

**HAMILTON TOWNSHIP PLANNING BOARD
RESOLUTION 2007-07**

**IN THE MATTER OF ANTHONY
PALAGANO FOR PRELIMINARY AND
FINAL SITE PLAN APPROVAL ALONG
WITH VARIANCE RELIEF, TO CREATE
A SMALL SHOPPING CENTER ON
ROUTE 33.**

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

**Map 147, Section 1958, Lot 5
Hamilton Township, Mercer County
Zone: HC, Highway Commercial**

**Application No. 06-07-062
Approval Date: July 26, 2007**

BE IT RESOLVED by the Planning Board of the Township of Hamilton that the action of this Board on July 26, 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. The applicant appeared before the Board requesting preliminary and final site plan approval, variance relief from maximum impervious surface coverage and waiver of soil testing for the purpose of constructing a 14,234 square feet retail center. The retail center is located at 1709 New Jersey Route 33, Map 147, Section 1958, Lot 5, Zone HC.
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 location of the property is 1709 State Highway 33, Hamilton Township, New Jersey.
4. Map 147, Section 1958, Lot 5, located in the area designated on the Hamilton Township Zoning Map as Highway Commercial.

THE APPLICANT

5. The property owner and applicant is Anthony Palagano.
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.
7. The applicant has submitted an Affidavit of Proof of Service of Notice published

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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. Six public hearings took place with regard to this application.:
 - a. On February 22, 2007, a hearing took place before the Planning Board at the Township Municipal Building located on Greenwood Avenue. At this hearing, the members of the board, the applicant's attorney, and Stuart Lieberman, the attorney for Save Hamilton Open Space, examined the issues that arose because
 - b. On March 8, 2007, a hearing took place before the Planning Board at the Township Municipal Building located on Greenwood Avenue.
 - c. On April 26, 2007 a hearing took place before the Planning Board at the Township Municipal Building located on Greenwood Avenue.
 - d. On June 14, 2007 a hearing took place before the Planning Board at the Township Municipal Building located on Greenwood Avenue. At this hearing, the application was extended to July 12, 2007.
 - e. On July 12, 2007, a hearing took place before the Planning Board at the Township Municipal Building located on Greenwood Avenue. At this meeting, an understanding between Michelle Donato, attorney for Save Hamilton Open Space and Gary Forshner, attorney for the Applicant, was put on the record.
 - f. On July 26, 2007, a hearing took place before the Planning Board at the Township Municipal Building located on Greenwood Avenue.

PLANS PRESENTED

9. The Board reviewed the following plans and sketches:
 - a. Preliminary and Final Site Plans, sheets 1 to 9, prepared for Proposed Retail Center Anthony Palagano, prepared by Princeton Junction Engineering and dated June 23, 2006 and last revised December 21, 2006.
 - b. Architectural Floor Plans and Elevations prepared for Proposed Retail Center Anthony Palagano, prepared by Raymond Klumb, AIA, and dated April 17, 2006, last revised August 30, 2006.

OTHER DOCUMENTS REVIEWED

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10. The Board also reviewed the following documents:
 - a. Surface Water Management Plan prepared for proposed Retail Center Anthony Palagano, prepared by Princeton Junction Engineering and dated June 26, 2006.
 - b. Soil Borings & Preliminary Freshwater Wetland Investigation prepared for Proposed Retail Center Anthony Palagano prepared by Hill Environmental Group and dated January 26, 2004.
 - c. Bond Estimate dated June 29, 2006.
 - d. Preliminary Joint Driveway and Cross-Access Agreement
 - e. Review response letter dated December 29, 2006.
 - f. Turning Analysis by Shropshire Associates LLC dated November 10, 2006.
 - g. Traffic Impact Study prepared by Shropshire Associates, LLC, dated September 8, 2006.

