

Planning Board Meeting
Special Meeting of October 8, 2009 at 7:00 pm

A special meeting of the Planning Board took place on the above date. Chairman McCabe read the Open Public Meeting Act and requested Mrs. Citterbart called the roll. Board Secretary Citterbart stated there was a quorum.

Members Present: Mr. Caffrey, Mrs. Fowler, Mr. Ricciardo, Mr. Russo, Mr. Vandyk, Mr. White, Chairwoman McCabe

EXCUSED: Mr. Elvidge, Mr. Flaherty

ALSO PRESENT: Mr. David Soloway, Esq., of Vogel, Chait, Collins and Schneider, Dave Simmons, Board Engineer from the firm Harold E. Pellow & Associates, Debra Millikin, Deputy Town Manager, Kathy Citterbart, Board Secretary.

FLAG SALUTE

OLD BUSINESS

#SP 08-07 Martorana Enterprises, 100 & 104 Sparta Avenue, Block 1201, Lots 5 & 5.03. Applicant is seeking approval for a site plan to allow construction of two retail buildings pursuant to a remand from the Superior Court.

SWORN: Gary Dean from the firm of Dolan and Dean Consulting Engineers, 792 Chimney Rock Road, Martinsville, NJ. Mr. Hal Simoff,

Mr. Soloway read from the transcript of the court. Discussion on the remand to the Board regarding the traffic issues. The Judge gave us 120 days from the day of the order which is December 2 or 3, 2009. We are supposed to resolve this by then.

Mr. Ricciardo questioned: You are telling us that we are to consider only interior traffic patterns, parking layouts, stacking, how the entrance and exit affected traffic flow. Can we discuss building locations and how that affects traffic flow? Can we discuss occupancy and how that will affect traffic flow and parking layout? Mr. Soloway stated: If they legitimately impact traffic flow. The answer is yes. When you say occupancy unless something has changed as everyone recalls from the first time around there were no specific uses proposed. The stipulation was that they would be conforming uses so you have to look at that one generically. The court also said somewhere in their opinion that at some point assuming that the application gets approved the Board will have the right to make them come back. Mr. Ricciardo questioned: Can we discuss how the stacking at the drive-thrus windows for the fast food restaurant and banks affect the traffic flow? Mr. Soloway stated: Absolutely. There are drive-thrus proposed. You can discuss that. Mr. Ricciardo questioned: Can we discuss how the stacking is proposed for the one building would affect noise for the neighbors? Mr. Soloway stated: Only to the

extent that the applicant would have to comply with the New Jersey Noise Ordinance. I don't think you can do anything more than that. So the answer is yes.

Mr. Fiorello provided his appearance. Mr. Soloway correctly recited the Board's decision and he is correct on saying that your focus should be upon internal circulation of traffic and safety hazards that proposed or any confusion that is created. The Court did not want the Board to stray or the public to stray from those limits. I have received two reports from Mr. Dean one dated October 5, 2009 which was received this week and October 10, 2009 which is a supplement to the original report that we received at 12 o'clock today. The reason Mr. Donahue is not here is that we have not had an opportunity to meet with him or Mr. Simoff until we met with him this evening for a half hour. We are not prepared to address point by point all of the points raised by Mr. Dean. I will address those more after he is qualified. He has reviewed the plans. There is a professional dialogue that takes place. We have an opportunity to review his plans and make comments on his recommendations and observations and respond to those. We are unable to do that because of the very short period of time which we received these reports. Mr. Dean was not here when we introduced the reports of September 4, 2008 from Mr. Simoff and Mr. Donahue's site plan of October 30, 2008. There are a lot of references that things have changed and they don't match up. Another report the Board received from December 1, 2008 prepared by Mr. Simoff which addresses a lot of questions regarding signage and traffic circulation. I do not see that reference in Mr. Dean's report and have a suspicion that he did not get that.

Mr. Soloway qualified Mr. Dean. Mr. Dean's stated: I am a 1983 graduate of Lehigh University. Bachelor of Science Degree in civil engineering. Former member of the faculty of Lehigh University and Lafayette College and served as an adjunct professor teaching transportation and engineering. I have been actively engaged in the practice engineering since 1983. I have been qualified as an expert in traffic engineering before 300 to 350 Planning Board throughout New Jersey, New York, Connecticut, Massachusetts, and Delaware. I have been previously qualified before this Board as an expert for traffic engineering applications some years prior. I currently serve as the traffic engineer for communities of North Plainfield, Watchung, Mountainville, Kenilworth.

Mr. Fiorello questioned: I accept your qualifications and would like to know you ever been involved with designing traffic and parking for shopping centers. Mr. Dean stated: Probably 200 to 300 shopping centers or commercial sites. Mr. Fiorello stated: I have no objection. I think he is qualified as a traffic engineer. The Board accepted Mr. Dean's qualifications.

