

RESOLUTION NO. P-10-2008A

**RESOLUTION OF THE EDGEWATER PARK TOWNSHIP PLANNING BOARD,
CARDINALE ENTERPRISES, LLC
BLOCK 404, LOT 2.02**

WHEREAS, Cardinale Enterprises, LLC has applied to the Planning Board of the Township of Edgewater Park for preliminary and final site plan approval for property located at 4201 US Route 130 South for the purpose of constructing a mixed-use commercial development; and

WHEREAS, variances are required because the Applicant has not satisfied all of the requirements of the Edgewater Park Zoning Ordinance; and

WHEREAS, the Planning Board, by Resolution No. P-19-2006, granted variances and preliminary and final major site plan approval for the development of the property into a mixed use commercial center with a 26,895 square foot retail building, a 3,000 square foot building for bank or fast-food restaurant use, a 7,800 square foot sit-down restaurant, a three story 23,530 square foot medical office building and a three story 15,000 square foot medical office building; and

WHEREAS, in connection with site plan approval, the Planning Board granted variances to the Applicant pertaining to the Ordinance requirements for front, rear and side yard setbacks, buffers, parking, loading zones, monument signs and number of stories for office buildings; and

WHEREAS, a neighboring property owner (Josephine Wells) filed a Complaint in Lieu of Prerogative Writ challenging the action of the Planning Board in granting the variances and site plan approval to the Applicant; and

WHEREAS, the neighboring property owner appealed to the Appellate Division of the Superior Court of New Jersey the Law Division's upholding of the Planning Board's action; and

WHEREAS, prior to the Appellate Division's action on the appeal, the Applicant revised its plans and is now proposing four buildings having a total area of 65,695 square feet, a reduction of 10,530 square feet from the prior approval; and

WHEREAS, the application was deemed complete by the Planning Board on April 3, 2008; and

WHEREAS, a public hearing to consider the application was held by the Edgewater Park Planning Board on April 3, 2008, after appropriate public and personal notice was provided to all property owners within 200 feet of the Property as required by the land development regulations of the Township of Edgewater Park and the statutes of the State of New Jersey; and

WHEREAS, the following exhibits were submitted by the Applicant and offered into evidence at the hearing:

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- A-1 - Prior Approval rendering;
- A-2 - Proposed Site Plan rendering;
- A-3 - Prior façade rendering;
- A-4 - Proposed façade rendering;

WHEREAS, the Applicant presented evidence to the Board through testimony, plans and other evidence; and

WHEREAS, the Board after carefully considering the evidence presented by the Applicant in support of its application for preliminary and final major site plan approval, and after the meeting was opened to the public for their questions, comments and input, has made the following findings of fact:

1. The Applicant has entered into an Agreement of Sale to purchase Block 404, Lot 2.02, a 7.82 acre site.
2. The Applicant has submitted an application for preliminary and final major site plan approval and for variances pertaining to front yard setback, side yard setback, impervious coverage, parking spaces buffers, landscaping, and monument signs, providing the Board with a proposed set of plans and testimony.
3. The taxes on the Property are current.
4. The Applicant has paid and/or posted all required fees and agreed to keep its review escrow current.
5. Proper notice of the application for site plan approval has been given, based upon the certified list from the Offices of the Edgewater Park Tax Assessor and the Willingboro Tax Assessor.
6. The Property is located in the Township's Commercial C-3 Zoning District, along the north side of US Route 130 and Mount Holly Road. The adjacent properties to the west are also located in the Commercial C-3 Zone, properties to the rear (north) are located in Residential Medium Density Zone and properties across Mount Holly Road to the east are in the Commercial Light Industry Zone.
7. The Property is currently vacant.
8. In September, 2006, the Planning Board granted preliminary and final major site plan approval to the Applicant for a mixed-use commercial development on the Property, consisting of:
 - a. One (1) 26,895 square foot retail building;
 - b. One (1) 3,000 square foot building for bank or fast-food restaurant use;

