

A meeting of the Township of Hamilton Planning Board was held on the above date with Chairman Gordon Dahl presiding. Members present were Michael Biglin, Jack Carson, William Christman, Chris Jensen, Joseph Nickels, John Percy, Charles Pritchard and David Wigglesworth. Alternate members present was Joan Dumoff. Also present were Joseph Adamson, Landscape Architect Consultant; John Rosenberger, Solicitor; Robert Watkins, representing James Mott, Planner Consultant; Steve Mazur, representing Kevin Dixon, Traffic Engineer Consultant; and Ronald Curcio, representing Chris Rehmann, Engineer Consultant.

Compliance with the Open Public Meetings Law was acknowledged.

Approval of Minutes – Mr. Carson moved, seconded by Mr. Christman, to approve the minutes of the meeting of March 6, 2008, as published. SAID MOTION CARRIED WITH EIGHT MEMBERS VOTING “AYE”, NO “NAY”, ONE “ABSTAIN”.

Wal-Mart Stores, Inc. (Continued Site Plan Hearing) – Stephen Nehmad, Attorney; Perry Petrillo, Architect; Peter J. Dolcy, P.E.; Deanna Drumm, Traffic Engineer; Sherri Thomas, Real Estate Manager for Wal-Mart; and Ron Fogg, Wal-Mart Store Manager, were present.

Pointing to a revised plan that had been presented at this meeting, Mr. Dolcy advised that the parking lot layout had been revised to reflect the design that had been part of the original approval for the site, and the garden center expansion had been reduced to accommodate the same number of parking spaces that had been originally approved.. He described how the revised plan differed from that which had been submitted for approval, and noted that the revisions were made in response to comments of the Board’s professional consultants.

Ms. Drumm described traffic circulation and how the parking layout complies with Ordinance requirements. She noted that the Applicant was enhancing pedestrian circulation with additional sidewalk and cross walk striping. It was Ms. Drumm’s opinion that the plan provides for safe and efficient access by all vehicles.

Ms. Drumm described how the loading dock area would function, and expressed the opinion that the design of the loading area is one of the best she has ever seen. She noted that the twelve foot loading dock width is an acceptable standard by the Institute of Transportation Engineering. Ms. Drumm and Mr. Dolcy responded to questions regarding truck maneuverability, loading dock width and screening.

Ms. Drumm stated that she had been involved with the application submitted to the New Jersey Department of Transportation, and that she was aware of the Township’s desire for a traffic signal at Wal-Mart Drive and the Black Horse Pike. Ms. Drumm advised as to who was in attendance at the meeting with NJDOT, when they were told that the traffic signal would not be permitted due to its proximity to existing signals. She stated they were, also, told that any request for a waiver would not be supported by NJDOT Staff, and that the marginal access road would allow drivers to exit the site and make left turns from the traffic signal existing at Leipzig Avenue and the Black Horse Pike. Ms. Drumm stated that Wal-Mart would pay its fair share contribution if the Township chooses to petition NJDOT for the signal.

A discussion took place with regard to the need for a traffic signal at Wal-Mart Drive and the Black Horse Pike and/or improvements at the intersection of Leipzig Avenue and the Black Horse Pike. Ms. Drumm acknowledged that the intersection at Leipzig Avenue is presently failing and that the Wal-Mart expansion would add traffic to that intersection. Mr. Nehmad stated that Wal-Mart would like to see a traffic signal established at Wal-Mart Drive and the Black Horse Pike, and would work with the Township to achieve that goal. He pointed out that the signal at Leipzig Avenue is off site, and suggested that a request be made of DOT to modify the timing. Mr. Nehmad cautioned that the project cannot be denied because of the increased traffic it will be generating, and the Applicant cannot do something that NJDOT will not allow.

Ms. Drumm addressed the comments in Mr. Mazur's report, and the requested waivers. She pointed out that the site contains an existing retail store with two access points, one on Route 40, controlled by a traffic signal, and one on Route 322, with limited movements; that there is a marginal access road on site, connecting to adjacent properties; and that the parking lot circulation meets generally accepted standards, as well as Ordinance requirements.

