

**HAMILTON TOWNSHIP PLANNING BOARD  
RESOLUTION 2007-20**

**IN THE MATTER OF SQUARE  
PROPERTIES, LLC, FOR  
PRELIMINARY AND FINAL SITE PLAN  
APPROVAL, VARIANCE RELIEF FROM  
SIGN LOCATION, FOR THE PURPOSE  
OF CONSTRUCTION A 20,850-SQUARE-  
FOOT RETAIL BUILDING AND 7,812-  
SQUARE-FOOT CREDIT  
UNION/OFFICE BUILDING**

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

**Map 148, Section 1959, Lots 1 & 2  
Hamilton Township, Mercer County  
Zone: HC, Highway Commercial**

**Application No.: 06-07-066  
Approval Date: August 9, 2007**

**BE IT RESOLVED** by the Planning Board of the Township of Hamilton (ABoard@) that the action of this Board on August 9, 2007 in this matter is hereby memorialized by the adoption of this written decision setting forth the Board=s findings and conclusions.

**RELIEF SOUGHT AND JURISDICTION**

1. Applicant is seeking preliminary and final site plan approval, variance relief from sign location for the purpose of constructing a 20,850 square feet retail building and 7812 square feet credit union/office building.
2. The subject of this application is within the jurisdiction of this Board. The Board has acted within the time required by law.
3. The property is located at State Highway 33 and Bisbee Avenue, Hamilton Township, New Jersey.
4. Map 148, Section 1959, Lots 1 & 2 is located in the area designated on the Hamilton Township Zoning Map as HC, Highway Commercial zone.

**THE APPLICANT**

5. The owner of the property is Jon/Gul Enterprises, and the applicant is Square Properties, LLC.
6. The applicant has certified that the owner has paid all property taxes for the property and the applicant has certified that it has paid all escrow fees required under ordinance for such an application. This certification includes agreement to pay all future monies due under the escrow ordinance for consultants and other professional work on the property.

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7. The applicant has submitted an Affidavit of Proof of Service of Notice published in the Trenton times. The Proof of service comports with the notice before the Board that this matter is of the character that the applicant has presented to the Board.

### **THE HEARINGS**

8. Public hearing which took place with regard to this application.
  - a. On April 12, 2007 [hearing #1], a hearing took place before the Planning Board at the Township Municipal Building located on Greenwood Avenue.
  - b. On May 10, 2007, a hearing took place before the Planning Board at the Township Municipal Building located on Greenwood Avenue.
  - c. On June 28, 2007, a hearing took place before the Planning Board at the Township Municipal Building Located on Greenwood Avenue.
  - d. On August 9, 2007, a hearing took place before the Planning Board at the Township Municipal Building located on Greenwood Avenue. At this meeting, a settlement was reached between the attorney for the applicant and the attorney for Save Hamilton Open Space.

### **PLANS PRESENTED**

9. The Board reviewed the following plans and sketches:
  - a. Architectural Floor Plans and Elevations by Ragan Design Group dated December 20, 2006.
  - b. Preliminary and Final Site Plans by Nave Newell dated June 26, 2006 and revised December 21, 2006.

### **OTHER DOCUMENTS REVIEWED**

10. The Board reviewed the following documents:
  - a. Letter of Interpretation.
  - e. Letter from Nave Newell, dated December 21, 2006.
  - f. Letter from Timothy M. Prime, LLC, dated February 8, 2007
  - g. Sign details for the freestanding sign from Yates Signs.
  - h. Groundwater Mounding Analysis Report by Snyder Environmental Engineering Associates dated March 17, 2007.

### **EXHIBITS PRESENTED**

10. The following exhibits were presented:
  - a. A-1, colorized site plan.
  - b. A-2, aerial photo

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- c. A-3, elevations for the proposed Credit Union
- d. A-4, Elevations for Retail
- e. A-5, color rendering of Retail Commercial Building.
- f. A-6, cross section of rear wall
- g. A-7, shows side view of the building
- h. P-1, list of variances prepared by Stuart J. Lieberman, attorney for Save Hamilton Open Space, believed to be required for Square Properties.
- i. P-2, photo submitted by August Scotto.
- j. P-3, photo submitted by August Scotto.
- k. P-4, photo submitted by August Scotto.
- l. P-5, photo submitted by August Scotto.
- m. P-6, photo submitted by Barbara Hutchins.
- n. P-7, photo submitted by Eric Volk.
- o. P-8, photo submitted by Eric Volk.
- p. P-9, photo submitted by Steve Bagley.
- q. P-10, photo submitted by Steve Bagley.
- r. P-11, photo submitted by Judy Walsh.
- s. P-12, series of photos submitted by Judy Walsh.
- t. P-13, photo taken February 28, 2007, submitted by Ames Hoyt.
- u. P-14, photo taken March 2, 2007, submitted by Eric Moench.
- v. P-15, photo taken May 23, 2007, submitted by Eric Moench.
- w. P-16, photo taken May 29, 2007, submitted by Eric Moench.
- x. C-1. CV of John Miller.
- y. C-2, the Applicant's grading plan
- z. C-3, Report of the soil boring review dated March 6, 2007.
- aa. S-1, site plan agreed to in settlement with Save Hamilton Open Space-.

### **TOWNSHIP EXPERT REPORTS**

- 11. At the hearing, the Board considered the following reports presented by Township officials:
  - a. Memorandum from Division of Planning to Michael Guhanick, Land Use Coordinator, dated August 10, 2006, revised February 12, February 15 and May 8, 2007.
  - b. Memorandum from Division of Engineering to Michael Guhanick, Land Use Coordinator, dated July 31, 2006, revised January 31, 2007.
  - c. Letter from Remington Vernick Engineers dated March 21, 2007.