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- c. One (1) 7,800 square foot sit-down restaurant;
 - d. One (1) three story 23,530 square foot medical office building;
 - e. One (1) three story 15,000 square foot medical office building;
9. In connection with the prior approval, the Planning Board granted variances to permit:
- a. Front yard setback for the bank/fast food restaurant to be 55.54 feet as measured to the canopy;
 - b. Rear yard setback for the retail building to be 40.52 feet where it abuts the residential zone;
 - c. Buffer along the rear property line to be 15 feet with the loading area for the retail building and the storm water retention basin located within the required buffer area.
 - d. 325 parking spaces where 403 parking spaces would be required;
 - e. Loading zones for the sit down restaurant to be located in the driveway rather than off-street.
 - f. One (1) 150 square foot monument sign to be located along US Route 130 and one (1) 75 square foot monument sign to be located along Mount Holly Road;
 - g. Monument signs to be located 5 feet from the US Route 130 right-of-way and 24 feet from the Mount Holly Road right-of-way;
 - h. Medical office buildings to be 3 stories in height;
 - i. Buffer along US Route 130 to be 5 feet;
 - j. Side yard setback of 5 feet so that a trash dumpster can be located within the required 10 foot side yard.
10. Josephine Wells, a neighboring property owner, challenged the action of the Planning Board, filing a Complaint in Lieu of Prerogative Writ in the Superior Court of New Jersey, Law Division.
11. The Law Division upheld the prior action of the Planning Board and the neighboring property owner filed an appeal with the Appellate Division.
12. Prior to the Appellate Division's oral argument on the appeal, the Applicant revised its plans in an attempt to resolve the litigation by reducing the number of buildings,

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reducing the total square footage of the uses and shifting the buildings closer to Route 130 to eliminate the rear yard setback variance previously granted by the Planning Board.

13. The Applicant is now proposing:
- a. A two story building consisting of 26,895 square feet of retail space on the first floor and 20,000 square feet of office space on the second floor;
 - b. A 3,000 square foot building for either a bank or fast-food restaurant;
 - c. A 7,800 square foot sit down restaurant; and
 - d. An 8,000 square foot day care center.

14. Gary Zangerle, Esquire, represented the Applicant at the Planning Board Public Hearing.

15. The following individuals testified on behalf of the Applicant at the Planning Board Public Hearing:

Robert Stout, P.E., design engineer, qualified as an expert witness
Candace Kannapalu, P.P., planner, qualified as an expert witness
Vito Cardinale, Member of Cardinale Enterprises, LLC

16. The Applicant is requesting the following variances in connection with its application for preliminary and final site plan approval:

- a. Variance to permit the front yard setback for the bank/fast food restaurant to be 45.54 feet, where 60 feet is required. The 45.54 feet is measured to the canopy of the building; the setback to the actual building is 70.99 feet.
- b. Variance to permit the side yard setback for the sit down restaurant to be 10 feet where 30 feet is required.
- c. Variance to permit 66.95% impervious coverage where 60% is the maximum impervious coverage permitted. The storm water management of the site is in accordance with Best Practices.
- d. Variance to permit 308 parking spaces where 352 parking spaces would be required for the proposed uses.
- e. Variance to permit parking to be located within the required buffer area.
- f. Variance to permit less than the required landscaping in the front, side and rear yard setbacks.

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- g. Variance to permit two (2) monument signs where only one (1) is permitted. The Property has frontage and access along US Route 130 and Mount Holly Road.
- h. Variance to permit the monument sign along US Route 130 to be 176 square feet in area and 17'4" in height.
- i. Variance to permit the monument signs to be located 5 feet from the US Route 130 right-of-way and 23 feet from the Mount Holly Road right-of-way where 25 feet is required.

17. The Applicant is requesting design standard waivers to permit the loading area for the sit down restaurant to be located in the drive aisle and to eliminate the loading area for the day care center.