Board members asked questions regarding the loading area, landscaping, additional traffic generated and peak hour trips. Concern was expressed with regard to the additional impact on an already burdened intersection.

Mr. Nehmad stated that the Applicant is legally able to use the existing roadways, and the Design Commercial Zone within which the project is located is the most intensive commercial zone within the Township. He read the ordinance section that sets forth the purpose of the DC Zone, and expressed the opinion that the project is very much consistent. Mr. Nehmad stated that the site is permitted to generate the type of use, and the Applicant's obligation is to provide safe and efficient access.

In response to a question regarding whether the proposed addition would eliminate the need for storing merchandise in trailers during the Holiday season, Mr. advised that Wal-Mart had stopped storing merchandise in trailers and the addition would totally eliminate the need to do so.

Ms. Thomas informed those present that she supervises nine Wal-Mart stores, and that Wal-Mart has a desire to upgrade the entire facility in Hamilton Township in an effort to provide more goods and services to the area. She advised that twenty percent of the business in the "supercenter" would be groceries; that some departments would be expanded; and improvements would be made within the store to provide a better shopping experience.

Mr. Jensen questioned whether there would be more traffic generated because of the sale of groceries, as opposed to other types of goods. Ms. Drumm explained how she arrived at trip generation, using the generally accepted method for retail use, and stated that it was accepted by NJDOT.

In response to questions, Ms. Thomas stated that the Turnersville supercenter is under her jurisdiction, and that this would be the only supercenter in Atlantic County at the present time.

Mr. Nehmad stated that Ronald Gasiorowski has indicated that he represents Constance Van Seeters, and he would like to question Ms. Van Seeters, but he would wait to question her if Mr. Gasiorowski plans to call her as a witness. Mr. Gasiorowski stated that he knows no precedent for Mr. Nehmad to call her as a witness and he was under no obligation to produce her unless he chooses to do so. Mr. Nehmad responded that he has a right to ask her some questions, as she is a party to the proceedings and has retained counsel, and he made reference to the Village Supermarket v. Mayfair case .

Mr. Rosenberger advised that Mr. Nehmad had a right to call Ms. Van Seeters as a witness, and Mr. Dahl stated that he could do so after the Board took a break.

After the break, Mr. Nehmad asked Ms. Van Seeters to come forward, and there was no response.

Mr. Nehmad requested that the Board issue a subpoena to compel Ms. Van Seeters' appearance. He pointed out that she resides on the opposite side of the Township and his questions would relate to credibility, bias and motivation as to the position of Mr. Gasiorowski and his client, and how Ms. Van Seeters' right to enjoy and use her property is affected by any decision the Board makes with regard to the application.

Mr. Gasiorowski stated that Ms. Van Seeters is a resident of the Township and has a right to object to the application, just as any of the residents do. He stated that, if Mr. Nehmad wished to submit a written request for a subpoena, he would then address it with a response.

Mr. Nehmad, again, referred to the Village Supermarket Case, and advised that an objector may properly be subject to questions by the Board to determine who is financing his or

her appearance. He emphasized that he is entitled to know, and the Board is entitled to know, and the purpose of asking those types of questions is not to determine whether someone has a right to object, but because it allows a full weighing of the evidence.

Mr. Rosenberger advised that the issuance of a subpoena would not need a motion by the Board, and is not something that Mr. Gasiorowski either speaks to or opposes. He stated that the theory of the Village Supermarket Case is not that there is a disqualification of having an objector financed by a third party, but that the Board has the right to have that disclosed so that it can be taken into consideration in the context of all of the other issues it is weighing. Mr. Rosenberger stated he would discuss the matter with the Chairman, and if Mr. Dahl chooses to direct issuance of the subpoena, Mr. Nehmad and Mr. Gasiorowski would be advised accordingly.

