

MANCHESTER TOWNSHIP PLANNING BOARD SPECIAL MEETING TUESDAY, JANUARY 26, 2010,  
1 COLONIAL DRIVE, MANCHESTER, NEW JERSEY

The Regular Meeting of the Manchester Township Planning Board was called to order by Chairman Vaccaro at 7:00 pm on Tuesday, January 26, 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	Absent
Anthony Tepedino	Alternate Member	Present
Christina Edwards	Alternate Member	Present
Ed Liston	Attorney	Present
Al Yodakis	Engineer	Present

APPLICATIONS:

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

Mr. Robert Shea for the applicant, legal issues I need to bring to the attention of the board and board's counsel, regarding Ron Gasiorski attorney for Michael Perlmutter, I assume he will be representing Mr. Perlmutter here tonight, I request the board consider the following: Mr. Perlmutter has to qualify as an interested party to enter an appearance and speak before the board to speak on this application at this time, it is a well recognized rule. Municipal Land Use Law identifies who is an interested party. In order to have standing and come before this board one must be an interested party.

Mr. Perlmutter's involvement with Shop Rite he is a principle of the corporation, he has testified at a case still pending before Superior Court stating in many transcripts he is an economic competitor of the applicant, Jaylin Holdings, Grunin Properties, leasing to Wal- Mart. We feel because of that involvement, refer to language in Paramus Multiplex Corp. v. Hartz Mountain Industries, 236 N.J. Super. 104,. In that particular case party did not retain the criteria to establish standing, as a result court disallowed any testimony. I think this is good reason, Mr. Perlmutter is not a property owner or a tax payer of Manchester. Mr. Perlmutter leases property from Hovanian, he is a direct competitor of Wal Mart, with that, language in Parumus Multiplex and Municipal Land Use I ask that Mr. Gasiorski and Mr. Perlmutter not be allowed to address the board or enter an objection at the level. We have made this argument in court, court has not made a determination yet.

Next request, this board mandate Mr. Perlmutter to appear before this board, once and for all indicate what is objection is to the application. He hides behind veil of experts' testimony never here, Mr. Gasiorski never states why he wants the application denied, time board has the opportunity to here what he has to say. I have deposed Mr. Perlmutter and some of the issues are very compelling. I would like the opportunity of cross examining Mr. Perlmutter. My request is two fold. I would remind the board as to Municipal Land Use Act allows the board subpoena power in the event persons fail to appear before board, if board deems appearance important. Why is he so determined to oppose this application.

Mr. Gasiorski, for Michael Perlmutter, listen to Mr. Shea's comments, first hearing board made a determination Mr. Perlmutter has standing to appear before board and note objection in this matter. I believe there was a motion by Judge Betensky and I know nothing in Land Use Law prohibiting.

This application involves two townships, Mr. Perlmutter is a resident and a tax payer in Toms River.

Mr. Liston as counsel for the board I would advise board they should not change ruling made last time, which was up held by motion of Judge Betensky, Perlmutter has standing in this application. Mr. Shea's issues of competitor can go later.

Mr. Vaccaro asked for questions from board.

Mr. Liston, does any board member feel Mr. Perlmutter does not have standing with this matter, they would like to hear from you, hearing none the ruling stands.

Mr. Gasiorski, second issue, I feel your problem is not Mr. Perlmutter it is the pine snake, I don't make the rules, Perlmutter does not make rules, State of New Jersey makes the rules that is why we are here with a new application.

Mr. Shea argued last time regarding Mr. Perlmutter testifying and this board determined it was not necessary, also the applicant Mr. Grunin never testified, perhaps all parties will testify this hearing. This is a lengthy application, I have read both review letters, request for 15 variances and 6 design waivers in Manchester and 9 variances and 9 design waivers in Toms Rive we will argue this, and final approval from CAFRA.

Mr. Liston, I understand Mr. Gasiorowski you are recovering from eye surgery and were unable to cross examine at Toms River hearing, same problem for tonight. Mr. Gasiorowski, I will do whatever the board requests, yes I am in extreme pain. Mr. Liston suggested in all fairness to everyone, Mr. Shea be allowed to present all of his experts, don't believe he will complete this tonight, than bring all back in same order for cross examination and questions and comments from public, or we can cross examine after each expert. Board would like to go with first suggestion, Mr. Shea, yes this is direction we are going in for Toms River also.