EXHIBITS PRESENTED

11. The following exhibits were presented:
 - a. A-1, the Site Development Plan, dated February 22, 2007.
 - b. A-2, the Color Landscaping plan, dated February 22, 2007.
 - c. A-3, a rendering of the architecture of the building
 - d. A-4, Surface water Management Plan, report dated February 26, 2007.
 - e. A-6, Turning Analysis Revision dated February 22, 2007
 - f. A-7, Complete set of plans
 - g. P-1, April 17 Photograph provided by Mr. Salamandra
 - h. P-2, April 17 Photograph provided by Mr. Salamandra
 - i. P-3, April 17 Photograph provided by Mr. Salamandra
 - j. P-4, March 20 photograph provided by August Scotto
 - k. P-5, set of three photographs provided by Mrs. Moench
 - l. P-6, Photograph provided by Mr. Moench
 - m. P-7, Photograph provided by Mr. Moench
 - n. P-8, Photograph provided by Mr. Moench
 - o. P-9, Photograph provided by Mr. Moench
 - p. P-10, Photograph provided by Mr. Moench
 - q. P-11, Photograph provided by Mr. Moench
 - r. P-12, Photograph provided by Mr. Moench
 - s. P-13, Photograph provided by Mr. Moench
 - t. P-16, three page letter, package of photos, and one map provided by Mr. Hoyt.

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nonstructural considerations and a law impact checklist had been submitted to the board. He stated that he did not consider lowering the impervious coverage because the site was designed in accordance with Township ordinances. Mr. Brown stated that above ground detention basins are preferred to below ground ones because they can be easily maintained, and that trees to absorb water. He testified that there are no wetlands on the site. Mr. Brown considered drainage for the property in question only, not for the adjacent site, and the capacity of the proposed basin would be close to its maximum for the site. Discharge would flow through a pipe in Bisby Avenue to an inlet in Mark Twain, and the overflow would go onto Bisby.

- d. David Shropshire of Shropshire Associates, traffic engineer for the applicant, testified that a common driveway for both the property in question and an adjacent property would be most efficient for circulation, and that is the reason the Applicant requested a variance for putting the driveway close to the property line. This would also eliminate a curb cut on to Route 33. Mr. Shropshire spoke about the Traffic Impact Study (A-5) and Turning Analysis Revision (A-6) and explained there would be a one-way in-bound only lane, one lane for outbound movement and sufficient radii to be able to circulate a delivery vehicle at the property. He stated that the site would have adequate circulations for both delivery and emergency service vehicles.
 - e. Ray Klumb, the project architect, reviewed the store elevations with the Board.
 - f. Jerry Snyder, of Snyder Environmental Engineering Associates, evaluated the mounding that would occur beneath the storm water infiltration pond and testified on March 8. He concluded that the level of groundwater mounding resulting from infiltration from the proposed pond would be about .01 feet in the worst case scenario, and thus insignificant. Mr. Snyder conducted a groundwater mounding analysis by putting data into a computer model. He testified that there would necessarily be an adverse impact on adjacent properties. He spoke about his March 18 report, and testified that the impact of an underground basin and a normal surface basin would be the same.
14. The following Township staff gave advice to the Board:
- a. Michael Angelastro of Remington & Vernick, functioned as the Board's traffic engineer..
 - b. Allen Schectel, township planner, gave advice to the Board on March 8. He stated that the proposed plans meet all the lot area bulk, maximum impervious surface coverage, signage, and parking requirements. He testified that the board experts had recommended that the Applicant do a combined driveway at the location at Bisby Avenue, for which the Applicant requested a variance. Mr. Schectel explained that a combined driveway would be safer, and would require the Applicant to reimburse the Township for the land on Bisby Road.

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Mr. Schectel advised that it was unnecessary to remove the stub street of Bisbee Avenue and recommended that the Applicant add another dumpster even if it meant exceeding the amount of impervious surface permitted. The Applicant agreed to preserve 20 to 30-foot swaths of trees at Mr. Schectel's recommendation. The Applicant will be required to shield its light fixtures so that no light spills on to neighboring properties, and any security lights should be kept to a minimum. Mr. Schectel asked that there be no 24 hour operations of any kind and that loading and dumpster pickup be limited to between eight a.m. and 11 p.m. Dumpsters will be fully enclosed and screened by landscaping. The Applicant is responsible for TID payments of \$51,244.20. Under cross examination on April 26, Mr. Schectel testified that the proposed retail center was not a "shopping center." It was his opinion that the Applicant had tried to revise the plan to save as many trees as possible. He explained that the small size of the property led the Applicant to decide not to have an Environmental Impact statement done.

