

**BEFORE THE BOARD OF SUPERVISORS OF NORTHAMPTON TOWNSHIP,
BUCKS COUNTY, PENNSYLVANIA**

**IN RE:
CONDITIONAL USE APPLICATION
OF RICHBORO PARTNERS CD PARTNERS, LLP : NO. 11-SD-1**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

AND NOW, the Township of Northampton, Board of Supervisors ("Board"), hereby Issues these Findings of Fact, Conclusions of Law and Decision regarding the conditional use applications filed by Richboro Partners CD Partners, LLP, as follows:

1. In December 2010, Richboro CD Partners, LLP ("Applicant") filed an application to the Northampton Township Board of Supervisors ("Board") seeking approval of a conditional use to establish a Shopping Center on a group of parcels located partially in the C-2 Zoning District and partially in the R-2 Zoning District under the Northampton Township Zoning Ordinance ("ZO") and Zoning Map (the "Application").
2. The Applicant's property which is the subject of the Application consists of the following parcels, as identified on the tax map of Bucks County, Pennsylvania – 31-9-2-8, 31-18-7, 31-18-8, 31-18-9, 31-18-10, 31-18-11, 31-18-12 and 31-18-14 (collectively, the "Property"). (Exhibit BOS-1).
3. The Property comprises a gross area of 11.548 acres and it is located at the northwest corner of the intersection of Second Street Pike and Bustleton Pike in the Richboro section of Northampton Township ("Township"). (N.T, 6/8/11, p.19).

4. Subsequent to the filing of the Application, and prior to the commencement of the hearings on the Application, the Applicant submitted an amendment to the Application ("Amendment"), seeking alternative relief. (N.T., 5/11/11, pp. 16-17).

5. In its original Application, the Applicant sought conditional use approval to allow the use of the Property as and for a shopping center pursuant to the provisions applicable to the C-2 Zoning District under the ZO. (N.T. 5/11/11, p. 16).

6. With the Amendment, the Applicant sought conditional use approval, in the alternative, to use the Property as and for a shopping center pursuant to the requirements of the Village Overlay District under the ZO. (N.T., 5/11/11, pp. 16-17). (The Application and the Amendment are hereinafter referred to, collectively, as the "Amended Application".)

7. The Township of Northampton ("Township") entered its appearance in opposition to the application, and is represented by Thomas J. Smith, III, Esquire, of the Law Offices of Harris & Harris.

8. Several residents requested and obtained party status to these applications (collectively "Protestants"), as follows:

- a) Murray and Lynda Battleman, individually and as owners of C&B Supermarket, Inc., doing business as Richboro Shop-N-Bag, c/o 1025 North Second Street Pike, Richboro, PA, 18954;
- b) Allan R. Spurr and Bonnie G. Spurr, residing at 121 E. Elizabeth Lane, Richboro, PA 18954;
- c) Paul J. and Bridget M. Scipione, residing at 5 Rucker Drive, Richboro, PA, 18954;
- d) William and Mary Rita O'Hara, residing at 131 E. Elizabeth Lane, Richboro, PA, 18954;
- e) Douglas E. and Christine Meyers, residing at 101 E. Elizabeth Lane, Richboro, PA, 18954;

- f) Mr. Printer, Inc., c/o Donald Walterick, President, located at 855 Bustleton Pike, Richboro, PA, 18954; and
- g) Douglas C. Brong, doing business as Richboro Optique, located at 1075 Second Street Pike, Richboro, PA, 18954.

9. All Protestants entered his, her or their appearances and are represented collectively by John E. Ryan, Esquire and Jeffrey S. Batoff, Esquire, of the law offices of Obermayer, Rebmann, Maxwell, & Hippel, LLP.

10. In accordance with the Pennsylvania Municipalities Planning Code, the Board commenced hearings on the conditional use applications on May 11, 2011. Subsequent hearings on the conditional use applications were held on: June 8, 2011; July 13, 2011; August 4, 2011 (at which time Richboro Partners closed its case-in-chief); August 18, 2011; September 7, 2011; September 14, 2011; September 27, 2011; and October 11, 2011 (at which time public comment was offered to any residents or other members of the public).

11. All hearings on the conditional use application were concluded on October 11, 2011, and all parties were directed to submit proposed findings of fact and conclusion of law to the Board no later than November 10, 2011. All parties and counsel agreed that the final decision of the Board would be rendered within forty-five days from the submission of proposed findings of fact and conclusions of law.

12. As agreed, the Board rendered its verbal decision at a special meeting of the Board on December 14, 2011.

13. Counsel for all the parties confirmed, by email communication, that the Board's written decision with findings of fact and conclusions of law would be submitted no later than January 15, 2012.

14. In accordance with the Pennsylvania Municipalities Code, the Township's Zoning

Ordinance and other applicable Township rules, regulations and policies, notice of the hearing for May 11, 2011 was duly advertised in the *Advance of Bucks County* and notice of the hearing for June 8, 2011 was duly advertised in the *Bucks County Courier Times*.

15. Richboro Partners presented, and the Board admitted, into evidence, the following exhibits:

- A-1 Curriculum Vitae for Gregory R. Glitzer, P.E., of Gilmore & Associates, Inc.
- A-2 Colored site plan for the property under the C-2 zoning provisions (known as C-2 plan)
- A-3 Excerpts of Township's Zoning Ordinance, Section 140-8, definitions
- A-4 Affidavit of Gregory R. Glitzer regarding C-2 plan
- A-5 Excerpts of Township's Zoning Ordinance, Section 40-20, General Commercial/Office District
- A-6 Colored site plan of the property in alleged accordance with Village Overlay District (known as VOD plan)
- A-7 Affidavit of Gregory R. Glitzer regarding VOD plan

- A-8 Excerpts of Township's Zoning Ordinance, Section 140-21, C-3 Planned Commercial District
- A-9 Colored site plan for the property under revised C-2 plan
- A-10 Colored site plan for the property under revised VOD plan
- A-11 Resume of James Constantine, PP, licensed professional planner
- A-12 Review letter of Hawk Valley Associates, P.C., dated January 27, 2011
- A-13 Review letter of Hawk Valley Associates, P.C., dated March 3, 2011
- A-14 Review letter of Hawk Valley Associates, P.C., dated May 23, 2011
- A-15 Copy of Northampton Township Ordinance No. 535, regarding Village

Overlay District

A-16 Colored photographs of the property:

- A-16(a) Aerial photograph of former automotive dealership use
- A-16(b) Aerial photograph of existing conditions at the property
- A-16(c) Photographs of existing site conditions –from Second Street Pike facing north, and from Second Street Pike facing west
- A-16(d) Photographs of existing site conditions –from Second Street Pike at Bustleton Pike facing northwest, Second Street Pike facing northeast, Second Street Pike facing southwest; and Second Street Pike facing west

A-17 Colored Village Overlay Concept Plan dated February 20, 2011

A-18 Curriculum Vitae of James P. Dimmerling, P.E. of Dimmerling Consulting Inc. A-19 Traffic Impact Study prepared by Dimmerling Consulting Inc. dated November 2010

A-20 Conceptual Roadway Improvement Plan dated March 2011

A-21 Copy of Pennsylvania Department of Transportation Memo, dated February 12, 2009 regarding SOL Transportation Impact Study Guidelines

A-22 Thomas Comitta Associates, Inc., Review Comments on Proposed Addisville Commons Shopping Center dated March 7, 2011

A-23 Excerpts from Institute of Transportation Engineers *Trip Generation* Manual, 8th edition, Volume 3 of 3

A-24 Copy of sheet 2 of 13 of Record Plan prepared by Boucher and James, Inc., dated April 30, 2002 for Giaimo Brothers Land Development.

16. The Township presented and the Board admitted, into evidence, the following

exhibits:

- T-1 Gilmore & Associates Inc., letter dated February 22, 2011
- T-2 Copy of Township Planning Commission Meeting minutes of February 1, 2011
- T-3 Copy of easement agreement dated April 4, 1994 between Vijaya J. Shah,

Jay Shah, Robert Gasper and Paula Gasper

T-4 Curriculum Vitae of Joseph J. DeSantis, P.E., of McMahon Transportation Engineers & Planners

T-5 Traffic Engineering Evaluation dated September 9, 2011 prepared by McMahon Transportation Engineers & Planners

T-5(a) Table A-3 –Level of Service Matrix contained in Traffic Engineering Evaluation

T-5(b) Table A-5 –95th Percentile Queue Matrix contained in Traffic Engineering Evaluation

T-5(c) Figure A-7 –2103 Future with Development aerial photograph contained in Traffic Engineering Evaluation

T-5(d) Table A-7 –Level of Service Matrix contained in Traffic Engineering Evaluation

T-5(e) Table B-2 –Level of Service Matrix contained in Traffic Engineering Evaluation

T-5(f) Table C-1 –Vehicular Trip Generation Characteristics contained in Traffic Engineering Evaluation

T-5(g) Table C-2 –Level of Service Matrix contained in Traffic Engineering Evaluation

T-5(h) Table C-4 Level of Service Matrix contained in Traffic Engineering Evaluation

T-6 Curriculum Vitae of Judith Stern Goldstein, ASLA, R.L.A., Director of Landscape Architecture/Planning Services for Boucher & James Inc.