Mr. Gasiorowski, thanked the board for his consideration of his condition.

Mr. Liston explained to public how this application will be heard.

Edward Bezdecki, attorney for Estate Laszlo Bellovitz and Man Shop Properties, Block 44 Lot 7, record noted they are objectors to this application, process of conveying property to Kay Realty Holdings, LLC., first time we have been noticed.

Mr. Liston, do you have an objection to our decision how to conduct hearing, Mr. Bezdecki, no.

Mr. Shea, supply legal opinion why Mr. Perlmutter should appear, Mr. & Mrs. Grunin have been at every hearing, Perlmutter is no where to be found. Mr. Gasiorowski we are beating this to death.

Mr. Liston, yes when application is complete, we will rule on this. Mr. Shea please copy Mr. Gasiorowski also with your brief, Mr. Shea, yes and I will copy Mr. Bezdecki also.

Mr. Shea, new application, different footprint, new architectural. Grunin long time resident of Ocean County, Jaylin lease for Wal-Mart, Varelli Estate (lot 4) part of application. Proposed store 190 sq.ft., store on 43 acres, 17.3 acres in Toms River and 25.7 acres in Manchester. Store in Toms River, parking and drainage in Manchester, also snake den.

Seeking several variances, experts will provide testimony, 833 parking spaces, 691 in Toms River, 142 in Manchester. Barrier, snake wall aprx. 35-3700 linear feet divides the property. Five expert witnesses will be called.

Mr. Liston, to public, this meeting will end at 10:00 PM, this will be carried to next regular meeting or special meeting if requested.

Michael Moonan, Bohler Engineering, sworn in and accepted by board.(sworn in by applicant's court reporter)

Reviewed and familiar with Manchester Master Plan and this application. Exhibits marked by court reporter

Exhibit MA-1, preliminary and final site plan, sheet 1 of 1, aerial ( TR A-1)

Exhibit MA-2 site plan exhibit (TR A-2)

Exhibit MA-3 minor sub division, 11/24/09 update 1/7/10 plat 1 inch = 100 ft.

Exhibit MA-4 small site plan hand outs to board

Exhibit MA-5 aerial

Mr. Moonan, 43 acres, Route 37, Northampton Blvd. we have an area where discussion on going regarding pine snakes, two snakes tracked, snake did come back to site, area in yellow on plan close to Route 37, noted as snake habitat.

CAFRA plan in for approval, to south there are wetlands, for these conditions development was pushed more to southeast more towards Toms River side of property.

Mr. Shea, explain reason for sub-division. Mr. Moonan, MA-3, sub-division, existing abandon gas station, fronts Route 37 1.68 acres, sub divide triangular to the south into subject development.

Mr. Shea, describe proposal, Mr. Moonan, MA-1 pine snake habitat shapes what we are going to do, MA-2 rendered version with landscape in proposal package. Direction from NJDEP circular buffer for the snake, We will have access from 37, right in right out off of 37, serpentine around snake habitat. Parking lot 833 spaces, 25 handicap spaces, 142 spaces in Manchester. Garden center not under roof, west side of store grocery, east side general merchandise, bus drop off for large senior population. Truck delivery to south down North Hampton, excess 6 loading bays, direct store deliveries southern face back walls, panel trucks.

Manchester site has access driveway, 3 infiltration basins and 142 parking spaces, main basin to west of proposed store. Water and sewer is provided by Toms River. 2 compacters for refuge, recycling center located on TR side.

Mr. Shea, sidewalks, Mr. Moonan, no.

Mr. Shea store hours, Mr. Moonan 24 hours.

Mr. Moonan, lighting coming in and on site, no variance for TR, variance for height for Manchester required.

Mr. Shea, variance for Lot 4, Mr. Moonan, required 3 acres, existing 1.6 acres, proposed 1.14 acres with 5.53 into proposed development.

Mr. Moonan, access from Route 37, NJDOT discussion, shut off access from 37, all future development of Lot 4, interior access, nothing proposed for lot 4 currently, will have to come back before board.