**TESTIMONY AND PUBLIC INPUT**

12. The testimony presented by and on behalf of the Applicant was given by the following persons:
  - a. The applicant was represented by Julie Williamson, Esq.
  - b. Dave Shropshire of Shropshire Associates, traffic engineer for the applicant, discussed his evaluation for a 24,000 square foot retail center and credit union, although the actual site is approximately 21,000 square feet, decreasing the likelihood of cars queuing. Mr. Shropshire also used a commercial bank rather than a credit union for his study, and a credit union would probably see more than ten percent less use than a commercial bank. The credit union would only be open three days a week until 3:30 pm, whereas a normal commercial bank would be open later. No gap analysis was done. On a highway, the Department of Transit requires that traffic be considered for drive-thru banks. The proposed retail center will share access with the adjacent Palagano site. There will be one left and one right lane for outbound at Bisbee Avenue, since the DOT thought that a deceleration lane would increase safety. The Applicant is proposing to have two signs on the property, one at each entrance, thirty feet back from the property line. The size of the size is in conformance with Township ordinance. The signs will distinguish the alternate access lanes and users.
  - c. Jay Tyson, P.E., of Nave Newell testified at the first hearing. He testified that the property was in the commercial zone, and that the Applicant met all requirements with the only variance for signage. Mr. Tyson stated that the property is classified as isolated wetland and will be filled. Mr. Tyson requested that sidewalks be allowed to be only 4 feet wide instead of the standard 5 feet in order to minimize impervious surface coverage. On August 9, Mr. Tyson explained the changes to the plan, primarily regarding storm water management, that were made as part of the settlement with Save Hamilton Open Space. He explained several alternatives for maintaining the underground drainage basin, including creating a stone bed and using pipes. Mr. Tyson also explained that the Applicant would have to get a Permit from the DEP to build on the property.
  - d. Jerry Snyder, P.E., presented a Mounding analysis at the April 12, 2007 hearing using a MODFLOW computer program. On June 28 he spoke about protection of nearby basements and the accounts of neighbors regarding flooding.
  - e. James Ambrose, signing
  - f. Rick Regan, the Applicant's architect, testified on May 10, 2007 [hearing #2]. Mr. Regan described the proposed buildings. There will be Brick facades along the length of the buildings, and the one story building will appear to

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have two stories with upper windows. The sides will be brick with split face block siding. The plans are being revised to hide mechanical equipment. The rear wall will also be made of split face block and will be extended above the roof to hide mechanical features and block the view over the roof tops to neighboring homes. Mr. Regan explained that this increased height will also block the adjacent homes from seeing any part of the building's roof. The building will have a stucco top and boarder around signs with gooseneck lights to illuminate the signs. The Credit Union will have brick on all sides. 450 square feet of signage is permitted, but the Applicant is proposing 250 square feet of façade signage. Windows on the side of the retail center will permit light to enter the building. Mr. Regan stated that the area design was modified based on the comments of Township staff. As far as lighting, there will be wall mounted fixtures and a canopy over the door to enclose the lighting fixtures there.

- g. Tom Orban, drew attention to fire safety issues on May 10.
13. The following Township staff gave advice to the Board:
    - a. Allen Schectel, Township Planner, reviewed his memorandum. At the second hearing, Mr. Schectel asked about the difference in traffic intensity between a credit union and commercial bank. On May 10, Mr. Schectel explained the need for the second sign on the property. He suggested that there be cultured stone around the buildings instead of split face block. Mr. Schectel drew attention to the Council on Affordable Housing and Transportation Improvement District fees owed by the Applicant. On August 9, Mr. Schectel requested clarification as far as the illumination of the site. Mr. Schectel stated that he wanted to minimize the lighting on the site and spoke to the need to be specific in descriptions of the illumination of the site, especially around the 24 hour ATM there.
    - b. Thomas E. Dunn, Township Engineer, reviewed his memorandum; and
    - c. Michael W. Herbert, Esq., reviewed the history of the site and the arguments of both sides.
    - d. Frank Seney, PE, Township traffic Engineer, requested that the Applicant provide calculations for a three vehicle queue at the property.
  14. Members of the public who spoke.
    - a. Members of the public were represented by Mara Epstein, Esq., and Stuart Lieberman, Esq., of the firm of Lieberman & Blecher. Mr. Lieberman and Ms. Epstein also represented Save Hamilton Open Space. On May 10, 2007, Mr. Lieberman argued that other variances were needed by the Applicant. He put his arguments into a letter to Ms. Williamson, attorney for the Applicant, which was marked P-1. A settlement was ultimately reached with the Applicant and put on the record on August 9, 2007.

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- b. Other homeowners in the area were represented by Peter Dickson of the firm of Potter & Dickson. Mr. Dickson asked how the underground storm water basin was an improvement over the above ground basin previously proposed, and about how it would deal with runoff coming from surrounding properties. Mr. Dickson also expressed concerns on behalf of his clients about some overhanging limbs that might constitute a safety hazard, and asked that they be taken care of as part of the routine maintenance of the site. The Board chairman expressed to Mr. Dickson that the homeowners could remove the limbs themselves.
  - c. August Scotto of 6 Mark Twain Drive asked about flooding on May 10 and drew attention to the fact that the property in question was located on deciduous wetland on August 9. He also spoke on June 28. Mr. Scotto wanted to be sure that the Applicant was in compliance with all regulations so that the construction would not cause more flooding.
  - d. Barbara Hutchens of 32 Mark Twain Drive spoke about the grading of the property on May 10.
  - e. Louis and Eric Volk of 40 Mark Twain Drive spoke about flooding behind the property on May 10.
  - f. Steve Bagley of 42 Mark Twain Drive spoke on May 10 asked about the views of the property and garbage pickup.
  - g. Judy Walsh of 30 Mark Twain Drive spoke on May 10.
  - h. Ames Hoyt of 29 Country Lane spoke on May 10.
  - i. John Brophy of 43 Mark Twain Drive spoke on May 10.
  - j. Eric Moench of 38 Mark Twain Drive spoke on June 28 about possible modification of the wells proposed on the Applicant's property.
  - k. David West of 34 Mark Twain Drive spoke on June 28.
  - l. Nancy Bagley of 42 Mark Twain Drive spoke on June 28.
15. Members of the Board who spoke:
- a. Dave Kenny spoke at the second hearing. Mr. Kenny asked what trip generation numbers were used, and was directed to page 8 of the traffic report. The predictions are for approximately 240 trips per peak hour and 342 at the Saturday peak hours. For the credit union, the prediction is for 140 per peak hour and 200 at the Saturday peak. These are mostly pass-by trips because there is traffic already on the highway. The critical movement will be in the left turn out of the site. 2 cars per minute will be split between two driveways. The average delay will be 35-50 across from the exit. The average traffic light cycle is 90-120 seconds. The proposed center is relatively small, and Mr. Shropshire stated that he thought the impact of the center would be less than his predictions. Mr. Kenny asked Mr. Regan what would be visible from the back of the proposed building, and Mr. Regan explained that only the peak canopy would be visible.

