

440 NORTH AVENUE EAST LLC


By: STEVEN NEEDLE, Owner

Sworn and subscribed to
before me on this 21st
day of June, 2019.


Joseph J. Triarsi, Esq.
Attorney at Law of New Jersey

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Tax Account Maintenance

Notes Exist

Block: 3202
 Lot: 7
 Qualifier:
 Owner: 440 NORTH AVE EAST, LLC
 Prop Loc: 440 NORTH AVENUE E
 Account Id: 00005288

Year	Qtr	Type	Billed	Principal Balance	Deductions	Balance	Interest	Total Balance
2020	2		3,329.81	3,329.81		3,329.81	.00	3,329.81
2020	1		3,329.82	3,329.82		3,329.82	.00	3,329.82
2020		Total	6,659.63	6,659.63		6,659.63	.00	6,659.63
2019	4		3,850.37	3,850.37		3,850.37	.00	3,850.37
2019	3		3,844.19	.00		.00	.00	.00
2019	2		2,812.34	.00		.00	.00	.00

Other Delinquent Balances: .00 Interest Date: 07/31/19
 Other APR2 Threshold Amt: .00 Per Diem: .0000 Last Payment Date: 07/31/2019

TOTAL TAX BALANCE DUE
 Principal: .00 Penalty: .00
 Misc. Charges: .00 Interest: .00 Total: .00

* Indicates Adjusted Billing in a Tax Quarter.

CERTIFICATION
TAXES PAID UP TO DATE
 NEXT TAX DUE 11/1/19
 ANY QUESTIONS, CALL 908-789-4051
 TAX COLLECTOR

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OWNER & ADDRESS REPORT

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WESTFIELD

BLOCK	LOT	QUAL	CLA	PROPERTY OWNER	PROPERTY LOCATION	Add'l Lots
3201	10		2	DE LEONARDIS, PAUL II & CAITLIN 426 EUCLID AVE S WESTFIELD, NJ 07090	426 EUCLID AVE S	
3201	11		2	MACDONALD, DONALD J & PATRICIA S 430 EUCLID AVE S WESTFIELD, NJ 07090	430 EUCLID AVE S	
3201	12		4A	P.MINNICINO RLT,C/O EUROSPOORT OF WF 459 NORTH AVE. EAST WESTFIELD, N J 07090	459 NORTH AVENUE E	
3201	13		4A	NORTH 433 LLC 137 ELMER ST WESTFIELD, NJ 07090	433-437 NORTH AVENUE E	
3201	14		4A	JATOLE, LLC 425 NORTH AVE, EAST WESTFIELD, NJ 07090	425 NORTH AVENUE E	
3202	6		4A	430 NO AVE E,LLC C/O LINDEMAN,T 136 OLD STIRLING ROAD WARREN, NJ 07059	422-436 NORTH AVENUE E	
3202	7		1	440 NORTH AVE EAST, LLC 108 N UNION AVE SUITE 5 CRANFORD, NJ 07016	440 NORTH AVENUE E	
3202	8		4A	450 NORTH AVENUE,INC 450 NORTH AVE WESTFIELD, NJ 07090	450 NORTH AVENUE E	
3202	9		2	PASQUARELLA, RICHARD L & JOYCE B 536 WESTFIELD ROAD SCOTCH PLAINS, N J 07076	462 NORTH AVENUE E	
3202	10		4A	PASQUARELLA, RICHARD L & JOYCE B 536 WESTFIELD ROAD SCOTCH PLAINS,N J 07076	466 NORTH AVENUE E	
3203	1		5A	NEW JERSEY TRANSIT CORP ONE PENN PLAZA EAST NEWARK, N J 07105	CENTRAL AVE - EAST	
3203	2		5A	NEW JERSEY TRANSIT CORP ONE PENN PLAZA EAST NEWARK, N J 07105	CENTRAL AVE - EAST	
3204	9		4A	STUART O GOLDSMITH 2012 FAMILY TRUS 7850 NW 146TH STREET MIAMI LAKES, FL 33016	221-341 SOUTH AVENUE E	

RESOLUTION

PLANNING BOARD TOWN OF WESTFIELD

APPLICATION NO. PB 11-01

APPLICATION OF 440 NORTH AVENUE EAST, LLC

440 NORTH AVENUE EAST

WHEREAS, 440 North Avenue East, LLC ("Applicant") has applied to the Planning Board of the Town of Westfield for preliminary and final major site plan approval with variances on property known as 440 North Avenue East (also designated as Lot 7 in Block 3202 on the Tax Map of the Town of Westfield) (the "Property"), in accordance with plans prepared by Guarriello & Dec Associates, LLC (Sheets 1-6) dated February 28, 2011, Sediment Control Plan prepared by Guarriello & Dec Associates, LLC (Sheet # SCS-1) dated February 28, 2011 and architectural plans prepared by Roger C. Winkle (Sheets A-1 through A-4) dated March 9, 2011; and

WHEREAS, 440 North Avenue East, LLC is also the owner of the Property; and

WHEREAS, the Planning Board held a public hearing and took action on the application on July 6, 2011, and this Resolution constitutes a resolution of memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g); and

WHEREAS, after considering all of the evidence presented by the applicant, the Planning Board has made the following factual findings and conclusions:

1. In connection with its site plan application, the applicant seeks approval of variances from the following sections of the Land Use Ordinance of the Town of Westfield:

(a) Section 17.02C5c, which requires 49 parking spaces based on calculations for use, whereas the applicant proposes 36 parking spaces.

(b) Section 17.02B4, which requires 41 parking spaces based on calculations for zone, whereas the applicant proposes 36 parking spaces.

(c) Section 17.03B5, which does not allow parking under the building, whereas the applicant proposes parking spaces numbered 32-36 under the building as identified on the submitted site plan.

2. Joseph Triarsi, Esq. appeared as counsel for the Applicant. Mr. Triarsi stated that the Applicant seeks preliminary and final major site plan approval with variances to construct a three-story office building, a permitted use in the zone, with a gross area of 12,193 square feet on an existing vacant lot. Mr. Triarsi stated that the Applicant intended to enhance the appearance and functionality of the existing site where a vacant diner currently exists.

3. Edward Dec of Guarriello & Dec Associates, LLC, a licensed professional engineer and surveyor, prepared the site plans for the property. Mr. Dec testified that the existing property has been in its current condition since approximately 1970. Mr. Dec stated that the property is in full compliance with all bulk requirements except for the requested parking variances. Mr. Dec further testified that the proposed ground floor did not have any occupied space and that the design of the building creates a "core" space on each floor associated with the lobby and elevators that is not habitable. With respect to the grading and drainage plan (Sheet 4 of 6 of the plans prepared by Guarriello & Dec Associates, LLC), Mr. Dec testified that the site would collect runoff and directly connect into the existing stormwater system. Mr. Dec further stated that the Applicant would submit revised drainage plans to possibly tie into the existing stormwater system toward the rear of the property. Mr. Dec testified that the proposed structure would have a positive impact on drainage in that it would collect runoff and reduce impervious coverage. Mr. Dec stated that there would be adequate landscaping on the property. Mr. Dec testified that there would be a free-standing sign no greater than the allowable sign square footage for the zone. Mr. Dec additionally stated that there would be wall-mounted lighting on the westerly side and that the Applicant would provide a lighting plan for underneath the building in the area of the proposed parking stalls. Mr. Dec testified that the parking spaces consist of 9' by 18' stalls with a 2' overhang near the curb. Mr. Dec further testified that there was a fence along the back of the parking stalls. Mr. Dec stated that in order to comply with the 2 foot overhang provisions of the ordinance to obtain the required parking stall size, the Applicant would remove the fence depicted on the site plans.