No longer be a gas station on this site.

Mr. Shea going thru Mr. Yodakis review letter, pre-existing conditions of lot 4, gas station, causing need for variances balance result of sub-division. Fence on property, we are not touching fence.

Mr. Barron asked where fence was located, Mr. Moonan, east front yard.

Mr. Shea, variances required, 5 are existing, balance are result of sub division.

Mr. Shea, zoning, Mr. Moonan, permitted use in this zone, building 1500 sq ft in TR, 0 sq.ft in Manchester, store is in TR.

Mr. Moonan, sign variances, 2 signs west of main access driveway, Northampton Square, Wal Mart, statue with flag poles and landscaping, required 50 ft. proposed 20 for visibility. Ground signs 2 in Manchester 2 in Toms River, future use for lot 4, owner wants it to be called Northampton Square. Photos, MA-6 statue and flag poles. Ground signs and

configuration of lot variances needed. Architectural for statue will be given to T & M, cost two hundred thousand. Two signs will be monument signs, Wal Mart 95 sq ft and Northampton 35 sq ft.

NJDEP request limit amount of disturbance, large amount of trees to stay. Height of light poles, allow for lesser poles won't impact snakes, safety benefit to shoppers. 60% of acres in Manchester preserved, Mr. Shea, many of waivers we are asking for are a result of this, Mr. Moonan, yes.

Pavement technical report accepted, Mr. Yodakis, standard in TR, Mr. Moonan, yes.

Mr. Moonan, application before DEP for storm water management approval, NJDOT approvals next month or two.

Still addressing Mr. Yodakis's letter, Mr. Shea we will address request or provide what is asked.

Mr. Moonan, gas station contamination, we will have expert testify.

Emergency services inter-local agreement between towns.

Mr. Yodakis, regarding signs, will board see details from other witness, Mr. Moonan, yes.

Mr. Yodakis, 3 in Manchester, Mr. Moonan, yes.

Mr. Liston, for next meeting, can you provide rendering for signage for the board.

Mr. Shea, MA-8, sign, sheet 24 of 29 1/7/10, pylon sign in Toms River, 2 signs in Manchester

Mr. Yodakis, planner will discuss variances, Mr. Moonan, yes.

Mr. Yodakis, light poles, shade tree, lighting is consistent with TR, not with Manchester ordinance, Mr. Moonan, yes.

Mr. Yodakis, parking spaces in Manchester 10x20, Mr. Moonan, yes.

Mr. Czekanski, MA-2 shows four and half foot wall erected, Mr. Moonan, south of lot 4, line access., around habitat, 3700 linear feet, 4 feet high. Mr. Czekanski, 6.6, purchase of 110 acres, what is that, Mr. Moonan, south of rail line, 4.28 miles from site, for mitigation for the habitat.

Mr. Barron, from NJDEP, Mr. Moonan, yes.

Mr. Somerset, lot 4 is not owned by Grunin, Mr. Shea, yes, Mr. Somerset, lot 4 owner is not here, Mr. Shea, he is a part of the application, so he is represented here.

Mr. Shea, lot 4 part of application, will have to have sign plot plan

Mr. Somerset, plan showed snake bails, looked like hay bails, Mr. Moonan, yes will be mounds of branches etc, provide safe haven for snakes.

Mr. Somerset, left side of building, near compactor, can't see, looks like reinforced grass pavers, Mr. Moonan, yes

Mr. Somerset, site lights will they be shielded, Mr. Moonan, yes

Mr. Liston, emergency generator, any other noise from site, Mr. Moonan, yes 2 compactors, roof top units, will comply with noise ordinance.

Mr. Barron, delivery day or night, Mr. Moonan, manager will testify next meeting.

Mr. Krasky, snake barrier extend the Manchester parking area, is by DEP

Mr. Moonan, yes NJDEP

Mr. Vaccaro, return carts, Mr. Moonan, Mr. Shea wanted noted for record, Mr. Trutkoff had been out of the room for a few of questions asked, he has returned.

Mr. Moonan, 36 cart corals, 5 in Manchester, not covered, Mr. Trutkoff explained he has a temporary medical problem.

Mr. Vaccaro how do you keep away from snake habitat, Mr. Moonan, guard rail.

