

7:01:33 PM - - DENNIS TOWNSHIP CONSOLIDATED LAND USE BOARD
Regular Meeting - May 25, 2023 - 7:00 p.m.

Attendance: Turner, Cowan, Penrose, McEvoy, Watson, Walsh,
VanArtsdalen, Batastini, Fralinger

Applications:

DENNIS 47 DEVELOPERS LLC - Block 64, Lot 30: Located on Route 47 in a VC (Village Commercial) zone. Applicants seeking preliminary and final amended site plan approval and any and all waivers and/or approvals necessary to construct, establish and maintain an approximately 5,051 square foot Wawa convenience store with fueling facility and related site improvements. No new variances are sought in connection with this application; applicant seeks reconfirmation of use and bulk variances previously granted.

PIERSON-PLEASANTVILLE, LLC - Block 224, Lots 68.01, 73, 74.02, 75.03 and 78.04: Located on Woodbine-Ocean View Road in a Business District (b). Applicant seeking preliminary and final site plan approval, a use variance, bulk variances, waivers from subdivision and/or site plan standards and any and all waivers and/or approvals necessary to add ready mix concrete as an additional use associated with an existing gravel pit. (Continued from April 27, 2023.)

Other Business:

Correspondence.

Discussion.

Resolutions: Ciardelli.

Minutes: April 27, 2023.

Bills.

Adjourn.

7:01:33 PM - - Start Recording
7:01:33 PM - -
7:01:34 PM - - Walsh - call meeting to order
7:01:51 PM - - Roll call
7:02:44 PM - - Walsh -
7:02:51 PM - - Turner - he can't vote this evening
7:02:59 PM - - Walsh - 5 voting members present
7:03:10 PM - - Batastini - up to applicant as to what they want to do
7:03:39 PM - - McEvoy - wasn't part of Wawa application, can he vote on this
7:04:10 PM - - Batastini - yes
7:04:26 PM - - Walsh - VanArtsdalen will be late
7:04:36 PM - - Batastini - will start with the Wawa application
7:04:47 PM - - Walsh - announce Wawa application
7:04:58 PM - - Walsh - ask Mr. Nehmad if he wants to proceed
7:05:36 PM - - Steven Nehmad, Esquire - attorney for applicant; this is not a new application for any new variance; it only requires a majority vote
7:06:11 PM - - Batastini - agree that only majority of members present needed to proceed

7:06:38 PM - - Nehmad - explain why here; admit exhibits into evidence. The only purpose of this amendment is to reduce number of fuel dispensers from 8 to 5; the canopy will be smaller and narrower; and the other thing is that they moved the building slightly forward which will allow parking of additional over-size vehicles. Bulk variances will not be exacerbated in any way. Refer to Exhibit list he submitted and reviewed same with Board. Call Matt Shao if Dynamic Engineering.

7:11:16 PM - - Batastini - administer oath to Sharo.

7:11:25 PM - - Sharo - state his credentials and qualifications to testify on behalf of the applicant.

7:12:15 PM - - Walsh - Sharo accepted as expert.

7:12:24 PM - - Nehmad - questions to Sharo

7:12:32 PM - - Sharo - one of his roles is to help from the beginning to the end of the project in the development of the project; has designed many Wawa stores - in the dozens; fully familiar with the site plan. Walked through the changes to the site plan. (Screen share started. Referred to Exhibit A-3 - aerial view of site and surrounding area of project; A-4 - zoomed in version at project limits and location of new lot being formed; A-5 - old exhibit presented to Board couple of years ago showing the site plan - described in general what is shown (the plan that has been approved at this time). Exhibit A-6 - overlay of area - shows how will look with surrounding properties being shown. Exhibit A-7 - new amended site plan - overlay of A-6 showing what surrounding area will look like as now proposed - described area - added additional over-sized parking; smaller canopy (3074 square feet) - length is similar, depth has changed.

