

**BOROUGH OF BERLIN  
PLANNING BOARD MINUTES  
September 9th, 2024**

**CALL TO ORDER:**

Chairman, M. McGowan called the meeting to order at 7:00 PM

**FLAG SALUTE:**

Chairman, M. McGowan called for everyone to rise and recite the pledge of allegiance to the flag.

**SUNSHINE STATEMENT:**

Chairman, M. McGowan announced that this meeting is being held in compliance with the Open Public Meetings Act and has been duly noticed and published by law.

**ROLL CALL:**

On roll call vote, the following members answered present to roll call: Chairman, M. McGowan, D Pomponio, F. Ballak, J. Cole, Councilman M. Wilkinson, E. Hahn

M. McGowan asked if there were any questions or comments on the minutes for May 13, 2024, none heard.

**MINUTES:**

A motion to approve the May 13th, 2024, minutes was made by F. Ballak and seconded by D. Pomponio.

Roll Call:

Chairman- M. McGowan -Abstained  
D Pomponio -AYE  
F. Ballak -AYE  
E. Hahn-AYE  
J. Cole-AYE  
Councilman M. Wilkinson-AYE

**RESOLUTIONS:**

**Case 24-01**

**Michael Iuliucci**

**100 Maine Ave, Berlin**

**Block 501 Lot 2**

**D Variance & Site plan waiver**

M. McGowan comment on the Resolution for Case 24-01, Michael Iuliucci, 100 Maine Ave, Berlin, Block 501 Lot 2 D Variance & Site Plan Waiver stated that there was a mistake on the Resolutions that needed to be corrected, the attorney for Berlin Borough, Chris Norman from The Platt Law Group, stated that his office will correct the mistake.

M. McGowan asked there is any other questions on the resolutions, none heard, a motion to approve the resolution was made by D. Pomponio and seconded by F. Ballak.

Roll Call:

Chairman- M. McGowan -Abstained  
D Pomponio -AYE  
F. Ballak -AYE  
E. Hahn-AYE  
J. Cole-AYE  
Councilman M. Wilkinson-Abstained

**ZONING OFFICERS REPORT:**  
**May, June, July & August report**

M. McGowan asked if there were any questions or comments on the Zoning report for May, June, July and August 2024, none heard.

**OLD BUSINESS:**  
**NONE**

**NEW BUSINESS:**  
**Case 24-02**  
**Berlin Holdings LLC**  
**Preliminary Major Site Plan, Final Major Site Plan, Minor Subdivision &**  
**Bulk “C”-Variance**  
**White Horse Pike & Pine Ave**  
**Block 1502 Lot 1, 2, and 3**

The Planning Board attorney, Chris Norman, stated to the public that this meeting is only being held for the first part of the settlement involving Berlin Wall Holdings, it only pertains to the Dollar General Store, not the remainder of the tract. This was a use, that essentially was a by right application that met nearly all the bulk requirements of the zone. The denial of the application was challenged in the superior court, the litigation was settled and agreed that the applicant would come in with a relocated area for the track of the Dollar General Store. Mr. Norman stated that tonight’s application is strictly for the Dollar General store not the other provisions associated with the settlement.

The attorney for the applicant. Nick Talvacchia with Cooper Levinson stepped forward to provide testimony. Mr. Talvacchia stated that the principal of the applicant, Jack Mandelbaum and the engineer for the applicant, Ahmad Tamous & Dave Shropshire who specializes in traffic engineering/ planner are here to testify and provide testimony.

Mr. Talvacchia stated that tonight’s application is a permitted use, for a Dollar General that is about 10,800 sq ft that will replace the Dollar General that’s across the street.

The site is about 2.7 acres, two lot minor subdivision, we're here only to talk about the smaller lot, the balance of the lot 29 acres will be subdivided off. There is not a development plan for tonight's meeting, there will be a separate application in the future. The attention tonight will be to the Dollar General application site plan and the subdivision itself. I'd like to have our professionals Ahmad Tamous and Mr. Shropshire sworn in. The Planning Board attorney, Chris Norman swore in both professional.

Mr. Talvacchia asked Ahmad Tamous for the record, what company he is affiliated with, if he is a NJ licensed engineer, how long and if he has been qualified as an expert in this discipline, by this board. Mr. Tamous responded, Bohler Engineering and that he has been a New Jersey licensed professional civil engineer for about fifteen to twenty years and has been in front of this board and others.

Mr. Talvacchia then went on to ask Mr. Shropshire who he is affiliated with and what he specializes in. Mr. Shropshire responded is affiliated with Shropshire Associates and is also the principal of that Association. Mr. Shropshire stated that he is an engineer, specializing in traffic engineering with forty years of experience.

Mr. Talvacchia asked Mr. Shropshire if he represents both private clients, governmental entities and traffic engineering, Mr. Shropshire responded that is correct. Mr. Talvacchia asked Mr. Shropshire if he has been qualified as an expert by planning and zoning boards in the state of New Jersey, by courts and by this board. Mr. Shropshire responded yes to all questions.

Mr. Norman then asked if his license was still of good standards. Mr. Shropshire stated, yes. Mr. Talvacchia offers Mr. Shropshire not only as a professional engineer specializing in traffic, but also as a New Jersey licensed planner.

Ahmad Tamous steps forward to orient the board which Mr. Talvacchia marked as exhibit one, which is an area of the site and its surroundings. The site, as the plan shows in yellow, it's surrounded by residential property, Jackson Road to the north, to the west, is Pine Avenue to the south is, south White Horse Bike, which is also known as State Highway, area to the east, is wooded land. The site plan that is shown in red is the subject of tonight's application that is being considered.

Mr. Talvacchia clarified that the applicant is asking for a minor subdivision to create the area shown in red, which will be the Dollar General site, and the balance will just be vacant ground for now subject to a future application.

Ahmad Tamous then stated that the size of the proposed lot for Dollar General is 2.69 acres of the remainder is 29.54 acres of the mainland that's part of the site.

Mr. Talvacchia stated that the display of the site plan rendered will be A2 and its sheet C dash 302. The date of the last revised sheet is May 29, 2022, for the application and report.

Ahmad Tamous plan shows the overall improvement, showing a 10,000 640 square foot Dollar General, with two axis points off the state highway, subject to state DEP permit.

Ahmad Tamous stated that the applicant is proposing 44 parking spaces, and the zoning ordinance requires 53 parking spaces, so the applicant is seeking a variance.

Mr. Talvacchia then stated that those additional eight spaces, if necessary, but it's unnecessary and just creates additional impervious coverage, which will be testified. Ahmad Tamous stated that is correct.

Ahmad Tamous then went on to explain the storm water management for the site, showing the large infiltration basin to the rear of the Dollar General and a sewage bed that handles the proposed building which is acquired by all the sites. The management regulations, the slow management design for the site, complies with the green infrastructure regulation that was adopted by the State of New Jersey. The site accommodates future rainfall events which were adopted by the state earlier this year and incorporates the nitrate requirements that were adopted recently. The design complies with township, state, and parliament circulation.