Mr. Vaccaro, can you supply more handicap spaces, Mr. Moonan, no maxed out.

Mr. Yodakis, in future if needed you can restripe, Mr. Moonan, yes.

Mr. Barron, who is responsible for maintaining snake area, Mr. Moonan, we will not be allowed to go in there, stray garbage bag we will retrieved.

(ten minute recess), Mr. Gasiowski left meeting at 9:00 PM.

Mr. Shea confirmed all witness could not be available for February 1<sup>st</sup>, meeting but three will.

Brian Wolf, architect sworn in accepted by board.(sworn in by court reporter)

Exhibits MA9-15, floor plan, rear & side elevations, pharmacy, exterior, exterior samples, floor plan.

Mr. Wolf, first store of this kind in area. MA-9 floor plan 3 entry points, pharmacy, market, garden

MA-10, exterior rendering , new store design, not like old store, earth tones, signage in white illuminated, cast concrete earth tones around entire building. Decorative fencing, trash enclosed, screen walls same color.

MA-14 samples of materials wall finish.

54% of store merchandise, 21% grocery, 13% stock, .7% bank or salon, .8% optical, 2% training or customer service.

Mr. Somerset, mechanical equipment of roof, will it be screened, Mr. Wolf, yes

Mr. Czekanski, store same as Stafford, Mr. Wolf, no first generation type in New Jersey

Mr. Liston, total square footage for grocery, Mr. Wolf, 40 thousand sq ft.

Mr. Barron, loading docks, will they taper down to trucks, Mr. Wolf, yes, Mr. Barron, will there be drainage problem.

Mr. Moonan, drain to piping system behind store.

Mr. Yodakis, Wal-Mart front internal illuminated just sign? Mr. Wolf, yes

Mr. Vaccaro, RV or truck parking over night, Mr. Shea, will not be allowed.

Mr. Liston, proposed last time, board objected.

Mr. Vaccaro, asked Mr. Barron if he felt there are enough fire hydrants.

Mr. Tom Uzzo, Environmental Consultant, sworn in and accepted by board, ( sworn in by court reporter)

Mr. Uzzo, the EIS, beneficial effects on the environment.

Exhibit MA-2 aerial rendering, 40% TR 60% Manchester, Manchester mostly undisturbed.

Lot 4, abandon gas station, air quality, water quality testing, part of remediation.

EIS shows no adverse effects to air and water with the proposed development, storm water management will control problems, noise greater, but no issue.

Mr. Shea asked Mr. Uzzo to discuss Mr. Yodakis 's letter regarding Lot 4. Mr. Uzzo, gas station remediation since 1980, 1992 tanks removed, 2005 remaining tanks removed. Soil has been removed, ground water remediation on going, 48 monitoring wells on site. NJDEP closed some, 28 still open, small area of ground water contamination still remains. Biological organism to dissipate remaining contamination.

Mr. Shea, nothing to prevent development, Mr. Uzzo, nothing to prohibit proposed development.

Mr. Shea, regarding Mr. Yodakis's letter gas station contamination traveling off site. Mr. Uzzo, was one time off site, remediation has pulled it back.

Mr. Tepedino, were the tanks completely removed, Mr. Uzzo, yes removed entirely.

Mr. Somerset, any remediation other than nature still going on, Mr. Uzzo, ended in 2004, levels declined proposing natural methods.

Mr. Shea, we will be prepared for the regular meeting, February , 2010, not all witness can return, but most can.

Mr. Liston, this application will be carried to February 1, 2010, 7:00 PM in this room, no further notice will be given to public.

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

Roll Call: Mr. Trutkoff-yes, Mr. Krasky-yes, Chairperson Vaccaro-yes

Messrs. Barron-yes, Czekanski-yes, Somerset-yes, Tepedino-yes

PUBLIC PORTION: Hearing None

PUBLIC PORTION Closed

ADJOURMENT:

MOTION TO ADJOURN by Mr. Barron, seconded by Mr. Krasky

ALL IN FAVOR

NONE OPPOSED

Meeting Adjourned 10:15 P.M.

Respectfully Submitted

Marianne Borthwick  
Secretary to the Board