4. Roger C. Winkle, a licensed professional architect, testified on behalf of the applicant. Mr. Winkle testified that the proposed design of the building was created after numerous studies of adjacent properties and properties located in the Town of Westfield, such as the Best Western hotel located on North Avenue. Mr. Winkle stated that the proposed design would be an improvement to the sight line as you enter the Town of Westfield from the east. Mr. Winkle testified that the building would be constructed using brick and clapboard with a gabled roof and dormers on the front and side of the building as depicted on the architectural plans. Mr. Winkle testified that the property was not designed under LEED standards but that the Applicant would use green materials where possible, including high efficiency HVAC and mechanical systems, windows and recycled roofing. Mr. Winkle testified that the proposed ground floor did not have any occupied space and that the design of the building creates a "core" space on each floor associated with the lobby, stairway, elevators and mechanical rooms that is not habitable. Mr. Winkle further testified that the lobby will be glass enclosed providing greater visibility of cars accessing the parking lot. Mr. Winkle stated that the doors to the lobby will be 4 inches above the parking lot area and that a small walkway 6 feet wide will come around the lobby along with a ramp. Mr. Winkle testified that, with respect to waste disposal, a waste disposal service company would come into the office, remove the trash, store it and then bring it down for pick-up at least two times a week. Therefore, there is no proposed dumpster or location for recyclables. Mr. Winkle stated that the heating system would be located in the roof attic space and that air conditioning condenser units would be located at ground level.

5. Craig Peregoy of Joseph Staigar Engineering, LLC, a licensed professional engineer and traffic engineer, testified on behalf of the applicant. Mr. Peregoy testified that he visited the site and prepared a study entitled "Traffic and Parking Impact Statement for Proposed Office Building" dated March 4, 2011. Mr. Peregoy testified that the study analyzed trip generation for the property based upon its permitted use as an office building as well as other permitted uses in the zone. Mr. Peregoy stated that the proposed use would result in less trip generation and volume than other uses permitted in the zone. Mr. Peregoy further testified that the parking configuration for the proposed site was a good design and that emergency vehicles could access the site. Mr. Peregoy further stated that the unique "core" design of the building would result in less traffic impact for the property. Mr. Peregoy testified that he did not believe there would be any need for on-street parking as there would be sufficient parking on-site. Mr. Peregoy stated, however, that there was sufficient on-street parking associated with the property, specifically an additional 43 parking spaces, should on-street parking prove necessary. Mr. Peregoy opined that any visibility issues associated with the parking spaces under the building would be minimal and would not impact visitors to the property. Mr. Peregoy acknowledged that the Applicant would be required to obtain all required approvals, including County and State approvals, associated with the application.

6. One resident appeared in opposition to the application and raised concerns regarding the size of the building and associated visibility and parking issues. The resident generally stated that the variance for parking underneath the building should not be allowed and that the Board should deny the parking variances and encourage a smaller building.

7. The Planning Board reviewed the proposed architectural plans prepared by Roger C. Winkle (Sheets A-1 through A-4) dated March 9, 2011, plans prepared by Guarriello & Dec Associates, LLC (Sheets 1-6) dated February 28, 2011, a Sediment Control Plan prepared by Guarriello & Dec Associates, LLC (Sheet # SCS-1) dated February 28, 2011, a study prepared by Joseph Staigar Engineering, LLC entitled "Traffic and Parking Impact Statement for Proposed Office Building" dated March 4, 2011 and the letter report of William H. Drew, Town Planner, dated July 6, 2011.

8. The Planning Board finds that the structure is appropriate for the neighborhood and further finds that the proposed project will improve the aesthetics of the neighborhood and create a positive economic impact on the area.

9. The Planning Board finds that based upon the testimony of the applicants' traffic engineer the proposed use of the building for professional and administrative offices will not generate excessive parking demand and the parking proposed is adequate. Further the proposed parking lot meets the design standards of the Town Ordinances. The Planning Board finds that the benefits resulting from deviation from the Land Use Ordinance substantially outweigh any detriment of the relief sought and the purposes of the New Jersey Municipal Land Use Law would be advanced by deviation from the Zoning Ordinance requirements.

10. The Planning Board finds that the relief sought by the Applicant can be granted without substantial detriment to the public good and without impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Town of Westfield.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board of the Town of Westfield on this 1st day of August, 2011, that the application of 440 North Avenue East, LLC for preliminary and final major site plan with variances on the Property is approved, subject to the following conditions:

1. The property shall not be used for medical use without the necessary Planning Board approvals.

2. Prior to the issuance of a building permit, the applicant shall submit a lighting plan to show the location and detail of wall-mounted lighting fixtures, as well as lighting on the ground floor of the property underneath the building.

3. Prior to the issuance of a building permit, the applicant shall:

A. Submit an accurate property survey showing the drainage inlet and outlet pipe and size/direction of the pipe.

B. Submit revised site plans to reflect the following changes:

(1) Corrected pipe inverts and slopes.

(2) If the drainage inlet existing on site is connected to the Town storm drain system and the applicant chooses to utilize that connection, then revised drainage plans shall be submitted for review and approval of the town engineer.

(3) A grading plan reflecting the location and limits of proposed concrete curbing and sidewalk on site with elevations.

(4) Removal of the fence along the east and west property lines.

(5) The location of the A/C condenser units.

(6) The landscape plan shall show the number of plants to be planted and the location of the A/C condenser units with landscape screening.

C. Receive SCS approval of the soil erosion/sedimentation control plan from the Soil Conservation District.

4. Prior to the issuance of a building permit, the applicant shall obtain any and all required County and State approvals including, but not limited to, NJDOT road opening permit and access and egress approval onto the property.

5. The Applicant shall remove the fence located along the curb behind the parking stalls underneath the building.

6. The Applicant shall provide adequate waste disposal services for the removal of refuse and recycling and no dumpsters are to be provided without seeking Board approval of an amended plan.

7. The Applicant shall comply with all applicable ordinances, regulations, codes and laws.



Kris McAloon, Secretary

Dated: August 1, 2011

**PB 11-01 440 North Avenue, LLC
440 North Avenue
Preliminary and Final Major Site Plan
Adopted August 1, 2011**

VOTE:	<u>Yes</u>	<u>No</u>
Vincent Wilt	X	
Robert Newell	absent	
Mark LoGrippe	absent	
James Foerst	absent	
Kris McAloon	X	
John Bennett	X	
Francis Smith	absent	
Darielle Walsh	X	
Thomas Walsh	X	
Dan Clifford (Alt. #1)	absent	
Lauren Falk (Alt. #2)	absent	

440 NORTH AVENUE, LLC
440 North Avenue

At the meeting of the Zoning Board of Adjustment for the Town of Westfield which was scheduled and took place on May 13, 2013, the Board heard and considered the within appeal.

