

MANCHESTER TOWNSHIP PLANNING BOARD REGULAR MEETING TUESDAY, JULY 6, 2010,
1 COLONIAL DRIVE, MANCHESTER, NEW JERSEY

The Regular Meeting of the Manchester Township Planning Board was called to order by Chairman Vaccaro at 7:15 pm on Tuesday, July 6, 2010.

A Salute to the Flag and Pledge of Allegiance was repeated.

This meeting has been advertised as required by enactment of the Sunshine Law.

ROLL CALL:

James Vaccaro	Chairman	Present
William Barron	Vice Chairman	Present
Frederick Trutkoff	Councilman	Present
Donald Czekanski	Mayor's Designee	Present
Sanford Krasky	Member	Present
Donald Somerset	Member	Present
David Borowski	Member	Present
Anthony Tepedino	Alternate Member	Absent
Christina Edwards	Alternate Member	Present
Ed Liston	Attorney	Present
Al Yodakis	Engineer	Present

MEMORIALIZATIONS:

Memorialization of a resolution for a Preliminary and Final Site Plan Approval
Proposed 11, 880 sq. ft. Office Building, Block 38 Lot 4, 2132 Route 37 West

Applicant Doctor Magda Douedi

Approved June 7, 2010 Meeting

Motion to approve by Mr. Somerset, seconded by Mr. Borowski

Roll Call: Mr. Somerset-yes, Mr. Borowski-yes, Chairman Vaccaro-yes

Messrs. Barron-yes, Trutkoff-yes, Czekanski-yes

Mr. Krasky not voting, recused himself from application

APPLICATIONS:

1. Preliminary and Final Site Plan Approval

Minor Sub-Division/Variance Approval

Block 44 Lots 2,3,5 and part of 4 Hwy.37 & Northampton Blvd.

Proposed Wal-Mart Store and Garden Center

Applicant Jaylin Holdings, LLC c/o Grunin Properties

Carried from June 7, 2010 meeting

Mr. Shea for the applicant, we have Mr. Moonan, witness to testify tonight, regarding change discussed at last meeting.

Change to be in Toms River not Manchester, on building.

Mr. Liston, reminded Mr. Moonan, still under oath.

Mr. Somerset addressed the Chair, regarding his conflict with application because his daughter is a employee of a Wal Mart store, to keep the record clean he will recuse himself from this application at this time.

Mr. Liston agreed.

Mr. Shea, I believe Mr. Gasiorowski is in the building, Mr. Liston, yes, someone can go out and get him.

Mr. Moonan to explain change, Exhibit MA-29, architect and fire protection engineer, with United Water, pressures were not sufficient enough for the building, a water tank and associated pump is required. 27 feet in diameter and 27 feet high placed in the southeast corner of building. No increase in impervious coverage and no change to storm water on site.

No changes in Manchester.

Mr. Liston, does the applicant now rest its case, Mr. Shea, yes, the only outstanding issue is Mr. Perlmutter's appearance, does the board want to deal with that now or later. Mr. Liston, I read your brief and it has been circulated among the board We will hear Mr. Gasiorowski and we will rule.

Mr. Shea, Mr. Perlmutter is an objector of this application and is a competitor.

Mr. Gasiorowski, stated he sent Mr. Liston a fax today, Mr. Liston, did not get it, was out of the office today.

Mr. Gasiorowski briefly, states Mr. Perlmutter owns a residence in Toms River, and has food stores one in TR and one in Manchester. He has hired professionals to testify, Mr. Shea can cross examine. The board heard the entire application last time without the testimony of Mr. Perlmutter.

Mr. Liston, Mr. Chairman, Mr. Gasiorowski, has placed it on the record Perlmutter is a competitor something the board should take into consideration, he is not an environmentalist, not an expert, having him subpoenaed, he would not add anything to the issues the board has to decide. It is my recommendation that the board deny Mr. Shea's request for subpoena of Mr. Perlmutter's testimony.

No questions or comments from board, Mr. Liston called for a motion to deny request to subpoena Mr. Perlmutter

Motion to deny the request by Chairman Vaccaro and seconded by Mr. Borowski

Roll Call: Chairman Vaccaro-yes, Mr. Borowski-yes

Messrs. Barron-yes, Trutkoff-yes, Czekanski-yes, Krasky-yes

Mr. Gasiorowski, began cross examination, Mr. Moonan, last time you stated you were aware of the NJDEP denial letter, correct, Mr. Moonan-yes.