**FINDINGS AND CONCLUSIONS REGARDING  
PRELIMINARY AND FINAL SITE PLAN APPROVAL**

16. Nature of application
  - a. The Applicant is requesting preliminary and final site plan approval and variance relief from sign location for construction of a 20,850-square-foot rental building and a 7812-square-foot credit union/office building.
  - b. The Applicant sought to have two signs on the property where only one is permitted by ordinance. The Applicant requested one sign for a credit union and one sign for the retail center, both located on the property.
  - c. The Applicant will require Bisbee Avenue, a “paper street,” to be vacated by the township.
  - d. The application meets all other requirements.
  - e. The Board approves the application, finding that there is no negative impact upon the public’s health, safety and welfare, nor upon local zoning regulations.
  - f. However, the approval of final site plan will not be issued until Save Hamilton Open space reviews all submittals and comments upon what has been reviewed by Township personnel. Such review and comments period shall be completed within 30 days of SHOS receiving notification that final review by the Township Personnel is complete. If Save Hamilton Open Space fails to complete its review and issue comments within 30 days for final review, the Township shall issue its final approval of the final site plan. The Township is under no obligation to revise its approval based on the comments offered by Save Hamilton Open Space. Save Hamilton Open Space shall be notified when the materials are completed for the final review.

**CONDITIONS REQUIRED**

17. The Applicant reached a settlement agreement with Save Hamilton Open Space in which both parties agreed to the following:
  - a. An underground, extended detention, non infiltration basin will be placed under the front parking lot. Dry wells in the front of the lot will be used for infiltration as set forth in the settlement site plan, S-1.
  - b. A conservation buffer will be located from the edge of the disturbed area to the rear property line to protect the wood subject to utility easements, fence easements, and any revisions to the plans that may now or in the future be requested by or required to satisfy the requirements or regulations and/or the regulations of the Township, New Jersey Department of Environmental Protection, or any other governmental entity. Any trees removed from this area during construction shall be replaced by compatible trees of a native

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- species subject to approval by the Township.
- c. If an appeal is filed by any party or property owner who agrees to the settlement, the settlement agreement may be enforced in a court of law. If the Applicant is unsuccessful in enforcing the settlement agreement, or if any neighbors or other parties who have not signed off on the settlement agreement file an appeal, the entire settlement agreement may be repealed by the Applicant and the Applicant may file an amended preliminary site plan application with notice.
  - d. Save Hamilton Open Space and the neighbors shall not object to the requested vacation of Bisbee. If any objection to the vacation of Bisbee is filed with the township, the settlement may be repealed by the Applicant, an amended preliminary site plan application may be filed with the Township or repealed by the Applicant and the Applicant may file an amended preliminary site plan application with notice.
  - e. The Applicant will consult with Princeton Hydro regarding design of the storm water management basin and Bob Wells regarding trees. Princeton Hydro and Bob Wells may offer comments regarding the plans to the Township, but will not have veto power over the plans. Final approval of the plans rests fully with the Township.
  - f. If the proposed settlement proves impractical, the settlement agreement may be repealed by the Applicant and the Applicant may file with the Township an amended preliminary site plan application with notice.
  - g. A six foot tall green vinyl fence shall be placed at the edge of the disturbed area, as indicated on the settlement site plan (S-1). A natural colored chain link fence will be placed at the property line to provide security for the property.
  - h. The Applicant will use reasonable efforts to retain the four trees located near the eastern edge of the development, if possible, to provide additional coverage and screening for 26, 28 and 30 Mark Twain Drive.
  - i. Gasketed ends as available will be placed on the storm water system pipes to prevent leakage.
  - j. Save Hamilton Open Space experts may comment on the plan for noncompliance, but shall have no veto power over the same. Final approval of the plans rests with the Township. All rear lighting adjacent to the residential properties shall be down lighting to prevent trespassing of light onto adjoining residential property subject to approval by the Township.
  - k. Square Properties shall be responsible for routine maintenance of the site including removal of dead trees, regular preventative pruning of the trees and vegetation, and must clean up any debris.
  - l. No commercial activity shall be permitted on site after midnight with the exception of the 24 hour ATM and any deliveries to the front areas of the site
  - m. Trash pick-ups shall be two times per week, more if required by the owner