Ahmad Tamous stated that the other variance that they are seeking relates to the location of the parking spaces to the east of the building in relation to the proposed outline where it shows an input offset for the performance requires 20 ft offset. All of that is necessary by the subdivision plan, which in essence is financial subdivision due to the use of the property. For the signage requirement they are proposing one sign that is located to the west of the building that is compliant with the code and one that is in front facing the compliance for landscaping.

Ahmad Tamous stated that there is a total of twenty trees, 100 and six shrubs and additional grass with landscaping is compliant with what is required by the settlement and by code. There is a design waiver for the location of the actual trees. Ahmad Tamous stated that they are compliant with the number of trees, this was a question brought up by Berlin Borough professional planner.

Ahmad Tamous then went on to talk about the lighting, there is a total of 8,400 lights, 20 ft high. There is adequate lighting for the site and the circulation lighting within the site. There is a design waiver where the code required at least two footcandles, we are proposing 0.5. This is needed to allow for safer finger and angle of the property.

Ahmad Tamous then went over variances one by one based on the letter. Ahmad Tamous showed examples from the site plan that was provided. The first variance was the 20 ft setback, this variance is driven by the unique nature of the subdivision, this is a financial subdivision of the property. It is created to allow for development of the Dollar General which is consistent with the inconsistency determination issued by the pilots. The previous application basically had the same development, the only difference is, that development was located at Pine Ave and Rt 30. The size of the building, the size of the parking lot and the number of parking spaces are consistent with the previous application from three years back. The variances that the applicant is seeking tonight is the nature of this supplement plan to allow the development. This development is consistent with the settlement that was approved by the court, but the overall consequent was reviewed and approved by the board back in April. This project remains consistent with objectives and overall sites.

Most of the residents' concerns are on lot 4. This site is from the edge of the paved surface to the edge of the property line, 423 ft from the existing pavement on the site to the northwest corner that is 1187 ft away from the side that most of the center. There is a 250ft buffer that is approved, that prevents any development trees removed or anything else on the development area. That 250 ft is proposed to be preserved, and no part of the development is proposed in that area.

Ahmad Tamous also brought up the permanent lawn areas appearance that the applicant is seeking the permanent lawn area around the parking lot when it is only permitted around the building. The layout shows lawn areas from the east then north to the east and west. Once there is a future development, the lawn area will be able to allow for cross access between the other development areas and once the overall site is developed that variance will be eliminated. Ahmad stated that they are asking for that variance tonight, since they are seeking the application of the development as the waiver. The waiver allows the driveways 170 ft apart for the code requires 300 ft apart which would be sliding the driveway to the west. This is consistent with the overall settlement. The proposed buffer required between the next business development, the overall site plan has 50-part buffer that is required to pay commercial uses and residential uses.

Ahmad Tamous then brought up the concern about the loading area that would prevent the use of parking spaces. Ahmand Tamous stated that the plan shows a total weight of the drive out of 38 ft if a truck is parked closer to the building where it allows 25 ft wide, which will allow for the eight spaces located to the east to be accessible and utilized during loading and offloading. The three spaces located next to the building are dedicated to employees. The deliveries occur of the hours that are coordinated and were not anticipated for any public spaces to be occupied during loading and offloading operation.

Mr. Talvacchia then stated that there would be an additional parking space for an electric vehicle which would bring it to 45 in total. Adham Tamous stated that is correct. That concludes Adham Tamous testimony.

Mr. Talvacchia then stated that Mr. Shropshire that has been sworn in and qualified, will be testifying next on parking variants and some of the setbacks and other issues related to circulation, traffic and parking.

Mr. Talvacchia asked Mr. Shropshire to first address the parking issue of 44 spaces that are being proposed and 53 are required. Mr. Shropshire stated that the Institute of Transportation Engineers has a parking generation manual that has data regarding Dollar general type stores. It's called variety stores but if you look at the description under ITE, it specifically is a Dollar General type of store. There are several surveys that have been conducted across the country with regards to these facilities. The data set for ITE, the average parking demand from that peak parking demand, is 11 parking spaces.

Mr. Shropshire went on to say, the 85th percentile confidence level, in terms of the data that were provided, 20 parking spaces would be sufficient for this, proposing 44 that's obviously in the upper ends of our experience regarding what would be required by a Dollar General, but there's more than sufficient parking on site in my opinion, for this particular use therefore no issue with regard to a concern regarding any parking.

Mr. Talvacchia then asked what is ITE, Mr. Shropshire explained that ITE is, The Institute of Transportation Engineers, that's our professional society to which we provide trip generation information and we provide parking generation information and that data is compiled from firms across the nation in order to come up with data sets for church generation purposes and parking generation purposes.

Mr. Talvacchia then asked if certain uses sometimes require less than what is required by the local zoning, Mr. Shropshire answered yes, and for the board's edification, I did look at a strip retail center, which would kind of be the next qualification up in terms of the ITE data. Looking at a strip shopping center, the data is around two spaces per 1000 square feet on average. Even at the next level of intensity, these 45 parking spaces are more than sufficient to accommodate the projected demands for this use. Mr. Talvacchia stated, it's not a hardship, we could accommodate the extra eight spaces, Mr. Shropshire stated that is correct.

Mr. Talvacchia asked in Mr. Shropshire opinion, is it better under the C two Criteria for them, in planning alternative to have less impervious coverage than more, examining good transportation planning, good aesthetic design and to promote good.

Mr. Shropshire stated that less asphalt is better, especially if that asphalt is going to go unused. Mr. Talvacchia asked if there is any disadvantage or detrimental impacts on public goods or a zone plan from having eight or nine less parking spaces? Mr. Shropshire answered none whatsoever, it's a benefit in his opinion.

Mr. Talvacchia then went on about the waivers or the variances from the distance from parking lots and drive aisles for more than six shall be 20 ft from property lines, we're proposing 8 ft. but this is one unified development at some point.

Mr. Shropshire stated that it's a composite plan and this is the first piece that's been carved out this so the other variances and waivers are generated by the plan that already had an approval. Mr. Talvacchia asked given the location of where that 6ft or 8ft landscape, on the east side, do you see any detriment from that? Mr. Shropshire stated he does not.

Mr. Talvacchia said that one of the requirements of 0.25 ft of footcandle of light where we are proposing 0.4 along the frontage from a traffic engineering safety standpoint is 0.4 better in your view than point 25? Mr. Shropshire stated absolutely because more light and more visibility for the driveway access is better than less. Mr. Talvacchia, so that would be along the frontage, do you feel that's a waiver to grant, and do you think it's beneficial in terms of public safety? Mr. Shropshire agreed on all terms.

Mr. Talvacchia asked if anyone on the board has questions, Chairman M. McGowan would like to first turn it over to the board's professionals.

Chris Dochney the Planning board's planner, asked about the variance for your code within the pinelands, that requires all the utility lines to be above ground where they are proposing underground utilities and why do you want the utility lines underground instead of above ground.