Based upon the evidence presented and the Board's familiarity with the Land Use Ordinance, the subject property, and the surrounding neighborhood, the Board found and determined as follows:

1. The applicant was represented by Joseph Triarsi, Esq. of Cranford, New Jersey in this case before the Board. It is noted that the applicant seeks approval to construct a mixed use building, with the first floor for retail use and the second and third floors for residential use on this property which is located in the General Business 2 Zone. This proposed usage is contrary to the requirements of Sections 11.27D4 (residential use is not permitted), 17.03B5 (parking under the building is not permitted), and 17.02B4 (insufficient parking as required by use) of the Land Use Ordinance for the Town of Westfield. Proposed in this case is a building containing eleven apartments on the second and third floors for residential use, and retail-commercial space on the first floor consisting of 836 square feet. Parking for the residential use is as required for in the RSIS Manual. Parking for the commercial-retail use is as per the Westfield Zoning Ordinance. Utilizing these criteria 25 spaces would be required, and the applicant has provided for 27 spaces as proposed in this case. Notwithstanding the foregoing, the off street parking provided is insufficient as required under the Westfield Land Use Ordinance. The applicant requesting and requiring variance relief as to these deficiencies and non-conformities in this case before the Board.

2. As part of the application materials submitted, the Board acknowledged receipt of plans entitled "Use Variance, 440 North Avenue East, Lot 7, Block 3202, Town of Westfield, Union County, New Jersey", as prepared by Guarriello & Dec Associates

of Kenilworth, New Jersey as dated February 2, 2012, with revisions thru May 10, 2012, and consisting of six sheets. Also Sediment Control Plan prepared by Guarriello & Dec Associates dated February 2, 2012 with revisions through December 11, 2012 (single sheet) were also submitted by the applicant, together with architectural drawings labeled "New Construction to 440 North Avenue, Westfield, New Jersey 07090", as prepared by Forefront Designs LLC, David Bailey Architect of Westfield, New Jersey, consisting of six sheets. Sheets A1 through A4 as dated October 23, 2012 and sheets A5 and A6 dated February 7, 2012 from Mr. Bailey. Further submitted as part of this case were review letters and reports dated November 14, 2012 and May 13, 2013 regarding this application from William H. Drew, the Town Planner, and Resolution for this property issued to this applicant from the Planning Board for the Town of Westfield dated August 1, 2011 for a three-story office building on the property as a permitted use in this zone.

3. The applicant's attorney explained to the Board that the applicant had obtained approval from the Planning Board for a building to be used as general office space. The applicant's attorney indicated that the applicant believed that the current proposal before the Board was necessary as "he has shown the property for office use without success". The applicant's attorney indicated that there was a need for use variance relief among other variances needed for this proposal because of the "mixed use nature of the building, and the first floor commercial space will be 850 square feet with eleven apartments above".

4. The applicant then offered testimony from the project architect, Mr. David Bailey. The attorney for the applicant requested that Mr. Bailey discuss the appearance of a building shown on an exhibit that the applicant's attorney attempted to introduce into evidence before the Board. The attorney for the Board advised the applicant that Mr. Bailey would have to identify the exhibit and confirm it as being part of his plan or

work that was now being presented to the Board. Mr. Bailey stated when questioned that not only did he not prepare the exhibit showing the rendering of a building that the applicant's attorney attempted to offer to the Board, but he further testified, "I do not know who prepared this rendering". As a result the Board attorney advised the Board that the applicant's witness could not properly testify regarding this proposed exhibit since it was not his work nor plan. Also that the project architect should testify as to his plans and work which was in accordance with the applicant's filing made with the Board. The Board agreed that this would be the proper procedure, and the applicant's witness was requested to testify as to his plans and work which was now before the Board as part of the plans in this case for which approval was being requested.

5. The project architect, Mr. Bailey, then went through his plans which were marked as separate exhibits to show the Board what the building would consist of and how it would appear. Mr. Bailey went through his plans which were marked as separate exhibits to explain to the Board the "East and West side elevations and the driveways thru (under) the building". He further explained the "first floor retail area and the dimensions of the building underneath the apartments which would be constructed above". Mr. Bailey referred to his drawings to identify for the Board the "footprint of the building" and also explained the ground floor plan for "retail use and with an elevator". Mr. Bailey further explained the tenant-lobby space on the first floor, and then went into an explanation of the second and third floors proposed for the building as to the floor plans and size of the bedrooms and apartments being proposed. Mr. Bailey referred to an exhibit being a page of his floor plans showing what he described as "seven one-bedroom units and four two-bedroom units with a size of 830 square feet for the one-bedrooms, the duplex having a size of 1032 square feet, and the two-bedroom units being 1200 and 1100 square feet". During this testimony and presentation by the project

architect the floor plans for the apartments on the second and third floors were referred to by Mr. Bailey in his description of the apartments proposed.

6. The applicant's project engineer, Mr. Ed Dec, then explained the survey and site plan drawings submitted to the Board as prepared by his firm. These plans were marked as a single exhibit into evidence. The applicant's engineer reviewed the bulk standards of the Ordinance and discussed the size of the building proposed and the site improvements that were also being shown on the plans which he said included, "The required parking by the use would be 25 spaces, and we are proposing and providing 27 spaces." A further explanation was given by the applicant's engineer as to the number of spaces required as compared to the mix of one-bedroom and two-bedroom apartments being proposed. The applicant's engineer also explained to the Board the different calculation of parking as to "type of use versus parking requirements of the zone". The applicant's engineer confirmed that the applicant's off street parking provided is insufficient as required by the Zoning Ordinance. Mr. Dec also explained the additional variance relief needed for "the six stalls underneath the building". He also stated, "The rear of the stalls on the easterly and rear side are 2 feet under the building, and these are also non-conforming as well." The applicant's engineer further explained the location of this site in relationship to the "Lindeman Buick property on the west side, on the east side is the McIntyre locksmith and lawnmower store, and further east is the Top Line Appliance store, and across the street the old Norris Chevrolet".

7. The applicant's engineer then explained the overall size of the property in relationship to the size of the new building and coverage improvements that were being proposed. Mr. Dec explained, "The property is a rectangle in shape." He then utilized a page of his plans to show the original parking previously proposed and what the applicant was now seeking to be approved in this case. The engineer for the applicant also

explained how the applicant would be "using the curb cuts from the adjoining roadway, and there will be one-way vehicle circulation around the property." The driveway-circulation plan also included what he described as a portion of the east side under the building. Mr. Dec utilized a separate page of his drawings to show to the Board the "pink shaded area where the parking will be taking place under the building". Mr. Dec was then asked by the Board to explain and locate the number of spaces and the aisle width. Mr. Dec advised that, "The aisle width will be 17, and this is slightly smaller than what would normally be provided but I believe it is still adequate." The engineer further explained the "U shaped circular one-way direction of traffic and vehicle circulation on the site utilizing the driveway proposed". Mr. Dec then located a bike rack and a grassy area on the site and further located for the Board what he described as "two ADA spaces as part of our overall minor site plan". This last statement by the applicant's engineer was responded to by Mr. Drew, the Town Planner, who advised the applicant, his legal representative, Mr. Dec, and also the Board that, "This is not a minor site plan as it does not meet the definitions of a minor site plan in our Ordinance, and is therefore a major site plan."