7:22:08 PM - - Nehmad -

7:22:28 PM - - Sharo - can fit 6 over-sized vehicles; building size will remain the same, same number of parking stalls; smaller canopy; landscaping basically the same (275 new plantings throughout site); access points to Route 47 are unchanged; Route 47 improvements with center turn lane from Petersburg Road to Main Street stays the same (have met with DOT and is moving ahead); other Wawa stores being constructed have no less than 8 fuel dispensers; building architecture will remain same (A-8) - refer to exhibit and describe. Exhibit A-9 is the canopy - describe - keeping A-frame look; one row of dispensers instead of two. Nothing is being changed as far as variances go; all previous conditions remain the same. Can address all of the Board Engineer's comments. No aspect of the plan affects neighbors to this property.

7:29:38 PM - - Nehmad - nothing further

7:29:45 PM - - Batastini - any questions from the Board

7:29:56 PM - - Watson - question regarding letter that says fuel dispensers are being increased

7:30:22 PM - - Nehmad - that was a typographical error - should say decreased

7:30:46 PM - - Watson - why are fuel dispensers being reduced in this and other projects

7:31:10 PM - - Nehmad - doesn't know why - happens with many companies - the company doesn't share their reasoning, say that it is proprietary.

7:32:19 PM - - Walsh - will they be selling diesel fuel

7:32:30 PM - - Sharo - yes, but will not be high flow pumps, only low flow hoses

7:32:56 PM - - Walsh - what about electric charging stations

7:33:05 PM - - Sharo - couple of electric charging stations due to requirement

7:33:50 PM - - Walsh - any other questions for Sharo

7:34:00 PM - - Nehmad - will note electric charging stations on plan

7:34:17 PM - - Penrose - how much further forward is building

7:34:32 PM - - Sharo - building has been moved forward approximately 21 feet

7:34:55 PM - - Nehmad - ordinance requires buildings to be built closer to road rather than farther back on the property

7:35:25 PM - - Sharo - apologize - building will be moved forward about 16 feet; doesn't affect/change anything else on the site

7:36:38 PM - - Penrose - stormwater being sent to the meadows

7:36:53 PM - - Nehmad - yes - confirm that they have the required CAFRA permit

7:37:18 PM - - Penrose - thank for the information

7:37:28 PM - - Walsh - any other questions from Board - none

7:37:38 PM - - Nehmad - one other witness - John McDonough (problem connecting)

7:39:24 PM - - Batastini - administer oath to John McDonough

7:39:38 PM - - McDonough - licensed professional planner - original planner on this application from its inception; license current and in good standing

7:40:21 PM - - Walsh - accept McDonough as expert

7:40:30 PM - - Nehmad - questions to McDonough

7:40:38 PM - - McDonough - re-establish negative criteria for this application and why nothing has changed with respect to same; familiar with plan; sees no detrimental impact between previous plan and proposed amended plan - explain reasons.

7:43:09 PM - - Nehmad - nothing further

7:43:17 PM - - Batastini - administer oath to Fralinger

7:43:27 PM - - Fralinger - review his report. With respect to comment #7 - requested additional information.

7:45:14 PM - - Nehmad - will provide requested information

7:45:26 PM - - Batastini - administer oath to Nick Verderese - traffic engineer;

7:46:18 PM - - Verderese - state credentials

7:46:27 PM - - Walsh - accept as expert

7:46:33 PM - - Nehmad - questions to Verderese

7:46:41 PM - - Verderese - review access configurations, state highway access, all DOT matters go through his office; review traffic circulation. With respect to Fralinger's comment #7 - number of fuel dispensers have an impact on trip generation numbers; new plan handles traffic better and is a better design and is a benefit over the previous design as to traffic operation.

7:50:44 PM - - Walsh - any questions for Mr. Verderese. None.