Ahmad Tamous stated that this is an unusual request, but we are trying to take all the utility on the ground to eliminate any potential complex between the high and the site for the utility lines along the front. It's a better design and eliminates the need for future modification. Ahmad stated that they are seeking that variance

Mr. Talvacchia then asked Mr. Shropshire, is placing the utilities underground a better aesthetic choice. Mr. Shropshire said yes and its capability of going underground is better than above ground. Mr. Talvacchia asked if there was any detriment to the zone plan or public good or substantial detriment, Mr. Shropshire answered, none.

Mr. Dochney then asked about the credit for waiver variance for the loading area, essentially blocking vehicles, but it looks like you have shown on the plans an actual loading space at the back of the parking lot, but it doesn't look like an actual truck would even use that loading space. It would just, drive straight in or back into that loading area in between the parking spaces. What is the purpose of having an actual designating loading space in the back if the trucks aren't going to pull in their perpendicular to the building.

Ahmad Tamous stated that the loading dock at the right corner of the building is set up for the dollies, giving that flexibility to move in and out of the building without impacting the rest.

Mr. Dochney then asked about the settlement agreement and the redevelopment plan for the remainder of the property is to be developed by the applicant and submitted to the town. Is there a status on that.

Mr. Talvacchia said they are working with Mr. Norman's partners to plan that and there was a fee that was paid to prepare it, Mr. Talvacchia didn't know the status of the progress because he is not working on it. Chris Norman, the planning board's attorney, stated it is not on this application.

Mr. Dochney, he understands it's part of the redevelopment plan and is eventually going to come before the board.

Mr. Talvacchia stated that they don't have the plans yet, but it is going through a process.

Mr. Dochney stated that essentially everything in his review letter is covered but there were a few landscape comments from the landscape architect that were asking for minor revisions of the plan. Ahmad Tamous stated they are working on it.

Mr. Dochney pointed out that in the original application they had indicated they required a variance from the FA R requirements and believes that it was just a holdover from the original review letter he had done, the ordinance for FA R had been changed. The borough did change that a couple of years ago, so they don't require a variance, that was a typo in your code.

The planning board attorney, Chris Norman swore in both professionals, for the planning board, Chris Dochney from CME Associates and Anthony LaRosa from Colliers Engineering & Design.

Mr. LaRosa then asked about the section in his letter called completeness and there were several items that they had requested waivers for, he would like the applicant to discuss them. They were a waiver from all utilities, estimated cost of on-site and off-site improvements. Developers' agreement, all building structures and their uses within 200 ft of the tract plans, profiles and utility layouts, location of temporary construction and sales trailers, location of individual trees, greater than six inches in diameter and plans. Cross section center line lines, tentative grades and description of existing and proposed streets on track within 200 ft of the site.

Ahmad Tamous confirmed that they are looking for those waivers to be deferred until all development applications come in front of the board. The letters from all utilities were subject to the board and its professionals a few years ago when the original application came in, he believes that information was provided at that time. The estimated cost of onsite and offsite improvements has not been finalized. It's finalized for thorough review, but it is subject to dot review. Providing the cost estimate at this moment will change because of the comments by the professionals, but also because of reviews by other outside agencies including the finance dot.

Ahmad Tamous then stated that the whole building structure is within 200ft of the track. Exhibit areas surrounding the Dollar General to 100ft is all woods, the only exception is the commercial development which has the previous and mark across the street. The utility layout on the plan is shown because of the sewer main. The profile will be prepared for the application to the state. All the requirements and the items requested here will be provided in a letter as the plan is developed and as we get closer to satisfying by the agency's approval and as an overall development. We are requesting a deferment, providing this information for this application and provided when we come in with overall development to our side.

Mr. LaRosa biggest concern is the sewer profile but since it is being submitted to the state, they will be taken care of it, so no objection.

Mr. Norman stated that there needs to be a motion to deem the application complete, rendering a decision.

Mr. Ballak asked the professionals if there was any requirement or issues regarding any kind of sidewalk or issues with pedestrian access that need to be addressed.

Ahmad Tamous stated that along the development as the rest of the site is developed, the sidewalk will follow.

Mr. Ballak then asked if there was going to be an ability or any kind of crosswalk from the other side of route 30, crossing over. The last time this was brought before the board, there was a concern as to a light or some kind of crosswalk.

Ahmad Tamous stated that they shy away, on adding a crossway, especially among the state highways because of a hazard for someone who's crossing. The traffic engineer would have to address that issue.

Mr. Ballak said he only asked because it is not on the plan.



Mr. Norman stated that there needs to be a motion to deem the application completely grant the submission waiver request and the applicant is not asking for a waiver, they are asking for a deferment of those details until the development of the remainder of the subject.

Chairman McGowan asked if there were any other questions regarding this motion.

Mr. Ballak concern is if they end up voting on the application tonight and we're deferring and pushing down those other issues later during that subsequent application, the applicant could say, you've already agreed on the application.

Mr. Norman then answered that the resolution would reflect those issues we heard at the time of application, of the development, of the remainder of the site would be specified in the resolution.

A motion for it to be determined and complete for the board's consideration was made by F. Ballak and seconded by D. Pomponio.

Roll Call:

Chairman- M. McGowan -AYE

D Pomponio -AYE

F. Ballak -AYE

E. Hahn-AYE

J. Cole-AYE

Councilman M. Wilkinson-AYE

Mr. LaRosa then went on to his next item for discussion which was that the application is deemed a subdivision but none of the plans that have been submitted specifically are noted as the subdivision plan request, looking for clarification.

Mr. Talvacchia stated on the site plan, it shows the information required for a subdivision application, but it just doesn't say subdivision application so we can correct that, but it has the information we notice for subdivision, the two lots are shown on the plan. The calculations in terms of the Dollar General based upon the laws as subdivided. We plan to file this by deed. So we think we're covered. I mean the application clearly says subdivision. The CME reports notes, it's a minor and the notice says it's a minor site plan. If something is missing, we can correct it.

Ahmad Tamous states that on the plan it shows the consolidation of the existing products for a total area. It has bulk standards, the setbacks, the ratio, the cover conditions and lot fee of 1 to 9 areas. All the information is on the plan since we are filing by deed a formal map is not required, the legal description will be provided to the lot and recorded at the county.

Mr. LaRosa then asked if they had no objections to changing the title of the plan. Ahmad Tamous stated no objections. Mr. LaRosa then asked the variances and lot are not changing and then Mr. Talvacchia stated that they will correct the plan to state it's a minor subdivision.

Mr. Pomponio then asked if this subdivision as a whole parcel is currently three lots or will it become four lots?

Mr. LaRosa stated that they will do what is called a consolidation of the remaining lot and they'll carve out the Dollar General piece from that. They are going to put the whole thing together and then create two lots.

Mr. Talvacchia stated that they are going to make it one big lot and then make it two lots, consolidate and then subdivide.

Mr. LaRosa stated that the other subdivision comments that are in the letter pertaining to easements, et cetera, which will have to be documented as the project moves forward to make sure that those cross lot easements are part of it.