17. The Protestants presented and the Board admitted, into evidence, the following exhibits:

P-1 Curriculum Vitae of Peter A. Terry, P.E., PTOE, PMP, civil engineer

P-2 Review letter prepared by Benchmark Civil Engineering Services Inc., dated August 18, 2011 of traffic impact study

P-3 Letter dated February 1, 2011 from Dimmerling Consulting Inc., regarding application review –traffic impact study

P-4 Curriculum Vitae of Thomas J. Comitta, AICP,RLA, ASLA, town planner and landscape architect

P-5 Review report dated September 7, 2011 prepared by Thomas J. Comitta

18. The Board also admitted, into evidence, the following exhibits:

BOS-1 Proof of publication of hearing of June 8, 2011 in the *Bucks County Courier Times*

BOS-2 Proof of publication of hearing of May 11, 2011 in the *Advance of Bucks County* with copy of legal notice mailed to residents and posting of notice of hearing at property in accordance with the Township's Zoning Ordinance and Pennsylvania Municipalities Planning Code.

19. In accordance with the Township's Zoning Map, 7.313 acres of the property are located with the Commercial/Office (C-2) zoning district, and the remaining 4.235 acres are located in the R-2 Residential zoning district.

20. The portion of the property located within the C-2 zoning district also lies within the Village Overlay District as set forth under the Township's Zoning Ordinance.

21. The Village Overlay District ("VOD") is a separate and distinct zoning district in the Township specifically created in 2008 for the heart of Richboro. Its express purpose is to encourage the development and renovation of Richboro as an upscale, pedestrian-friendly village. The VOD was established through simultaneously enacted amendments to the Township's Zoning Ordinance and Subdivision and Land Development Ordinance ("SALDO").

22. The purposes of the Village Overlay District are expressly identified in the Township's Zoning Ordinance at § 140-58.7:

A. The Village Overlay District shall be a special overlay to the underlying zoning districts within Northampton Township. The purpose and objectives of this special overlay district are outlined as follows:

(1) To improve the aesthetics, architectural appearance, commercial centers, and streetscape design within defined areas within Northampton Township.

(2) To establish uniform design standards to be referenced as the "Village Overlay Design Standards", which reflect the overall community vision.

(3) To require uniform streetscape improvements and site enhancement measures such as street trees, streetlights, curbing, sidewalks, pedestrian crosswalks, architecture, controlled signage, traffic calming measures and gateway planning in accordance with the Village Overlay Design Standards.

(4) To improve the modes of transportation by enabling automobile, pedestrian and bicycle traffic to coexist in a planned and harmonious community.

(5) To retain and expand existing businesses to preserve a sound tax base and provide employment opportunities.

(6) To encourage adaptive reuse and redevelopment opportunities.

(7) To provide incentive-minded parameters to attract or expand desirable uses.

(8) To provide an expedited review process in order to achieve the overall purpose and objective of the Village Overlay District as well as to provide incentives for land owners and the private development community.

(9) To implement the recommendations for land use planning, economic development and transportation, which are contained within the Northampton Township Comprehensive Plan.

B. The Village Overlay District shall be defined as specific areas delineated as an overlay zone on the Northampton Township Zoning Map.

C. Except as noted elsewhere in this Zoning Ordinance, all subdivision and land development activity within the Village Overlay District shall be designed in accordance with the requirements of the Village Overlay District.

23. Richboro Partners proposes to construct a Giant supermarket, consisting of 53,107 square feet within the southern portion of the property, and four smaller retail, general merchandise or personal service tenant spaces totaling 3,424 square feet. The four retail spaces are several hundred feet across the Giant parking lot and adjacent to an existing "church" building in the far northeast corner of the property.

24. No current tenants have been identified for the additional retail or professional services spaces in the smaller building proposed at the property.

25. The Applicant, Protestants, and Township presented several witnesses to provide testimony, expert and otherwise, in support of their respective positions.

23. The Applicant's witness, Gregory Glitzer, testified as an expert in the field of civil engineering. (N.T., 6/8/11, pp. 18-19).

24. Mr. Glitzer testified that a portion of the Property comprising approximately 7.3 acres is located in the C-2 District. (N.T., 6/8/11, p.20).

25. Mr. Glitzer testified that the 7.3 acre portion of the Property located in the C-2 District is also located in the Village Overlay District ("VOD"). (N.T., 6/8/11, p. 20).

26. Mr. Glitzer testified that the buildings shown on Exhibit A-2 include a freestanding supermarket and four smaller retail/personal service tenant spaces adjacent to the old church building in the northeast corner of the Property. (N.T. 6/8/11, pp. 32-33).

27. Mr. Glitzer testified that the total floor area of the buildings depicted on Exhibit A-2 is 56,531 square feet. (N.T., 6/8/11, p. 33).

28. Mr. Glitzer testified that all of the floor area shown on Exhibit A-2 will be devoted to retail, general merchandise and/or personal service establishments. (N.T., 6/8/11, p. 34).

29. Exhibit A-6 is the plan which the Applicant prepared in an effort to demonstrate compliance with the ZO requirements for a shopping center on property located in the C-2 District under the VOD provisions. (N.T, 6/8/11, p. 48).

30. Mr. Glitzer testified that Exhibit A-6 depicts a freestanding supermarket comprising 53,107 square feet and four retail/personal service spaces attached to the former church site which comprise a total of 3,424 square feet. (N.T., 6/8/11, p. 49).

31. Mr. Glitzer testified that he assumed the maximum impervious surface rate applicable to the entire Property was 70%. (N.T., 6/8/11, pp. 41, 62 and 94).

32. Mr. Glitzer testified that, in his opinion, the 70% maximum impervious surface limitation for the C-2 Zoning District applied to the entire site because the proposed impervious surface is located only on the portion of the Property that lies within the C-2 District. (N.T., 6/8/11, pp. 97-98). (This method is incorrect as seen from our discussion of *In re: Appeal of Baldwin School*, 932 A.2d 291 (2007) *infra*.)

33. Mr. Glitzer testified that the net site area of the portion of the Property located in the C-2 District is 6.513 acres. (N.T., 6/8/11, p. 99).

34. Mr. Glitzer testified that the net site area of the portion of the Property located in the R-2 District is 4.235 acres. (N.T., 6/8/11, p. 101).

35. Mr. Glitzer testified that 70% of the net site area of the portion of the Property located within the C-2 Zoning District is 4.5591 acres. (N.T., 6/8/11, pp. 100-101).

36. Mr. Glitzer testified that 12% of the net site area of the portion of the Property located within the R-2 Zoning District is 0.5082 acres. (N.T., 6/8/11, pp. 101-102).

37. Mr. Glitzer testified that there is a shared driveway easement with an adjoining property owner affecting a portion of the Property located southwest of the intersection of Second Street Pike and Bustleton Pike ("Easement"). (N.T., 6/8/11, pp. 106-107; Exhibit T-3).

38. Mr. Glitzer testified that there is a shared driveway located within the Easement. (N.T., 6/8/11, p. 107).

39. Mr. Glitzer testified that he is not aware of an agreement with the adjoining landowner to eliminate the shared driveway located within the Easement. (N.T., 6/8/11, p. 108).

40. Mr. Glitzer testified that the southern entrance to the Property as depicted on Exhibits A-2 and A-6 would have to be reconfigured if the neighboring property owner does not agree to abandon the Easement. Id.

41. Mr. Glitzer prepared Exhibit A-9, which is a revision to Exhibit A-2 intended to preserve the Easement. (N.T., 7/13/11, pp. 249-251).

42. Mr. Glitzer testified that that there is additional impervious surface included on Exhibit A-9 that was not included on Exhibit A-2. (N.T., 7/13/11, p. 253).

43. Mr. Glitzer prepared Exhibit A-10, which is a revision to Exhibit A-6 intended to preserve the Easement. (N.T., 7/13/11, p. 253).

44. The revisions to Exhibit A-6 which are depicted on Exhibit A-10 include the shifting of the southern driveway away from the Easement and the removal of one of the lanes in the southern driveway. Id.

45. Mr. Glitzer testified that, in his opinion, Exhibits A-2 and A-6 conform to the requirements for a preliminary land development plan. (N.T., 7/13/11, pp. 260-261).

46. Mr. LaCagnina testified on behalf of the Applicant as the director of real estate for Giant Food Stores, the anticipated tenant for the Applicant's proposed supermarket. (N.T., 7/13/11, pp. 263-264).

47. Mr. LaCagnina testified that Giant operates full-service supermarkets throughout Pennsylvania, and in Maryland, West Virginia and Virginia. (N.T., 7/13/11, p. 265).