7:51:03 PM - - Nehmad - that is all he has; would like to make closing remarks at appropriate time

7:51:22 PM - - Walsh - open to public - none

7:51:41 PM - - Batastini -

7:51:47 PM - - Nehmad - closing remarks and request reconfirmation and additional time

7:52:45 PM - - Batastini - form of motion to approve amended site plan

7:54:13 PM - - Walsh - motion to approve

7:54:24 PM - - Cowan - second

7:55:15 PM - - All members voting - in favor

7:55:28 PM - - Nehmad - thank Board

7:55:34 PM - - Walsh - next matter Pierson-Pleasantville

7:56:18 PM - - Batastini - thank Fralinger; administer oath to John Gibson, P.E.

7:56:44 PM - - Batastini - left off where Balstreri has additional questions

7:57:05 PM - - Balistreri - that is correct

7:57:17 PM - - Batastini - administer oath to Barbara Allen Woolley-Dillon

7:57:35 PM - - Baldini - confirm that only 5 members are able to hear this application this evening

7:57:57 PM - - Batastini - that is correct; at some point will need to make sure that 7 members have heard everything; to get to that point, will probably have to have some members review what they have missed. (Brian VanArtsdalen just arrived.) If want to wait for additional members to hear, that is fine, but up to applicant.

7:59:38 PM - - Baldini - agrees with analysis - as long as there is 7 at time

of vote and all members have caught up with all hearings.

8:00:06 PM - - Roll call -

8:00:44 PM - - Balistreri - proceed with questioning (screen share screen) to Woolley-Dillon. Reviewed exhibits previously referred to her and asked her to describe.

8:01:57 PM - - Woolley-Dillon - describe exhibits as provided by Balistreri and answer questions with regard to same. Testify that Action Supply is approximately 4.3 miles away; is in another municipality and should have no bearing on this application; the use is not inherently beneficial to the public; only serving a limited serving - not everyone needs concrete; not aware of any concrete shortage in the area; Refer to O-19 (Pierson plant sites) - there are other concrete sites in the area of this Pierson site that can provide concrete; economic benefit is not a reason to grant applicant's request; there is a viable operation at this site and doesn't create a financial hardship for the applicant; it is not a premitted use and the Township can determine the appropriate use and previously denied previously. The municipality is suppose to look at the use and have had 16 years to look at this property and determine if the proposed use is appropriate. Has reviewed the Township's Master Plan and Zoning Ordinances and it is her opinion that the Township has determined through those documents, that it is not a permitted use in the area. Reviewed nearby business in the area and how they compare. Conover-Swanson - not comparable - come in in the morning, leave and come back at end of day and business mostly done off-site. Rogers Auto - not comparable. Plitnick - workers arrive in the morning, leave and go to work site, come back at end of day, not continuance operation on the site. Walters Marine Construction - again, workers come to site, leave for the day and come back. Atlantic City Electric Sub-station - not comparable, it is an essential use; rarely do workers come to the site and work; Fehrle & Sons (Concrete Plant) - (screen share started by Balistreri) - has reviewed (Zoom stopped for a second). Woolley-Dillon confirmed that she had had a chance to review the Fehrle application (Zoom problem again)

8:19:32 PM - - Balistreri - seems to be having a problem with screen sharing and Zoom kicking him off - will try again

8:20:04 PM - - Woolley Dillon - indicate what Fehrle application had requested previously - applicant which is a masonry contracting business, (read entire description of request from their application). They did not request a concrete plant. No use variances were granted in the Fehrle application. Referred to Exhibit A-10-D (Fehrle) and described. To the extent that Fehrle does any concrete work at their property, it is not being done pursuant to a use variance. Exhibit A-25 - map of Pierson property and surrounding area. Discussed PA5 area - State Development and Re-Development Area, which is a protected area with no development going on in said area. Her understanding is that the the Township is looking into having PA5 areas designated at PA8, which is a level of higher protection. Also, explained other PA areas. A-26 (Chapter 95 of the Dennis Township Code) - List of excavation permit holders - she has reviewed. The policy of the Township is that upon the ceasing of operations on that property, that the property be reclaimed and restored and once the permit expires it is not renewed. Exhibit O-5 (excerpt from 1994 Master Plan of Dennis Township) - discusses Woodbine-Ocean View Road from Corsons Tavern Road to the Great Cedar Swamp - read portions of provision into record - encourages "light industrial", as well as other provisions to avoid visual intrusions, etc. Her opinion that this does not support the application and speaks clearly as to why