- c. Robert C. Poppert, Division of Planning, Township Planner, reviewed his August 2, 2006 revised memorandum with the Board.
- d. Thomas E. Dunn, Township Engineer, reviewed his memorandum of July 31, 2006, revised January 10, February 5 and March 8, 2007. Mr. Dunn found the application complete. Mr. Dunn stated that he wished to further consider the issue of a right turn lane entering the site, that the Applicant had addressed his concerns regarding water runoff into Perro Place, and explained the need to address the costs associated with the maintenance of the basin. On April 23, he testified that he had received a maintenance manual which addressed the issue. Mr. Dunn testified that he had not been aware of any basement flooding problems prior to the hearing. Mr. Dunn testified that the Applicant had met requirements for impervious surface coverage, and that he was not prepared to recommend that the Applicant reduce the impervious surface coverage. Mr Dunn did say that he thought the concept of an underground basin might warrant further consideration.
- e. Michael W. Herbert, Esq., Board Attorney, gave advice to the Board. Mr. Herbert advised that the Board could only address one application at a time, and that thus issues relating to an adjacent property could not be discussed at the hearing regarding this application. Mr. Herbert advised that the Township does not require the owners of properties to be bonded for the maintenance of the basin. Mr. Herbert also advised the Board that the Applicant had the right to use the maximum amount of impervious surface coverage allowed by ordinance and that the Board could not deny the application on those grounds.
- f. Rachel U. Doobrajh, counsel for the Board, gave advice to the Board.
- g. Frank Seney, Traffic consultant, asked the Applicant on March 8 to revise the plans according to page two of the March 8, 2007 expressing his concerns.

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h. Dave Kenny, a Board member, spoke about the advantages and disadvantages of an underground basin. If the underground basin were to stop working, it would be necessary to dig up the parking lot. An underground basin could not be under a parking lot unless it was pretreated.

15. The testimony given on behalf of Save Hamilton Open Space, which took issue with the application, was as follows.
 - a. Save Hamilton Open Space was represented by Stuart Lieberman on February 22 and Michelle Donato on March 8, April 26, and June 14. Michele Donato, Esq., presented various witnesses and cross examined the Board's witnesses and applicant's witnesses.
 - b. Geoffrey Goll, a Civil Engineer dealing with geotechnical, environmental, soil, and water resources engineering, reviewed the plans, reports, and ordinances relating to the application and testified on June 14. Mr. Goll testified about performance statistics for different types of developments relating to the removal of suspended solids and the maintenance of existing hydrologic regimens on a site. Mr. Goll performed 27 tests along the property line contiguous with the site which indicated high water, although he never actually found it. Mr. Goll testified that the Applicant would usually need to supplement non-structural techniques with structural items. He said that the Applicant should reduce impervious surfaces and break up impervious surface with pervious surface to reduce flooding and allow infiltration, and that the Applicant should complete a Low Impact Development checklist (LID). He cited Township Ordinance 158-8(b)(3)(c) to show that according to the ordinance the proposed basin has steep slopes. Mr. Goll testified that there was standing water on an adjacent property in an "isolated wetland," and that the proposed basin was unlikely to drain in 72 hours, could cause a mosquito problem, and had no pre-treatment.
16. Members of the public who spoke.
 - a. August Scotto, a resident of 6 Mark Twain Drive, expressed concerns at the meeting on March 8 and April 26 about trees that would be removed as part of the project. Mr. Scotto was concerned that this would lead to increased flooding. He testified on June 14 that he was more concerned about other properties than his own, since he does not live right adjacent to the property in

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question.