Ahmad Tamous stated that they will work with his office to provide the proper documentation for cross access easement. Sometimes that information is covered by an REA as the project continues to develop, that information will be subject to future application. We will work with the town, the solicitor, to address those comments as they arrive.

Mr. LaRosa asked if the trucks that typically make deliveries, are they of the semi-trailer type, so they're not box trucks, circulation is important and you've shown on your plan that with some finesse that they can go back into that space, correct?

Ahmad Tamous stated that the information was provided as part of the application.

Mr. LaRosa stated, we require an easement for the sanitary manhole connection to Pine Avenue that'll have to be provided under utilities, talked about the distribution lines, et cetera, everything underground. Your detail for your manhole must be revised, I believe for the drop when somebody just respond to them regarding storm water. I understand that your soils there drain very quickly. What's your plan as far as making those soils in conformance with the requirements of pinelands.

Ahmad Tamous explained it's almost like quicksand, the state doesn't like that the water infiltrates too quickly. So, they recommend the soil to reduce the infiltration and infiltration rate of the soil on site. That information, as we go through the final movement, insists on us providing additional details and shows that we need to lower the application capabilities.

Mr. LaRosa stated all stormwater calculations there in accordance with your local requirements. although Pinelands will review them in accordance with Pinelands requirements as well. Lighting and landscaping. Chris had spoken about traffic. I don't believe that we spoke about traffic, specifically about trips generated and the amount of traffic. I'm sure that people here are very concerned about traffic.

Mr. Shropshire stated again about the Institute of Transportation Engineers data was used for this Dollar General during the critical peak hour. 71 total trips of which about 24 of those are already on the roadway called pass by trips, stopping in and out on their way to another trip purpose. Looking at what's going to be generated as new trips, 47 trips new to the overall roadway system, which is considered insignificant. And we have good levels of service for the movements out of

the proposed driveway, a level of service c or better that relates to less than 25 seconds of average delay. NJ dot Permitting is going to be required for the driveways. We have to go through that process, and they'll be checking all those numbers.

Mr. LaRosa asked if they could define the peak hours of service.

Mr. Shropshire explained the level of service is generally the best way to understand it is to look at a report card. A through F and F is a failure or you're basically overcapacity, lot of delay C is an average delay. When we put seconds to that at an unsignalized intersection, it's between 15 to 25 seconds of average delay. You can see on most of the driveways, up and down the section of the pike, you're probably looking at level service, B level service C delays because volumes are not great coming out of the cross streets, but the volume about 1000 peak hour trips along the four lane roadway creates an issue with regard to delays not being less than that level service fee. Looking at delay somewhere between 15 to 25 seconds of average delay away, for the left turns.

Mr. LaRosa asked, as you define the number of trips, you said 47 additional trips is that per day or per hour?

Mr. Shropshire stated that it is per hour, that's the peak hour. We're required to assess everything based on the peak hour, in other words, it's the worst case and something that's kind of left unsaid regarding traffic impact studies. We're required to put what's called a peak hour factor on top of that. We look at the worst 15 minutes within the peak hour. We do counts out on the street highway so we can find out what those peak hours are, then we do kind of a worst case, the worst 15 minutes within that peak hour. That's how the evaluation is done.

Mr. LaRosa asked the board if there were any questions.

Mr. Pomponio asked if the deliveries are off hours.

Ahmad Tamous stated that it is true.

Mr. Pomponio confirmed that there is no truck semi-truck delivery during operation hours because Dollar General is not a 24 hour.

Mr. Talvacchia stated the hours are eight to ten.

Mr. Talvacchia stated that the Dollar General could be during hours, he wasn't sure but its about once a week, for about an hour.

Mr. Shropshire stated that they have done several Dollar General applications and it's generally one, maybe two deliveries per week, so it is very infrequent and kind of like the peak parking demand against when the loading activity is generally done outside of those peak or off-peak hours.

Mr. LaRosa asked about the environmental issue that is a big concern of the community. Is there information regarding the environmental impact statement or a phase one site assessment that was completed.

Ahmad Tamous stated that the copy of the phase one assessment was conducted about two years ago in 2022, a copy has been provided to professionals, secretary, in essence they investigated the site, and they didn't find any concerns relating to the site. The 32-acre site in question did not have any concerns raised. That testing was done by license site remediation.

Chairman McGowan asked if phase one was reportedly done two years ago, was a phase two or a site investigation done?

Ahmad Tamous stated based on the finding of phase one, they determined that no additional testing is required.

Mr. LaRosa explained that the phase ones are done to an A STM standard. There are certain protocols that they must follow, cetera based upon following those protocols, they make a conclusion from there whether additional testing needs to happen, in this case based upon following the protocols, it was determined that there needed to be no additional follow up at that site. There was nothing there that was noticeable that came up in any of the records, cetera that were utilized in preparing that phase one to require some more work being done. There were some additional excavations that were done recently, in the locations of specific basins. Can you tell us something about that.

Ahmad Tamous stated that required by the state, the town, every time you propose some more management, you need to investigate these sort capabilities operations, see on high water table, the type of composition and so on. The excavation activities that were witnessed by some of the residents and the borough, all that information was in the areas of the storm water management which are the three areas as I mentioned earlier, west of the building, a large basin to the north of the building and the area along the front. These are the three areas that were investigated based on the size, the type of some more management facilities that testing required and there might be some additional testing that we might have to conduct but for now, all exam activities have been concluded. No additional testing is needed at this moment. However, in the future, as we submit, they might require some additional testing, and we'll make sure to notify the borough of any future testing prior to taking that activity on.

Mr. LaRosa asked Ahmad Tamous to be more specific about how many pits were excavated. How deep were they and where were they?

Ahmad Tamous stated that he didn't have a copy of the report, but he has a plan that shows strong location of the desperate and based on the plan, it looks like, we have a total of seven suspects were investigated on site. There were four in the large basin. We had two in the linear so management facility along the frontage and one in the vicinity.

Mr. LaRosa asked how deep they were, and Ahmad Tamous stated he didn't know since he didn't have the report but typically, they conduct these test up to 12 feet deep. That is the

standard practice since the area was sand. I suspect that most of these are approximately 12 ft deep and it works like that they're possibly sandy or standing of composition which is favorable for a filtration in the public facilities.

Mr. LaRosa asked if the groundwater table was done. Councilman Wilkinson asked if they tested just the area that's planned for development, Mr. LaRosa stated just the area of plan for development at this point, specific to the areas pointed out, the basins. Mr. Hahn asked if additional testing is going to be done. Mr. LaRosa stated additional testing will be done once they have the development plan also for the storm water.

Ahmad Tamous stated that a seasonal high-water table does not capture the testing areas based on that information, that information is shown on the plan and shown on sheet which is the basing cross section area. I do not have a copy of that information.

Mr. LaRosa stated that when they do geotechnical borings, cetera, the material is actually checked with the P ID. Is that type of protocol followed here as well, which would sense if there's certain VO CS or whatever else like that in that soil.