Mr. Fiorello questioned: Mr. Dean have you seen a copy of the court order number FFFL865-08 in transcript before today? Mr. Dean stated: Yes. Mr. Fiorello questioned: Have you seen the transcript of the court's decision before tonight's meeting? Mr. Dean stated: No. Mr. Fiorello questioned: Mr. Dean when you took your assignment you reviewed two plans? One was September 4, 2008 plan prepared by Mr. Simoff? Mr. Dean stated: Correct? Mr. Fiorello questioned: You also reviewed the October 30, 2008 site plan prepared by Donahue. Mr. Dean stated: Correct. Mr. Fiorello questioned: Did you December 1, 2008 circulation plan prepared by Mr. Simoff's firm? Mr. Dean stated: I did not. Mr. Fiorello stated: Thank you.

Mr. Simoff was sworn in and provided testimony on the September 4, 2009. Mr. Simoff testified that he designed the site to accommodate a WB65 truck. Mr. Simoff stated: In between September and October Mr. Donahue prepared a revised plan which increased the buffer on the south side of the site at the request of the Board. Mr. Donahue changed the plan in a minor way to accommodate the traffic flow of the WB65, also to change the parking configurations and circulation patterns. Mr. Fiorello stated: He prepared those plans and at the suggestion of the Board to move the larger building back further from the property line to the northwest of the site. Mr. Simoff stated: Both buildings were moved from the property line. Mr. Fiorello stated it would be inappropriate to compare the September plan to the October plans.

Mr. Soloway marked the plans:

A-R1 September 4, 2008 Mr. Simoff Truck Circulation Plan

A-R2 October 30, 2008 Donahue Site Plan

A-R3 December 1, 2008 Simoff Plan

Mr. Simoff reviewed the Mr. Donahue's Site Plan. Mr. Simoff stated: We added the stop signs, no right turns, no left turns, do not enter signs. In the southeast corner or the lower left corner of the property the driveway is offset from the property line about 40 feet. In the plan for September it is setback 20 feet. We moved the driveway another 20 feet. Mr. Fiorello questioned: Did that affect the ability of the WB 60 to navigate that turn. Mr. Simoff stated: There were minor changes to the location of the building and the parking. I made the representation of this plan at the December meeting stating that the WB 65 would circulate. Mr. Ricciardo questioned: How did you increase that width because the October plans by 30 feet? You just said it was 20 feet. Are you talking about the striped area on the plan? Mr. Simoff stated: The December 1, 2008 plan is the exact same plan as the October 30, 2008 plan. Mr. Ricciardo questioned: So it is 30 feet. Mr. Simoff stated: It shows a 30 foot buffer. Mr. Ricciardo questioned: Do you have a copy of Mr. Donahue's plan that you can reference? There are no dimensions on that plan. It shows on Mr. Donahue's plan that you have a 30 foot roadway that narrows down when you come around the corner. Mr. Simoff stated: Right. This is a 30 feet roadway. Mr. Ricciardo questioned: So the whole roadway is 30 foot around from the curb line to the retaining wall? Mr. Simoff stated: On the side of the building it narrows down to 25 feet after you get to the curb. Is the dotted area inside the curb line? Mr. Simoff stated: It is inside the curb line.

Mr. Fiorello stated: We would like to remind you that we have not had a chance to speak to Mr. Donahue. I am doing this to clarify so when Mr. Dean wrote his report he did not have the benefit of A-R3. There were several mentions in Mr. Dean's report regarding lack of signage. He did not see A-R3 he did not have an opportunity to review the signage included in that plan. Mr. Fiorello stated: Referring to his letter and report of October 5, 2008 there are 17 initial I have as marked T-1 through T-17. You had an occasion to review that with me this evening is that correct? Mr. Dean stated: Yes. Mr. Fiorello stated: Most of those refer to things that are traffic counts and corrections for island on Sparta Road. Mr. Dean stated: Correct. Mr. Fiorello stated: You heard Mr. Soloway indicate that this Board has no jurisdiction or power to speak to Sparta Road traffic counts, lights, neighbors, ingress and egress. Mr. Dean stated: That is my understanding. Mr. Ricciardo stated: I would like a clarification on that. If I have a belief that

the stacking at the exit has a detrimental effect on traffic flow I am not allowed to discuss that because you are referring to an exit? Mr. Soloway stated: If the stacking at the exit is a detrimental impact on-site. That is certainly relevant. Mr. Ricciardo questioned: If the entrance has an effect on traffic flow and pattern I am not allowed to discuss that and that is what Mr. Fiorello is saying? Mr. Soloway stated: If the entrance has an effect on traffic flow and traffic pattern where? Mr. Ricciardo stated: On-site. Mr. Soloway stated: On-site yes, off-site no. Mr. Ricciardo questioned: Our jurisdiction is from property line in, correct? Mr. Soloway stated: Yes. Discussion ensued.