- b. Lois Volk, of 40 Mark Twain Drive, expressed concerns on March 8 about a fence that had been incorrectly built on her property that might give the Applicant a false impression of the property line.
- c. Eric Volk, also of 40 Mark Twain Drive, spoke on August 8 and was concerned about flooding that might be worsened by the removal of trees as part of the project. Mr. Volk was also concerned about additional traffic that might be generated, and asked about fencing around the proposed detention basin to protect children from it.
- d. Rosemary Wirth relayed the concerns of her mother, who lives at 10 Perro Place, about flooding, drainage, and surface water runoff issues that might result on March 8.
- e. Mr. Ameshoit, of 29 Country Lane, requested a copy of the Environmental Impact statement and the mounding analysis on March 8, and asked that the Applicant consider putting the drainage basin beneath the parking lot a changing to open face asphalt.
- f. Eric Moench, of 38 Mark Twain Drive, asked on March 8 about testing on the property for polluted land. On April 26, he presented seven photographs of the board showing flooding in the area around the site. Mr. Moench advocated preserving the land of Bisby paper street as open space to absorb water and prevent flooding. Mr. Moench presented two additional photographs on June 14.
- g. Timothy Cupo, of 45 Mark Twain Drive, asked on April 26 whether potential flooding the area around the site might affect the buildings on the site itself, and drew attention vacant stores already existing on Route 33.
- h. Charlene Maruska, of 4 Perro Placed, also expressed concerns on April 26 about vacant stores. She was also concerned about traffic.
- i. Kathy Moench, of 38 Mark Twain Drive, drew attention on April 26 to red tail hawks living on Bisby paper street that would be affected by the construction. On July 12, Mrs. Moench thanked Mr. Palagano for working with the residents.
- j. Vincent Walsh, of 30 Mark Twain Drive, expressed frustration on April 26 with the limits of the Planning Board. He questioned the advisability of building another strip mall in Hamilton and urged the Board members to see the site and surrounding properties for themselves. On June 14, Mr. Walsh spoke about flooding in the basements of people on his street, and recommended that the Applicant come see the flooding person.
- k. Sara Esposito of 36 Mark Twain Drive expressed concerns on April 26 about how the construction might affect her enjoyment of her back yard.
- l. Rich Rabipinto of 36 Mark Twain Drive asked on April 26 whether there would be a combined hydrological study for the property in question and an

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adjacent property.

- m. Steve Bagley of 42 Mark Twain Drive was concerned that the construction might worsen flooding in his basement and affect his enjoyment of his back yard. He testified on April 26.
- n. Helen Groffie of 43 Mark Twain Drive said on April 26 that she did not want to see the trees destroyed as a result of this project.
- o. Nancy Bagley of 42 Mark Twain Drive testified on April 26 that she was worried about raised taxes, litter, noise, mosquitoes, and damage to the surrounding trees and wildlife that could occur as part of the project. On June 14 she asked that the Board walk in the residents' backyards to see the situation.
- p. Judith Walsh of 30 Marl Twain Drive, asked on April 26 why the application was submitted for approval by the planning board before the Township had agreed to vacate Bisby. She also argued for the preservation of the woods in the area and asked how the price of the Bisby land would be determined.
- q. John Nichols of 6 Perro Place testified on April 26 about widespread water problems in Hamilton. He also asked about safety in the retention basins.
- r. Leonard Salamandra of 46 Mark Twain Drive expressed concerns on April 26 that the construction might worsen flooding in his basement. He also asked that the board not meet on this subject in the first two weeks of May, and expressed his preference that the Bisby street be built instead of the Applicant's project.
- s. Ames Hoyt of 29 Country Lane asked on June 14 if leaf litter would have any impact on the hydrology of the site. In July 12 he declined to state agreement or disagreement with the agreement reached between the Applicant and Save Hamilton Open Space.
- t. Dennis Hudacsko, a planner from Bedminster, New Jersey, advised the board on different requirements dealing with light. After his testimony, all parties agreed that the illumination would be at zero lumens on the property line.

FINDINGS AND CONCLUSIONS REGARDING MINOR SUBDIVISION APPROVAL

17. Nature of application

- a. The Applicant appeared before the Board requesting preliminary and final site plan approval and variance relief for maximum impervious surface coverage.