Ahmad Tamous stated that is correct, it was done by a different firm.

Chairman McGowan asked if that firm would have documented any anomalies that they would have seen as part of the test bits, any visual impact, not just the VOC from the P ID meter, but any other visual impacts. Once we open up, to the public here, there's going to be one probably a theme with particular contaminant from the former manufacturing plant down the street. There were no visible observations of asbestos containing materials as part of the test pits that were done as part of the storm water.

Ahmad Tamous stated as a license professional, when we notice something that's questionable nature, we apply to notify people if liquid sheen anything going on the surface and that did not occur to best of my knowledge.

Chairman McGowan asked if there were any other questions, from the board, Mr. Hahn asked if the parameters tested or pre-established based on a STM standard

Ahmad Tamous answered yes, for phase one.

Mr. LaRosa stated that the excavations that were done to characterize the soils in the basin, there is a requirement that you must take those tests and get them chemically tested or anything like that. But based upon visual observation, smell tests there like that, if something came out to be an issue, they would be required to report it and the follow up.

Councilman Wilkinson asked if they don't test specifically for certain possible pollutants.

Chairman McGowan stated that they don't, the phase one would drive the investigation piece of it. The conclusions of the phase one did not find any concerns then that's where they were, if

they found a concern like there was a former gas station there, it would drive it to testing for like gasoline constituents and stuff like that on that parcel.

Mr. Dochney read a report from phase one that says specifically for asbestos, it says the no friable as not all friable means maybe when engineers could educate me there, but no friable asbestos was identified and that just notes that the site is undeveloped. It does note also in the report the Owens Corning Facility down the road, and it says that all records indicate that the ground under contamination flowed to the southeast from that site. And that they, I believe this site is not affected by that contamination of groundwater.

Councilman Wilkinson stated that most of the people in the gallery are here because they believe that there was a cross contamination from the years that Owens had sat over by the bridge. Has there ever been any testing of the lot that would prove or disprove this contamination theory?

Mr. LaRosa stated that he doesn't know enough about it. Possibly the engineer, the owner could, you know, we're focusing now on the smaller piece, but it's to be a concern raised this evening. Absolutely. It was raised before, to my knowledge, there wasn't testing done, but I can't say.

Ahmad Tamous stated that two acres from phase one was conducted two years ago.

Chairman McGowan asked if there were any other questions, from the board.

Mr. Hahn asked if the 200 ft buffer is just around the back of the property?

Ahmad Tamous stated that all the residents' north property is limited of the 250 ft buffer to the Dollar General and that will continue in the east of the direction provide the buffering along the commercial piece, along the line on the plans.

Mr. Hahn asked what the buffer is on the right and left of the Dollar General

Ahmad Tamous, that is the future development, parking and other uses as this project is worked on.

Mr. Hahn asked if there is a minimum wood buffer that is going to be maintained on two sides.

Ahmad Tamous stated that the same side and the rest of the site was on the interior immediately adjacent to the Dollar General which would be for circulation between all the separate uses.

Councilman Wilkinson asked if there was a buffer in the plans, pre litigation.

Mr. Norman stated, originally there was not a buffer, it was bargained by the borough to include the buffer to protect the residents that surround the commercial.

Chairman Mc Gowan also stated that the original application did not have a buffer, plus the drainage.

Ahmad Tamous stated that there will be no disturbance, not even the stormwater management. There will be a 100 to 50 ft area that would be preserved in the condition on the development for more stormwater management and whatever is needed for the development will occur.

Chairman McGowan open the discussion to the public and asked them to be mindful that this is only for the Dollar General and not the greater redevelopment that will be in future applicant and meeting. The one parcel in red on the plan or questions on the Dollar General.

The attorney for the planning Board, Mr. Norman, also stated that you can't ask the applicant to look for other properties off site for the Dollar General. They are here tonight to develop that site.

James Dennis Adair from 265 South White Horse Pike from Berlin Borough came forward and Mr. Norman swore him in. Mr. Adair stated he opposes the Dollar General; he feels it is going to destroy the Pinelands. Mr. Adair asked how much was spent on labor fees fighting the Dollar General.

Mr. Norman stated he doesn't keep track of that, and the applicant's developer sued the planning board and whenever there is litigation there is always litigation cost.

Mr. Ballak stated that this is only comments on the application.

Councilman Wilkinson stated that everyone wanted it voted down and it was.

Mr. Adair then went on to say, the past planning board members stood up for the citizens, for example the Walmart and the Indian Culture Center that wanted to come in our town, they fought to keep them out. Mr. Adair stated for this planning board to stand up for the citizens of Berlin.

Joanna Nixon from 136 Jackson Road in Berlin came up to the podium and was sworn in. Mrs. Nixon feels that we don't need any more homes in Berlin, and she agrees with Mr. Adair once they get their foot in the door there won't be much more we can do. Mrs. Nixon feels it is going to cost taxpayers more money, for example, snow removal, trash removal, bring in more police to adjust for the new homes.

Mrs. Nixon asked if there was going to be a retention pond and how deep also are they going to replace the sand with clay.

Ahmad Tamous stated that there is a retention pond that will be 4 ft deep, and they are going to mix it because the sand is too fast. This will exact the composition so it's slower.

Mrs. Nixon then asked if they only did the digging in A for phase one and the B digging will done further down the road.

Ahmad Tamous stated, yes

Mrs. Nixon stated that a lot of dumping was going on behind her property and a lot of drilling on the other side of route 73 and there are still 10 or 12 wells as of last year that are still showing contamination from Owens Corning.

Mrs. Nixon then asked if they could bring someone from the environmental agencies in to talk to the public.

Mr. Shropshire stated that he can't bring the state here, but they do submit all the data to the state and the Pinelands is a vigorous review.

Mrs. Nixon stated that she still believes it is contaminated ground, and she asked if they tested for asbestos.

Mr. LaRosa stated that the type of testing was for basins wasn't specifically chemically driven at all asbestos. The phase one that was done indicates that there's no reason to test for asbestos upon the pros.

Mrs. Nixon asked why it can't be pushed for that. Mrs. Nixon stated that she wrote to The Pinelands, facetime the DDA and she needs people to help back her up. Mrs. Nixon stated that Pinelands requires environmental studies to test wildlife is that something that can be done or is this not deep enough in the Pinelands.

Ahamd Tamous stated that when they initially started looking at the site, there was some concern, wetlands. They walked, the site; they investigated the site. They issued a letter to the Pinelands, the conversation with the Pinelands and the conclusion was that they do not have any concern. That letter is on file now, and I believe it was part of the original application.

Mrs. Nixon stated that she understands that they do that study, but she also understands that Pinelands and certain areas require a two-year study because of the animals that migrate.

Mr. Shropshire then stated that they are going to follow the protocol of Pinelands requirements and there are rules on what agency can get involved. It is not the planning board jurisdiction to get in involved.