8. The applicant then offered testimony from Mr. Craig Peregoye, as its traffic engineer. This witness explained the parking layout, roadway access, and overall circulation proposed for the site plan. The applicant's traffic engineer explained to the Board the parking proposed on the property and the location of same. The expert for the applicant offered his opinion that the parking as proposed would "meet the RSIS requirements". The applicant's traffic expert also explained the calculations of "available on street parking on the street within 500 feet of this property in both directions". The Board questioned the applicant's engineer as to whether there was in fact on street parking available along the very busy North Avenue roadway, also known as N.J. Highway 28. The Board also questioned the

applicant's engineer about whether or not the driveways as proposed and the overall site circulation would be "safe and would work for a residential development". The applicant's expert offered to the Board his belief that there would be adequate parking for the applicant's proposed use, and further explained the breakdown of parking that would be required for a mixed or "typical retail use" of the property as well. The Board immediately questioned the applicant's traffic engineer as to whether there was any type of use that would not be appropriate as far as parking requirements and traffic generation from this property. The witness responded that he felt the present plan was appropriate.

9. Counsel for the applicant, Mr. Triarsi, then introduced Mr. Anthony Schilling of Relocation Realty as a proposed expert in this case. Counsel for the Board immediately questioned the applicant's attorney as to the area of expertise that this proposed witness would offer to the Board. Mr. Triarsi advised that Mr. Schilling had been retained by the applicant to rent office space for the property. Counsel for the Board then inquired of counsel for the applicant as to whether Mr. Schilling was an appraiser or had any particular expertise or recognized authority as an expert witness other than as the applicant's real estate agent. Counsel for the Board further inquired as to whether the applicant's counsel was intending to offer this witness on the basis of any claim of economic hardship or economic utility of the property. Mr. Triarsi advised this was not being done. Mr. Schilling then attempted to introduce before the Board a "study" of available office space. This caused counsel for the Board to question the witness as to whether he had prepared the study. Mr. Schilling advised the Board that he had not. Mr. Schilling further advised the Board that he would wish to offer testimony as to his efforts in "marketing this property and the feedback I have had from interested parties about the property." Counsel for the Board then advised the applicant's attorney and the witness that the

witness would not be permitted to testify as to statements made by unknown or unavailable third persons or parties since same would constitute hearsay. Further that the efforts of the real estate agent to market the property or attempting to arrange for rentals would not be relevant to the issues related to the variance relief and the site plan approval that the Board was now being asked to issue to the applicant in this case. Counsel for the applicant, Mr. Triarsi, urged the Board to allow Mr. Schilling to testify as to his efforts to lease the property for office use. Counsel for the Board advised the Board that they would have to make a decision based upon the advice of Board counsel as to whether or not it would be appropriate to consider any claimed expert testimony from this witness. The Board determined that Mr. Schilling was not a properly qualified expert and that his offered testimony was not appropriate to have the Board receive regarding this application.

10. The applicant then offered testimony from Mr. Jason Kasler, as a professional planner in support of this application. Mr. Kasler advised the Board that he had reviewed the site plan submission that was before the Board and had also considered the Land Development Ordinance and the Master Plan for the Town of Westfield. The applicant's planner indicated that the applicant had the burden in this case of establishing that, "The proposed mixed use building and the use of the property being requested for approval is particularly well-suited for the property. The applicant since D variance relief is required bears the responsibility of establishing an enhanced quantity of proof to justify the variances requested." The applicant's planner then reviewed with the Board the permitted uses in the GB-2 Zone which included a variety of retail uses, which Mr. Kasler stated "are in an area where there are many large lots and a variety of different types of uses".

11. The applicant's planner, Mr. Kasler, indicated that the subject property was "in need of a facelift". The applicant's planner further stated that he was advised by the

findings regarding the GB-2 Zone. The Town Planner pointed out that such report further stated that development regulations should allow and permit large scale uses that exist in that zone and continued designation of this area for commercial development. Also that the Planning Board had re-examined the Master Plan in 2008 and adopted the re-examination report on March 17, 2009 which reaffirmed that commercial development should continue to be the designation for the GB-2 Zone, and that the GB-2 Zone considering its location along the railroad and the roadway in front of the property was an appropriate designation for the premises as determined by the Planning Board to provide a transition area between the GB-2 uses and residential uses. The Town Planner also asked Mr. Kasler as to whether he had considered the goals and objectives of the land use element in the re-examination report which encouraged the GB-2 Zone to be maintained in commercial use, and it did not contemplate or support residential uses within the GB-2 Zone. The Town Planner also asked Mr. Kasler as to whether he felt a residential use of the subject property would "inhibit the development or commercial uses adjoining this property or in close proximity". Mr. Kasler continued to maintain his opinion as he argued to the Board that the property was "underutilized" and that the applicant's project demonstrated its "appropriateness" for the property. Mr. Kasler was asked by the Board as to whether the subject property was "likely to be used as a permitted use in the future", and Mr. Kasler stated, "I am not in the position to have a crystal ball to respond to this question, but it is my observation that some of the businesses that had formerly been in this area were leaving and not coming back."

14. The Board then discussed with the applicant's planner and the Town Planner the permitted uses in the Ordinance for the premises. Also the Board again questioned Mr. Kasler that if the adjoining automobile dealer left the premises they occupied would not the subject property as now proposed which required

use variance relief for residential use be "incompatible with neighboring redevelopment there that would be consistent with the zoning". The Board further questioned Mr. Kasler about the commercial space proposed in the applicant's building and what type of usage this would involve. Mr. Kasler stated, "I don't know the business use that is proposed for the commercial space in our project, but I would imagine we hope to have a use that would provide services." The Board then questioned the applicant's planner as to how the proposed use variance and other variance relief and the use of this property for a mixed use residential development would benefit the neighborhood or the Town of Westfield from the proposed usage? Mr. Kasler advised the Board that, "The benefits will come for surrounding neighborhoods and for businesses providing services and for the downtown district as well."

15. The Town Planner, Mr. Drew, then asked the applicant's planner and the Board to further consider the compatibility of the property and the uses proposed here with the GB-2 zoned neighboring properties. Mr. Drew also explained to the Board and the applicant's planner the zoning designations of other zones in close proximity to the site and why the GB-2 commercial designation has continued to be encouraged and given by the Planning Board in the update to the Master Plan for this property, and others along the railroad tracks. Mr. Drew also stated, "The Board has not heard any testimony about how eleven apartment units would be compatible with this busy commercial zone and district, adjoining a railroad and fronting a very busy highway." The Town Planner, Mr. Drew, also asked the Board to consider whether the applicant had shown any evidence through any of the testimony in this case that the proposed use of the premises for a mixed use commercial-residential mix would be "compatible with the Master Plan and/or could be accommodated and reconciled considering the GB-2 Zone designation of permitted uses which was designed and intended to allow the continuation of large commercial uses in what has become a

limited area of the Town of Westfield where such uses can be allowed and accommodated". The Town Planner, Mr. Drew, also pointed out to the Board the GB-3 Zone residential uses which were also allowed in other zones were not permitted in the GB-2 District because the GB-2 Zone District would not have sufficient buffering, compatibility for residential usage, etc. The Town Planner also pointed out to the Board that the re-examination of the Land Use Element of the Master Plan, which had been recently approved by the Planning Board and which reaffirmed the commercial use of the GB-2 Zone as a specific review of the business zones undertaken by the Planning Board in the Town had reaffirmed the appropriateness of such designation. During this discussion with the Town Planner it was also noted by the Board that the applicant had made no presentation or offered any testimony to support the density of the proposed residential use of the site, nor any evidence as to how the site would be suitable for residential use in accommodating the residents who would use these apartments as to open space, recreational usage, etc. It was also noted that the density proposed for this development would exceed the maximum density of any zone district in the Town of Westfield for multi-family housing.