Mr. Fiorello stated: The purpose of the testimony thus far is to demonstrate that we have not had an occasion to review Mr. Dean's report for Mr. Simoff and Mr. Donahue to address the problems. Some of the issues in Mr. Dean's report relate to matters of the Board does not have jurisdiction over so we would not be addressing them anyway. He needs to have an occasion to review A-R3 which he did not review because of the time constraints he was working. That is all I intend to present this evening.

Mr. Soloway questioned: Is the applicant presenting the same plan it presented last year? Mr. Fiorello stated: I don't know because we need to digest the observations of Mr. Dean appreciate them, point out where some observations have already been address such as signage, and address some concerns that he has that don't relate to signage.

Mr. Dean stated: I visited Town Hall to review the entire Planning Board files. My report was based on the information that exists in the Planning Board files. My commentary to what has been marked A-3 is that plan is not in the Planning Board files. Mr. Soloway stated: The only copy the Board had when we went to the Court House when Mr. Kelly delivered the record. Mr. Dean stated: There was not a record of Mr. Donahue's October 30, 2008 site plans. I requested those plans directly from Mr. Donahue. Those plans were received in our office last week. I have had maybe five days to work with those plans and come up with my October 7, 2009 report. In terms of productivity this evening, there are 35 review comments of the site and that is quite a bit. We have requested a revision of the traffic study. We found numerous errors in the technical methodology. We have raised questions regarding the validity of traffic counts, the projections of the associated trip generation all of which speak directly to traffic impact but as they directly relate to the ability for traffic to safety circulate on site. If there is an under estimation of the amount of traffic leaving the site and it is corrected obviously the cuing and the stacking and what that does to on site circulation is critical and speaks for what has been permitted in the transcripts from the court order. The County was unaware of what are the flaws in Mr. Simoff's report. I think it would prudent and appropriate for the County to revisit and correct the traffic projections as the original projections served as a basis for their review. If an error was made originally and the County did not identify it I think it is appropriate for this Board to solicit an additional opinion from the County or make them aware of these findings. If the Board chooses and directs me to do so I will take that effort directly with the County and their engineering staff. Given the number of revisions to the site plan I believe both sets of information need to be consistent. I would defer to the applicant and Mr. Simoff whether they tend to comply with these recommendations in terms of providing our office with the necessary information or whether it is something we will be left to our own interpretation and efforts to be traffic counts and traffic projections. We would like to reconcile the differences between Mr.

Simoff's truck circulation plans of September 4, 2008 that was superseded by the revisions to the site plan. There was not a corresponding revision to the truck circulation plan. That directly relates to the safety and the on-site circulation and I would request that Mr. Simoff's office prepare an amended truck circulation plan that is consistent with the revised site plan. The truck circulation plan is fundamental.

Mr. Soloway stated: My copy which is now A-R1 is from the hearing has written notations on it of changes that were made on the fly at the last hearing in December. There is a note here about including an island, and a note about a stop bar, a note to add something to a sign. You will get a full set of plans on Mr. Donahue's A-R2.

Mr. Ricciardo questioned: Do we have or not have a complete set of revised drawings? Mr. Soloway stated: The traffic circulation plan was not 100 percent coordinated and it should be. Mr. Ricciardo stated: We should have a complete set for our consultant to review, attorney and Board to review. Otherwise we are going to go back and review it again. We do not want to do things three and four times. Mr. Fiorello stated: Your observation is correct. We need to have an integrated set of plan which is why indicated at the beginning we were not prepared to go forward. Mr. Ricciardo questioned: How much more time would it take to coordinate so we can produce a set of drawings so this Board can review them? Mr. Fiorello stated: We have to review the comments that Mr. Dean made to see what could be addressed and what has already been addressed.

Mr. Soloway stated: The Board's next regular meeting is October 21, 2009. Are we going to be ready to go on that date? Mr. Fiorello stated: I have a feeling we won't be ready. We can try. We can schedule it so we have a date. Mr. Simoff stated he would like to meet with Mr. Dean directly. It is not because this Board has delayed at all. We hope to have it by November 3, 2009.

Chairwoman McCabe stated: I have three concerns. My first is Mr. Dean's comments about how does this Board deal with the possibilities of flaws in the original traffic count and the County review and the conflict of the court case and can we? Mr. Soloway stated: I don't think that it would be possible for the Board to take a position that assuming there is a finding of discrepancy. All you have heard at this point is Mr. Dean's opinion. We have not heard what they are and Mr. Simoff's response. Even if there are discrepancies I am not sure I would advise the Board to go back to the County and then come back to us. If the Board finds there are discrepancies that should be reported to the County what the County does is up to the County. It is not our jurisdiction. My understanding of the position that the County has taken is that issues relating to Newton Sparta Road were very much at odds with what the Boards perceptions and desires were.