application should not be granted. Exhibit O-6 - cover sheet of next Master Plan of Dennis Township and refer to certain portions and read into record from screen share. The purpose of the goals is to guide the municipality as to what they are looking forward to in the future - limit encroachment of industrial uses in residential neighborhoods. There are campgrounds and residential properties in the immediate area. Language of this Master Plan confirms language in the previous Master Plan. Applicant is asking for "heavy duty industrial" so having this use in this area does not support the direction that the Township wishes to grow and goals they want to meet; the Township recognizes the value of natural resources and that is what they trying to promote in this area. This should have been an application for zoning as opposed to a use variance. Exhibit O-6 (applicant's Exhibit 1-N of applicant). Applicant is proposing hours of operation 12 hours a day, 5 or 6 days a week, 6 trucks on site with 10 trips per day for a total of 120 concrete trucks per day, with additional trucks if needed. There is nothing to stop Pierson from having more trucks and trips, once the application is approved, there is no limitation. The only limitation is how fast they can load the trucks. In her opinion as a planner this application is not a benefit to the public and is not a inherently beneficial use and applicant needs to provide the reasons why it would be inherently beneficial. Applicant believes that site has materials already existing on the site and would be a similar use, but doesn't account for additional trucks/traffic. Applicant is proposing another non-conforming use and by saying that there would be a lower cost to residents, but the application can't be granted for economical reasons. Discussed visual impact and how additional use changes the visual impact. Reviewed applicant's prior applications (2011) - discussed differences between that application and the current application - moved the location on the site and the tower height was lowered - moving the location a couple of hundred feet is not substantial. Believes this application is substantially similar to their previous application.

8:55:47 PM - - Nehmad - no further questions for Woolley-Dillon
8:56:01 PM - - Batastini - ask Mr. Baldini if he has any questions
8:56:16 PM - - Baldini - not at this time
8:56:24 PM - - Batastini - ask Baldini if Mr. Lomax is present
8:56:35 PM - - Baldini - he is present and is a rebuttal witness to Dr. Kerlinger's testimony
8:57:08 PM - - Batastini - administer oath to Lomax - ask for his credentials
8:57:37 PM - - Baldini -
8:57:42 PM - - Lomax - state his credentials; self-employed by Lomax Consulting Group in Cape May Court House, NJ; tree expert; stated professional activities - habitat assessments, wetlands delineations, land use applications to State and other agencies, has volunteered in organizations, conducted training sessions, and other credentials
9:00:58 PM - - Walsh - accept as expert
9:01:04 PM - - Balistreri - Lomax is a rebuttal witness, he has not seen his CV, and hasn't heard any qualifications that relate to the application
9:02:26 PM - - Lomax - address Balistreri's areas of concern
9:03:29 PM - - Baldini - has heard Woolley-Dillon testify as to many concerns and Mr. Lomax is here to rebut her testimony as well
9:04:11 PM - - Balistreri - no objection to Lomas testifying, but objects to him as a rebuttal
9:05:05 PM - - Batastini -
9:05:10 PM - - Walsh - Lomax considered as expert
9:05:22 PM - - Baldini - questions to Lomax