18. Robert Stout, PE, provided the following testimony:

- a. Compared the previously approved site plan with the Applicant's current proposal;
- b. Described the variances requested by the Applicant for the current plan;
- c. Compared the hours of operation for the various uses, especially the differing peak hours so that the parking demand for each use is not identical;
- d. Eliminated the rear yard setback variance by moving the development closer to the Route 130 corridor and away from the residentially zoned property;
- e. Described the shape of the Property impacting on the design because it is irregularly shaped property fronting on Route 130 and wrapping around a corner lot to also have frontage along Mt. Holly Road;
- f. The Property's 2 frontages requires proper identification signage along both roads and the size and height of the signs is required to identify the tenants and for visibility for passing motorists;
- g. Construction of the site will be phased with the retail portion being constructed first, as market conditions warrant;
- h. Utilized templates to confirm that trucks and emergency vehicles can navigate the site;
- i. Parking will not be impacted regardless of whether the 3,000 square foot building is used for a bank or fast food restaurant;
- j. There are no wetlands or other environmental conditions that effect the site;

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- k. Deliveries for the sit down restaurant will be scheduled for non-peak times with delivery in the rear in an area marked for loading and unloading;
 - l. Lighting of the site will not impact the neighboring properties;
 - m. The sanitary sewer will be reconfigured so that the Applicant can get a direct connection to the public sewer and not require an easement to connect to the sewer pipes located on an adjacent property;
 - n. The number of trash enclosures are sufficient for the proposed uses;
 - o. The play area for the day care center will be fenced;
 - p. All buildings will be less than 40 feet in height;
 - q. The Applicant will comply with the review letter from Environmental Resolutions, Inc.;
 - r. Façade signs will comply with the Ordinance requirements.
19. Candace Kannapalu, PP, testified as follows:
- a. The Property is one of the largest undeveloped tracts in the Commercial District of Edgewater Park along the Route 130 corridor and its size promotes the Master Plan by being developed as one mixed-use site;
 - b. The Property is uniquely shaped and this uniqueness contributes to the need for variances, especially with a pitch point in the middle of the Property;
 - c. The mixed-uses proposed by the Applicant promote a better use of the Property than single uses on their own individual lots;
 - d. The Master Plan of the Township identifies the Route 130/Mt. Holly Road intersection as a gateway into the Township and the proposed development compliments the Master Plan by providing a commercial center as the gateway into the Township;
 - e. The mixed use development promotes and advances the Route 130 corridor study and the Master Plan by developing the Property with improvements consistent with and complimentary to the Master Plan;
 - f. The number of curb cuts onto Route 130 are reduced by the proposed mixed use development;

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- g. The proposed uses are consistent with existing uses along Route 130 and will promote jobs and increase ratables and the economic vitality of the area;
- h. The variances can be granted without substantial detriment to the public good; any detriment is mitigated by the design of the site with additional landscaping in the buffer and setback areas;
- i. The development being moved closer to Route 130 does not negatively impact the Route 130 corridor as the required front yard setback is satisfied by the proposed buildings, the only encroachment being a canopy for the bank/fast food restaurant;
- j. The differing peak times of the uses results in differing demand times for parking;
- k. Two signs will properly identify the center along both road frontages;
- l. The size of the monument signs will properly identify the center for ease of recognition for passing motorists;
- m. The sign setback along Route 130 is consistent with the setback for a monument sign located on an adjacent property.

20. Vito Cardinale testified regarding the architectural style of the buildings. He further testified that the different type of uses proposed for the development will create staggered peak hours of use so that the 308 parking spaces will satisfy the demand.

AND WHEREAS, based upon the above factual findings, the Planning Board has come to the following conclusions:

1. This application relates to a specific piece of property and the purposes of the zoning laws of the State of New Jersey and the zoning ordinance of the Township of Edgewater Park would be advanced by the deviations from the zoning ordinance requirements specified herein, as requested by the Applicant.

2. The benefits of the deviation from the zoning ordinance requirements specified herein would substantially outweigh any detriment to the public good as variance approval would allow for the development of the Property, and otherwise promote the safety, health and general welfare of the Township.

3. Relief as requested by the Applicant can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance of the Township.

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4. The day care center does not require a designated loading area for its required deliveries. Deliveries for the sit down restaurant will be scheduled during non-peak times so that the loading area encroaching into the drive aisle will not affect the site's circulation pattern.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Edgewater Park, on the 3rd day of April, 2008, that this Board hereby grants to the Applicant the following:

1. Variances to permit the following:
 - a. Front yard setback for the bank/fast food restaurant to be 45.54 feet, where 60 feet is required. The 45.54 feet is measured to the canopy.
 - b. Side yard setback for the sit down restaurant to be 10 feet where 30 feet is required.
 - c. Impervious coverage to be 66.95% impervious coverage where 60% is the maximum impervious coverage permitted.
 - d. 308 parking spaces where 352 parking spaces would be required for the proposed uses.
 - e. Parking to be located within the required buffer area.
 - f. Less than the required landscaping area in the front, side and rear yard setbacks.
 - g. Two (2) monument signs, one 176 square foot in area, 17'4" in height monument sign along Route 130 and one monument sign, complying with the height and size requirements of the Ordinance, along Mt. Holly Road.
 - h. The monument signs to be located 5 feet from the US Route 130 right-of-way and 23 feet from the Mount Holly Road right-of-way where 25 feet is required.
2. Design standard waivers to permit the loading area for the sit down restaurant to be located in the drive aisle and to permit no loading area for the day care center.
3. Preliminary and final site plan approval for the construction of a mixed-use commercial development consisting of four (4) buildings, a two-story building containing 26,895 square feet of retail space on the first floor and 20,000 square feet of office space on the second floor, a 7,800 square foot sit-down restaurant, an 8,000 square foot day care center and a 3,000 square foot bank or fast-food restaurant, in accordance with the plans submitted by the Applicant, subject to the following conditions;

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- a. Proof that the Applicant has applied for the necessary approval(s) from all other agencies having jurisdiction over the Applicant's use of the Property shall be filed with the Township of Edgewater Park, including but not limited to approval of the Burlington County Planning Board and the Burlington County Soil Conservation District.
- b. The fulfillment of all other conditions precedent shall forthwith be reported in writing to the Township of Edgewater Park, which may cause such reports to be verified in an appropriate manner. Only upon the fulfillment of all of the conditions shall the site plan be signed or any required building permit, certificate of occupancy or zoning permit be issued.
- c. Nothing herein contained shall be deemed to waive or modify the requirement that the Applicant obtain from any and all other agencies having jurisdiction in this matter, any and all approvals required by law and this approval is specifically conditioned upon the Applicant obtaining those approvals.
- d. Subject to the comments of compliance made by the Applicant and its agents and representatives at the April 3, 2008 Planning Board Public Hearing.
- e. Subject to the Applicant satisfying the comments of the Planning Board Engineer as contained in the March 25, 2008 Review Letter of Environmental Resolutions, Inc. by Thomas J. Miller, PE, PP, CME and Barbara Fegley, PP, AICP, **as amended by letter dated April 2, 2008 by Mr. Miller.**
- f. Subject to the façade signs complying with the Ordinance requirements.
- g. Subject to the Approval previously granted to the Applicant by the Planning Board as memorialized by Resolution No. P-19-2006 being rendered null and void upon the dismissal by the neighboring property owner of her challenge to the Board's prior action.
- h. Subject to the Applicant complying with all applicable Township COAH Ordinances and Regulations regarding the Township's and Applicant's COAH obligations.
- i. Subject to the Applicant complying with all New Jersey Department of Transportation requirements for any improvements to the US Route 130/ Mount Holly Road intersection and jughandle, including any signalization that may be required.
- j. Subject to the submission of revised plans complying with the conditions of this Approval and the comments contained in the March 25, 2008 Review Letter from Environmental Resolutions, Inc.

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ROLL CALL VOTE

Those In Favor: 9
Those Opposed: 0
Those Abstaining: 0

CERTIFICATION

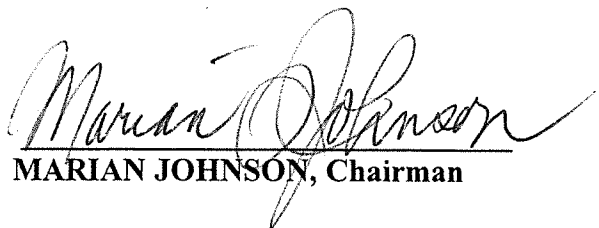
I hereby certify that this foregoing Resolution is a true memorializing resolution, as adopted by the Planning Board of the Township of Edgewater Park in accordance with its decision at its regular meeting on April 3, 2008

Attest:

EDGEWATER PARK PLANNING BOARD


SHERI HANNAH, Secretary

By:


MARIAN JOHNSON, Chairman

Dated: 9-18-2008

Date of Approval: 4-3-08

Date of Memorialization: 4-17-08