Mrs. Nixon asked how many retention ponds and Mr. Shropshire stated, three.

Mrs. Nixon feels that the retention ponds are going to seep into the ground and any asbestos doesn't go away.

Mrs. Nixon commented that she would have her water tested every year, because Owens Corning dumped constantly. She will have to go back to testing all the time.

Mr. Pomponio asked if everything is good now.



Mrs. Nixon stated that she has not done it recently because they haven't been dumping it and there has not been any disturbance of the ground, but now that there's going to be disturbance of the ground, she going to have to go back and have it tested.

Chairman McGowan asked if she had a well property and Mrs. Nixon said, yes

Councilman Wilkinson stated that the board can't tell a property owner what they can and can't do with a property that they bought. Have there been any houses built along Jackson Road or maybe even on Pine Ave, any buildings, pools since this last happened 15 years.

Mrs. Nixon stated one house, no pools

Mrs. Nixon then went on to say when it came to the Kmart shopping center, when that was being redone, they were planning on doing more, doing some demolition and rebuilding certain things, but they were told that it's probably not a very good idea because there might be contamination underneath, leave it alone, submit plans that are just basically going to get you what you want. And that's what they did because they were afraid there might be contamination at Kmart. There really haven't been a lot of buildings in that area to say, this is the problem. We had one house built and it was from a house knocked down. There haven't been any new houses in 20 years in that area.

Councilman Wilkinson feels that we are taking like it's been confirmed that the ground is contaminated and its hasn't been.

Mr. LaRosa stated that the phase one that was done, if there was contamination documented on the site, I'm just supposing right? Dep et cetera, then that would be one of the things that would have to be in this document to mention that there is no contamination. The dep is documented on this site, whether it's ground water or otherwise, which would then I believe give them reason to do more testing.

Chairman McGowan also stated to keep in mind that it depends on subject of the report. I don't think anybody in the room is contesting that, some things haven't happened, but has it happened on this parcel. The data that the lady has back there, which I'm assuming I heard you say CE A. I'm assuming you have water testing data.

Mrs. Nixon then went on to say that we don't know if that site had any contamination, but we didn't attest for asbestos and asbestos is not something that's going to be coming, bubbling to the ground. It's a fiber that's in the ground and once water hits it, it moves. This is fact, this is something I've read. It moves it along in the ground and that's how it got all contaminated down the other way on the other side of 73 because they didn't dump right on the other side of rt 73 they did dump on Kettle Run Road. There's a farm on the other side of Jackson Road or on the other side of 73 that they had to put in a well, 350 ft deep, to avoid the contamination within the last couple of years because it has got so bad. If it is affecting them then it could affect us.

Councilman Wilkinson asked who order the well to be put back there and Mrs. Nixon answered that they had a company come in to avoid all the problems that they were having and because it is a farm that operates mostly on well water, it was recommended that they go down 350 ft

Councilman Wilkinson stated that we are currently in on of the more regulated stated in the union. He then stated that he can't imagine that the property owner who wants to develop the land hasn't probably crawled across glass on their bellies to be able to get the approvals with the state of New Jersey.

Mrs. Nixon stated that she would like to know what they had. We haven't had problems but once you touch the ground and once you have retention ponds, it's going start seeping into the ground, and we're going have problems. The Mullica River runs underneath there.

Mr. LaRosa then went on to say, the engineer had mentioned, the soils there, are very sandy, and the water runs through them very quickly, right now, the ground out there isn't capped, it has vegetation on it. Vegetation allows the water to run and run through that sand and everything else. If there was anything in the soil or whatever else like that, it's been tested, it would show up, by now.

Mrs. Nixon then stated that it is still showing up over on the 10 or 12 wells on the other side, they're still contaminated.

Mr. LaRosa stated in which direction is it?

Mrs. Nixon responded, it's only where they're testing it, they're not testing it on our side, they're testing it over there. It's still showing contaminated.

Mr. LaRosa stated that there they do analyze the groundwater flow, and the studies understand which way the ground flows. According to the study it's flowing away from the site.

Mrs. Nixon stated that there is a lot of clay and sand where she is so it's a little bit of both in the area. I am not stating am positive it is in the ground, but I am just asking for help because I know what I have seen.

Robert Todd from 19 Pine Ave in Berlin Borough stepped up to the podium; Mr. Norman swore him in. Mr. Todd concern could be an environmental catastrophe, and an inspection should be done to find out if this is true or not. Mr. Todd agrees with Mrs. Nixon.

Jennifer Adair Lafontaine, 125 E. Evesham Ave, Magnolia, stepped up to the podium and was sworn in by Mr. Norman. Mrs. LaFontaine went on to say there's a website that Owens Corning keeps, not sure if everybody's familiar with that. It's called Berlin community site, what they do they upload all their recent testing. It has a dialogue with the community, they inform the borough on a regular basis of what is going on there and how it happens. They provide this newsletter. You can go to the website and get it. The most recent one is from December of 2023. The newsletter contains updated findings from their testing, which also includes the groundwater testing. It says that there's 10 contaminated wells in the area. Mrs. LaFontaine did have questions

that are related to the development of this project in regards to traffic, in the past there was issue with traffic when Kmart was populated, there was a lot of intersection accidents because there wasn't enough space between the driveways and I heard that you are given them a variance for the amount of space between the driveways, are these going to be one way in and out because we have problems with TD Bank, which is just a few, 100 ft maybe down the road where people are going in and out of the one ways incorrectly. This has historically been an issue in Berlin right there at that intersection where traffic is not.

Mrs. LaFontaine also mentioned the foot traffic in the area and the triangle of Jackson, the white horse pike up to Pine is landlocked. She pointed out that there is not one single crosswalk. The only people that are legally going to be able to walk to Dollar General are the people that live on Pine Bishop and Marshall like in that triangle because nobody else can get into that intersection. Mrs. Lafontaine indicated that she did bring the county down to walk through, but somebody had gotten hit right by heritage and died so they didn't want to have anything to do with it, it was couple of years back. Mrs. LaFontaine is concerned of the apartment complexes that are on the other side with the children that go to Dollar General and cross the pike.

Councilman Wilkinson asked if Owens Corning own the property we are taking about or does Owens just have the right?

A resident that was for the public explained, they take, all the town's water samples and put them into their report.

Mrs. Nixon walked up to the plan to show Councilman Wilkinson the areas where they did the dumping.

Mr. Dochney stated that no matter who owns the property, it must be tested as part of their settlement.

Councilman Wilkinson confirmed that Owens Corning doesn't own the lot that is being discussed.

Mr. Talvacchia then stepped up to the podium and explained to the Chairman that he doesn't want to discourage any discussion, but some of this is going far off field of the site plan review of the planning board. This is less than a three-acre site, not the 32-acre site, there are other people that stayed involved in reviewing ground for contamination, planning boards don't have the tools to do that. You don't have the EPS, scientists. Fairness to an applicant, we really should be focused on the site plan application, that's what the case law says.

Chairman McGowan then stated that moving forward this must be to the applicant before us.