9:05:31 PM - - Lomax - has reviewed prior testimony and is prepared to proceed. The purpose of his testimony is limited to several areas. With respect to the environmental assessment, there are conditions that are established as to whether or not to waive the assessment. As part of that MV Engineering went through area and made a checklist which found that there was nothing that required an environmental assessment, to which after his review he agrees. Reviewed limitations which Board needs to take into consideration when deciding if assessment can be waived. Referred to screen share (A-28 - aerial photograph of subject site from 2022) and described what shown. Shows limits of fresh water wetlands (2003 and 2009) - proposed concrete washout is 800+ feet from the wetlands and the concrete plant is a greater distance. Designations describe the wetlands (A-29 - aerial photograph) and various categories. The nearest stream is 5000 feet away and other water is 8000 feet away and waiver can be granted. Addressed the environmental and ecological comments testified to: The Great Cedar Swamp is adjacent to the site, but the use is separated by 2 mine ponds and a large distance. Showed map delineating the conservation zone and reviewed distances from the zone to the actual use. The Natural Heritage Priority designation doesn't overlap the site (A-32 - Site with road map) - Describe what exhibit shows and that the Natural Heritage area does not overlap the site, while another such area is 600 plus feet away. With respect to Wildlife Refuge referred to another map which shows that it corresponds with conversation area but is not adjacent to or abut the proposed activity. With respect to environmental impacts off site such as traffic on Woodbine-Ocean View Road (Route 550). This is a primary transportation route in the Township (mentioned business along route) but road is already heavily traveled, but trips generated by this applicant aren't different types than already generated on this road. There would actually be less traffic by the applicant because would no longer need to transport sand to the site as it is already there.

9:27:44 PM - - Balistreri - objects, Lomax now testifying as a traffic expert

9:28:06 PM - - Walsh - point well taken

9:28:15 PM - - Balistreri - Litwarnia testified as to impact on certain birds, but not on the actual traffic

9:28:46 PM - - Walsh - point well taken

9:28:53 PM - - Baldini - indicated that Woolley-Dillon was all over the place, as well as others, have gone all over the place and he hasn't objected

9:29:42 PM - - Lomax - maybe he got long-winded, but was getting back to conservation; wildlife in the zone already experiences whatever is happening on the roadway and has either adjusted or moved farther away from the activity.

9:31:51 PM - - Baldini - can wildlife make a distinction of what types of traffic is on the roadway

9:32:41 PM - - Lomax - no the wildlife can't tell the difference of the type of traffic on the roadway. Talking about a very small already disturbed area. Looking at Exhibit A-30 (Township Zoning Map of the area) - described area zone. Significant concern over disturbing undisturbed land. Area in question has already been disturbed and explained uses in area. Also concern with fragmentation of site - began in 1954 when utility lines were cut. The limits of clearing on this site were established in 1991. Applicant is doing the opposite of disturbing and is consolidating. There is no edge area impact. Also concern that sand and gravel mines were a blight - they provide habitat value for wildlife that use the mine ponds.

9:40:56 PM - - Batastini - it is 9:40, ask for short break until 9:50; doesn't

want to go any longer than 10:15 as Board has other business to attend; sure that Mr. Balistreri will have questions and will begin those at the next meeting.