Mr. Watkins reviewed the variances that were being requested, and noted that a variance for lot width had previously been granted. He referred to an ordinance section that provides guidelines for exceeding the maximum building length, and advised as to what was the ordinance required with regard to signage and parking lot setback.

Mr. Watkins noted that there were no design waivers being requested, and that the Applicant had revised the parking lot plan to address the Board's consultants' concerns.

Mr. Watkins advised of other comments contained within his report, and made a recommendation as to where he felt additional sidewalk should be constructed.

In response to a question of Mr. Watkins, Ms. Thomas stated there would be approximately six tractor trailer trucks and fifteen to twenty-five panel trucks per day visiting the site, and that Wal-Mart has control over when the deliveries are made. She gave examples of the types of goods that would be delivered by the smaller trucks, and noted that they are unloaded quickly, with deliveries generally in the morning. Ms. Thomas stated that the larger, Wal-Mart trucks generally visit the site after 2:00 PM.

Ms. Thomas testified that carts would be stored outside in the parking lot in cart corrals and within the store, and they would not be stored on the sidewalk where people would be walking.

In response to a question of Mr. Percy as to the proposed thirty foot setback of the parking lot from the adjacent property, Mr. Dolcy indicated on a plan where it would be located, and noted that it was already cleared. Mr. Watkins stated that he believed that a variance had not previously been granted from the fifty foot requirement, and Mr. Nehmad pointed out that it was clearly shown on the approved plan.

Mr. Percy questioned how the Board could be assured that buffer would be protected during construction. Mr. Dolcy advised that there is a six inch curb along the area, and the Applicant would be working with Mr. Adamson to enhance the buffer. He advised as to what methods are applied during construction, and noted that there would not be much earth work necessary in that area.

In response to a question as to the presence of litter within the buffer, Mr. Fogg advised as to the program he has in place to keep the grounds clean. He noted that he had approached the manager of Toys "R" Us in an attempt to address clean-up of the debris in the adjacent buffer, and learned that his program of clean-up was not as aggressive as Wal-Mart's.

A discussion took place with regard to the location of sidewalk to promote public safety and Mr. Dolcy agreed to construct it in certain areas. Particularly debated was where it should be located along the driveway on the westerly side of the site. Concern was expressed with regard to the necessity of vegetation removal and pedestrian crossing, and Mr. Dolcy advised that there would be enough room to construct it within the cleared area on either side of the driveway. Mr. Watkins favored placing it on the basin side, as pedestrians entering from Route 40 could cross at the traffic signal. Mr. Dahl felt it did not need to be constructed in the area of the loading dock. Mr. Dolcy stated that the Applicant would be willing to construct the sidewalk on either side, at the direction of the Board and its professional consultants.

Mr. Curcio reviewed his report, and noted that many of his comments had been addressed as a result of the revised plan.

A discussion took place with regard to the proposed depressed curb in front of the building. Mr. Dolcy advised that the curb is standard at almost all Wal-Mart stores so people wouldn't have to meander through the parking lot. He noted that it would be ADA compliant, and expressed the opinion that other curb type could present a tripping hazard. It was agreed that the Applicant would provide decorative bollards in a location to be determined by the Applicant in consultation with the Board's professional consultants.

Mr. Curcio advised that the storm water management system meets Ordinance requirements, with the exception of the basin depth, and that the proposed lighting presents no problem, provided more details are presented.

Mr. Curcio reported that there are some curb sections on site that are damaged, and Mr. Dolcy stated that he would visit the site and mark the problem areas.

Ms. Thomas stated that the store would be open twenty-four hours.

Mr. Dolcy advised that the store would be open during construction, and they would provide a construction phasing plan. He stated that every effort would be made to ensure customer safety.

Mr. Mazur referred to his report, and requested information to demonstrate that the two proposed free-standing signs would not obstruct the site triangles. He addressed the waiver requests with regard to the traffic study, noting what waivers he supported and what additional information he would like to see presented.

With regard to increasing the Level of Service at the Route 40 driveway, it was stated that if the "green time" were increased by one second, it would reach Level of Service "C".