48. Mr. LaCagnina testified that Giant will be open 24 hours a day, seven days a week. (N.T., 7/13/11, p. 266).

49. Mr. LaCagnina testified that the exterior lighting in the proposed parking lot will be illuminated 24 hours a day, seven days a week. (N.T., 7/13/11, p. 268).

50. Mr. LaCagnina testified that the proposed Giant will receive three to four tractor-trailer deliveries per day, five to seven days per week. (N.T., 7/13/11, p. 269).

51. Mr. LaCagnina testified that the tractor-trailer deliveries to the proposed Giant will occur between midnight and noon. (N.T., 7/13/11, p. 269).

52. Mr. LaCagnina testified that the proposed Giant will receive additional smaller truck deliveries 15 to 20 times per day, five to seven days per week. (N.T., 7/13/11, p. 270).

53. Mr. LaCagnina testified that there will be a trash compactor located at the rear of the proposed Giant. (N.T., 7/13/11, p. 272).

54. The Applicant's witness, James Constantine, testified as an expert in the field of land planning. (N.T., 8/4/11, p. 312).

55. Mr. Constantine testified that the proposed building at the northern end of the Property will contain four retail spaces ranging from 640 square feet to approximately 1,000 square feet, some of which encompass a former church (the "Church Building"). (N.T., 8/4/11, p. 316).

56. Mr. Constantine testified that the following uses would be suitable for the four (4) tenant spaces in the Church Building: ice cream shops, Carvel, Dairy Queen, Rita's Water Ice, Bruster's, Dunkin Donuts, Caribou Coffee, Starbucks, a barber shop, hair salons, beauty salons, car rental businesses, dry cleaners, shoe repair businesses, jewelry shops, Johnny Rocket, Burger King, Five Guys, GameStop, Subway, GMC, AT&T, T-Mobile, Domino's Pizza, Papa John's, Jamba Juice, Wireless Zone, Anytime Fitness and Curves for Women. (N.T., 8/4/11, pp. 316 - 318).

57. Mr. Constantine testified that Northampton Township Ordinance No. 535 contains the zoning requirements applicable to the VOD district. (N.T., 8/4/11, p. 330).
58. Mr. Constantine prepared Exhibit A-17, which is a concept plan showing the streetscape of the proposed supermarket. (N.T., 8/4/11, pp. 343-344).
59. Mr. Constantine testified that no tenants have been identified for the four (4) units in the Church Building. (N.T., 8/4/11, pp. 354-355).
60. Mr. Constantine testified that the ZO provisions applicable to the C-2 District do not specifically provide that a supermarket is permitted in a shopping center located in the C-2 District. (N.T., 8/4/11, p. 355; Z.O. Section 140-20.B(2)(d)).
61. Mr. Constantine testified that the definition of the term "shopping center" set forth in the Z.O. does not mention the term "supermarket". (N.T., 8/4/11, pp. 355-356; Z.O. Section 140-8).
62. Mr. Constantine testified that the only instance of the term "supermarket" in the Z.O. is Section 140-21.B(1)(b), which is the provision in the C-3 District regulations dealing with "general merchandise stores". (N.T., 8/4/11, p. 356).
63. Mr. Constantine testified that Section 140-21.B(1)(b) is not a definition of the term "general merchandise store" and that many of the uses listed in that section are not general merchandise stores. (N.T., 8/4/11, 357-358).
64. Mr. Constantine testified that the Township established design criteria for the VOD which are set forth in the Northampton Township Subdivision and Land Development Ordinance ("SALDO"). (N.T., 8/4/11, pp. 365-366).
65. Mr. Constantine testified that the outdoor seating area and sidewalk area depicted on Exhibit A-17 is intended to comply with the VOD design requirement that the entrance to a

building located at the corner of intersecting streets shall be located on the corner with an enhanced design element or feature. (N.T., 8/4/11, pp. 368-369; SALDO Section 118-42.A(3)(c)).

66. Mr. Constantine testified that the entrance to the proposed supermarket depicted on Exhibit A-17 is not necessarily the main entrance to the proposed building. (N.T., 8/4/11, p. 373).

67. The Applicant's witness, James Dimmerling, testified as an expert in the field of traffic engineering. (N.T., 8/4/11, p. 384).

68. Mr. Dimmerling testified that the square footage of the buildings devoted to the proposed shopping center is the same for the VOD Plan (Exhibits A-2 and A-9) and the C-2 Plan (Exhibits A-6 and A-10). (N.T., 8/4/11, p. 385).

69. Mr. Dimmerling prepared Exhibit A-19, a traffic study in which he attempted to analyze the potential impact of the proposed shopping center on the surrounding area. (N.T., 8/4/11, p. 386).

70. In preparing Exhibit A-19, Mr. Dimmerling analyzed the existing conditions of the roadways in the vicinity of the Property and then projected future traffic volumes with and without the development of the Property. (N.T., 8/4/11, p. 387).

71. In examining the existing and future traffic conditions, Mr. Dimmerling limited his analysis to weekday morning and afternoon peak periods. Id.

72. Mr. Dimmerling did not analyze Saturday peak periods in preparing Exhibit A-19. (N.T., 8/4/11, pp. 387-388).

73. In preparing Exhibit A-19, Mr. Dimmerling limited his analysis to the intersection of Second Street Pike with Bustleton Pike and the intersection of Second Street Pike with Almshouse Road. (N.T., 8/4/11, p. 388).

74. For the purpose of preparing Exhibit A-19, Mr. Dimmerling assumed that the proposed development would open in 2011. (N.T., 8/4/11, pp. 388-389).

75. In preparing Exhibit A-19, Mr. Dimmerling analyzed future conditions in 2016, five years after the assumed opening year, with and without development of the Property. (N.T., 8/4/11, p. 388).

76. In preparing Exhibit A-19, Mr. Dimmerling assumed that the approved Giuseppe's development located near the intersection of Second Street Pike and Almshouse Road would be developed and assumed that the improvements required in connection with the approval of the Giuseppe's development would be constructed by 2016. (N.T., 8/4/11, pp. 389-390).

77. In analyzing the future traffic conditions in 2016, Mr. Dimmerling assumed background traffic growth at the rate of 2.24 percent per year. (N.T., 8/4/11, p. 390).

78. Mr. Dimmerling testified that, in his opinion, the traffic generated from the proposed development would have an effect on the intersection of Second Street Pike and the access road to Crossroads Plaza, but he did not study those intersections to determine the effect. (N.T., 8/4/11, p. 400).

79. Mr. Dimmerling testified that he does not believe that the proposed shopping center will open in 2011. (N.T., 8/4/11, p. 402).

80. Mr. Dimmerling testified that the five years after the opening year for the proposed development is likely to be later than 2016, the year that he analyzed for future traffic conditions. (N.T., 8/4/11, p. 402).

81. Mr. Dimmerling testified that he referred to the International Traffic Engineers' Trip Generation Manual, Eighth Edition ("Trip Generation Manual") for the purpose of analyzing anticipated new trips resulting from the proposed development. (N.T., 8/4/11, pp. 391-392).

82. In performing his analysis of the trips generated by the proposed development, Mr. Dimmerling did not classify the proposed development as a "shopping center", as that use is described in the Trip Generation Manual. (N.T., 8/4/11, pp. 392, 403).

83. For the purpose of performing his trip generation analysis, Mr. Dimmerling classified the proposed development as a "supermarket" and four "specialty retail uses", as those uses are classified in the Trip Generation Manual. (N.T., 8/4/11, p. 403).

84. Mr. Dimmerling testified that the possible uses of the Church Building described by Mr. Constantine are not specialty retail, as that use is classified in the Trip Generation Manual. (N.T., 8/4/11, p. 404).

85. Mr. Dimmerling testified that he does not know whether the traffic improvements required in connection with the Giuseppe's development will ever be constructed. (N.T., 8/4/11, p. 405).

86. Mr. Dimmerling testified that it is his recommendation that the northbound inside lane on Second Street Pike be converted to a continuous northbound/southbound center left-turn lane from Bustleton Pike to Almshouse Road in order to mitigate the effect of the additional traffic generated from the proposed development.

87. Exhibit A-19 provides that the proposed driveway located at the northern end of the Property is a high volume driveway and the proposed driveway located at the southern end of the Property is a medium volume driveway. (Exhibit A-19, p. 7).

88. Mr. Dimmerling testified that a medium volume driveway would require additional improvements not depicted on the Applicant's plans, including a four foot by one hundred foot median down the center of the driveway. (N.T., 8/4/11, pp. 406-407).

89. Mr. Dimmerling testified that a high volume driveway would require additional improvements not depicted on the Applicant's plans, including a channelized right turn pork chop island and a center median. (N.T., 8/4/11, pp. 407-408).

90. Mr. Dimmerling testified that a 145 foot right-turn lane is required on Second Street Pike at the northern driveway. (N.T., 8/4/11, p. 409; Exhibit at A-19, p. 21).

91. Mr. Dimmerling testified that the dedicated right turn lane depicted on the Applicant's plans is not 145 feet long. (N.T., 8/4/11, p. 409).

