

RESOLUTION: 5 - 2022

WESTAMPTON TOWNSHIP LAND DEVELOPMENT BOARD

APPLICANT'S NAME: KCA Westampton Phase 2, LLC

BOARD'S DECISION: Granted Preliminary and Final Major Site Plan Approval with regard to the Dollar General Use, Preliminary Site Plan Approval with regard to the Fast Food Use, Minor Subdivision and Bulk Variances and Design Waivers

PROPERTY ADDRESS: 76 Springside Road – Block 203, Lots 4.01 and 5.02

ZONING DISTRICT: Commercial “C” Zone

DATE OF HEARING: December 14, 2021

WHEREAS, KCA Westampton Phase 2, LLC (“Applicant”) filed an application with the Westampton Land Development Board (“Board”) requesting preliminary and final major site plan approval with regard to the Dollar General use, preliminary site plan approval with regard to the fast food use, minor subdivision with bulk variances and design waivers to develop a 10,640 sq. ft. Dollar General retail store and a 3,185 sq. ft. fast food restaurant with drive thru services and to consolidate the two (2) existing lots and re-subdivide to create one (1) remainder lot and one (1) new lot on which the proposed retail and drive-thru restaurant will be situated. The property is in the Commercial “C” Zone and is located at 76 Springside Road, Westampton, New Jersey, designated as Block 203, Lots 4.01 and 5.02 on the Township Tax Map (“Subject Property”); and

WHEREAS, the Board had jurisdiction to hear this matter (the “Application”) under the New Jersey Municipal Land Use Law (“MLUL”), *N.J.S.A. 40:55D-1 et seq.*; and

WHEREAS, the Application came before the Board at special public meeting held virtually on December 14, 2021. The Applicant was represented by Sara Werner, Esquire. The Board heard testimony from the Applicant’s witnesses and professionals as to the nature, purpose, location, and description of the proposed preliminary and final major site plan, minor subdivision and requested bulk variances and design waivers; and

WHEREAS, the Board discussed the Application and the Board Professionals offered recommendations. The Application was opened to the public for comment, and any members of the public wishing to comment on the Application were given the opportunity to do so; and

WHEREAS, based on all the evidence submitted to the Board and testimony presented at the December 14, 2021 public hearing, the Board renders the following factual findings and conclusions of law in addition to any contained in the preceding paragraphs:

1. The Applicant, KCA Westampton Phase 2, LLC proposes to develop a 10,640 sq. ft. Dollar General retail store and a 3,185 sq. ft. fast food restaurant with drive thru services and to consolidate the two (2) existing lots and re-subdivide to create one (1) remainder lot and one (1) new lot on which the proposed retail and drive-thru restaurant will be situated. The Subject Property is in the Commercial "C" Zone and is located at 76 Springside Road, Westampton, New Jersey.

2. The Application also requires the grant of *N.J.S.A.* 40:55D-70c bulk variances in connection with the preliminary and final major site plan approval to permit the following non-conformities in the C Zone: §250-Attachment 2, with regard to minimum side yard setback and maximum impervious coverage; §250-22.Q.6(A) with regard to nonemployee automobile parking spaces; §250-16.F(1) relating to front yard buffers; §250-16.F(2) relating to screen plantings; and §250-Attachment 4 regarding freestanding retail, motel, hotel and restaurant signs having a maximum facade sign area of 40 square feet; Section 250-16.E.(1) – 43 parking spaces are required for the Dollar General, where 35 spaces are proposed on that particular lot; and Section 250-25 K.(1)(a) - The maximum permitted size of a façade sign is 40 square feet and the Applicant proposes a 97.5 square foot facade sign for the Dollar General.

3. The Board considered the following submissions from the Applicant:

- a. Twenty (20) Sheet set of site plan drawings prepared by Dynamic Engineering, dated September 1, 2021, with no revisions;
- b. One (1) Sheet of Proposed Minor Subdivision prepared by Dynamic Survey, LLC, dated September 13, 2021, with no revisions;
- c. One (1) Sheet, ALTA/NSPS Land Title Survey, prepared by Dynamic Survey, LLC, January 23, 2020, last revised, August 25, 2020;
- d. One (1) Sheet, Boundary, Location and Topographic Survey, Block 203, Lot 4.01, prepared by Dynamic Survey, LLC, dated August 27, 2021, with no revisions;
- e. One (1) Sheet, Dollar General Elevation Prototype, September 14, 2020, with no revisions;
- f. Stormwater Management, Groundwater Recharge and Water Quality Analysis, prepared by Dynamic Engineering, dated September 2021;
- g. Water and Sanitary Sewer Engineer's Report prepared by Dynamic Engineering, dated September 2021;
- h. Stormwater Management Measures prepared by Matthew Sharo, PE, PP, dated September 13, 2021
- i. Traffic Impact and Parking Assessment, prepared by Dynamic Traffic, dated September 14, 2021;
- j. Preliminary Variance and Waiver Summary;
- k. Application form and associated materials