16. This discussion was responded to by the attorney for the applicant, Mr. Triarsi, who stated to the Board his belief that, "The area needs a boost and this development would give the area such a boost. The Board should not stand on ceremony and refuse to allow the use as it is embarrassing as it is and this property is really an island and it would be stupid for the Board to not allow this use." Mr. Triarsi urged the Board to also consider that the applicant was "proposing a use that will rehabilitate the property and that the Board should not allow this property to remain fallow".

17. During public comment the Board heard Ms. Millicent Brody of Westfield, New Jersey advise the Board, "I am looking for an apartment for a number of years, and I have no place that

I feel I can go that is suitable. I think this would be a good project as I would be able to keep my car and live downtown." Mr. Jeff Silverstein of Scotch Plains asked the applicant and the Board as to whether the project as proposed would be "ADA accessible"? It was confirmed by the applicant's representatives that it would be. Ms. Sherry Cronin, who advised the Board that she is the "Main Street Manager", asked the Board to consider approving this project as it had "potential for the downtown corridor".

18. The Board noted that the business zone designation and permitted uses in this zone and for this property had only recently been looked at by the Planning Board. Further that the Planning Board had determined that it would not rezone this property and that the commercial use of this property and others in the immediate zone had not been intended to include residential development. The Board noted the limited commercial and business areas available for use in the Town of Westfield. The Board also noted the zone districts in the Town of Westfield which permitted multi-family development which the Board indicated caused the Board to consider whether or not the applicant had in fact demonstrated in its mixed use proposal a "particularly suitable use for this property in this zone". The Board noted that the subject property is also across the tracks from a shopping center and that there was no buffering or no transitional area set forth or possible between these properties. Also that the uses that adjoin this property would not be compatible with residential development. The Board also inquired as to whether it would be appropriate to put a residential use such as being proposed in this case in the middle of commercial uses and in a commercial corridor where the existing zoning had only been recently re-examined and reconfirmed as not being appropriate for residential development. The Board also noted that it would consider, despite what the applicant felt would be the benefits to his property, whether or not this proposed usage would detract from

the GB-2 uses of adjoining properties in the future and/or which would create more detriments and negative impact for the subject property and others in this zone that would outweigh the benefits that the applicant was claiming.

19. There was no further testimony, evidence, nor other arguments heard by the Board in this connection with this case.

The Board finds and determines that variance relief and site plan approval cannot be issued to the applicant in this case as the applicant has failed to establish the required showing of proof, evidence, and other good cause to justify the Board's approval. In that regard the Board notes that the applicant has failed to establish the particular suitability of the premises for the proposed mixed use building, and in particular the residential usage proposed both as to the use itself and the density proposed.

The Board notes in that regard that the applicant's failure to show particular suitability of the site also relates to the applicant's failures of proof as to any proper and required analysis and discussion of the GB-2 Zone requirements which prohibit residential use of any type. In particular the Board notes the review memo and comments of the Town Planner, Mr. Drew, which points out the 2002 Land Use Plan Element to the Master Plan which was undertaken with a specific review of the business zones in the Town and the findings stated therein, which specifically reaffirmed the appropriateness of the commercial uses to be located and maintained along the railroad, generally between North and South Avenues. This of course includes the subject site, the Board observes.

Further the Board notes herein the Planning Board's re-examination of the Master Plan in 2008 and the adoption of the re-examination report by the Planning Board on March 17, 2009 wherein it is again reaffirmed that commercial development should be encouraged in the GB-2 Zone, and also the further findings of the Planning Board stated therein that the GB-2 Zone

would not be suitable for residential use because it lacks the buffering found to be necessary by the Planning Board for residential uses in the GB-2 Zone.

The Board notes further that the 2009 Land Use Element and Housing Element and Fair Share Plan also establishes and promotes certain high density residential development (transit oriented development) along the railroad but in more proximity to the Westfield and Cranford train stations. This site in this case was not included in the transit oriented development sites encouraged and recognized for possible future plans for such development in the updated Planning Board study and reports mentioned herein. The Board concludes as a result that multi-family housing is not appropriate for this site.

The Board finds in particular the failure of the applicant's planner and other witnesses offered to the Board in this case to discuss and analyze the impact upon the existing Land Development Ordinance and Zoning Plan for the Town of Westfield and the Master Plan for the Town of Westfield which do not allow the uses proposed in this case. The applicant's proofs being limited to the applicant's belief that this would be a preferable use of the property and a "suitable redevelopment of a vacant site" the Board finds to be insufficient to support use variance relief.

The Board particularly finds as well that the applicant's proofs are not sufficient to justify the "particular suitability" standard for use variance relief as is set forth and required under New Jersey case law and authority. Further that the applicant has completely failed to demonstrate that variance relief can be allowed and permitted to the applicant in this case to permit residential usage of this property "consistent with the goals and purposes of the Land Development Ordinance and the Master Plan for the Town of Westfield".

The Board finds specifically to the contrary that the goals and purposes of the Land Development Ordinance and the Master

Plan for the Town of Westfield, as recently reaffirmed by the Planning Board in its Master Plan re-examination report are all directly contrary to the applicant's claims and purported usage and have not been reconciled by the applicant herein.

The Board also finds most importantly that the applicant has also failed to justify or demonstrate particular suitability of the site for residential use as to the density proposed. The Board notes in that regard that the applicant proposes a density that equates to 29 units per acre, which is far in excess of any residential zoning permitted in the Town Land Use Ordinance. The Board observes as has been set forth in the report of the Town Planner and in his comments to the Board that the RA-3 Zone which has a maximum density of 18 units per acre, which is the highest density for multi-family housing in this Town, is far less than the proposed density for residential development that the applicant proposes herein, 29 units per acre.

In fact, the Board finds the applicant's proposal to construct this number of units at the subject property with the roadway required to go under the building and with the other unusual and contorted site reconfiguration that would be necessary to allow this building to be used as proposed by the applicant, to be particularly unsuitable, undesirable, an unworkable design, and overall a use that the Board finds to be not suitable for the premises.

The Board finds that the applicant's witnesses have failed to establish that the site can support the density and the number of apartments proposed (eleven) with sufficient open space and air to be provided. Further the applicant has failed to establish any testimony that the obvious negative impact the residential use of the site would create would not occur. The Board finds to the contrary that the residents would experience an undesirable and "urban type appearance" from this property, adjoining large commercial uses, adjoining a busy highway, adjoining a railroad and a busy shopping mall area on the other side of the premises as well. The Board finds quite simply that

the subject property is too small to accommodate the apartment house with eleven apartments that the applicant is proposing in this case. The substantial and overwhelmingly over-intensive use of the site with the building and the number of apartments proposed by the applicant in this case, with the lack of recreational amenities, open space, light and air, the Board finds to be a particularly undesirable and unsuitable usage of the property overall.