Q. Have you read letter, A. read thru it, don't know relevance

Q. You did not read letter last time

Mr. Shea, object, beyond scope of direct examination

Mr. Liston, he has the right to ask him

Mr. Shea, fine

Q. Have you read the letter, A. brief scan of letter

Q. As professional engineer, preparing of plan in question, if DEP denial applied to your plan as you prepared it, would your plan be changed

A. It is my understanding that the plan would be the same as you see it here today.

Q. Again, DEP denial, guidelines and standards and findings applied to your plan, would that change your plan

A. Again, based on discussions with DEP, plan will substantially stay the same.

Q. If a letter of denial were applied or based upon your belief what a settlement may be

Mr. Shea, objection he is not a DEP expert

Mr. Liston, he did develop the plan, Mr. Moonan you read the letter, Mr. Moonan, yes

Mr. Liston, the letter denied the plan, Mr. Moonan, it denied the project

Mr. Liston, so the plan you presented has been denied, Mr. Moonan, yes

Mr. Liston, fair to say applicant's team is working out a compromise, Mr. Moonan, yes

Mr. Liston, your testimony is the compromise would not substantially alter the plan you presented

Mr. Moonan, correct

Mr. Liston, if it alters you have to come back to board, Mr. Moonan, yes

Q. Original plan, asked for variances for front yard setback on NH Blvd. correct, A. yes

Q. Do you agree area fronts NH Blvd. is a violation of setback, A. Yes

Q. If build honor the 100 ft setback, a significant portion of building would be reduced

A. A portion would be reduced

Q. If the size of the buildings are reduced, less parking is required, less cars coming onto site impact on Manchester less

A. A building could be constructed, not sure client would be willing to construct that building

Q. Zoning says 20 percent, 100 ft setback, yes A, yes, if you look at the entire site, its much less than 20 percent

Q. If building is reduced, than parking is reduced, yes, A, Yes

Q. Traffic on site reduced? A, Yes

Mr. Liston, redirect Mr. Shea

Mr. Shea, redirect examination

Q. Mr. Moonan, did DOT approve this site A, Yes

Q. Approved with egress and ingress to site, as well as amount of cars

A, Yes, building is actually smaller that first approved

Q. CAFRA permit, other outside agencies are approved for this site A, Yes

Mr. Liston, has applicant considered trying to combine his access off 37 in the eastbound with property owner to the west, A, yes I believe there were discussions

Mr. Liston, from engineering standpoint can it be done

A, it is a challenge with our DOT permit we have already

Mr. Liston, a challenge, you don't want to change your plan, A, It is not ideal

Mr. Liston traffic standpoint is there a conflict between existing ingress and egress to the site to the west

A, as far as these access points, from DOT standpoint we comply

Mr. Liston, does your plan allow or you to move your ingress and egress point further east. A, No

Mr. Liston, why not, A, constraint of the adjacent parcel

Mr. Liston, constraint, because parcel is not owned by client

Mr. Shea, spoke with property owner, position has not changed.

Mr. Liston, the Varelli parcel is a co-applicant correct. Mr. Shea, yes

Mr. Liston, why can't we force them to consolidate

Mr. Shea, board has jurisdiction certainly, but not jurisdiction over controlling ownership of property

Mr. Gasiorowski re-cross examination

Q, Does the applicant have to secure a variance for the ingress and egress on the west side

A, I believe we do

Q, For the board to approve a variance is needed. A, Yes

Q, If applicant were to acquire the lot in question, applicant could avoid variance or reduce the amount of the variance

A, My understanding shifting, it, much closer to the jug handle, would impact on the DOT permit acquired, have to review transcripts.

Q, If applicant secured Varelli property, variance for driveway ingress and egress would be reduced

A, If that access point were able to move into that direction, deal with Manchester & DOT could impact on the permit.