92. Peter A. Terry, testified as an expert in the field of traffic engineering on behalf of Intervenor, Murray and Linda Battlemen, Alan and Bonnie Spurr, Douglas Brong, William and Mary Rita O'Hara, Donald Wladerick, Douglas and Christine Meyers, and Paul and Bridget Scipione (collectively, "Intervenor"). (N.T., 8/18/11, p. 465).

93. Mr. Terry testified that the Applicant's traffic impact study demonstrates that the level of service for the AM peak westbound movement at the intersection of Second Street Pike and Almshouse Road in 2016 drops from level of service "C" without development to level of service "D" with the proposed development. (N.T., 8/18/11, pp. 469-471).

94. Mr. Terry testified that the Applicant's traffic impact study demonstrates that the level of service for the AM peak southbound movement at the intersection of Second Street Pike

and Almshouse Road in 2016 drops from level of service "D" without development to level of service "E" with the proposed development. (N.T., 8/18/11, pp. 469-470).

95. Mr. Terry testified that the Applicant's traffic impact study demonstrates that the level of service for the PM peak westbound movement at the intersection of Second Street Pike and Almshouse Road in 2016 drops from level of service "E" without development to level of service "F" with the proposed development. (N.T., 8/18/11, p. 471).

96. Mr. Terry testified that the Applicant's traffic impact study demonstrates that the level of service for the PM peak southbound movement at the intersection of Second Street Pike and Almshouse Road in 2016 drops from level of service "E" without development to level of service "F" with the proposed development. (N.T., 8/18/11, pp. 472)

97. Mr. Terry testified that the Applicant's traffic impact study demonstrates that the eastbound approach at the intersection of Second Street Pike with the northern driveway will operate at level of service F in 2016 with the proposed development. (N.T., 8/18/12, p. 473).

98. Mr. Terry testified that, in his experience, PennDOT is reluctant to issue permits for new driveways when they are projected to operate at poor levels of service (N.T., 8/18/12, pp. 477-478).

99. Mr. Terry testified that the Applicant's traffic impact study fails to address the impact of pedestrians on the studied intersections in the 2016 with development analysis. (N.T., 8/18/12, p. 484).

100. Mr. Terry testified that pedestrians will affect both the level of service and queue length calculations if the sidewalks proposed by the Applicant are constructed. (N.T., 8/18/12, pp. 484-485).

101. Mr. Terry testified that, in his experience, it is unlikely that PennDOT would approve the location of the southern driveway as depicted on Exhibits A-9 and A-10 because it is too close to the existing shared driveway located within the Easement. (N.T., 8/18/12, pp. 503-504).

102. Mr. Terry testified that, in his experience, PennDOT may deny a permit for a new driveway when the adjacent owners are not willing to execute a release related to the impact on the adjacent owners' existing driveways. (N.T., 8/18/12, pp. 504-512).

103. Mr. Terry testified that, in his opinion, the Applicant's traffic impact study (Exhibit A-19) does not provide sufficient information to identify the impact of the traffic from the proposed development on the surrounding area. (N.T., 8/18/12, p. 514).

104. Mr. Terry testified that the analysis of the opening year for the proposed development set forth in the Applicant's traffic impact study (Exhibit A-19) provides no relevant information because the proposed development will not be constructed in 2011. (N.T., 8/18/12, p. 593).

105. Mr. Terry testified that Mr. Dimmerling should have studied levels of service at additional intersections and performed Saturday peak traffic counts and level of service analyses in order to properly evaluate the effect of the proposed development upon the traffic in the surrounding neighborhood. (N.T., 8/18/12, pp. 596-597).

106. Thomas A. Committa testified as an expert in the field of land planning on behalf of the Intervenors. (N.T., 9/7/11, pp. 639-641)

107. Mr. Committa testified that Section 140-37 of the Z.O. sets forth nine (9) criteria for the evaluation of conditional uses. (N.T., 9/7/11, p. 689).

108. Mr. Committa testified that, based upon his review of the Applicant's evidence and testimony, and his experience as a land planner, the Amended Application does not comply with many of the criteria set forth in Section 140-37 of the Z.O. for the following reasons:

a. The Amended Application does not comply with Section 140-37.C(1) of the Z.O. requiring the Board to examine the importance of the proposed conditional use to the Township or region because the Applicant presented evidence to the Northampton Township Planning Commission which indicates that the proposed Giant supermarket will result in a 20 percent decrease in the sales volume of each of the two existing supermarkets in the Township. (N.T., 9/7/11, pp. 689-690).

b. The Amended Application does not comply with Section 140-37.C(3) of the Z.O. requiring the Board to examine the compatibility of the proposed conditional use with existing and foreseeable nearby uses because the Applicant presented evidence to the Northampton Township Planning Commission which indicates that the proposed Giant supermarket will result in a 20 percent decrease in the sales volume of each of the two existing supermarkets in the Township, and the proposed supermarket is incompatible with existing uses due to its size. (N.T., 9/7/11, pp. 692-693).

c. The Amended Application does not comply with Section 140-37.C(4) of the Z.O. requiring the Board to examine the relationship of the proposed conditional use to the goals and objectives of the Township Comprehensive Plan because the proposed development is incompatible with the goal to discourage strip commercial development set forth in the Comprehensive Plan. (N.T., 9/7/11, p. 693).

109. Mr. Committa testified that a shopping center containing a supermarket may only be developed in the C-2 district if it is developed as a conditional use in accordance with the VOD requirements of the Z.O. (N.T., 9/7/11, p. 753).

110. Mr. Committa testified that, based upon his review of the Z.O., there is no provision in the Z.O. which would permit the Applicant to apply the maximum impervious surface ratio for the C-2 District across the entire Property, including the portion of the Property that is located in the R-2 District. (N.T., 9/7/11, pp. 755-756).

111. Mr. Committa testified that, in his opinion, the Amended Application fails to comply with the stated purpose of the C-2 District to provide pedestrian-oriented development as set forth in Section 140-20.A of the Z.O. (N.T., 9/7/11, pp. 759-760).

112. Joseph J. DeSantis testified as an expert in the field of traffic engineering on behalf of the Township. (N.T., 9/14/11, p. 799).

113. Mr. DeSantis reviewed the traffic impact study prepared by the Applicant's traffic engineer, Mr. Dimmerling. (N.T., 9/14/11, p. 801).

114. Mr. DeSantis and his staff also performed their own analyses of the traffic elements of the Applicant's proposed use and prepared a report based upon that analysis. (N.T., 9/14/11, p. 802; Exhibit T-5).

115. In preparing Exhibit T-5, Mr. DeSantis and his staff reviewed the Applicant's plans and conducted their own field investigations. (N.T., 9/14/11, p. 803).

116. In evaluating the Applicant's traffic impact study (Exhibit A-19), Mr. DeSantis concluded that the study should have addressed additional intersections, the Saturday peak periods, and more accurate years for the opening year and five year analyses. (N.T., 9/14/11, pp. 803-804).

117. Mr. DeSantis also concluded that the Applicant's traffic engineer, Mr. Dimmerling, incorrectly modeled the existing traffic conditions at the intersection of Almshouse Road and Second Street Pike. (N.T., 9/14/11, pp. 804-805).

118. In preparing Exhibit T-5, Mr. DeSantis used the traffic counts from the Applicant's traffic impact study, which were performed in 2009. (N.T., 9/14/11, p. 807).

119. Mr. DeSantis assumed an opening year of 2013 for the proposed development and added background growth at the rate of 1.5 percent per year as specified by PennDOT for Bucks County. *Id.*

120. Mr. DeSantis analyzed traffic volumes for 2018 for the five-year post development analysis. (N.T., 9/14/11, pp. 807-808).

121. In addition to the two intersections studied in the Applicant's traffic impact study, Mr. DeSantis recommended that the Board require the Applicant to study the following intersections:

- a. Second Street Pike and Crossroads Plaza Access;
- b. Bustleton Pike and Crossroads Plaza Access/Upper Holland Road;
- c. Second Street Pike and Richboro Shopping Center Access; and
Newtown-Richboro Road and Township Road/Richboro Shopping Center Access. (N.T., 9/14/11, pp. 809-810; Exhibit T-5).

122. Mr. DeSantis analyzed the additional intersections and recommended new traffic counts and traffic signal interconnection of the additional intersections with those studied by the Applicant. (N.T., 9/14/11, pp. 809-810; Exhibit T-5).

123. Mr. DeSantis analyzed the levels of service at the intersection of Second Street Pike and Almshouse Pike in the years 2013 and 2018, with and without the Applicant's development, and determined that the addition of a pedestrian crossing at that intersection will

require a right turn signal for the southbound movement on Second Street Pike to allow pedestrians to safely cross that intersection. (N.T., 9/14/11, pp. 811-812, Exhibit T-5).

124. Mr. DeSantis examined the levels of service at the intersection of Second Street Pike and Almshouse Road in the years 2013 and 2018, with and without development in the weekday morning and afternoon peak hours, as well as the Saturday peak hour. (N.T., 9/14/11, pp. 813-814, Exhibit T-5).