The Board further finds and concludes that the residential use of this property as proposed would place in a commercial zone, in a very busy neighborhood, an isolated multi-family residential property which would be out of character with adjoining properties, and inconsistent with conditions in this neighborhood for such a residential use.

Not only would residential use of this property be detrimental to the proper use of same in the reasonable judgment of the Board, but it also would have negative impact on the adjoining commercial uses and redevelopment possibilities for these properties as well. The Board also finds contrary to the applicant's contention that the residential use of the subject property would be a suitable usage considering the adjoining premises, the Board further finds to the contrary that the redevelopment of the other neighboring properties which are designed and intended for continued commercial uses would be adversely affected by this residential use. The Board again notes that the applicant has completely failed to establish that this proposed residential use at a proposed density of 29 units to the acre to be located in a zone in which no residential use of any sort is permitted, and would not conflict with the zone plan or the zone scheme of the Town's Zoning Ordinance or Master Plan, requires the Board to deny this application.

The Board further finds that the applicant's proposed usage would not only be damaging to the subject property as to its further proper and appropriate use for a variety of permitted commercial purposes and uses, but also this use would convert

and/or establish an undesirable "interference with" the proper and future development of large lots adjoining this property. The subject property and the adjoining premises are and remain suitable for permitted commercial development in the reasonable judgment of the Board, and as the Board notes as recently affirmed as well by the Town's re-examination report and the Planning Board's recommendations regarding the Master Plan for continued commercial usage. The Board finds in that regard that there are multiple other locations in the Town of Westfield that would be suitable for residential use, and a limited amount of commercial and retail zoned properties still available for usage, in particular those located on busy highway corridors and adjoining other long-established commercial and retail uses such as is the case with the neighborhood and zone district in which the applicant's property is located.

The applicant's simple claim that the premises is a vacant lot which is need of "rehabilitation" the Board finds to be a completely inadequately argument and complete failure of proofs as to the proposed usage in this case.

The Board also rejects the applicant's unsupported claims that the subject property is not suitable for any office usage (other uses the Board notes as well to also be permissible for this property in accordance with the existing zoning), as the applicant has failed to undertake any construction or usage of the property consistent with the prior Planning Board approval of an office building on this site.

The Board finds that the applicant has failed to establish that special reasons exist to justify the proposed use. The failure of positive criteria and showing by the applicant is also combined with the failure of the applicant to satisfy the negative criteria as well the Board concludes. Also the Board finds that the applicant has failed to demonstrate that the proposed use can be allowed by virtue of a use variance without leading to a substantial detriment to the public good, and to

the intent and purposes of the zone plan and the zoning Ordinance.

The Board finally concludes that the applicant's proofs overall do not meet the enhanced level of proofs and showing required for use variance relief to the applicant in this case. Further the Board finds that the negative impact from a retail unit, three-story, eleven apartment, residential, multi-family complex, would be incompatible to allow for this property and for the adjoining property owners and for conditions in this zone. The Board concludes that the applicant's proposed use would have no substantial benefit to either the general public or to the zone plan by virtue of this usage. As a result, it is therefore properly denied by this Board.

NOW, THEREFORE, the request of 440 North Avenue, LLC for variance relief and site plan approval to allow and permit the applicant to construct a mixed use building, with the first floor for retail use and the second and third floors for residential use for this property which is located in the General Business 2 Zone, and which usage would be contrary to the requirements of Sections 11.27D.4 (residential uses not permitted), 17.03B.5 (parking under the building is not permitted), and 17.02B.4 (insufficient parking as required by use) of the Land Use Ordinance, with the proposed development also being deficient as to off street parking as required by zoning under the Westfield Ordinance, and with the applicant's related requests for waivers and other relief from the Board in connection with this application, in accordance with the plans, evidence, and testimony before the Board in this case, **BE AND HEREBY IS ORDERED DENIED.**


Chairman


Secretary

Dated: June 10, 2013

LAW OFFICES

TRIARSI, BETANCOURT, WUKOVITS & DUGAN, LLC

FOUNDED 1969

RAFAEL J. BETANCOURT**
STEVEN F. WUKOVITS†
MARK P. DUGAN***
RICHARD D. HUXFORD††

CENTENNIAL PLAZA
186 NORTH AVENUE, EAST
CRANFORD, N.J. 07016
www.tbwdlaw.com
(908) 709-1700
TELECOPIER: (908) 272-4477

MARC A. SPOSATO◇

JACOB L. TRIARSI
OF COUNSEL
(1934-1987)

JOSEPH J. TRIARSI
OF COUNSEL

ALFONSO L. PISANO
OF COUNSEL
(1960-2005)

**NY & PR BARS

† CERTIFIED BY THE SUPREME COURT OF NJ
AS A CRIMINAL TRIAL ATTORNEY

*** NY, PA & DC BARS & R. 1:40 MEDIATOR

†† CERTIFIED BY THE SUPREME COURT OF NJ
AS A CERTIFIED MUNICIPAL COURT ATTORNEY

◇ NY BAR

January 27, 2020

Mr. Donald Sammet
Planning Board, Town of Westfield
959 North Avenue, West
Westfield, NJ 07090

Re: 440 North Avenue, East LLC

Dear Mr. Sammet,

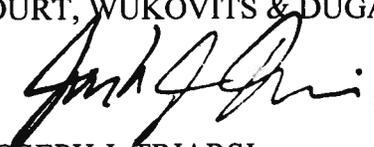
This is furtherance of our telephone conversation of January 22, 2020. As you are aware this office represents 440 North Ave East, LLC in connection with a certain application to develop property at 440 North Avenue, East.

The application in this matter was previously filed, properly noticed, and originally scheduled for hearing on October 7, 2019. At the time, matter was called for hearing a discussion ensued between the developer and members of the board respecting the architecture of the proposed new building. In order to accommodate the concerns of several members of the planning board, the developer agreed at that time to delay formal presentation of its case pending a review of the architecture with the development review committee of the planning board and the matter was thereupon adjourned. Subsequent to the initial meeting, the developer, his architect, and engineer conducted the required meetings and a new design for the proposed structure was presented and deemed by the planning board members to be an acceptable design for the property. The redesign of the site resulted in the necessity of the developer requesting an additional variance that additional variance related to the front yard setback. The GB-2 Zone requires a front setback of 15 feet or building height. The proposal before the board proposes a one-foot setback. In all other particulars the prior variances as they relate to parking stall size, light fixture location, parking required by use and parking required by zone remain as originally

stated. The front yard setback required is necessary due to the fact that the foundation is located at the property line. This, being essential to the building design I ask that the board accept this communication as an amendment to the previously filed application and schedule the case for hearing. I will of course serve a new public notice wherein all variances will be listed together with other such variances, waivers, and or exceptions as may be required and I will attend to the publication of the notice in the official newspaper of the town.

Will you kindly advise at your earliest convenience of the date and the time this matter will be heard and what additional documents you will require. Your immediate attention to this matter is greatly appreciated.

Very truly yours,
TRIARSI, BETANCOURT, WUKOVITS & DUGAN, LLC

A handwritten signature in black ink, appearing to read "Joseph J. Triarsi". The signature is fluid and cursive, written over the printed name below.