Q, You don't know the answer, A, I do not

Q, What is proposed use of lot 4 A, demolish building, don't know proposed use

Q, T & M review letter states, state proposed use of lot 4

Mr. Shea, I think he has answered that three times

Mr. Liston, in order to include this lot in application, size of lot is being reduced, is it not

A, Yes

Q, so we have preexisting non-conforming lot as a result of this subdivision

A, Yes

Mr. Liston, want to know the quantum of the variance that you are seeking for ingress and egress

Mr. Moonan, minimum driveway separation, 100 feet required, we have approximately 60 feet to where the property line meets the drive coming in

Mr. Liston if you were to move that driveway 40 feet, could you squeeze it into your property

Mr. Moonan, your turning radius coming out would encroach on the property next to you

Mr. Liston, so you can't move it, Mr. Moonan, correct, Mr. Liston, can or cannot

Mr. Moonan, cannot based on design

Further re-cross examination Mr. Gasiorowski

Q, Right now the adjacent property owner is not in violation of any of the standards, correct

A, Its violation is its within 12 feet, 12 and a half ft of property line, violation of DOT requirements

Q, What impact would use of adjacent property owners property be on proposed ingress and egress of the Wal Mart

A, What impact

Q, When this developer of this property comes before the board, he should have to seek the same variances, does he not

A, I don't know how he is going to develop this property

Mr. Shea, redirect, you have know idea how Mr. Klein is going to use this site A, I do not

Q, As far as mapping, it does show encroachments on the site A, clearly shows it

Q, Regarding variance we are requesting, deals with access points, yes. A, Yes

Mr. Liston, no questions from the board, this concludes the applicants presentation, its your turn

Mr. Gasiorowski

Mr. Gasiorowski, I thought Mr. Shea was calling his architect

Mr. Shea, unless the board has questions, I have him here, I have no intentions of calling him.

Mr. Gasiorowski, I have questions

Mr. Shea, we have 2 exhibits to mark in, MA-30 MA-31 elevation plan

Mr. Serruya sworn in, discussion, Mr. Liston, Mr. Shea, Mr. Gasiorowski, Mr. Serruya will not be called to testify.

Mr. Shea, we can recall Mr. Moonan, Mr. Liston, I don't think we need to do that.

Direct examination by Mr. Gasiorowski

Charles Rosh P.E. sworn and accepted

Q, Familiar with Ma-29 A, generally

Q, Plan identical except for the water tank A, yes

Q, Your retained for certain engineering services A, yes

Q, Aware applicant seeking variances A, yes

Q, Did you perform a study which would reflect the setbacks on NH Blvd the max percentile of building coverage were honored, whether or not that would reduce the size of the building

A, Yes, conforming to TR ordinance you would have 149,000 sq ft building, 24% reduction, reduction in parking spaces building lot coverage opens up more open space

Mr. Czekanski, does Wal Mart have a site in Forked River or Lacey

Mr. Rosh, I do not know

Mr. Czekanski, do you know the size of other Wal Marts, Mr. Rosh, no

Mr. Czekanski, you reduction in size would it be like Lacey, Mr. Rosh it would be equal to other Wal Marts in area, can't specify.

Next witness, Alexdander Litwornia P.E. sworn in and accepted

Mr. Gasiorowski direct examination

Q, you did certain studies and review plans, correct A, Yes

Q, regarding ingress and egress on Route 37,

A, I looked at the site plan, the block and property that's not part of the proposed not part of the consolidated lot has an axcel lane, not full access lane across the majority of the property, radius of curvature supposed to be 12 ft , its not, goes over property line

Q, Consideration to manner cars traveling on 37 in west direction and east would access the site

A, traveling east they would come into the one driveway

Q, would ingress into the site on 37 would be in conflict with cars coming out of the driveway on adjacent lot

A, Correct,

Q, Someone could travel east and access the property off of Northampton

A, Yes they could

Q, Jug handle, a portion of it in Manchester & Toms River

A, Yes

Q, What impact would the operation of jug handle have on cars traversing into Manchester

A, I looked at the intersection, to be used by both the Wa Wa and Wal Mart to a great degree

Mr. Shea, objection, respect to testimony going into what the Wa Wa traffic reports

Mr. Gasiorowski, the MLUL says the board can take into consideration of a site plan the impact traffic coming into and off a site, issue of safety

Mr. Shea, to the best of my knowledge, don't think anything under Municipal Land Use Act gives this board the ability of turning down this application a result of something that occurs off this site. It's the jurisdiction of DOT. We are getting into Wa Wa site and traffic counts, that is not the application before this board.

Mr. Gasiorowski, we are getting into when cars leave the site and proceed onto Northampton, where talking how cars travel west on 37, get into site.