125. The overall level of service in the afternoon peak hour at the intersection of Second Street Pike with Almshouse Road in 2013 without the proposed development is level F with an average delay of 95.3 seconds. (N.T., 9/14/11, p. 816; Exhibit T-5).

126. The overall level of service in the afternoon peak hour at the intersection of Second Street Pike with Almshouse Road with the proposed development is level F with an average delay of 116.6 seconds. *Id.*

127. Mr. DeSantis further testified that some turning delays and que lengths at the major intersections in the heart of Richboro would double, triple, quadruple, and in one turn maneuver the delay would be nearly 6x more than the existing delay.

128. At Table A-3 in his Report (Exhibit T-5), Mr. DeSantis identified the Level of Service delays for existing conditions and estimated increases with the Giant development and its expected increases in vehicle trip generation. The delays documented include the following:

Almshouse Road (Route 332) Westbound Left Turn during AM Peak hours
73.7 second existing delay nearly triples to 201.5 second delay with development

Almshouse Road (Route 332) Westbound Left Turn during PM Peak hours
90.4 second existing delay more than doubles to 184.7 seconds with development (with "ameliorating" Connector Road, delay *increases* further to 186.9 seconds)

Almshouse Rd (Rte 332) Westbound Left Turn during Sat. Midday Peak hours
29.0 sec. existing delay nearly doubles to 55.4 second delay with development

Second Street Pike (Route 232) Northbound Left Turn during AM Peak hours

48.2 second existing delay nearly quadruples to 183.2 seconds with development

Second Street Pike (Route 232) Northbound Left Turn during PM Peak hours

79.3 sec. existing delay increases nearly 2.5x to 193.6 seconds with development

Second Street Pike (Rte 232) Northbound Left Turn during Sat. Midday Peak hours

30.7 second existing delay more than doubles to 63.4 seconds with development

Second Street Pike (Route 232) Thru-Traffic during PM Peak hours

50.0 second existing delay more than triples to 154.0 seconds with development

Second Street Pike (Route 232) Southbound Left Turn during PM Peak hours

33.3 second existing delay more than doubles to 75.9 delay with development

Second Street Pike (Rte 232) Southbound Left Turn during Sat. Midday Peak hours

27.7 second existing delay increases nearly 2.5 x to 67.1 delay with development

Second Street Pike (Route 232) Southbound Right Turn during PM Peak hours

35.8 sec. existing delay increases nearly 6x to 201.7 seconds with development

129. Mr. DeSantis testified that PennDOT would require the Applicant to mitigate the additional average delays at the intersection of Second Street Pike and Almshouse Road resulting from the proposed development. (N.T., 9/14/11, Exh.T-5).

130. Mr. DeSantis testified, however, that the impact of the proposed development on the intersection of Second Street Pike and Almshouse Road cannot be mitigated with the techniques proposed in the Applicant's traffic impact study, which include signal interconnection, striping and conversion of the inside northbound lane in Second Street Pike to a dedicated Northbound/Southbound left-turn lane. (N.T., 9/14/11, p. 820).

131. Mr. DeSantis reviewed the plan submitted to the Township by the Applicant in connection with a petition for rezoning of the Property which preceded the Application and the Amended Application (the "Rezoning Plan"). (N.T., 9/14/11, p. 820).

132. The Rezoning Plan proposed a connector driveway from the Property to Almshouse Road to the west of the intersection of Second Street Pike and Almshouse Road. (N.T., 9/14/11, pp. 822-823).

133. As analyzed by Mr. DeSantis in his Report (Exhibit T-5), even with the connector road, many of the delays were either the same or actually worse.

Almshouse Road (Route 332) Westbound Left Turn during AM Peak hours
201.5 sec. delay w/development & same 201.5 sec. delay w/connector road.

Second Street Pike (Route 232) Thru-Traffic during PM Peak hours
154.0 sec. delay w/development and same 154.0 delay w/connector road

Second Street Pike (Rte 232) Southbound Left Turn during Sat. Midday Peak hours
67.1 sec. delay w/development actually increases to 89.7 secs. w/connector road

Almshouse Road (Route 332) Westbound Left Turn during PM Peak hours
184.7 sec. delay w/development increases to 186.9 secs. delay w/connector road

(Exhibit T-5 at Table A-3).

134. Mr. DeSantis also performed an analysis of the queue lengths at the studied intersections using highway capacity software. (N.T., 9/14/11, p. 826; Exhibit T-5).

135. The 95th percentile queue length during the weekday afternoon peak hour for the *northbound left turn* traffic at the intersection of Second Street Pike and Almshouse Road in 2011 is 225 feet. Id. After development, the queue length nearly doubles to 400 ft. (Exhibit T-5 at Table A-5).

136. The 95th percentile queue length during the weekday afternoon peak hour for the *northbound through traffic* at the intersection of Second Street Pike and Almshouse Road in 2011 is 445 feet. Id. After development, the queue length increases another nearly 200 ' and is now a whopping 644 feet. At 15' for the average car length, that's 43 car lengths to the

intersection. (Exhibit T-5 at Table A-5). And that's assuming they don't remove the 2nd northbound lane as planned.

137. Mr. DeSantis testified that the queues for the northbound left turn lane at the intersection of Second Street Pike with Almshouse Road in the afternoon peak hour in 2013, with the proposed development, will actually occupy the dedicated left turn lane proposed by the Applicant. (N.T., 9/14/11, p. 828; Exhibit T-5).

138. Mr. DeSantis also testified that the dedicated left turn lane on Second Street Pike proposed by the Applicant should not be implemented unless other improvements to increase traffic volume capacity at the intersection of Second Street Pike and Almshouse Road are implemented. (N.T., 9/14/11, p. 830).

139. Mr. DeSantis also analyzed the levels of service at the intersections of Second Street Pike with the access driveways to the proposed development. (N.T., 9/14/11, p. 832).

140. Mr. DeSantis determined that the left turn movement from the northern site access (abutting Ohev Shalom synagogue) onto Second Street Pike would have a level of service E with an average delay of 43 seconds in 2013, the assumed opening year for the proposed development. (N.T., 9/14/11, p. 834; Exhibit T-5).

141. Mr. DeSantis determined that the left turn movement from the northern site access onto Second Street Pike would have a level of service F in the weekday afternoon peak hour and Saturday peak hour in 2018, five years after the assumed opening year for the proposed development, with an average delay of 53.3 seconds and 60.8 seconds, respectively. (N.T., 9/14/11, p. 835; Exhibit T-5).

142. Mr. DeSantis further testified that the traffic volumes and level of service at the intersection of the northern driveway with Second Street Pike in 2018 would warrant a traffic

signal, but PennDOT would not likely approve a signal due to the proximity to the intersection of Second Street Pike and Bustleton Pike. Id.

143. Mr. DeSantis also testified that the uses proposed by the Applicant for the four units in the Church Building should be classified as land use code 820, "standard retail", under the land use codes set forth in the ITE Trip Generation Manual, rather than "specialty retail" as set forth in the Applicant's traffic impact study. [N.T., 9/14/11, pp. 837-838].

144. Mr. DeSantis analyzed the effect on the trip generation from the proposed development if the use of the units in the Church Building were classified as general retail. [N.T., 9/14/11, pp. 838-839, Exhibit T-5].

145. Based on his analysis after classifying the Church Building uses as "general retail", Mr. DeSantis concluded that the proposed development is likely to add 12 more trips per hour turning left onto Second Street Pike in the opening year, 2013, causing the level of service for the left turn movement to drop to level of service F for both the weekday afternoon and Saturday peak hours. [N.T., 9/14/11, p. 840; Exhibit T-5].

146. Mr. DeSantis testified that Applicant's proposed use is not a "shopping center" as that use is described in the ITE Trip Generation Manual. [N.T., 9/14/11, p. 843].

147. Mr. DeSantis testified that the applicant's proposed development must be characterized as a standalone supermarket with four small general retail uses due to the fact that 95% of the floor area of the development is devoted to the supermarket use. [N.T., 9/14/11, p. 842].

148. Mr. DeSantis testified that the trip generation rates for a supermarket are higher than the trip generation rates for a shopping center under the ITE Trip Generation Manual. Id.

149. Mr. DeSantis testified that a shopping center has more internal trips than a standalone supermarket with four retail uses, reducing the overall trip generation rates for a true shopping center. [N.T., 9/14/11, pp. 842-843].

150. Mr. DeSantis analyzed the traffic impact on the surrounding neighborhood that would occur if the Property were developed as a shopping center, as that use is classified in the ITE Trip Generation Manual, rather than a standalone supermarket with four specialty retail uses. [N.T., 9/14/11, pp. 843-844, Exhibits T-5, T-5F].

151. Based upon his analysis, Mr. DeSantis determined that the Property would generate 927 fewer trips per day if it were developed as a true "shopping center", as opposed to the standalone supermarket with four specialty retail uses that the Applicant now proposes. [N.T., 9/14/11, pp. 844-845; Exhibits T-5, T-5F].