Mr. Mazur stated that the Township's Master Plan includes a recommendation that there be a traffic signal at the intersection of Wal-Mart Drive and the Black Horse Pike, and the Applicant has agreed to a financial obligation towards that improvement.

Mr. Mazur raised issues and made recommendations with regard to the parking lot, pedestrian circulation, vehicular circulation, traffic study and other items, as contained within his report.

Mr. Adamson reviewed his report, noting that the Applicant has agreed to comply with most of the technical issues contained therein. He made raised issues and made recommendations involving landscaping, buffers and the promotion of "green" practices.

Mr. Percy questioned whether the recommendation of the Fire Official would be in conflict with some of Mr. Adamson's recommendations. Mr. Adamson stated he would meet with the Official and work with the Applicant to resolve any conflict.

Mr. Gasiorowski advised that Mr. Nehmad had provided him with the information he had requested, with the exception of the traffic report. Mr. Nehmad promised to see that Mr. Gasiorowski obtains a copy of the document. Mr. Gasiorowski agreed to provide copies of his experts' reports if they should be produced.

Mr. Dahl opened the hearing to public comment, and asked Mr. Gasiorowski if he wished to proceed with his questions, comments and experts' testimony. Mr. Gasiorowski stated that he would like to defer his presentation until the next meeting when the hearing would be continued, as the meeting was scheduled to conclude at 11:00 PM and it was 10:45 PM.

Mr. Dahl instructed the audience as to how the public comment portion of the hearing would be conducted.

Edward Chatten, a resident of the Township who lives on Driftwood Lane, supported the project, and offered comments with regard to vehicular access related to adjacent uses, pedestrian activity, landscaping and tax ratable.

Gerald Chudoff, a resident of Marlton, New Jersey, who lives on Chesterwood Court, asked questions and made comments with regard to the parking lot, handicap accommodation, how things were accommodated at a different Wal-Mart location, truck deliveries, use of sidewalk, how spoiled meats would be disposed, impact on local police department, whether there would be a subdivision of the property, and signs. Responses were provided to his comments and questions.

Mr. Nehmad questioned Mr. Chudoff's standing to comment on the application due to his place of residence. Mr. Chudoff stated he did not own property with the Township of Hamilton, that he was employed by Local 152 out of Hammonton, New Jersey, that he was a Business Agent on the street, and that he represents Super Fresh and Pathmark in Pennsylvania. Brett Last interrupted the questioning, stating that he wanted to object, and Mr. Rosenberger stopped him from proceeding, advising that Mr. Chudoff was testifying and that he would have an opportunity to comment at another time. In response to Mr. Nehmad's question as to whether he was asked to appear at this meeting to object to the application by his organization, Mr. Chudoff replied in the negative. In response to Mr. Nehmad's question as to whether the grant of the application would affect his right to use or enjoy his property, Mr. Chudoff replied in the affirmative. Mr. Gasiorowski attempted to advocate the position of Mr. Chudoff, and Mr. Nehmad objected, stating that Mr. Chudoff was not Mr. Gasiorowski's client, but he would not object to Mr. Gasiorowski urging the rights of his client. Mr. Nehmad further stated that the record has to be clear as to what is being done and why.

There were impromptu comments made from the audience, and Mr. Nehmad asked that the Board request the presence of a law enforcement officer when the hearing is continued. Additional comments from the audience were made, and Mr. Dahl cautioned the audience that he expected the continued hearing to proceed in an orderly manner.

It was announced that the hearing would be continued on April 3, 2008.

Mr. Biglin asked that protocol be established for attorneys to speak, so they wouldn't keep interrupting the proceedings, and Mr. Rosenberger stated he would discuss it with Board members.

Adjournment – Mr. Jensen moved, seconded by Mr. Nickels, to adjourn the meeting. SAID MOTION CARRIED WITH ALL MEMBERS VOTING "AYE", NO "NAY", NO "ABSTAIN".

Respectfully submitted,

Nancy Rainbow,
Planning Board Administrator