9:42:38 PM - - Short recess.
9:43:17 PM - - Pause
9:51:48 PM - - Resume
9:52:13 PM - - Resume - roll call
9:52:24 PM - - Batastini - ask Baldini what he has left
9:52:43 PM - - Baldini - list people he intends to call on
9:52:54 PM - - Balistreri - doesn't think going to get through cross and re-cross tonight, but if Board wants to proceed it's up to them
9:53:44 PM - - Batastini - to Baldini
9:53:54 PM - - Baldini -
9:54:07 PM - - Batastini -
9:54:20 PM - - Balistreri -
9:55:14 PM - - Baldini -
9:55:20 PM - - Batastini - prefers to have Baldini's planner testify now
9:55:45 PM - - Baldini - we have 35 minutes
9:56:06 PM - - Balistreri -
9:56:13 PM - - Batastini - have gone too far, would rather go with Baldini's planner and Mr. Lomax can make himself available later
9:56:55 PM - - Walsh - does that make sense?
9:57:06 PM - - Batastini - thinks it will be ok
9:57:21 PM - - Baldini - ready
9:57:57 PM - - Walsh -
9:58:09 PM - - Batastini - administer oath to Tiffany Morrissey - previous planner and previously approved as expert
9:58:47 PM - - Baldini - questions to Morrissey
9:58:58 PM - - Morrissey - has brought herself up-to-date on the issue of res judicata - Board needs to make the decision and have to factor in what changes have been made since the last decision; unique because Board has approved and denied applicant; went through history of those applications. In this instance back before the Board for what they believe is a different plan - for a mobile transit mix operation, which is different than what was presented in 2012. Screen shared a Google map aerial view of the site and described the area and how this application differs from the 2012 application. This site is about 160 acres - explained where activity occurs on property and how much land it covers. Looking at the area of activity, it shows a substantial change. Also the tower has been reduced 25% in height from 82 feet. Looking at all of the changes from 2012 to 2023, there are substantial changes. There are also changes in the surrounding area - introduction of different types of commercial uses. Walters Marine has enlarged. Stoney Court has been built out with an existing concrete/masonry facility, which is a smaller scale, but the use is the same and has been there for a number of years. The Board has approved various uses and expansion of uses in the area.
10:08:28 PM - - Baldini - Klebower application
10:08:54 PM - - Morrissey - yes that was another similar activity approved by the Board
10:09:20 PM - - Baldini - wants to make reference to the applicant's 2012 application - paragraph 8
10:09:50 PM - - Morrissey - familiar with the 2012 application, read paragraph 8 into the record. That application asked for multiple separate uses - using "and" and not "or" so the requests are together. All of the findings were considered as a single use. Referred to other paragraphs which she read into the record from the findings of fact as to the use of site.
10:16:27 PM - - Baldini - wants to draw attention to some case law. If case law changes, can be brought back for reconsideration. Cited cases and entered into evidence as Exhibit A-34 and will

provide full set of exhibits.

10:18:04 PM - - Balistreri - doesn't think this case is applicable and is an unpublished case

10:18:32 PM - - Baldini - stated reasons why case should be allowed - has provided and has already been referred to in testimony on this case

10:19:18 PM - - Batastini - will reserve decision, but will allow Baldini to continue

10:19:42 PM - - Baldini - is an opinion decided by the Appellate Decision and Mr. Balistreri will have 30 days to review before next meeting. Asked Morrissey to read from decision case.

10:20:56 PM - - Morrissey - read excerpt from Appellate Court decision cited by Baldini into record. In that case it was accepted as an accessory use and a use variance was not necessary. Both that case and this dealt with similar issues. Referring to Exhibit A-36 is an approved subdivision plan from 1989 on what is now Stoney Court. Exhibit A-35 from 2003 shows 6 lot along Route 550, the new Stoney Court and the creation of 9 lots on Stoney Court and existing mining area abutting Stoney Court. There was discussion of reclamation and what happened across the street was a reclamation and re-use and re-purpose of the land. There has been no change in zoning in this area since 1994 and if there was concern, it could have been changed to conservation; and similar applications to the one being presented have been approved.

10:29:28 PM - - Batastini - going to conclude for this evening

10:29:44 PM - - Turner - advise Baldini and Balistreri that he is on Township Committee; and that this application is now approaching the 1 year mark and a lot of resources have been involved and hopes can be wrapped up soon.

10:31:02 PM - - Batastini - time will be waived and will continue at next meeting, which may be July for this application

10:31:30 PM - - Walsh - Resolution for Ciardelli

10:31:47 PM - - Batastini - Ciardelli Resolution - review and ask for vote

10:32:59 PM - - Watson - motion to approve

10:33:05 PM - - Penrose - second

10:33:42 PM - - Motion passed

10:33:47 PM - - Walsh - minutes of April 27, 2023

10:34:05 PM - - Voice vote - all in favor

10:34:15 PM - - Walsh - bills

10:35:16 PM - - McEvoy - motion to pay bills

10:35:26 PM - - Cowan - second

10:35:51 PM - - All in favor.

10:35:56 PM - - Batastini -

10:36:06 PM - - Turner -

10:36:12 PM - - Meeting adjourned.

10:36:26 PM - - Stop Recording