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- and/or tenants.
- n. The eastern trash enclosure will be moved closer to Route 33 as shown on Exhibit S-1. Plastic lids shall be used on all dumpsters to prevent noise to the neighbors.
  - o. There will be security lighting only in the back of the property. Specific lighting, especially around the ATM, will be addressed and worked out pursuant to the Township's regulations.
  - p. The memorialized planning board resolution shall be recorded with the County.
  - q. No walkway shall be provided from Mark Twain Drive to the site. Square Properties will coordinate with Palagano where reasonable and possible utilities running through the Bisbee stub to minimize the number of holes running to Mark Twain Drive.
  - r. There will be no deliveries to the rear-facing delivery areas before eight-o'clock a.m. to the best of the owner's ability.
  - s. A note will be added to the plan regarding dust suppression during development. A note is included on the Settlement Site Plan, Exhibit S1.
  - t. The Applicant will use its best efforts to coordinate building activities with Palagano.
  - u. The deed restriction litigation currently pending in the Superior Court of New Jersey shall be dismissed without prejudice with mutual releases. Dismissal with prejudice is to be entered if no appeal relevant to this settlement agreement is filed by anyone.
  - v. The following members of the public also agreed to the settlement: John Groffey of 43 Mark Twain Drive; Helen Groffey of 43 Mark Twain Drive; Barbara Hutchins of 32 Mark Twain Drive; Steven Maruski of 8 Parrel Place; John Nickles of 6 Parrel Place; Timothy J. Cupo of 45 Mark Twain Drive; Jacqueline Cupo of 45 Mark Twain Drive; Steven and Nancy Bagley of 42 Mark Twain Drive; and Rocky Swingle of Save Hamilton Open Space.
18. The Board finds that, in order to address the concerns expressed in the course of the hearing, and to limit the relief to that which is reasonably necessary to satisfy the applicant's legitimate requirements, the relief granted is subject to the following conditions:
- a. From the submitted elevations it appears that the applicant is proposing a second floor. The applicant shall include a second floor plan if this is the case, and what uses would occupy that floor. The second floor the FAR might exceed the maximum permitted and a D variance might be required for that purpose. Also there may be additional parking spaces required, which have not been provided in the current site plan. The Applicant provided testimony that there is no second floor and no increase in FAR therefore no additional parking is necessary.
  - b. The applicant will be filling in the two patches of wetlands on the property.

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The applicant is required to get the necessary approvals and permits from NJDEP. The Engineer in his letter as reference above has mentioned that he will be applying to the DEP for verification of the wetlands lines and for the GP-6 permit for filling of isolated minor wetlands. The letter also states that the copy of the wetlands LOI and GP-6 will be submitted to the Township once it is received. Applicant agrees to this condition.

- c. In terms of lot area, bulk and yard requirement the above-mentioned property complies with ordinance requirements.
- d. The zoning table on sheet 4 states that a 20 foot landscaped buffer is required along the street line and 26 feet is provided. This erroneous as per section 160-78 (7)(f) of the ordinance requires that at least the first ten feet shall be planted in lawn area or ground cover or landscaped with evergreen shrubbery. In either case the applicant complies with the ordinance requirement.
- e. In terms of parking the Board has the following comments and recommendations:
  - i. For commercial retail one space is required for 200 square feet of gross floor area. For 20,850 square feet around 104.25 or 105 parking spaces are required.
  - ii. For a bank or credit union five parking spaces are required per 1,000 square feet of gross floor area or 8 parking spaces for each teller window, whichever is greater. Using the above-mentioned ordinance standard for 7812 square feet office, around 39.06 spaces are required and there are 4 teller windows therefore by ordinance around 32 spaces are required. Since the number required by office space is greater than by teller windows; 39 parking spaces are required for the credit union use.

Using the ordinance standards, 144 parking spaces are required while 145 parking spaces will be proposed as a result of the Settlement agreement which requires the relocation of one of the dumpsters and the Township planner's request for 2 additional front islands (see 18 m. below), thereby meeting and exceeding the ordinance standards.

- f. Regarding the parking circulation:
  - i. The overall design of the entrance and exit looks awkward. The entrance/exit lanes shall be perpendicular to the property line instead of at an angle. In addition, the Board requires that the area be redesigned to avoid the curved entry and sharp right turn. The Board requires that the applicant remove the one parking space at the entrance, on the northern side. The Board has safety concerns regarding this location, as we fear it will conflict with the cars entering from the driveway to the left side and with other cars exiting the driveway on the right hand side. This might be pronounced during

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peak business hours. The sharp right turn must be eliminated. The revised plans address this comment.

- ii. The applicant is required to provide pedestrian connection from the furthest parking spaces, on the northern side, to the buildings, which would aid in providing safe walkway for pedestrians. The revised plans address this comment.
- iii. All on-site curbing must be Belgian block. This is an ordinance requirement. The revised plans address this comment. There is a note on sheet 4 to that effect.
- iv. All sidewalks, walkways around the buildings and pedestrian connections must be in brick in lieu of concrete. The engineer in his letter states that due to safety and maintenance considerations, they are proposing brick-like concrete i.e. red-colored concrete stamped in a brick pattern. The revised plans therefore do not address our above-mentioned comments. Applicant will install brick stamped concrete.
- v. Regarding the dumpsters enclosure the Board requires the following:
  1. There is a note stating all trash to be stored internally. This option is feasible for the credit union use or office uses. This does not appear to be an efficient option for shopping complexes or retail uses in general. . The applicant has replaced this option with plans showing 3 external dumpster locations.
  2. For a restaurant, any food service, or any other use, the trash generated would be quite substantial. In addition receptacles for recycling materials would be required as well. An internal trash receptacle would not efficiently be able to handle this. The applicant is required to provide external receptacles. These must be placed in enclosures, the colors and materials of which must match the proposed buildings.
  3. The plans have been revised to show external dumpster enclosures. Regarding their location and overall circulation the Board has the following comments:
    - a. The dumpster enclosures are placed at an angle and the drive aisle is one way. The Board is concerned about how the trucks would access it efficiently. This location and orientation seems inefficient and at a later date might have tenants leave the receptacles outside the enclosure, which would defeat the purpose of having these enclosures in the first place. This comment has been addressed with the revised plans.
    - b. The Board requires that the applicant reorient the enclosure so that it perpendicular to the drive aisle. This

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way the trucks can pick up the receptacles straight ahead and not have to negotiate back and forth through the one-way drive aisles. This comment has been addressed with the revised plans.