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- b. The Applicant sought to locate the driveway for the proposed retail center adjacent to side property line at the request of the Department of Transit and township professionals to enable a common driveway with the adjoining property if and when construction occurred on that property.
- c. The Applicant plans to build part of the center (specifically the driveway) within the area covered by the "paper street" of Bisbee Avenue. Bisbee Avenue is 50 feet wide and the Applicant incorporated a 25 foot wide strip into the plans for the retail center. This would require Hamilton Township to vacate said paper street, and the applicant will take up that issue with the Township after approval by the Planning Board.
- d. The property in question, with the Bisby Avenue addition, is just over two acres at 87,813 square feet. The site contains a small dwelling (to be demolished) and slopes from Route 33 towards the back of the properties that front on Perro Place and Mark Twain Drive.
- e. As far as landscaping, there will be a hedge and low flower bed out in front of the property, as well as landscaped islands and a landscaped sign. There will be several flowering and shade trees along the sides of the building and along the rear of the parking lot.
- f. The Retail Center will be a one story building approximately 25 feet high to the ridge line, and as high as 32.5 feet on the west end. The HVAC system will be located on the back roof and shaded.
- g. 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.

CONDITIONS REQUIRED

- 18. The Applicant reached a settlement with Save Hamilton Open Space as well as with several neighborhood residents. They agreed to the following:
 - a. An underground detention basin will be located in the rear of the property underneath the parking lot. Dry wells for infiltration would be in the front of the property most likely underneath the parking lot, and all of the infiltration will be directed to them.
 - b. There will be a conservation easement for the remaining treed portions of the property in the rear as shown in the plans, subject to any utility easements that may be necessary or applicable or desirable with regard to this application. The applicant will try to limit any clearing that would take place if utilities are installed, as well as replanting native species where it is not inconsistent with the use of utilities.
 - c. The Applicant will be responsible for cleanup and maintenance of the preserved area and will consult with the Save Hamilton Open Space tree

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- expert, Robert Wells, to maximize tree preservation.
- d. The Applicant will remove the fence located between the Applicant's property and the residential property behind it and move the fence to the area between the parking area and the preservation easement agreed to. The color of the fence will be worked out with the township professionals.
 - e. The Applicant will provide landscaping as a buffer to residential properties in a small "carved out" piece of the property.
 - f. The Applicant agreed to have gasketed ends on any utility pipes.
 - g. The Applicant will consult with Princeton Hydro if difficulties arise with storm water control. The Applicant is bound by township storm water regulations.
 - h. There will be down lighting that will not trespass to the residential properties in the rear. Lighting will be at zero lumens at the property line.
 - i. The hours of operation will not extend past eleven pm. If there is a restaurant on the property, trash will be picked up at least two times a week and more if appropriate due to overflow. The trash enclosure will be moved as far north as possible without interfering with traffic circulation of parking.
 - j. SHOS will not appeal any approval granted by the Board or present any objection to the vacation of Bisby Street proposed in conjunction with the application. If the above provisions cannot be reasonably accomplished, the Applicant has the right to return to the Board as if no agreement had been reached and SHOS can preserve any objections.
19. 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. An auto CAD of the application must be filed with the Township.
 - b. There are parking spaces to the rear and a 12-foot wide loading dock. The applicant has included a turning analysis plans indicating the same.
 - c. The two parking spaces perpendicular to each other on the southwesterly side are located very close to each other. If the cars in both the spaces were to reverse into the parking lot at the same time they might crash into each other. The applicant has submitted revised plans, which shows the two perpendicular parking spaces being reconfigured.
 - d. The Board requires that the applicant install brick sidewalks and walkway in lieu of the concrete sidewalks.
 - e. All on-site curbing must be Belgian Block. There is a note on Sheet 2 and a detail on sheet 10, which indicates that Belgian block, will be used.