Mr. Simoff stated: We discussed the alternative with the County. They told us they would give us one driveway with all movements that we have on the lower side and we will give you another driveway with right turn in and right turn out. They said they will only give two driveways and only with those two figurations. They also wanted the driveway lined up with the shopping center across the street and gave us a plan for Newton Sparta Road that caused for widening and we put a left turn lane in. That is what is driving this design. Those issues are not up for

discussion. The size of the building is not up for discussion because it conforms to your site plan ordinance. Mr. Dean stated: There is a commercial driveway across from the property. The County has asked that those two driveways align. Nowhere in Mr. Simoff's analysis were counts done at that driveway nor were the impacts of traffic leaving that site as they affect operations to and from this property taken into consideration. It was like the entire analysis for this project was done without considering what is going on across the street. So my request for updating is to update the Board and if you choose to share with the County that is at your discretion. This Board has to have a clear picture of the traffic movement. If the level of service F conditions and there is an underestimation of the site traffic, those conditions will be worse which means more cuing on site. If the County had the correct projections then they may have viewed the entire application differently. How well the driveway operates is a function of the traffic projections. That issue is relevant in the context of addressing onsite circulation and traffic flow. If the traffic cannot get out of the site then there are problems with the plan.

Chairwoman McCabe stated: I get what Mr. Soloway is saying that anything that relates to the County as far as that road is not within our purview. Mr. Soloway stated: It is not within our purview in the sense that you can't require it to be changed. We cannot approve a plan with ingress and egress. That is a given. Where it becomes relevant, as a given any impact that it causes on-site in terms of traffic and circulation and safety. The easiest sample is cuing to get out. If it is on-site it is your business.

Chairwoman McCabe stated: The Board has not had the opportunity to review the comments. I think it is unfair of the Board to make a correct analysis of Mr. Dean's report. Yes, the plans need to be updated. We do need more detail. It needs to be cohesive. We need to have the truck circulation in here.

Mr. Ricciardo questioned: Now that we have a deadline, and the testimony of our consultant is important to the review of this plan, is there a method to apply to the Court for an extension of the date? Would the applicant be willing to have our counsel or they themselves apply to the court for an extension of the review date? Has that procedure ever been done? Mr. Soloway stated: The procedure can be done. If the applicant consented to it I wouldn't bother telling the court because the deadline is for the benefit of the applicant. Mr. Simmons stated: The court was looking for an estimation of how quickly this could be done. I have a feeling the court would be indulgent if they knew we were making progress.

Mr. Simmons stated: We can begin our process and advise the Board how the process is going so we can target a date.

Mr. Soloway stated: Mr. Fiorello is not ready to schedule a date which we require notice. If the applicant is willing to proceed I am assuming the Board has no objection. I would want Mr. Fiorello's representation that we will not make the December 3, 2009 deadline. I want his representation that he will indicate that it is the consent of the applicant. Mr. Fiorello stated: We are not going to pull the plug. We are going to proceed as quickly as possible. Perhaps at the October meeting you could announce a future meeting when the application might be heard so we won't have to go through the problem of notifying the public again.

Mr. Ricciardo stated: Why don't we put it on the agenda for October 21, 2009.

Date will be determined.

Chairwoman McCabe opened the floor to the public.

Kent Hardmyer, 70 Pine Street. I just wanted to take a minute and thank you all for your very courageous and correct decision you made last December to deny the application. I am sorry the judge only saw the on-site traffic as the only issue. The residents thought there were many more.

Mr. Ricciardo made a motion to carry the application to October 21, 2009 at 7:00 pm. Mr. Fowler second the motion.

AYE: Mr. Caffrey, Mrs. Fowler, Mr. Ricciardo, Mr. Russo, Mr. Vandyk, Mr. White, Chairwoman McCabe

ADJOURNMENT

Mr. Ricciardo made motion to Adjourn. Mrs. Fowler second the motion. The meeting was adjourned with a unanimous “aye” vote. The meeting adjourned at 8:30 pm.

The next regular scheduled meeting will be October 21, 2009 at 7:00 pm in the council chambers of the Municipal Building.

Respectfully submitted,

Katherine Citterbart
Planning Board Secretary

EXHIBITS

A-R1 September 4, 2008 Mr. Simoff Truck Circulation Plan

A-R2 October 30, 2008 Donahue Site Plan

A-R3 December 1, 2008 Simoff Plan