- g. Regarding the vacation of Bisbee Avenue, the applicant is required to acquire Hamilton Township Council approval for the proposed vacation.
- h. As Bisbee Avenue is integral to the development of this site and the adjacent one, it becomes a piece of real estate that should not simply be vacated and given for free to the developers. We believe that the normal process of street vacation should not be employed here and that the developer pay for that portion of the street to be acquired. Township Council shall make a determination regarding the requirement for payment for the Bisbee Avenue street vacation.
- i. Part of Bisbee Avenue that connects to Mark Twain Drive could be vacated as well. Part of the street can be offered to owners of Block 1959, lot 32 and Block 1958, lot 6 to consolidate with their residential lots. The applicant should coordinate with the developers of the adjoining site in order to facilitate this process. If the homeowners agree to the proposal then the applicant is required to install curb along the width of the street, remove the asphalt and install lawn. If the homeowners do not agree to this proposal then that part of Bisbee Avenue can be left as it is. However the street should not be used as another access to the applicant's property. This shall be the condition of approval.
- j. The applicant is proposing a vinyl privacy fence to the rear of the property. The colors and design should be coordinated with the adjacent development.
- k. Regarding the electric lines, there is a note on the plans stating that the existing utility pole to be relocated and the new location is close to the entrance on the vacated Bisbee Avenue (paper street). The plans show a line connecting this pole to another pole on Bisbee Avenue. There is another line going underground from this relocated pole to the building. All utilities must be underground, except that, to minimize tree loss, the existing aerial electric line will remain from the southwest corner of the bank building area to the existing pole at the southwest corner of the property .

1.

The following plant substitutions/revisions should be made to the landscape plans:

- i. The inkberry should be the 'Shamrock' variety.
- ii. A foundation planting plan is required for front of the "Credit Union" building. A twelve (12) foot wide walk is provided and therefore, there is sufficient room for a four (4) foot wide landscaped bed along the building.
- iii. Within the elongated landscaped area between the two (2) buildings,

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- add four (4) trees spaces evenly between the two (2) proposed area lights. The Red Oak installed within a small island on the east side of the Credit Union should be removed from this area.
- iv. The islands at the two (2) rear corners of the large retail building should be filled in with shrubbery.
  - v. Substitute the four (4) Red Maples within the central two (2) islands with a tree more suitable for a narrow growing environment, such as the Japanese Tree Lilac 'Ivory Silk', Pear (Redspire, Cleveland Select, and Chanticleer), Hornbeam, or another equal variety.
  - vi. .
  - vii. All landscaped islands should include for low growing shrubbery in lieu of turf.
- m. Along the front of the building, provide at least two (2) landscaped islands to break up the long thirty-two (32) space parking row. In addition, as the front walkway varies from ten (10) to twelve (12) feet wide, the inclusion of small landscaped openings within this sidewalk area will vastly improve the appearance of the building upon entering the site. Provide for at least ten (10) cut-outs (about 4' by 4' wide) that would include for shrubbery and perennials.
- n. The applicant is subject to the tree replacement ordinance (Section 160-117). All areas of trees cleared (including underground utilities, access roads, etc.) with acreage totals for each, must be shown on the plans. Tree clearing between the applicant's rear property line and the existing Bisbee stub street must also be shown and quantified.
- o. The applicant has indicated that 3.75 acres of trees are to be removed. According to ordinance, for every one (1) acre of woodlands lost, twenty (20) trees should be planted. The applicant is responsible for a grand total seventy-five (75) trees, **in addition to the landscape plan**. However, as per ordinance requirements the applicant **cannot** count the replacement trees as part of the site landscape package. The above formula represents requirements for plantings over and above required street tree plantings and required street tree plantings, buffers and parking lot plantings in nonresidential developments. The plan should note the number of compensatory plantings installed in the planting schedule, and the remainder that will be contributed to the Township tree replacement fund. This item has been reduced as it has been modified by the Settlement Agreement, the Settlement Site Plan, Exhibit S1 and has been approved by the Hamilton Township Planning Board.
- p. As shown in the landscape performance table, it shows that ninety (90) conifers and forty-five (45) deciduous trees will be used as "replacement" trees on site. However, there are only ninety three (93) conifers and eighty-

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one (81) deciduous trees on site to be installed. The ninety-three (93) conifers proposed are necessary to satisfy ordinance buffering requirements (to 160-130 [b]). Therefore, a credit towards the tree replacement can not be used here. For the deciduous trees, the tree replacement credit can be applied to supplementing the existing treed area along the rear of the property. The twenty (25) trees in this area may count towards the tree credit. This amount is now reduced, as it has been modified by the Settlement Agreement, the Settlement Site Plan, Exhibit S1 and has been approved by the Hamilton Township Planning Board.