Carl Craft, 6 Townsend Ave in Berlin, stepped up to the podium and was sworn in by attorney Chris Norman. Mr. Craft asked question on the traffic about the White Horse pike by asking Mr. Shropshire, how many lanes and Mr. Shropshire answered four then Mr. Craft asked which direction they are going Mr. Shropshire answered, east and west then Mr. Craft asked if he wanted to enter the new Dollar General and he is going in the direction towards, Atco, how many

lanes do I have to go over in order to get to that new Dollar General? Mr. Shropshire answered, two. Mr. Craft stated that's correct, but that would be the fast lane so is there any plan in place to have a type of pullover that we have seen on highways where people on the right side can go past you while you're waiting to turn left. Is there anything in the plans for that? Mr. Shropshire answered, no. Mr. Craft then stated that he lives at six Townsend, and he hears accidents all the time about a year or two years ago, Mr. Craft did a traffic study, and it was above average accident rate, so if you put the Dollar store there then it is only an incentive for more accidents to happen. Mr. Craft feels that this is posing a huge danger to all folks.

Harriet Walcott, 3 Pine Ave of Berlin stepped up to the podium, and was sworn in by attorney Chris Norman. Mrs. Walcott stated that she is adamantly opposed to the Dollar General, the first reason is the woods and animals. The animals will have no where to go and end up ready hit and killed. This Dollar General is going to cause traffic problems and once they start digging, contamination issues. Mrs. Walcott asked about the storage unit that was proposed to be there in April, did that pass? Mr. Dochney stated that it hadn't come before the board, yet.

Jeanne Molineaux, 12 Bishop Ave in Berlin stepped up to the podium and was sworn in by attorney Chris Norman. Mr. Molineaux asked to explain the letter that she received from the lawyer, where the applicant is seeking a C variance for the minimum floor area.

Mr. Talvacchia stated that it has been eliminated, the ordinance was amended so it is no longer an issue. Mrs. Molineaux stated that there was no new letter and Mr. Talvacchia stated because they are taking away, not adding.

Mrs. Molineaux then asked if they are going to have a road off to the side the enter the Dollar General because her concern is trying to get out of Bishop Ave to White Horse pike.

Mr. Shropshire stated that the proposal today following NJDOT design criteria, it's going to be like the other driveway, Mr. Shropshire used Walmart as a explain of traffic and how it generates substantially more traffic which may warrant a turning way where this will generate very little traffic and therefore would not warrant.

Mrs. Molineaux asked if they could have a third lane instead of just two lanes.

Mr. Norman stated that it is a DOT jurisdiction, and this board has jurisdiction over, the ingress and egress pulling in and out of the site.

Chairman McGowan then stated the design of the highway, the highway of deceleration, lean or shoulder is not part of the board.

Mr. Shropshire stated that they must follow the DOT design guidelines regarding access.

Charlene Galiana, 265 South White Horse Pike, Berlin stepped up to the podium and sworn in by attorney Chris Norman.

Mrs. Galiana concerns are not only the chemicals but traffic. Mrs. Galiana asked if will be cutting back the trees that come up to the street so the traffic pulling out will be able to see.

Mr. Norman stated that if the DOT says clear it, then it will be cleared.

Mr. Shropshire then stated that there are specific criteria for site distance from a driveway which will be comply with.

Mrs. Galiana then stated, when clearing the tree, taking into consideration the accidents that have happened. Mrs. Galiana doesn't want any development whatsoever. Mrs. Galiana stated she would like to see more testing done.

Rhonda Breslin, 3 Maloney Ave in Berlin stepped up to the podium and was sworn in by attorney Chris Norman. Mrs. Breslin commented that the taxpayers should be able to know how much the attorney was paid, one of the residents should have gotten an answer. Mrs. Breslin asked if the board already knows, what is in progress?

Chairman McGowan stated that the information in front of him, is the same information as to the public. That's the only information that he has. The reason why there are multiple members of the board is because we all have a vote. Chairman McGowan stated that he listens to the public, the professionals, the applicant, just like the rest of the gentlemen up here and our fellow board members. The only thing that's made up right now is what the history of the site as, our solicitor has outlined at the very beginning of this meeting, on the process that we've gone through so far as this board. Many of the folks on this board have been through it multiple times and this is where we're at today.

Mrs. Breslin stated that she feels the planning board members are supposed to be for the people and the town.

Attorney, Mr. Norman, stated the land use board is to apply the zoning standards in place. The policy was established by the council. The board's job is to implement those standards to a development application that's pending before us and if they meet the requirements of the ordinance, they're required to grant approval, that's out of fairness to the applicant. This board does not have the veto power of any decision that was made, how to zone this property, how it, going to be used, it's very limited.

The planner for the borough, Mr. Dochney, then stated, that the board denied, not this exact application but a similar application a couple of years ago, I think many of you were here that night when it was denied, after it was appeal, the court said that the board essentially had erred in that denial or only a certain jurisdiction they can deny only under certain if the zoning ordinance is not satisfied or there's some other extreme circumstances. Not being a use variance, when the board is configured as a zoning. The board wouldn't be permitted to just say we don't want a Dollar General that would be outside of the jurisdiction and it has been mentioned several times, Environmental issues are generally the jurisdiction of either the Pinelands or N JB EP or even to some extent, since the only coring site is a superfund site in the U SEPA oversees everything that goes on with regards to them, this board generally does not have the jurisdiction to oversee

environmental issues. This is a land use board so they make decisions based on whether or not the applicant is meeting all the zoning ordinance standards and whether or not there's essentially going to operate the best practices with how a retail store would operate on a highway.

Mr. Norman then gave an instance, they're asking for certain bulk Variance, C variance and they provided expert testimony by their engineer and their traffic engineer to justify the granting of those variances, now there's some discretion with the variances, but the board has to ground its decisions. They got to be reasonable based on the evidence. You can't, just because we don't want a Dollar General, that's not a basis for denying.

Mrs. Breslin asked if the public's voice mattered.

Mr. Norman stated that the board must stay in their lane if we go out of our lane, there may be another lawsuit and incur more legal fees defending the case. This board approved the settlement of the land use litigation because whenever the site does get to the remainder of the track, we're trying to reduce attorney's fees, but also follow the land use law, its commercial zone on route 30 and it's under the pinelands.

Mrs. Breslin stated that it upsets her to see people selling their homes after being there for a long time because they know it wouldn't be worth that much money after all this development happening.

Mr. Pomponio asked if that is why they are selling their homes?

Mrs. Breslin stated that she didn't know but her grandmother's house went up for sale and she didn't want to sell it but felt forced to sale it since she felt it wasn't going to be worth anything because of building around it. Mrs. Breslin other concerns are the trees, animals, Dollar General deliveries and if the Dollar General ends up closing, that will be another vacant spot. Mrs. Breslin feels the CEO of Dollar General should care more about people when building these stores. Mrs. Breslin stated that the public should boycott the Dollar General.

Councilman Wilkinson stated that the gentlemen here tonight represent the people that own the property. The people that own it aren't here tonight.