4. The Board considered the following review letters submitted by the Board professionals:

a. A letter prepared by the Board Engineer, James Winckowski, PE, CME, dated December 6, 2021; and

b. A letter prepared by the Board Planner, Chris Dochney, PP, AICP, dated December 6, 2021.

5. The Applicant submitted the following exhibits during the December 14, 2021 hearing: Exhibit A-1 – Aerial Map; Exhibit A-2 – Survey (as provided with Application); Exhibit A-3 – Proposed Minor Subdivision (as provided with Application); Exhibit A-4 – Site Plan Rendering; Exhibit A-5 – Dollar General Elevation; and Exhibit A-6 – Alternate Dollar General Sign with 24” Letters.

6. Daniel J. Dougherty, P.E., P.P., the Applicant’s engineer and planner and Nicholas Verderese, P.E., the Applicant’s traffic engineer, were all sworn in by the Board solicitor

7. Ms. Werner presented and introduced the Application to the Board and explained the requested relief.

8. After placing his credentials on the record, the Applicant’s engineer and planner, Daniel J. Dougherty testified on behalf of the Application and described multiple exhibits he shared on the screen; testifying that there are going to be 35 parking stalls in total, 17 on the main side or front, 3 in the rear, and 15 on the north side; then testified as to various variances, including: Side yard setbacks: 20 feet is required; the Applicant is requesting a 3 feet setback on the Dollar General property line; the Applicant is seeking an impervious coverage variance as there is a 60% impervious coverage requirement and they propose 65.8% and stated that the two lots combined as one will meet the requirements; parking setback of 20 feet from lot lines; the Applicant is seeking a sign variance and provided “Exhibit A-5,” color elevation rendering and the Applicant is requesting 97.5 sq ft where 40 sq ft is required; and the rear of the building will have faux windows.

9. Ms. Burkley asked Mr. Dougherty to show her where on the plan is the border between the lots and Mr. Dougherty testified to a response.

10. Mr. Dougherty then testified as to the loading areas.

11. Mr. Borger asks that if any of the area that was residential is currently paved. Mr. Dougherty presented Exhibit A-2 and testified as to a gravel-paved driveway, the impervious coverage to the structure, and its porches, paver walk ways, and a couple of sheds.

12. Mr. Borger asked about Exhibit A-4, as to what is between the parking spaces and the building on the south side and Mr. Dougherty testified that there will be lawn that is six ft from building to curb. Mr. Roberts, the Board Engineer, suggested sidewalk and the Applicant accepted acknowledging that will slightly increase the impervious coverage request.

13. Ms. Burkley asked why the property cannot be just one lot and Mr. Borger stated that there are 2 uses.

14. Mr. Guerrero questioned the landscaping buffer looking to better understand the relationship to the Wawa property. The Applicant testified as to location and the buffer variance.

15. Mr. Dougherty stated that he believed all waivers and variances have been brought up in his testimony and Mr. Dochney, the Board Planner, stated there are two more design waivers in the review that were not identified, and states there are supposed to be shade trees on each island except for the one small island. The Applicant agreed to provide shade trees in the island but there is a sanitary sewer line in the frontage which would prohibit shade trees in that location.

16. Mr. Guerrero asked questions about the loss of the parking stalls. The Applicant testified as to clarification with regard to the fast food restaurant. The Applicant agreed to remove the variance with regard to the fast food restaurant for the preliminary approval and could better determine at time of final approval for the fast food restaurant.

17. Ms. Burkley asked about the handicap parking spots being 11 ft wide. She does not want the spots being so close to the front door. She is also concerned that if one lot sells, it will be out of compliance with the Township Ordinances. The Applicant testified with further explanation as to the handicap parking stalls complying with the law.

18. Ms. Burkley asked what would happen if someone is walking on both properties and they are injured, who will cover it. Ms. Werner stated there will be reciprocal easement agreements that set forth the relationship and obligations of the properties, similar to what they have with the Wawa currently.

19. Mr. Dochney asked for clarification of final site plan approval, if there will be HVAC equipment on the roof. Mr. Dougherty testified that there will be.