- q. All site work, including landscaping, must be completed in accordance with the applicant's plan prior to occupancy. This shall be a condition of approval.
- r. Also add a note stating that any stockpiles of soil, equipment or materials shall not be stored within the drip lines of the existing trees being saved. Sheet 8 of 13 should be revised accordingly.
- s. The applicant has re-designed the basin as per our previous comments. However, in coordination with the adjacent developer of Lot 5, this shared basin concept may not be feasible. Nevertheless, once the location and design of the basin is finalized, we reserve the right to comment further on the landscape plan for the same as well as the buffering along the residential properties. This item is void as it has been modified by the Settlement Agreement, the Settlement Site Plan, Exhibit S1 and has been approved by the Hamilton Township Planning Board.
- t. The electrical cabinet, gas meter and other mechanical equipment panels located on the exterior elevation that are visible at ground level must be labeled as such on the building, painted to match the surrounding wall color and be screened from view with adequate landscape material or an actual wall built to match the building materials, whichever is more effective. Applicant agrees to this condition , except for the screening requirement, which has been obviated by the Conservation Easement.
- u. On sheet 8 of 13, the smallest soil stockpile to the left of the site entrance will be placed within the drip lines of those adjacent trees to be saved. This stockpile should be relocated so as not to adversely impact these trees. Additional comments may be made once the plans have been revised to reflect our previous comments.
- v. Sheet 8 shows part of the basin encroaching into the adjacent property (Palagano) to the west. The engineer's letter states that they have discussed with the development and have agreed to have a common basin that would enable them to use the land between the sites more effectively and reduced the length of the basin. The applicant has submitted a copy of the consent letter, which states that the owner of the adjacent property (Block 1958, lot 5) will consent to the filing of a land use application for a joint storm water

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management system on the Property by Square properties, LLC. This item is void as it has been modified by the Settlement Agreement, the Settlement Site Plan, Exhibit S1 and has been approved by the Hamilton Township Planning Board.

- w. The lighting plans indicate the isolux values and curves. We recommend that the underlying layer showing the parking lot be darker than what is currently shown, which is illegible. Regarding the lighting we have the following comments and recommendations:
  - i. From the submitted plan it appears that it meets the ordinance requirement of a minimum of 0.5 footcandle anywhere in the area to be illuminated and shall average a minimum of 1.0 footcandle over the entire area. The plan shows the isolux curves as well the values. We recommend that the applicant clearly indicate the isolux curves at 0.5 and 1.0 footcandle value.
  - ii. The applicant is indicating wall mounted fixtures as well as decorative lighting. The wall-mounted fixtures must be downward focused.
  - iii. Sheet 11 has a detail of the decorative light fixture with a note stating that it will be HADCO Hagerstown V03 or approved alternative. There is a note stating that the lights will be coordinated with lights on the adjacent property.
  - iv. We need the applicant to clarify if that the entire site will have these decorative light fixtures.. It was agreed that the decorative light fixtures should be restricted to the front of the site, since they are not shielded nor downward focused.
  - v. The Board requires that the lights be on timers. The applicant must specify what lights would be on for security reasons. This will help to eliminate nightglow to the resident.

This item is void as it has been modified by the Settlement Agreement, the Settlement Site Plan, Exhibit S1 and has been approved by the Hamilton Township Planning Board.

- x. The applicant is also required to submit a copy of the cross easement agreement with the adjacent property (Block 1958; Lot 5; Palagano).
- y. Regarding the signage, the Board requires the following:
  - i. Freestanding Sign: By ordinance one freestanding sign is permitted, provided that each sign shall not exceed 50 square feet on any one side and not exceed 25 feet in height. Any such signs shall not be located in the area within 30 feet Regarding the proposed freestanding signs we have the following comments and recommendations:
    - 1. The applicant is proposing two freestanding signs, one for the shopping mall and the other for the credit union. The applicant requires variance relief from number of signs, which was

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granted by the Board.

2. There is a note on Sheet 4, which states “reader board for multiple tenants freestanding sign.” Flashing or neon types of signs are not permitted.
  3. For the commercial retail use, the applicant is proposing one freestanding sign having a height of 15 feet and an area of 99.87 square feet at a distance of 21 feet from the property line. The applicant requires variance relief from sign setback and sign area. The applicant needs to clarify if the sign will have two faces. Regarding the variance, we feel that the sign area is too large and recommend that the applicant reduce the size to comply with the above-mentioned ordinance requirement. The Applicant agrees to comply with size, height and setback requirements of the ordinance.
  4. For the credit union use, the applicant is proposing one freestanding sign having a height of 12 feet. We need the applicant to clarify the area of the sign. This should be a more of a monumental sign, no higher than six feet. The Applicant agrees to comply that a monument sign of no greater than 6 feet in height shall be installed.
  5. Sign details from Yates Signs result in the following comments:
    - a. The applicant must specify the materials and colors for the piers and sign pediments.
    - b. The Board requires that the materials of the sign complement the elevation of the main building.
    - c. The overall sign design must complement the one being proposed for the adjacent development. The Applicant agrees to these requests.
- z. By ordinance the façade sign should not exceed ten percent of the front façade and should not project more than 15 inches in front of the façade of the building. The elevation drawings show arched signs. The Board is not certain if those comply with the above-mentioned ordinance requirement. The applicant is required to provide more details as to what type of signs are being proposed. This Applicant has complied with this requirement.
- aa. On sheet A-1, there are four (4) façade signs that mimic the size and placement of the 2<sup>nd</sup> floor windows. These four (4) signs should be removed, as they are atypical sign designs. The applicant should provide a normal rectangular shaped sign box, similar to the others proposed on the building front. Also, a “Store Sign Detail” has been provided, however, this detail does not show as to where these will be located on the building and how

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many are proposed. **This information must be provided.** The Applicant modified the plan to replace the (4) façade signs that mimic the size and placement of the 2<sup>nd</sup> floor windows with windows.

bb. Regarding the architecture the Board requires the following:

i. Credit Union: The applicant is proposing a brick building for the proposed credit union. The overall elevation is aesthetically appealing. The applicant is required to specify the colors and type of the decorative block. In addition the applicant is required to specify the shades of the proposed brick and color of the roof shingles.

ii. The applicant is also required to submit a color rendering for our review.

iii. Shopping Center:

1. The front elevation is a medley of styles. We recommend that the architecture of the shopping center match that of the credit union. This has been addressed by the Applicant and approved by the Hamilton Township Planning Board.