JOSEPH J. TRIARSI

JJT/tk



DONALD B. SAMMET, PP, AICP

TOWN PLANNER

Memorandum

TO: Planning Board

FROM: Donald B. Sammet, PP/AICP, Town Planner

CC: Linda Jacus, Board Administrative Secretary
Alan Trembulak, Esq., Board Attorney
Joseph Triarsi, Esq., Applicant's Attorney

DATE: February 26, 2020

RE: **REVISED SITE PLAN AND VARIANCE APPLICATION**
440 NORTH AVENUE EAST
BLOCK 3202, LOT 7

Introduction and Background

The applicant has submitted an application for site plan and variance approvals to allow for the construction of a mixed-use building containing retail space on the ground floor, office space on floors two and three, and accessory parking areas. The property is located within the GB-2 General Business District Zone District, on the southern side of North Avenue west of its intersection with South Euclid Avenue.

The applicant obtained approval from the Planning Board for a near identical project on the site in 2011. Given the passage of time since that approval, local ordinance considers that approval expired. Due to ordinance changes, the applicant actually no longer requires certain variance relief needed previously; for example, from an old ordinance provision which prohibits parking underneath a building, as that provision has been removed from the ordinance.

The applicant brought forward their initial application in 2019. After deliberation, the Board and applicant both determined that meetings with the Planning Board Site Plan Review Committee were warranted to address certain concerns of the Board regarding architectural design and building placement. From there, the applicant met



TOWN OF WESTFIELD

959 NORTH AVENUE WEST, WESTFIELD, NEW JERSEY 07090-2196

EMAIL: dsammet@westfieldnj.gov TELEPHONE: (908) 789-4100, EXT. 4624 FAX: (908) 789-4113

with the Committee on multiple occasions. Now submitted is a revised set of plans based upon those meeting with the Committee.

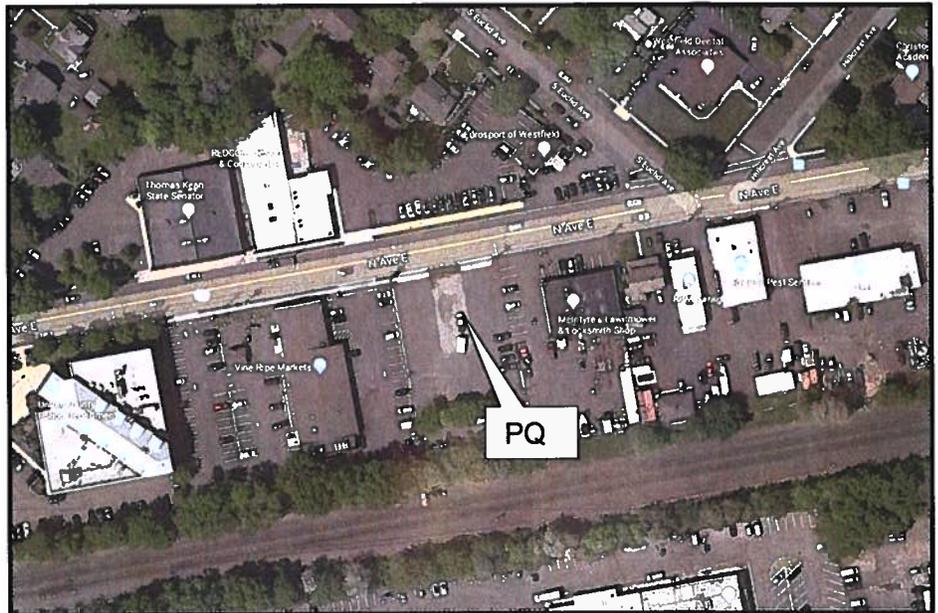
Submitted and reviewed were the following:

- Correspondence from Joseph Triarsi, Esq. to Donald Sammet, Town Planner, dated January 2, 2020;
- Application for site plan and variance approvals for the subject property, with accompanying documents;
- Site plans on 6 sheets, prepared by Edward Dec, PE/PLS, of Guarriello & Dec Associates, LLC last revised to January 15, 2020;
- Floor plans and elevations on 2 sheets, prepared by Roger Winkle, Licensed Architect, dated January 17, 2020.

Property Description

The subject property is located on the southerly side of North Avenue East just west of South Euclid Avenue. The property is surrounded by non-residential uses to the west, east and north. To the south, running parallel to the rear lot line of the property is the Raritan Valley Line.

The subject property measures 18,000 square feet in area. The site once contained a diner, which has been removed. Now the property is vacant, covered only by asphalt and gravel.



Zoning Considerations

The subject property is located within the GB-2 General Business District Zone District. The GB-2 zone district is intended to encourage retail and wholesale sales, personal and business services, as well as business, administrative and professional offices.

The property is also located within the GB-2 Affordable Housing Overlay Zone District. The overlay allows for development on the property for exclusively residential use as an alternative to what is permitted by the underlying zoning, as long as affordable housing

units are constructed. The applicant is not proposing to develop using the overlay zone regulations and has chosen to build utilizing the underlying GB-2 Zone regulations.

Permitted Principal Uses

The applicant proposes both retail and office use on the site. Although not specifically mentioned, it appears that the applicant is proposing business/administrative offices. This is inferred from the parking calculations provided within the application. Business/administrative offices (such as as an insurance office) have a lesser parking requirement from other office types such as professional offices (such as offices for accountants, lawyers, architects) and medical offices. Although professional offices and medical offices are permitted principal uses, the applicant is not requesting variance relief for a parking deficiency for these office types. If they were proposed in the future, a parking variance would first need to be obtained.

The ground floor of the building would contain retail space, parking, an elevator, and stairwell. At the time of the 2011 application, parking was not permitted underneath a building. This prohibition was removed from the ordinance in 2012, by General Ordinance Number 1992. Floors 2 and 3 would contain the office use.

Bulk Standards

Setback and Height Requirements

The size of the building has increased in area from that originally proposed. The original proposal showed a building footprint of 110 feet deep and 57 feet wide. The revised submission shows a building footprint of 128 feet deep and 57 feet wide.

The applicant originally proposed a front yard setback of approximately 20 feet. Based upon discussions with the Site Plan Subcommittee, the applicant has brought the building to one foot from the front property line. This one foot setback results in the necessity for a variance from Land Use Ordinance Section 11.27E.1 in that a 20 foot front yard setback is required and a lesser setback is proposed.

The building proposed is fully compliant with height requirements for the zone district. The zone district permits a maximum height of 3 stories/40 feet and a 3 story/40 foot building is proposed. Minimum side and rear yard setbacks are being met and exceeded.

Coverage Requirements

The applicant is fully compliant with coverage requirements, which include maximum coverage by buildings and above grade structures, and maximum coverage by improvements. Coverage requirements are instituted, in part, to help manage stormwater. The applicant should describe the grading and drainage plan for the property and how stormwater will be managed.

Parking Requirements

The Town Land Use Ordinance necessitates that parking requirements be calculated in two separate ways. One is by the zone district in which the property is located, and the second is by the uses contained within the proposed development. Pursuant to Land Use Ordinance

Section 17.02.A.1., the more restrictive of these two calculations shall be the minimum number of parking spaces required.