152. Based upon his analysis, Mr. DeSantis testified that the Property would generate 100 fewer trips during the afternoon peak hour if it were developed as a true "shopping center", as that use is classified in the ITE Trip Generation Manual, rather than a standalone supermarket with four specialty retail uses. [N.T., 9/14/11, pp. 844-845; Exhibits T-5, T-5F].

153. Mr. DeSantis performed a level of service analysis for the intersections of Second Street Pike and Almshouse Road and the intersections of the site access driveways with Second Street Pike based on his alternative trip generation analysis for the development of the property as a shopping center with the same square footage as that proposed by the Applicant for the standalone supermarket with four retail uses. [N.T., 9/14/11, pp. 845-846; Exhibits T-5, T-5G].

154. Based upon his analysis, Mr. DeSantis testified that the afternoon peak hour level of service in 2013 for the left turn movement at the intersection of the northern driveway with Second Street Pike would be a manageable level of service D with a 30 second delay if the

Property were developed as a typical shopping center. But with the Property developed as a standalone supermarket (as even conceded by Applicant's own Traffic Engineer who used standalone supermarket trip-generation rates rather than the substantially lower true shopping center rates), the level of service already drops to E with a 43% increased delay to 43 seconds for left turn exit from the north driveway. [N.T., 9/14/11, pp. 846-847; Exhibit T-5, T-5G].

155. Mr. DeSantis also testified that the Applicant's proposed development will have an adverse impact on the traffic conditions in the surrounding area. (N.T., 9/14/11, p. 851; Exhibit T-5).

156. Mr. DeSantis further testified that the improvements proposed by the Applicant are not sufficient to mitigate the adverse impact upon the traffic conditions in the surrounding area resulting from the proposed development. (N.T., 9/14/11, p. 851; Exhibit T-5).

157. Mr. DeSantis testified that improvements to add traffic volume capacity at the intersection of Almshouse Road and Second Street Pike would be required in order to mitigate the effect of the proposed development on the traffic conditions and safety in the surrounding area. (N.T., 9/14/11, p. 852; Exhibit T-5).

158. Mr. DeSantis testified that the Board may require the Applicant to study the traffic impact of the development at additional intersections not included in the Applicant's traffic impact study pursuant to Section 140-37(d)(2) of the Z.O. (N.T., 9/14/11, pp. 936-940).

159. Judith Stern Goldstein testified as an expert in the field of land planning on behalf of the Township. (N.T., 9/27/11, pp. 1033-1034)

160. Ms. Stern Goldstein reviewed the provisions of the Z.O. and the Applicant's plans submitted as Exhibits A-2, A-6, A-9 and A-10. (N.T., 9/27/11, pp. 1034-1035).

161. Ms. Stern Goldstein was present during the testimony of the Applicant's engineer, Greg Glitzer, and is familiar with the manner in which he calculated the impervious surface limitations for the Property. (N.T., 9/27/11, pp. 1035-1036).

162. Ms. Stern Goldstein testified that, based upon her review of the Z.O. and her experience as a land planner, the proper method of determining the maximum impervious surface area permitted on the Property is to calculate the area of the portion of the Property located in the C-2 District and apply the 70% maximum impervious surface ratio for the C-2 District to that area; and to calculate the area of the portion of the Property located in the R-2 District and apply the 12% maximum impervious surface ratio for "all other permitted uses" in the R-2 District to that area. (N.T., 9/27/11, pp. 1038-1039).

163. Ms. Stern Goldstein calculated the maximum permitted impervious surface for the Property based upon the *In Re: Appeal of Baldwin School* methodology. (N.T., 9/27/11, pp. 1039-1040).

164. Ms. Stern Goldstein testified that, based upon Mr. Glitzer's testimony that the net site area of the portion of the Property located in the C-2 District is 6.2977 acres and, after applying the 70% maximum impervious surface ratio applicable to the C-2 District to the net site area, the maximum impervious surface area permitted for the C-2 portion of the Property is 4.408 acres. (N.T., 9/27/11, p. 1040).

165. Ms. Stern Goldstein testified that, based upon Mr. Glitzer's testimony that the net site area of the portion of the Property located in the R-2 District is 4.2352 acres and, after applying the 12% maximum impervious surface ratio for all other permitted uses in the R-2 District to the net site area, the maximum impervious surface area permitted for the R-2 portion of the Property is 0.508 acres. (N.T., 9/27/11, p. 1040).

166. Ms. Stern Goldstein testified that the maximum impervious surface permitted for the entire Property is the sum of the maximum impervious surface areas calculated for the C-2 portion and the R-2 portion of the site, or 4.916 acres. Id.

167. Ms. Stern Goldstein testified that the Applicant's VOD Plan (Exhibits A-6 and A-10) indicates that the impervious surface area proposed is 5.3018 acres. (N.T., 9/27/11, pp. 1040-1041).

168. Mr. Glitzer testified at the July 13, 2011 hearing that the impervious surface area proposed on the revised C-2 plan (Exhibit A-9) is 5.2217 acres. (N.T., 7/13/11, p. 247).

169. Based upon her impervious surface calculations and her review of the Applicant's plans and the testimony of the Applicant's engineer, Ms. Stern Goldstein testified that the plans submitted by the Applicant in support of its Application and Amended Application do not comply with the maximum impervious surface limitations in the Z.O. (N.T., 9/27/11, pp. 1041-1043).

170. Ms. Stern Goldstein testified that based upon her review of the VOD design criteria set forth in the Section 118-42 of the SALDO, the Applicant's proposed VOD Plan failed to comply with the following provisions:

- a. Section 118-42.A(3)(a) of the SALDO requires that the front façade of a building must be oriented toward the street with the highest functional classification in terms of vehicular and pedestrian traffic volumes, and the Applicant's proposed building is oriented toward the street with the lower functional classification;
- b. Section 118-42.A(3)(c) of the SALDO requires the entrance to a building located on the corner of intersecting streets to be located at the corner with an enhanced element or feature, and the entrance to the proposed supermarket is not located at the corner; and
- c. Section 118-42.A(5)(b) of the SALDO provides that the areas designated for off-street parking and loading shall not be a dominant design feature of the

building or streetscape, and the proposed parking area is the dominant design feature along the portion of Second Street Pike extending from the intersection with Bustleton Pike toward Almshouse Road. (N.T., 9/27/11, pp. 1064-1067).

171. Ms. Stern Goldstein testified that it would be inappropriate to use the 20% maximum impervious surface limitation for single family detached dwellings, group homes or community residential facilities in the R-2 District set forth in Section 140-15 of the Z.O. when calculating the maximum impervious surface area for the R-2 portion of the Property because the Applicant is not proposing to use the Property for single family detached dwellings, group homes or community residential facilities. (N.T., 9/27/11 pp. 1087-1088).

172. Michael Solomon testified on behalf of the Township in his capacity as the Township's Zoning Officer. (N.T. 9/27/11, pp. 1146-1147).

173. Mr. Solomon testified that a supermarket is not permitted as part of a shopping center located in the C-2 District unless, and only unless, the site is also located in the VOD and the shopping center is developed in accordance with the Village Overlay District design provisions of the Z.O. (N.T. 9/27/11, pp. 1149-1150).

174. Mr. Solomon testified that the only zoning district in which a supermarket is permitted is the C-3 "Planned Commercial District." (N.T. 9/27/11, p. 1149).

175. Mr. Solomon testified that the VOD provisions of the Z.O. do allow C-3 "Planned Commercial" uses in a C-2 "General Commercial/Office" District, but only if that C-2 District is specifically included in the Village Overlay designated areas AND the C-3 use complies with all requirements of the Village Overlay District. As such, if the Applicant wishes to site a C-3 Supermarket in a C-2 District (as here), the Applicant must comply with all the plan criteria so that the supermarket is developed in the upscale, pedestrian-friendly village concept mandated by the Village Overlay District provisions. (N.T. 9/27/11, pp. 1149-1150).

176. Mr. Solomon testified that the term "supermarket" does not appear anywhere in the Z.O. other than Section 140-21B(1)(B), which sets forth the requirements for the shopping center use in the C-3 District. (N.T. 9/27/11, p. 1162).

177. Mr. Solomon testified that there are no existing supermarkets within Northampton Township that are located in the C-2 District. Id.

178. Mr. Solomon testified that the existing supermarkets in the Township are properly located only in shopping centers sited in the C-3 District. Id.