2. The applicant is required to provide a color elevation for our review. In addition, the applicant is required to provide the elevations at a larger scale and in more detail than what has been currently provided. The Applicant complied with this request.

3. At this time the applicant is showing roof top HVAC units that will be screened by fencing. This is unacceptable. The screen shall be of the same material as that of the building. This has been addressed by the Applicant and approved by the Hamilton Township Planning Board.

4. The front elevation shows a standing seam roof and gable. The rear elevation shows just the blank façade of the gable and the rear side of the standing seam roof. This is unacceptable. In addition the side elevation has a blank façade. We recommend that applicant enliven the rear elevation and the left side elevation as these face the adjacent homes. This has been addressed by the Applicant and approved by the Hamilton Township Planning Board.

cc. We recommend that the applicant speak with the Division of Planning regarding possible alternatives. We would also recommend that the overall architecture for this development and the proposed development on the adjacent property complement each other. This has been addressed by the Applicant and approved by the Hamilton Township Planning Board.

dd. The applicant is responsible for Transportation Improvement District (TID) fees. The calculations are as follows:

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- i. 20,850 sq. ft. x \$3.60 (unit fee per square feet for commercial retail)  
= \$75,060
  - ii. 7,812 sq. ft. x \$2.25 (unit fee per square feet for office space) =  
\$17,577
- Adding (a) and (b) the applicant is responsible for the total amount of **\$92,637**.
- ee. In our previous memorandum we had made the following comments:
    - i. The applicant is required to clarify the hours of operation. Businesses that will be open for 24 hours should not be allowed. There is a note on Sheet 4 stating that the proposed hours of operation shall be no earlier than 6AM and no later than midnight. The Settlement Agreement provides that no commercial activity shall be permitted on site after midnight with the exception of the 24 hour ATM and any deliveries to the front area of the site.
    - ii. Deliveries and garbage collection should be between 8AM to 10PM. There is a note on Sheet 4 stating that the delivery and garbage collection shall be between 8AM and 6PM. There will be no deliveries to the rear-facing delivery areas before eight-o-clock a.m. to the best of the owner's ability.
  - ff. Signature blocks for the Township Engineer and Planner must be on all sheets submitted by the project architect and engineer.
  - gg. The applicant is responsible for affordable housing fees for commercial properties.
  - hh. All visible structures in the detention basin must have a stone veneer facing to create a more natural looking appearance. This item is void as it has been modified by the Settlement Agreement, the Settlement Site Plan, Exhibit S1 and has been approved by the Hamilton Township Planning Board.
  - ii. There is an existing stub street from Mark Twain Drive that runs into this development and the adjoining property which also is under an application review. The Township has no interest in extending the stub street to NJ Route 33. This stub street serves no purpose so we suggest that the Applicant be required to approach the two adjoining Mark Twain Drive property owners to solicit their interest to obtain this property, as the Township would offer to vacate it to either or both property owners. The applicant would be responsible to remove the existing curbs and pavement and to construct curb along Mark Twain Drive.
  - jj. The lighting plan is to be revised to provide a minimum of .5 footcandles for the pedestrian walkway along the frontage of the site. Light intensity is not adequate along Route 33.
  - kk. All concrete sidewalks shall be 5' minimum. Revise detail.
  - ll. A Detention basin cross section shall be added to the plans to document the

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basin configuration, side slopes and elevations. Cross-section has been added to the Profile Plan. However, the cross-section indicates a 3 to 1 slope on one side of the basin. Applicant shall revise to a 4 to 1 slope max. This item is void as it has been modified by the Settlement Agreement, the Settlement Site Plan, Exhibit S1 and has been approved by the Hamilton Township Planning Board.

- mm. A substantial amount of existing wooded area will be removed for this project. Applicant has submitted a table to demonstrate compliance of the Tree Replacement Ordinance. However, with the basin being shifted into the adjacent property, the application must include Block 1958, Lot 5 or the portion that is relevant to the basin's construction. This item is void as it has been modified by the Settlement Agreement, the Settlement Site Plan, Exhibit S1 and has been approved by the Hamilton Township Planning Board.
- nn. All proposed building mounted lights as shown on the plan are to be downward facing fixtures with glare eliminating features.
- oo. Applicant has submitted a Bond Estimate in the amount of \$665,290.63. The estimate shall be reviewed and approved before the plans are signed.
- pp. The following approvals will be required:
  - i. Mercer County Planning Board
  - ii. Mercer County Soil Conservation District
  - iii. NJDOT Major Access Permit
  - iv. NJDEP Permit to fill wetlands
  - v. Township Water Pollution Control Dept.
  - vi. Township Fire Officials
  - vii. The monitoring wells present onsite, shall be sealed per NJDEP requirements
- qq. The emergency spill shall be shown on the plans. The Applicant shall demonstrate that there would be no adverse effects to adjoining properties. This item is void as it has been modified by the Settlement Agreement, the Settlement Site Plan, Exhibit S1 and has been approved by the Hamilton Township Planning Board.
- rr. This development is along Route 33. Therefore, NJDOT approval and permits are required. The Applicant has submitted the plans to NJ DOT for Major Access Permit. The Township shall be provided all the comments received by the Applicant and compliance submitted to DOT by the Applicant.
- ss. The Applicant has a note on the site plan stating, "See NJDOT plans for details". There are no DOT plans attached with this application. The Applicant has submitted the NJDOT Plans to the township.
- tt. The Applicant will do road widening in front of the property. There are no

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striping and signage shown on the plan. It is presumed that widened area will be shown as a deceleration lane. The width (13') shall be restricted with white stripe and proper signs will be installed. Hamilton Township is interested in seeing this plan. The signs/object markers are required at the end of the widened area for the cars heading eastbound.