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- f. Regarding the vacation of Bisbee Avenue, the applicant is required to acquire Hamilton Township Council approval for the proposed vacation.
- g. 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.
- h. 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.
- i. Regarding the signage, the plan indicates one freestanding sign at a distance of 30 feet from the property line, which complies with the ordinance requirement.
- j. The details (sheet 9) show the total height to be six feet and the total area of the sign to be 40 square feet, which meets the ordinance requirement.
- k. The Board requires that the ground sign complement the proposed building. In addition, the sign must complement the one that is being proposed in the adjacent shopping complex development.
- l. The details sheet also indicates a 24 square feet façade sign. 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 applicant agreed to comply.
- m. The plans must include a note stating that the dumpsters must be placed in the enclosures at all times. There is a note on Sheet 2.
- n. Sheet 10 has details of the dumpster enclosure. There is a note stating that the colors and materials of the enclosure match the existing building. The engineer's letter states that the gates will be vinyl PVC while there is a note on Sheet 10 stating that the gates will be steel mesh with vinyl privacy slats. The Board requires that the applicant install vinyl in lieu of steel mesh with privacy slats.
- o. Entrances to sites deserve special landscape treatment. The applicant should revise the entry design to satisfy this requirement. The planting design for the west side of the entrance should mirror that of the east side of the entrance. The applicant should coordinate this design with the adjacent property (Jon/Gul Enterprises). A combination of ornamental

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- grasses (i.e. dwarf fountain grass), perennials (i.e. black-eyed Susan, daylilies), evergreen and flowering shrubbery shall make up this design. The plans have not been revised with coordinated landscape designs.
- p. The following changes should be made to the Proposed Planting Schedule:
- i. The list notes that 86 Kwanzan Cherry trees are to be planted when in fact the design only shows 1. Please revise accordingly.
 - ii. Change the Zelkova and the three (3) other deciduous trees to 2 ½" – 3" caliper minimum at time of planting.
- q. The following plant substitutions should be made to the landscape plans:
- iii. On the South side of the basin, change the ten (10) silky dogwood to ten (10) Norway Spruce. Therefore, the new total number of conifers will be 53, of which no more than 33 should be Norway Spruce. The remainder can be White Spruce or Douglas Fir.
 - iv. This second row of shrubs should then be interrupted with areas of perennials plantings, installed every thirty (30) feet on center. For each group of sixty (60), change the rear thirty (30) to daylilies ('Happy Returns').
- r. At the front left corner of the building, center the proposed Columnar Red Maple within the landscaped bed.
- s. The monument sign must be landscaped at its base (all sides). This is an ordinance requirement. Provide for a group of three (3) evergreen shrubs at each end of the monument sign. Change the fifty (50) liriope to thirty (30) rudbeckia and twenty (20) liriope (plant the liriope in front of the rudbeckia).
- t. 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. The applicant has indicated that 1.8 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 thirty-six (36) trees, in addition to the landscape plan. The landscape design of the property will not allow for the installation of these trees, therefore, the applicant will be required to contribute trees to the township at a rate of 130 percent of the required number of trees specified or equal monetary contribution to the township for the purchase of trees for street, park and open space beautification in the amount of \$250 per tree or \$11,700.00. 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 is subject to the settlement between applicant and Save Hamilton Open Space.

- u. Tree clearing between the applicant's rear property line and Mark Twain Drive must also be shown and quantified. This item has not been addressed. Also, the applicant should justify as to how they arrived at a clearing number of 1.8 acres.
- v. 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.
- w. The detention basin configuration and design has changed since the last site plan submission. The plan now shows a sand bottom basin surrounded with a six (6) foot high gabion wall. The applicant should replace the gabion wall with a more aesthetically pleasing retaining block wall (i.e. EP Henry, etc.). Please provide examples of such types of retaining wall block to be used.
- x. In parking lots, at least five (5) percent of the parking lot shall be landscaped. The landscaping should be located in protected areas along walkways, center islands and at the ends of bays. At least one (1) tree shall be planted for every ten parking spaces provided in off-street parking areas. The applicant has now shown that these requirements have been met.
- y. The applicant has re-designed the stormwater basin to preserve (at least) the first twenty (20) feet and as much as thirty (30) feet of the existing trees. The Board has reviewed the landscape and site development plan and requires the following:
 - v. Tree numbers #498, #497, #496, #429 and #444 are shown to be within 0' to 3' of disturbed areas. Due to the species and size of these trees, grading and utility trenching will adversely impact the critical root zone. Please provide a revised grading plan that is able to preserve these trees.
 - vi. Tree numbers #434, #439-#442 are shown to have grading within their drip lines. Please provide a revised grading plan that is able to preserve these trees.
 - vii. Tree number #445 is a 12" Cherry – the applicant should best describe its current health and value to determine if this tree is worth saving.
 - viii. Tree numbers #531-#535 are all White Pines that are located on the adjacent lot. The plans show that grading will occur within 0' to 4' of

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these trees. As Pines are noted as “severely” impacted by a changes in grade (cuts and fills), the applicant should revise the grading plan to not disturb the root zones of these trees.