DISCUSSION & ANALYSIS

A conditional use in a zoning ordinance is a use which is expressly permitted in a given zone so long as certain conditions detailed in the ordinance are found to exist. *See Appeal of Rieder*, 410 Pa. 420, 422, 188 A.2d 756 (1963).¹ Thus, a special exception, or in this case a conditional use, has its origin in the zoning ordinance itself. It relates only to such situations as are specifically provided for and enunciated by the terms of the ordinance. The Board of Supervisors' role is to determine whether or not the conditional use meets the objective standards of the zoning ordinance. If it does, the Board of Supervisors must grant the conditional use, unless the protestants establish that the use will be harmful to the public health, safety and welfare. If it does not, then the conditional use must be denied, regardless of whether or not the protestants have established that granting the conditional use would be harmful to the public health, safety and welfare. The burden of proof of demonstrating compliance with the specific

¹ Conditional uses and special exceptions are governed by identical rules. The difference is that a conditional use is heard by the Board of Supervisors, whereas a special exception is heard by the Zoning Hearing Board. Therefore, court decisions dealing with special exceptions are equally applicable to conditional uses. *Bailey v. Upper Southampton Twp.*, 690 A.2d 1324, 1326 (Pa. Cmwlth. 1997).

requirements of the zoning ordinance is always on the Applicant. *See Lower Merion Township v. Enokay, Inc.*, 427 Pa. 128, 223 A.2d 883 (1967).

Section 603(c)(2) of the Pennsylvania Municipalities Planning Code ("MPC"), 53 P.S. §10603(c)(2), provides that Zoning Ordinances may contain "[p]rovisions for conditional uses to be allowed or denied by the governing body pursuant to public notice and hearing and recommendations by the planning agency and pursuant to express standards and criteria set forth in the zoning ordinances." Northampton Township has adopted a Zoning Ordinance which, in relevant part, states the following with regard to conditional use applications at Section 140-37.C:

The following factors and criteria shall apply to all conditional uses permitted within any zoning district:

- (1) The importance of the proposed conditional use to the Township or the region.
- (2) The availability of alternative sites or location for the proposed use.
- (3) The compatibility of the proposed use with existing and foreseeable nearby uses.
- (4) The relationship of the proposed use to the goals and objectives of the Township Comprehensive Plan.
- (5) The potential physical impact of the proposed use upon the neighborhood and upon nearby streets, roads and highways in terms of vehicular traffic and pedestrian safety.
- (6) The safety of personal property if a proposed use is allowed (for example, storage in a Floodplain and Flood Hazard District).
- (7) The absolute need for a proposed use if viable alternative locations exist and such use, in its proposed location, has identified detriments.
- (8) The effect of the proposed use upon the public water and public sewerage systems or, alternatively, the lack of availability of connection to such systems.
- (9) The overall environmental impact of the proposed use upon the proposed site, the watershed and, particularly, the surface water drainage effects on all

downstream properties.

In *Bray v. Zoning Board of Adjustment*, 410 A. 2d 909, 910-911 (Pa. Cmwlth. 1980), the

Court held in the context of a special exception as follows:

Our cases have repeatedly made clear that the applicant has both persuasion burden and the initial evidence presentation duty to show that the proposal complies with the terms of the Ordinance which expressly governs such a grant. This rule means that the applicant must bring the proposal within the specific requirements expressed in the Ordinance for the use (for area, bulk, parking or other approval) sought as a special exception. Those specific requirements, standards or "conditions" may be classified as follows:

1. The kind of use (or area, bulk, parking or other approval) i.e., the threshold definition of what is authorized by a special exception;
2. Specific requirements are standards applicable to the special exception, e.g., special setbacks, size limits; and
3. Special requirements applicable to such kind of use even when not a special exception, e.g., setback limits or size maximums or parking requirements applicable to that type of use when ever allowed as a permitted use or otherwise.

Every special exception will always involve item 1 above and most involve item 2 . . . item 3 above, when present, is necessarily part of the threshold requirement because special exception use naturally must comply with the requirements applicable to that type of use throughout the Ordinance unless expressly exempted from them.

Id. The rules governing an applicant's burden of proof in a special exception case apply equally in conditional use applications. *White Advertising Metro v. Zoning Hearing Board of Susquehanna Township*, 453 A.2d 29 (Pa. Cmwlth. 1982). In the instant case, the Application does not meet the specific requirements of the Zoning Ordinance and, therefore, the Application must be denied.

As the Applicant admitted, through the testimony of its engineer, Gregory Glitzer, the Applicant assumed that the maximum impervious surface rate for the C-2 District of 70%

applied to the entire Property, which is split zoned between the R-2 District and the C-2 District. The Applicants have not cited to any provision of the Zoning Ordinance, or applicable law, to support their contention that the maximum impervious surface ratio of 70% applies to the portion of the Property which is located in the R-2 Zoning District, precisely because no such provision or precedent exists.

The issue of the application of impervious surface limitations in a zoning ordinance to split zoned properties was squarely addressed by the Commonwealth Court in *In re: Appeal of Baldwin School*, 932 A.2d. 291 (2007), where the Baldwin School applied for a special exception to construct athletic facilities on a lot in Lower Merion Township. The Baldwin School lot consisted of approximately 25 acres, 3.4 of which were located in the R-7 District, where the zoning ordinance provided a maximum impervious surface limitation of 40%. The remainder of the lot was located in the R-3 District, where the zoning ordinance provided a maximum impervious surface limitation of 28%. *Id.* at 292-293. All of the existing Baldwin School facilities were located on the R-3 District, where only 4,342 square feet remained available for impervious surface coverage; whereas, approximately 29,610 square feet remained available for impervious surface coverage on the R-7 portion of the site. *Id.*

In pursuing a special exception to construct the athletic facilities, Baldwin School contended that it should be permitted to use the entire unused impervious surface available for the whole parcel on the R-3 portion of the site, despite the fact that only 4,342 square feet was left from the 28% maximum permitted in the R-3. *Id.* at 294. Baldwin asserted that it should be permitted to “blend” the remaining impervious surface available from the R-7 portion of the site onto the R-3 portion. The Lower Merion Township ZHB, in approving the special exception, concluded that blending was not permitted under the zoning ordinance and held that the Baldwin

School must meet the impervious surface limitation for each zoning district without blending the allowed impervious surface across the zoning district boundary. Id.

On appeal, the Commonwealth Court addressed the blending issue and examined the opinion of the Court of Common Pleas of Montgomery County in *North Side Holding Co. v. Lower Merion Tp.*, 75 Montg. Co. L.R. 11 (1959), where the court examined the issue of how to apply maximum building coverage limitations for different zoning districts to split zoned lots. The Commonwealth Court cited the Montgomery County Court of Common Pleas' holding that "the permissible building area would be 70% of the C-2 zone including the automatic 50 feet extension² and 30% of the R-7 zone excluding the aforesaid 50 feet." Id. at 299. The Court of Common Pleas quoted the following rationale of the Montgomery County Court of Common Pleas:

The foregoing interpretation, however, is subject to the obvious intent of the ordinance to restrict a given use to its corresponding use zone. Thus the actual building must be restricted to the use zone to which the building is applicable. In other words, in this specific instance, the appellants desire to erect a building covering an area of 9869.75 square feet. The C-2 zone including the automatic 50 feet extension is 135 feet by 92 feet or 12,420 square feet. Seventy percent thereof is 8,694 square feet. The R-7 area exclusive of the foregoing 50 feet automatic extension is 135 feet by 150 feet or 20,250 square feet. Thirty percent thereof is 6,075 square feet. Thus the total permissible building area for the lot is 14,769 square feet. The appellants' proposed building therefore does not violate the building area limitations provided however in view of the nature of the building it must be contained exclusively on the C-2 zone including the automatic 50 feet extension.

Id.

The Montgomery County Court of Common Pleas held that blending is appropriate when applying differing area and bulk requirements to split zoned properties; however, the area and bulk requirements for each district must be applied to the portion of the split zoned property

² The Lower Merion Township Zoning Ordinance contains a boundary tolerance provision allowing the owners of split zoned lots to extend the regulations of the less restricted district into the more restrictive for a certain distance. No such provision is found in the Northampton Township Zoning Ordinance.

located in each district to arrive at the total area that may be blended across the district boundary line. *Id.* In adopting the rationale of the Montgomery County Court of Common Pleas, the Commonwealth Court held that this “interpretation as to how to apply area and bulk restrictions on split zoned lots is reasonable and appropriately resolves any interpretive doubts in a manner favorable to the landowner.” *Id.* at 299-300.

Here, the Township’s witness, Judith Stern Goldstein, applied the same rationale adopted by the Commonwealth Court in *In re: Appeal of the Baldwin School* when examining the maximum impervious surface allowed under the Northampton Township Zoning Ordinance on the Applicant’s split-zoned Property. She applied the R-2 Zoning District’s maximum impervious surface rate of 12% for all other permitted uses to the net site area of the portion of the Property located in the R-2 District (4.2352 acres) to arrive at a maximum impervious surface from the R-2 portion of the site of 0.508 acres. She applied the C-2 Zoning District’s maximum impervious surface ratio of 70% to the net site area of the portion of the Property located in the C-2 District (6.2977 acres) to arrive at a maximum impervious surface from the C-2 portion of the site of 4.408 acres.

Based upon the analysis of Ms. Stern Goldstein and the rationale of *In re: Appeal of Baldwin School*, the maximum impervious surface permitted on the Applicant’s split zoned Property is 4.916 acres. All of the plans proposed by the Applicant, including the original C-2 Plan, the VOD Plan, and the revisions to those plans to address the Shah easement, provide for impervious surface coverage in excess of 4.916 acres. Accordingly, the Applicant has failed to demonstrate compliance with the objective standards of the Zoning Ordinance which are required for approval of the proposed conditional use, and the Application must be denied on that basis.