Joanna Nixon stepped back up to the podium and attorney Chris Norman stated that she is still under oath. Mrs. Nixon asked if the borough engineer looked at the plans.

Mr. LaRosa stated that he will look at the plans when it comes to development, and he will make sure that they are constructed in accordance with the frame.

Mrs. Nixon stated that they didn't want another Kmart because when they built that they put the retention pond in and then the house right next to it, they ended up having to put what you would call a very large alley because it kept flooding the houses. The engineers at that time said it was going to be fine, but it wasn't. Mrs. Nixon is worried about retention ponds and flooding homes.

Mr. LaRosa stated that with the two factors here, with this site, that the retention pond is to the rear and there's a lot of buffers around, as you mentioned, a couple of 100 feet and the soil again drains very quickly. I mean, 23 plus inches an hour, which is almost 2 ft.

Mrs. Nixon stated that she understands that the board needs to stay in their lane, but it wouldn't hurt to call to ask questions.

Councilman Wilkinson stated that he can't even get DCA to change a lightbulb at a streetlight.

Mr. Adair came back up to the podium to ask about the agenda, where it states the major site plan, final site plan, minor subdivision and C variance. Mr. Adair wanted to confirm that the zoning laws are already established and for the board to change the bulk.

Mr. Norman stated that it is not accurate, the land use law, not there's no such thing as a perfect zoning or that's why we have variances that you have to apply for.

Mr. Dochney stated that they are asking to deviate from a few of the standards of the borough code. They are asking for variance relief from where the code requires 53 parking spaces and they have 45 where the parking lot is going to be located. It is supposed to be a minimum of 20 ft away from a side lot line and their internal subdivision line, they're only 8ft away from the eastern side, which is going to be another development. Utilities are supposed to be above ground and they're proposing underground utilities.

Mr. Adair questioned about the subdivision is already designated and they are trying to subdivide them down.

Mr. Dochney stated that they are using the three lots right now and this board has the authority to grant it.

Mr. Norman stated if they meet the minimum lot area, which they do, and they meet all the bulk set back requirements which is all part of the subdivision. It is very common to have C variances in subdivisions. They meet the minimum lot size requirements.

Mr. Dochney stated that major minor subdivision, anytime you reconfigure a lot line by law that's technically referred to as a subdivision dividing into two.

Mrs. Nixon stepped up to the podium again to ask if they were going to fence in the retention ponds.

Mr. Talvacchia stated that they are only fencing the retention pond in the back.

Mrs. Nixon asked about the other two retention ponds.

Ahmad Tamous stated that there is a linear and it is about 3ft deep.

Most of the stormwater management occurs in the back which is most of the volume.

Mr. Talvacchia stated that the two up front, they're not going to be fenced in, but it's basically a filter or swell.

Mrs. Nixon asked if this has been approved yet and Chairman McGowan stated that they have not voted yet.

Chairman McGowan stated, Seeing and hearing nobody from the public will close the public portion.

Chairman McGowan asked if there are any final questions from the planning board, none heard.

Mr. Norman then began his motion summary of the application; they're seeking preliminary and final major site plan approval and minor subdivision approval to allow for the development of the Dollar General. They're asking for a certain bulk variance relief, the utilities below ground to allow the parking setback variance 8 ft versus 20 ft and the number of parking spaces they say only need 45. The ordinance requires 53 spaces. They presented proof in support of each of those variances. They've also requested some submission waivers which will be carried forward to future development applications.

Mr. Dochney stated that the one additional variance is that the permanent lawn is supposed to be limited to the areas immediately adjacent to a building and they're showing the areas around their parking lot, which is going to be future expansion of the next stages of this larger area. That requires a variance and a handful design waivers for the driveway distance. The loading space technically potentially blocking parking spaces, the shade trees having them around the parking lot rather than within planted islands in the parking lot. They're supposed to have space between the parking lot and the building is supposed to be landscaped, but they have a sidewalk instead of landscaping there to access and to increase the light along white horse pike. There is supposed to be a shade tree easement along the frontages and increase tree size. Mr. Talvacchia stated that they will provide them.

Mr. Ballak asked the professionals about the zoning requires the utilities to be above ground.

Mr. Dochney stated that the only thing he can think of , is there's a possibility because this only applies in the pinelands outside the pinelands, it doesn't apply and maybe there is some thought of more rural areas and trying to maintain a rural character. You want to see the utility lines, the power lines and telephone lines above ground rather than digging up the ground.

Mr. Norman stated it may be an old ordinance.

Mr. Ballak asked if there is any positive for having it above ground instead of below ground.

Mr. Dochney said that it's always been kind of standard language that we recommend all utilities feasible underground. Sometimes the utility company will say, you know, or say we're not putting these lines underground, you must keep them above ground.



Mr. Talvacchia stated it's usually a cost issue. Developers used to fight it years ago. They don't fight it anymore, but they used to fight it.

Mr. LaRosa stated where you have certain lots that are set back a good distance from the roadway and you're going to have to clear possibly to get those utilities in.

Chairman McGowan commended that Mr. Dochney included State, DOT, Pinelands and County etc., approvals.

Mr. LaRosa stated that it's standard of meeting the requirements of the planner's letter, the engineer's letter.

Chairman McGowan asked for a motion on the application

A motion to approve the application with all the conditions set forth by our solicitor was made by F. Ballak and seconded by D. Pomponio.

Roll Call:

Chairman- M. McGowan -AYE  
D Pomponio -AYE  
F. Ballak -AYE  
E. Hahn-AYE  
J. Cole-AYE  
Councilman M. Wilkinson-AYE

**CORRESPONDENCE:**

NONE

**GOOD OF THE ORDER:**

Mr. Ballak asked about the zoning reports and what is going on with 18 Harker Ave, he noticed it on the last few zoning reports. The zoning officer was not there to address the issue, but at the next meeting, Mr. Ballak would like to be filled in on the issues at 18 Harker Ave.

Mr. Norman explained the US Supreme Court decided the case, is overruled Chevron Deference. Government agencies must stay in their lane just like we must stay in our lane. If they go beyond the statutory mandate of their regulatory authority, the gray areas where you're not sure. One of the best examples that Mr. Norman used is the state's new storm water rigs for free replacement plan. There's nothing in the statute, the warm water manual that talks anything about treatment yet. We have regulations for it now, that would be an example where it could be challenged, previously, if the government agency could come up with a legitimate reason for filling the gap, courts would have to defer to that. Now, they don't, they just say it's not within the four corners of your statutory authority. We think you overstepped your bounds. It's, basically you're legislating from the regulatory perspective, and you shouldn't be doing that.

**ADJOURNMENT OF REGULAR MEETING:**

A motion to adjourn the meeting was made by J. Cole and all in favor at 9:20pm

cc: Bill Behnke, Fire Marshall  
Stacey DiVello, Escrow Financial Department  
Al Hallworth, Construction Official  
Michael Bernardins, CTA Tax Assessor