- z. Regarding the submitted lighting plan The Board has the following requirements:
 - ix. 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.
 - x. It appears that the light flows into some properties to the rear. Since the use occupying the properties is residential, therefore there will be concerns regarding glare etc. We recommend that the applicant install house side shield on the light fixtures in order to reduce the footcandle value and the subsequent impact on the neighboring residential properties.
 - xi. The sheet includes details of wall-mounted fixtures, which must be downward focused.
 - xii. The applicant has included a detail of the decorative light fixture, which will be HADCO Hagerstown V03. We would like to add that the applicant coordinates the light fixtures with the developers of the adjacent property so that the same types of fixtures are used for both the developments.
 - xiii. The plan denotes “triangles” in the parking lot. The applicant needs to confirm if the entire parking lot will have decorative lighting.
 - xiv. The applicant is required to clearly denote the location of the decorative and wall mounted lights on the lighting plan.
 - xv. The Board requires that the lights be on timers so as to reduce glare, which may impact neighbors. The applicant must specify what lights would be on for security reasons.
- aa. The applicant is proposing a vinyl privacy fence to the rear of the property. The fence along this property as well as the adjacent development must be identical.
- bb. Regarding the architecture, the applicant is proposing a stucco building with a stone. The applicant is required to submit color rendering and samples for review.
- cc. The Board requires that applicant enliven the rear elevation and the left side elevation, as homeowners will clearly see these elevations.
- dd. The Board requires that the applicant speak with the Division of Planning regarding possible alternatives. Most importantly we recommend that the overall architecture for this development and the proposed development

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on the adjacent property complement each other. The Division of Planning has called up and informed the applicant's attorney regarding the submission of color rendering. Additional comments will be made on receipt of the same.

- ee. There is a note on Sheet 2 stating that occupants and tenants will be restricted from 24-hour operations and that all occupants and tenants are restricted to conducting business between the hours of 6AM to 11PM.
- ff. Deliveries and garbage collection should be between 8AM to 11 PM. There is a note on Sheet 2 regarding the same.
- gg. The Board requires that the applicant submit the signage plan on a separate sheet.
- hh. The HVAC systems, whether they are on the rooftop or located outside the building, must be concealed from view.
- ii. There is a note on the elevations on Sheet A-2, which indicates that the HVAC will be rooftop and screened. The architect is required to show in dashed lines the location of the system on the elevation.
- jj. The applicant is responsible for Transportation Improvement District (TID) fees of \$51,244.20. The breakdown is as follows:
14,234.5 square feet x \$3.60 (per square foot)=\$51,244.2 square feet.
- kk. All utilities must be underground.
- ll. Signature blocks for the Township Engineer and Planner must be on all sheets submitted by the project architect and engineer.
- mm. The applicant is responsible for affordable housing fees.
- nn. All visible structures in the detention basin must have a stone veneer facing to create a more natural looking appearance.
- oo. The applicant shall submit stormwater management maintenance manuals for proposed basin. Applicant has submitted a stormwater management maintenance manual and is under review.
- pp. Applicant shall provide storm drain detail. Plans shall note storm drain material.
- qq. This development is along Route 33. Therefore, NJDOT approval and permits are required. The Applicant shall submit the plans to NJDOT for approval. The Applicant was going to meet NJ DOT regarding this application in mid January 2007. The minutes of this meeting shall be provided to the Township.
- rr. The Applicant has not shown the deceleration lane striping clearly on the plan. Is this lane created to enter this proposed retail center? What happens to this deceleration lane past the driveway? Proper signage is also missing for the deceleration lane. Applicant is awaiting comments from NJ DOT.
- ss. The proposed driveway is 40 ft wide for only a 45-foot length from Route 33. The driveway then reduces to only 25' wide. It is advisable that only