20. Mr. Dougherty testified as to signage for the Dollar General store and after being asked by a member of the Board provided and testified as to an alternative sign program, which, although appears to have smaller lettering will still require a variance and would be backlit. Mr. Dochney then discussed the waivers with the Applicant.

21. The Applicant agreed to revise the monument sign in order to comply with the Township Code.

22. Ms. Burkley asked if there are any requirements from the Fire Department. The Applicant stated they do not have a letter from the Fire Department. Ms. Burkley stated she had one that requested a fire hydrant. The Applicant asked for a copy of the letter. Ms. Werner stated the approval would require all outside agency approvals.

23. Mr. Odenheimer asked if the Applicant could combine monument signs into one sign for all three users. Mr. Dougherty testified that based on the limited number of tenants and the number of access points, the multiple signs appears to work better in this case. Mr. Odenheimer then asked if the project meets the Township requirements for stormwater.

24. Ms. Haas asked about the lighting in comparison with the Wawa parcel. The Applicant testified that the lighting will be LED shoebox type fixtures along with shields. The Applicant agreed to comply with the comments in the Board Engineer's report.

25. Mr. Borger asked about including the name "Westampton Township" on the Applicant's signage. The Applicant's attorney testified the Applicant will work with the Board professionals to add the Township name to the base of the monument.

26. After placing his credentials on the record, the Applicant's traffic engineer, Nicholas Verderese, P.E., offered testimony regarding the traffic report his office prepared.

27. Mr. Roberts asked about stop signs and their placement.

28. Mr. Thorpe questioned fencing around the trash enclosures. The Applicant agreed to colorized vinyl fencing and will work with the Board professionals to make them more aesthetically pleasing. Mr. Thorpe questioned around the fencing around the property and the Applicant agreed to the same terms.

29. After testimony presented by the Applicant's witnesses and professionals, the matter was opened to the public for comment, and no member of the public commented on the Application.

30. With regard to the request for bulk variance and design waiver relief, through the testimony presented, the Board finds that the Applicant has established that the Application:

a. relates to a specific piece of property, namely the Subject Property;

b. that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, namely by: promoting the public health, safety, and general welfare at the Subject Property and for the benefit of Township residents and by promoting a desirable visual environment through creative development techniques and good civic design and arrangement;

c. that the variance can be granted without substantial detriment to the public good because the proposed signage includes emergency notifications and there are no nearby residential uses impacted by the new signage;

d. that the benefits of the deviations would therefore substantially outweigh any detriment and that the variances will not substantially impair the intent and purpose of the zone plan and ordinance.

31. With regard to the requested preliminary and final site plan approval with regard to the Dollar General Store use, the preliminary approval with regard to the fast food use, and the minor subdivision approval, through the evidence submitted and testimony presented by the Applicant's witnesses, professionals, the Board's professionals, and members of the public, the Board finds and concludes that the requests comply with all site plan, minor subdivision and other standards, specifications, and requirements established by the Township's zoning ordinance not addressed by variances and waivers as detailed herein, and that the Subject Property is suitable for the

proposed development given the size of the Subject Property, the existing use of the Subject Property and permitted uses in the B-1 Business Zone. See, e.g., *Levin v. Livingston Twp.*, 35 N.J. 500, 510–11 (1961); *Pizzo Mantin Group v. Randolph Twp.*, 261 N.J. Super. 659 (App. Div. 1993), *aff'd. as modified*, 137 N.J. 216 (1994).

NOW, THEREFORE, BE IT RESOLVED, by the Land Development Board of the Township of Westampton that the within Application seeking preliminary and final major site plan approval with regard to the Dollar General use, preliminary site plan approval with regard to the fast food use, minor subdivision with bulk variances and design waivers to develop a 10,640 sq. ft. Dollar General retail store and a 3,185 sq. ft. fast food restaurant with drive thru services and to consolidate the two (2) existing lots and re-subdivide to create one (1) remainder lot and one (1) new lot on which the proposed retail and drive-thru restaurant will be situated. The property is in the Commercial “C” Zone and is located at 76 Springside Road, Westampton, New Jersey, designated as Block 203, Lots 4.01 and 5.02 on the Township Tax Map, was and is hereby **GRANTED**, subject to the testimony and representations set forth on the record by the Applicant, and any conditions set forth on the record and those specified herein by a motion made by Ms. Haas and seconded by Mr. Mr. Guerrero.