The applicant is requesting a variance from the number of parking spaces required by use as specified in Land Use Ordinance Section 17.02.C.5.c. When parking for the proposed project is calculated under the use requirement 63 parking spaces are required, and the applicant proposes a total of 40 parking spaces. When the parking requirement is calculated based on the zone district however, only 53 parking spaces are required.

This parking requirement is greater than that originally necessary due to the redesign of the building. The overall square footage of the building has increased from that originally proposed. The original proposal had 12,193 square feet of usable floor area dedicated to offices, with the revised proposal having a total of 15,828 square feet.

Section	Regulation	Proposed	Required	Proposed	Variance
17.02B.4 Min. parking by zone district	1 per 300 sq. ft. gross floor area	15,828 gfa	15,828/300=53	40	No*
17.02.C.5.c. Min. pkg. by use	Business/administrative office: 1 space per 250 gross floor area	15,109 gfa	15,109/250 =60.4	40	Yes*
	General retail sales	719 gfa	719/300=2.39		
			TOTAL=63		

**The parking requirement is 63 spaces as the parking requirement per use is greater than the requirement by zone. Pursuant to LUO Section 17.02A.1., the more restrictive requirement is utilized.*

As noted earlier, as part of the applicant's request for a parking variance by use, they are proposing business and administrative offices. If an office type that has a greater parking requirement such as professional or medical offices are proposed in the future, the applicant will need to seek additional variance relief.

Site Plan Considerations

Parking and Circulation

The applicant proposes parking both within a surface parking area on-site and underneath the building (ground level). As a result of the redesign, a single parking space has been lost, reducing the total number of parking spaces proposed to 40, down from 41. All 30 parking spaces within the surface parking area are ordinance compliant. For the remaining 10 parking space which are under the building, the applicant is requesting a variance from Land Use Ordinance Section 17.04A in that parking stall dimensions measure 9 feet wide by 16 feet deep, where the ordinance requires a 20 foot deep stall. Although the Town ordinance does not provide for compact car parking spaces, allowances for them are not uncommon in non-residential developments.

For some guidance, I reviewed the publication "The Parking Handbook for Small Communities", prepared by the Institute for Transportation Engineers and National Trust for Historic Preservation, 1994. That publication notes that "designers of parking facilities must design for an automobile population in which, on average, 50% of the vehicles will be large and 50% will be small". The publication also notes research conducted which found that 85% of small cars will have an average dimension of 5 feet 9 inches wide by 14 feet 7 inches long. Given this information, the proposed stall dimensions of 9 feet wide by 16 feet deep could accommodate small cars.

If the Board was not disposed to grant the variance for these small spaces, it is likely that 5 would need to be removed resulting in a lesser amount of parking on-site. If the Board finds that the spaces can accommodate parking for compact vehicles, I recommend that a condition of approval be that the spaces be labeled with pavement markings or signage indicating that they are reserved for compact vehicles.

The applicant also proposes an electrical vehicle charging station on the property.

A one-way circulation pattern is now proposed on the site. This results in a reduction in the size of the garage opening in the front façade of the building and was requested by the Site Plan Review Subcommittee. Parking spaces located underneath the building will be accessed from the same aisles that serve the surface parking spaces. There are two handicapped parking spaces proposed within the rear of the site with a striped crosswalk provided between these spaces and the elevator lobby (Although this striped crosswalk is only shown on the architect's plans).

Land Use Ordinance Section 17.07 requires that all parking and loading areas and all driveways be curbed with granite block curbing. I believe this is proposed, as a curbing detail is provided. The applicant should confirm for the Board that granite block curbing is proposed.

Lighting

The applicant proposes to illuminate the site with a total of 8 pole mounted light fixtures around the perimeter of the site. These fixtures will be mounted at a height of 15 feet and therefore do not exceed permitted height limits. The applicant should provide testimony in regard to any lighting proposed underneath the building, illuminating the parking there, and any wall mounted fixtures. No wall mounted fixtures are shown on the building elevations, so the three lights indicated on the lighting and landscaping plan on the westerly side of the building should be described. Are these also pole mounted fixtures?

Landscaping and Fencing

The landscape plan indicates that all four corners of the site will contain planting beds. Within the southeast corner, a picnic table will be provided. The applicant should describe the proposed plantings within these landscape beds at the hearing. A ground cover of river stone will be placed between the parking area and property line. A 4 foot tall split rail fence is to surround the parking area.

Trash and Recycling

No refuse enclosure is shown on the site. A note on the cover page of the site plan states that solid waste refuse is to be stored inside of the building. The applicant should describe how trash and recycling will be collected from the site. Will trash bags be brought down to the parking area for collection and where will they likely be placed? It should be verified that any temporary placement of trash bags will not hinder circulation on the site.

Signage

The applicant's plans show a single wall mounted sign on the wall structure which screens the bicycle storage area. I believe this to be a building directory sign for the upper story office uses. As this sign is not located at the entrance to a commercial space, a variance is required from **Land Use Ordinance Section 16.04G1**. Sign details are not provided, although I measure the sign dimensions to be approximately 3.5 feet tall by 4.25 feet wide. The applicant should describe compliance or non-compliance with the following regulations for building directory signs:

G. **Directory signs for entrances serving multiple nonresidential uses.** Regardless of the zone district, any building occupied by lawfully permitted nonresidential uses shall be permitted one (1) directory sign for each exterior public entrance which serves more than one (1) nonresidential use, regulated as follows:

1. Any such sign shall be mounted on the wall at the public entrance.
2. Any such sign shall be divided into panels identifying each nonresidential use served by the entrance; one (1) such panel for each use. The panels shall be arranged above and below each other.
3. The horizontal dimension of any individual panel or the entire directory sign shall not exceed two and one-half (2½) feet (30 inches).
4. The vertical dimension of any individual panel shall not exceed four (4) inches. The vertical dimension of the entire directory sign shall not exceed the product of four (4) inches times the number of individual panels on the sign.
5. The vertical dimension of the letters, numbers or other symbols on the sign shall not exceed three (3) inches.
6. The sign shall not be illuminated.

The applicant should also indicate any signage proposed for the retail space.

Other Comments

I kindly request that the applicant address the comments in my report. They are listed below for convenience.

1. The applicant should describe the grading and drainage plan for the property and how stormwater will be managed.
2. The applicant should confirm for the Board that granite block curbing is proposed.
3. The applicant should provide testimony in regard to any lighting proposed underneath the building, illuminating the parking there, and any wall mounted fixtures.
4. No wall mounted fixtures are shown on the building elevations, so the three lights indicated on the lighting and landscaping plan on the westerly side of the building should be described. Are these also pole mounted fixtures?
5. The applicant should describe how trash and recycling will be collected from the site. Will trash bags be brought down to the parking area for collection and where will they likely be placed? It should be verified that any temporary placement of trash bags will not hinder circulation on the site.

I also note the following:

1. If an office type that has a greater parking requirement such as professional or medical offices are proposed in the future, the applicant will need to seek additional variance relief.
2. If the Board finds that the parking spaces underneath the building can accommodate parking for compact vehicles, I recommend that a condition of approval be that the spaces be labeled with pavement markings or signage indicating that they are reserved for compact vehicles.

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