- uu. At the westerly driveway two exit lanes and one entering lane are provided. A very short distance (25') is provided for the entering cars to shift the lane. The Board requires that only one exiting lane be provided. This will provide safety. The Applicant agreed to provide two exiting lanes at the Credit Union entrance/exit on what is currently known as the Bisbee stub street (a paper street).
- vv. The double yellow lines shall include the island in the easterly driveway instead of ending at the nose of the driveway. The striping must be revised.
- ww. One way signs R6-1L shall be provided instead of R6-1R.
- xx. There are no stream corridors associated with this application and no steep slopes. Consequently, the Steep Slopes and Stream Buffer Conservation Zone Ordinances do not apply. The application is however subject to the Phase II Stormwater Regulations and Site Investigation and Soil Sampling Ordinance of the Township.
- yy. There are indications of wetlands on the property and NJDEP has confirmed this. However, there is no record of the extent and accuracy of the wetlands delineation from NJDEP. A Letter of Interpretation accompanying a verified plan of wetland delineation is required.
- zz. NJ DEP has determined that freshwater wetlands and associated transition buffers are present on the site AND that the Applicant must have these delineated and submitted for verification. This has not been done and therefore no Letter of Interpretation (LOI) has been issued. The accuracy of the wetland as shown by the Applicant cannot be determined. There are indications of extensive disturbance of the wetlands. Any approvals shall be conditional upon a NJ DEP issued Letter of Interpretation (LOI).
- aaa. Any required NJDEP Freshwater Wetlands Permit must also be submitted.
- bbb. A NJ DEP-issued freshwater wetlands permits are required for any disturbance of the wetlands.
- ccc. The soil borings SB-1 through SB-5 indicated the ground water levels to be between 17 and 20 feet below ground surface. The applicant has provided a groundwater monitoring report which indicates that the basin will have no adverse effects on the adjacent properties. This item is void as it has been modified by the Settlement Agreement, the Settlement Site Plan, Exhibit S1 and has been approved by the Hamilton Township Planning Board
- ddd. The Stormwater Management Report and Site Runoff Calculations address most of the Phase II Stormwater requirements. Stormwater runoff quantity, quality, and recharge issues are addressed. The Applicant must also identify

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the party responsible for the maintenance of the stormwater management facilities and also provide estimates for annual cost of maintenance and operations.

- eee. All inlet grates and headers shall comply with Township Standards and Details.
- fff. The applicant needs to provide a copy of all plans, reports and estimates in electronic format on a C.D. disk for each submittal. The plans are to be in Auto-Cad version not later than 2005, correspondence in Word format and estimates in Excel version no later that 2003. The Applicant is not required to comply with this requirement.
- ggg. Applicant shall be required to submit the following upon completion of construction and prior to release of any performance guarantees:
  - i. As-built drawings prepared by a NJ licensed Land Surveyor for the drainage system and detention facilities.
  - ii. Engineer's certification that the detention facilities have been constructed in accordance with approved plans and appropriate detention size and volume of storage is provided. The certification should include a table comparing the design storage volumes to the as-built conditions.
- hhh. A deed of consolidation will be required for existing Lots 1 & 2. It is the applicant's responsibility to supply the new deeds for the proposed Lots.
- iii. The "sight triangle" areas must be dedicated to the Township, and added to the plan stating the following: Sight Triangle deeded or the purposes provided for and expressed in the "Land Development Ordinance." Within the sight triangle easement nothing shall be erected, placed, planted or allowed to grow in such a manner as to obstruct vision between a height of (3) feet and (7) feet above centerline grade of either street. This item is void as it has been determined that it only applicable to street-to-street intersections, not driveway-to-street intersections.
- jjj. Applicant shall comply with all stormwater Phase II regulations.
- kkk. .
- lll. Subject to compliance with all other applicable local, state and federal laws.
- mmm. All site work must be completed in accordance with the applicant=s plan prior to occupancy.
- nnn. Applicant shall not apply for a building permit nor shall any applicants be accepted by the Township until all conditions are satisfied, including all environmental concerns.
- ooo. Subject to the conditions of the Division of Planning memorandum dated August 10, 2006, revised February 12, February 15 and May 8, 2007, except as modified herein.
- ppp. Subject to the conditions of the Division of Engineering memoranda dated

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April 25, 2007, revised May 10, 2007, except as modified herein.  
qqq. Subject to the conditions of the Remington & Vernick Engineering letter dated March 21, 2007, except as modified herein.

**VARIANCES AND WAIVERS REQUESTED**

19. The applicant is seeking variance relief from the following:
  - a. The Applicant is seeking variance relief from the ordinance permitting only one sign on the property. The Applicant wishes to build two signs, one for the proposed retail center and one for the proposed bank, which will be a separate building.
20. The Board grants the waivers and variances, finding that the applicant has satisfied both the positive and negative criteria required for this application. Applicant has also presented testimony that the proposal will not have an adverse impact upon the public's health, safety and welfare, nor will it have a negative impact on local zoning ordinances.

**CONCLUSION**

Based upon the foregoing, the Hamilton Township Planning Board, at its August 9, 2007 meeting, voted to approve the application.

This Resolution of Memorialization was adopted on September 13, 2007 by a vote of the majority of the members present, who voted to grant the relief sought by the applicant.

The date of decision shall be August 9, 2007, except that the date of the adoption of this memorializing resolution is the date of decision for purposes of (1) mailing a copy of the decision to the applicant within ten (10) days of the date of the decision; (2) filing a copy of the decision with the administrative officer; and (3) publication of a notice of this decision. The date of the publication of the notice of decision shall be the date for the commencement of the vesting protection.

We do hereby certify that the foregoing resolution was adopted by the Hamilton Township Planning Board at its regular meeting held on September 13, 2007. This resolution memorializes formal action taken by the Board at its regular meeting held on August 9, 2007.

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Cheryl Durelli, Acting Secretary  
Hamilton Township Planning Board

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