ROLL CALL VOTE

	<u>Ayes</u>	<u>Nayes</u>	<u>Abstentions</u>	<u>Recusal</u>
Borger	x			
Burkley	x			
Guerrero	x			
Haas	x			
Thorpe	x			
Odenheimer	x			

IT IS FURTHER RESOLVED, the above relief is subject to the following conditions:

1. The Applicant shall add 6' wide sidewalk on the right side of the Dollar General store.
2. The Applicant shall add shade trees on 5 islands as discussed on the record.
3. The Applicant shall revise the plans to in order that all parking stalls are compliant with the Township Ordinance.
4. The Applicant shall provide for a reciprocal or cross easement agreement between uses and provide to the Board Solicitor for review.
5. The monument sign shall be compliant with the Township Ordinance.
6. The Applicant will work with the Board professionals with regard to shade trees along Springside Road.
7. The Applicant will work with the Board professionals regarding lighting as discussed on the record.
8. The Applicant will work with the Board professionals regarding the vinyl fencing around the trash enclosures and around the property to make them aesthetically more pleasing that is not a white vinyl.
9. The Applicant shall comply with all terms, conditions, and recommendations set forth in the Board Engineer's Review Letters.

10. The Applicant shall comply with all terms, conditions, and recommendations set forth in the Board Planner's Review Letters.

IT IS FURTHER RESOLVED, the above relief is subject to the following standard conditions:

1. That the Application, all exhibits, testimony, map, and other documents submitted and relied on by the Applicant, are true and accurate representations of the facts relating to the Applicant's request for approval. In the event that it is determined by the Board, on non-arbitrary, non-capricious and reasonable grounds, that the Application, exhibits, testimony, maps, and other documents submitted are not accurate, are materially misleading, or are the result of mistake, and the same had been relied upon by the Board as they bear on facts which were essential in the granting of the relief sought by the Applicant, the Board may review its approval and rehear the Application, if circumstances so require, or where a rehearing is necessary and appropriate in the interests of justice;
2. Upon discovery by the Board of clear and convincing evidence of a materially misleading submission, material misstatement, materially inaccurate information, or a material mistake made by the Applicant, the Board reserves the right to conduct a hearing with the Applicant present, for the purpose of fact-finding regarding the same. Should the facts at said hearing confirm that there had been a material fault in the Application, the Board shall take whatever action it deems appropriate at that time, consistent with the MLUL and case law, including but not limited to a reconsideration of its prior approval, a rehearing, a modification of its prior approval, or such other action as appropriate. In addition, at any time within 45 days after the adoption of this resolution, a party of interest may appeal to the Superior Court for an order vacating or modifying any term or condition as set forth herein;
3. The Applicant shall indemnify and hold the Township harmless from any Claims whatsoever which may be made as a result of any deficiency in the Application, or as to any representations made by the Applicant, including but not limited to proper service and notice upon interested parties made in reliance upon the certified list of property owners and other parties entitled to notice, said list having been provided to the Applicant by the Township pursuant to *N.J.S.A. 40:55D-12(c)*, and publication of the notice of public hearing in this matter in accordance with the law;
4. The relief as granted herein is subject to the discovery of any and all deed restrictions upon the Subject Property which had not been known or had not been disclosed to the Board, but which would have had a materially negative impact upon the Board's decision in this matter had they been so known, or so disclosed;
5. The Applicant must obtain approvals from any and all other governmental and/or public agencies as required, whether federal, state, county or local, over which the Board has no control but which are necessary in order to finalize and/or implement the relief being granted herein, as well as any construction that may be a part of said relief. The Applicant

is solely responsible for determining from which governmental and/or public agencies, if any, such approvals are required;

6. The Applicant is further required to submit a copy to the Board's Secretary of all approvals and/or denials received from such outside agencies, with a copy thereof to the Board's Solicitor, Engineer and Planner;
7. The Applicant must pay the costs of all professional review and other fees required to act on the Application, pursuant to the applicable sections of the Township's land development ordinances, zone codes and any other applicable municipal codes, and the N.J. Municipal Land Use Law;
8. The Applicant assumes all risks should the Applicant fail to obtain any other construction or other municipal permits required with respect to the relief as granted herein during the statutory appeal period associated with the language of this resolution;
9. The Applicant must obtain any other construction or other municipal permits required with respect to the relief as granted herein;
10. The Applicant shall comply with all of the representations and stipulations as contained in the application and as represented through testimony in support of the application.

WESTAMPTON LAND DEVELOPMENT BOARD

BY: David M. Duenne
~~Gary Berger, Chairman~~
DAVID GUERAGRO, VICE CHAIRMAN

ATTEST: Jodie TerMi
~~Emily Hess, Board Secretary~~

DATE MEMORIALIZED: 2/2/2022