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- two lanes (one entering and another exiting) be provided for 45' length. This will be suitable for WB-50 trucks entering and exiting the site. Double yellow striping shall be shown for the entire length of driveway. This comment is still outstanding.
- tt. The concrete sidewalk shall be 5' wide instead of 4'. The Applicant states that in order to meet the 60% maximum impervious surface area requirement, the sidewalk proposed remains at four foot wide. This comment is still outstanding.
 - uu. This development is within TID area, the Applicant shall pay appropriate contribution to the Township for TID Fund.
 - vv. There are no stream corridors and no wetlands on this property. The adjoining property (Jon/Gul) has wetlands but those wetlands and their associated buffers do not affect this property. Additionally, the Steep Slopes and Stream Buffer Conservation Zone Ordinances do not apply.
 - ww. The Applicant requested a waiver of the Soil Testing Requirements of the Township Ordinance. There are still questions concerning the area under and surrounding the underground storage tank (UST). Until the UST is removed and the area thoroughly investigated, the Township cannot grant this waiver.
 - xx. The Applicant had the underground storage tank (UST) removed on May 2, 2004 by Hill Environmental Group. The location is an area of concern and soil samples are required. The Applicant did not take soil samples for testing. To ascertain that the site is not contaminated, the soil sampling requirements cannot be waved.
 - yy. This application is subject to the Phase II Stormwater Regulations.
 - zz. The applicant must monitor the groundwater movements and seasonal high water tables and submit findings as part of the records for this application. Comment is still outstanding
 - aaa. Should the findings indicate high water tables, the applicant shall be requested to relocate the basin away from the residential homes. Comment is still outstanding
 - bbb. Subject to the conditions contained in the March, 2007 Remington Vernick memorandum.
 - ccc. Subject to the conditions of the Division of Planning memorandum dated August 2, 2006, revised February 8 and March 6, 2007.
 - ddd. Subject to the conditions of the Division of Engineering memorandum dated July 31, 2006, revised January 10, February 5 and March 8, 2007.
 - eee. Subject to compliance with all other applicable local, county, state and federal laws.

VARIANCES AND WAIVERS REQUESTED AND GRANTED

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16. The following variances were requested:
 - a. In terms of lot area, bulk and yard requirement the above lot complies with the ordinance requirement. Previously variance relief was required from maximum impervious surface coverage. The plans have been revised to comply with the ordinance requirement.
 - b. In terms of parking for a commercial retail use one space is required for every 200 square feet of gross floor area. For a 14,234.5 square foot building, 71 spaces are required. The applicant is providing 71 spaces, which meets the ordinance requirement.
 - c. The existing impervious coverage is 2.33%, and the proposed impervious coverage is 61.1%. The maximum impervious coverage permitted at this site is 60%. The plan was revised to have only 59.95% proposed impervious coverage.
 - d. The Applicant requests a variance regarding the twelve foot setback required for a driveway and the lot line. At the request of Township experts, the Applicant agreed to change the plan so that the driveway would be located 5 feet from the property line so that, in the event that the property adjacent to the property in question was developed, the two properties could share a driveway.

17. The applicant through its professional testimony has provided statements that the positive criteria have been met. The applicant has also proven negative criteria by showing that there is no negative impact upon the public's health, safety and welfare, nor upon local zoning ordinances. In fact, this application is compliant with almost all Township ordinances. Any required variances are the result of requests made by the township.

CONCLUSION

Based upon the foregoing, the Hamilton Township Planning Board, at its July 12, 2007 meeting, voted to approve the application.

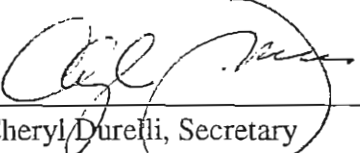
This Resolution of Memorialization was adopted on September 27, 2007 by a vote of the majority of the members present, who voted to grant the relief sought by the applicant.

The date of decision shall be July 12, 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.

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We do hereby certify that the foregoing resolution was adopted by the Hamilton Township Planning Board at its regular meeting held on September 27, 2007. This resolution memorializes formal action taken by the Board at its regular meeting held on July 26, 2007.



Cheryl Durelli, Secretary
Hamilton Township Planning Board