Mr. Liston, its in Toms River, correct?

Mr. Gasiorowski, portion of jug handle is in Manchester

Mr. Liston, don't want to waste time with this.

Mr. Litwornia, Wal Mart did not include the Wa Wa traffic, so it is going to create a problem, traffic will be backed up.

Q, Did you listen to testimony of both Mr. Rosh and Mr. Moonan, regarding reducing the building size

A, Yes

Q, would it also reduce parking fields A, yes

Q, Would Manchester be better served if building size was reduced

A, Yes

Recess ten minutes

Meeting call back to order

Mr. Gordon Gemma, P.P. sworn and accepted

Q, As a planner what impact does the DEP denial have on your testimony

A, They denied it for a few reasons, not just pine snakes, your ordinance states section 35-86.4C, the municipal agency responsible for plan approval may on the basis if environmental impact.

Q, Application includes two towns, building being in Toms River, does building size impact Manchester

A, yes

Q, Property in Manchester, mostly wetlands as well as endangered species

A, That's what CAFRA letter indicated .

Q, Can board take into consideration the impact of cars on state highway as they relate to the site

A, Stated case El Shaer v. Planning Board, Pizzo Mantin v Randolph Township

Mr. Shea, my concern here is Mr. Gemma is talking as attorney or as a planner

Mr. Gemma, planner Mr. Shea, I think we are beyond that

Mr. Liston, he is talking as a planner, and most quote cases from Cox

Q, Lot 4, a preexisting non-conforming lot?

A, That's my understanding

Q, In regard to variances, building size, setbacks, the greater building size would it have more impact on Manchester

A, If the building is bigger than permitted it would generate more cars, more parking

Q, Is there any planning that states, parcel of land located in two municipalities, where one area located in one municipality, is unusable because of constraints of environment, should be automatically granted a hardship variance

A, Not aware of that exception

Mr. Liston, my understanding you are going to cross examine all of Mr. Gasiorowski's witnesses at our next meeting

Mr. Shea, yes, some rebuttal so we might as well do it all at one time

Ms. Borthwick, date of next meeting August 2nd.

Mr. Liston, board wish to ask questions now or wait for next meeting

Board will wait

Mr. Liston, Mr. Shea if you are ordering transcript of testimony given by Mr. Gasiorowski's witnesses, I would ask that you share that with the board.

Mr. Shea, yes

Mr. Liston, ask for a motion and vote to carry this application to next regular meeting, August 2, 2010, 7: PM, in this room, there will no further public notice

Mr. Shea, you will extend the time

Mr. Liston, yes

Mr. Vaccaro called for motion

Motion to carry by Mr. Trutkoff, seconded by Mr. Borowski

Roll Call: Mr. Trutkoff-yes, Mr. Borowski-yes, Chairman Vaccaro-yes
Messrs. Barron-yes, Czekanski-yes, Krasky-yes

Open Public Portion, hearing none

Close Public Portion

ADMINISTRATIVE SESSION:

Motion to approve June 7, 2010 Regular Meeting Minutes by, Mr. Borowski, seconded by Mr. Czekanski

Roll Call: Mr. Borowski-yes, Czekanski-yes, Chairperson Vaccaro-yes
Messrs. Barron-yes, Trutkoff-yes, Krasky-yes, Somerset-yes

PAYMENT OF BILLS:

From June 2010

Mr. Borowski, submitted bill report.

	Escrow	General Matters	Hov/Stav	Perlmutter
T & M Assoc. 3612	2,064.00			
Liston 86133	189.00	405.00		
Total	\$ 2253.00	\$ 405.00		

Motion made to pay bills by Mr. Trutkoff seconded by Mr. Czekanski

Roll Call: Mr. Trutkoff-yes, Mr. Czekanski-yes, Chairperson Vaccaro-yes
Messrs. Barron-yes, Krasky-yes, Somerset-yes, Borowski-yes

PROFESSIONAL REPORTS:

None

PUBLIC PORTION

None

MOTION TO ADJOURN by Mr. Borowski, seconded by Mr. Czekanski

ALL IN FAVOR
NONE OPPOSED

ADJOURNMENT:
Meeting Adjourned 9:45 P.M.

Respectfully Submitted

Marianne Borthwick
Secretary to the Board