The Applicant asserts that a shopping center containing a supermarket is permitted in the C-2 District by conditional use pursuant to Section 140-20.B(2)(d) of the Zoning Ordinance, which provides, in relevant part, as follows:

A. Use regulations in the C-2 District shall be as follows:

(2) Conditional Uses (see Article IX).

(d) Shopping Center, on a lot of at least five acres, subject to the regulations of §140-21C(3) through (5), (10) and (11). The foregoing regulations apply in addition to all other applicable standards set forth in the Zoning Ordinance.

Section 140-20.B(2)(d) of the Zoning Ordinance lists a number of provisions applicable to the C-3 District with which a Shopping Center in the C-2 District must comply, all of which apply to area and bulk requirements. Conspicuously absent from the C-3 District ordinance provisions listed is Section 140-20.B(2)(d) of the Zoning Ordinance is Section 140-21.B(1)(b), which provides that a shopping center in the C-3 District may contain “[g]eneral merchandise stores, including department stores, specialty clothing shops, supermarkets, lunch counters, delicatessens or restaurants (each meeting the definition of “restaurant”). As the Township Zoning Officer opined, Section 140-20.B(2)(d) allows a shopping center in the C-2 District but it does not specifically include a supermarket as one of the uses otherwise allowed in the C-2 District. The only section of the entire Zoning Ordinance where the term supermarket is used is the C-3 District provision quoted above. Moreover, no supermarkets have been developed in the Township except as part of a shopping center located in the C-3 District.

The purpose of the C-2 District is to provide convenient, pedestrian oriented facilities and personal service needs of local resident and to prevent unwarranted expansion of strip-type commercial development. (Zoning Ordinance, Section 140-20.A). The purpose of the C-3 District is to provide for a carefully designed community shopping center meeting the

commercial needs of the residents of the Township. (Zoning Ordinance, Section 140-21.A). The stated purpose of the C-2 District clearly indicates that the C-2 District is intended to provide less intensive commercial development than the C-3 District, which is specifically designated for carefully planned shopping centers.

The C-2 District regulations list several uses permitted by right in Section 140-20.B(1) of the Zoning Ordinance which are identical to many of the uses permitted as a component of a shopping center in the C-3 District. For instance, the uses listed in Section 140-20.B(1)(a), (b), (c) and (d) are identical to the uses permitted as a component of a shopping center in the C-3 district which are set forth in Section 140-21.B(1)(a), (c) and (d). Again, conspicuously absent from those uses permitted by right in the C-2 District are those set forth in Section 140-21.B(1)(b), which allows general merchandise store, including supermarkets, in the C-3 District as a component of a shopping center. No other provision authorizing the supermarket use is found anywhere in the Zoning Ordinance, and no supermarkets have been developed in the Township outside of the C-3 District, where they have been developed as part of shopping centers.

The Applicant argues that a supermarket is a type of retail store, which is permitted by right in the C-2 District pursuant to Section 140-20.B(1)(b); however, if the Township intended that result, there would be no need to add a separate provision in the C-3 District authorizing general merchandise stores, including supermarkets, as the C-3 District already contains a provision for retail stores which is identical to the C-2 provision found at Section 140-20.B(1)(b). By specifically authorizing supermarkets only in the C-3 District pursuant to Section 140-21.B(1)(b), it is clear that the Township did not intend the more general provisions allowing retail stores to include supermarkets.

As there is no provision of the Zoning Ordinance which allows a shopping center containing a supermarket to be developed in the C-2 District by conditional use, the Applicant's C-2 plan must be denied.

While the Applicant's failure to comply with the maximum impervious surface limitations in the Zoning Ordinance and the fact that a supermarket is not permitted in the C-2 District unless it is developed in accordance with the VOD regulations, are sufficient bases for denial of the Amended Application, the Board considered other ordinance provisions with which the Applicant has failed to demonstrate compliance with its VOD plan. Specifically, the Applicant has already demonstrated that it will not comply with a number of the Village Overlay District Design Requirements which regulate the location of buildings and other improvements within the VOD.

The Applicant asserts that it is not required to demonstrate compliance with those provisions as part of its conditional use application, on the theory that the conditional use, if granted, only authorizes the use of the Property, and the location of the buildings will be addressed at the land development stage. However, all of the evidence that the Applicant has submitted in an effort to demonstrate compliance with the specific criteria for the proposed use set forth in the Zoning Ordinance assumes that the buildings, parking areas, sidewalks, and other improvements will be as shown on the plans submitted by the Applicant during the hearings before the Board. The Applicant's traffic impact study, its alleged compliance with the applicable bulk and area regulations, including, but not limited to, parking, building coverage and impervious surface area, all assume that the Property will be developed in accordance with the plans submitted to the Board. Moreover, the Zoning Ordinance specifically provides that the plans submitted with a conditional use application must be designed in conformance with the

requirements of preliminary land development plan, which necessarily requires compliance with the provisions of the SALDO. (Zoning Ordinance, Section 140-38.A(1)).

Here, the Applicant's plans indicate that it will not comply with Section 118-40.A(3)(a), of the SALDO, which provides that the front façade of the building shall be oriented towards the street with the highest functional classification in terms of vehicular and pedestrian volumes. As the Township's land planner, Judith Stern Goldstein, testified, the portion of Second Street Pike between the intersection with Bustleton Pike and the intersection with Almshouse Road has a higher functional classification, and the front façade of the proposed supermarket is not oriented toward that street.

The Applicant has also demonstrated that it will not comply with Section 118-40.A(3)(c), which requires the entrance to buildings located on a corner of intersecting streets to be located on the corner with an enhanced element or feature. The proposed supermarket, as depicted on Exhibits A-6 and A-10, is located on the corner of intersecting streets; however, the entrance to the building is not located at the corner of the intersecting streets. Instead, the building is oriented toward one of the legs of the intersecting streets.

Perhaps the most significant VOD design criterion with which the Applicant has not complied is Section 118-40.A(5)(b), which provides that areas designated for off-street parking and loading shall not be a dominant design feature of the building or streetscape. As Ms. Goldstein testified, there is a sea of parking located along Second Street Pike, and it is the major design feature of the proposed development along the streetscape for the portion of Second Street Pike between the intersection with Bustleton Pike and the intersection with Almshouse Road.

While that Applicant asserts that it cannot be forced to demonstrate compliance with the provisions of the SALDO at the conditional use stage no matter what the Zoning Ordinance says,

there is at least one recent Commonwealth Court decision which holds otherwise. In *K. Hovnanian Acquisitions of Pennsylvania, LLC v. Newtown Township*, 954 A.2d. 718 (2008), the applicant sought conditional use approval to develop a parcel of property as “elderly housing”. The Joint Municipal Zoning Ordinance included a provision requiring the applicant to comply with applicable requirements of the zoning ordinance and all municipal ordinances. *Id.* at 725. The Newtown Township SALDO included a provision which limited the length of cul-de-sacs to no more than 800 feet, and the applicant proposed two cul-de-sacs of 1700 feet and 1350 feet in length. *Id.* The Newtown Township Board of Supervisors denied the application for a number of reasons, including the applicant’s failure to comply with the maximum cul-de-sac length provision in the SALDO. *Id.*

On appeal, the applicant asserted that the board erred in denying its application for failure to comply with the SALDO. *Id.* The Commonwealth Court held that, while the MPC provides that a governing body may grant a modification of SALDO requirements under certain circumstances (see 53 P.S. §10512.1(a)), the governing body does not have the power to grant modifications of SALDO provisions in the context of a conditional use application. *Id.* Although the applicant could have sought subdivision and/or land development approval simultaneously with the conditional use approval, thereby providing the opportunity to obtain a waiver from the provision of the SALDO with which it failed to comply, the applicant did not do so. Accordingly, the board did not have jurisdiction to waive the SALDO requirement and properly denied approval of the conditional use for failure to comply with the maximum cul-de-sac length limitation. *Id.*

As set forth above, the Zoning Ordinance requires an applicant for conditional use to submit plans which demonstrate compliance with the requirements for a preliminary subdivision

or land development plan. The Applicant's witnesses conceded that they were aware that the plans must demonstrate compliance with some of the sections of the SALDO, but they chose not to comply with the VOD design criteria described above. As the *K. Hovnanian* case illustrates, where, as here, the applicant's plans demonstrate that the proposed use will not comply with provisions of the SALDO that cannot be waived by the Board in the context of a conditional use proceeding, the Board must deny the conditional use application for failure to comply.

Even if the Applicant met the requirements of the Zoning Ordinance, which it does not, the Application is denied because the Application is harmful to the public health, safety and welfare. The traffic impact study submitted by the Applicant was based on unfounded assumptions, including the analysis of the impact of the traffic during the opening year and five years after development. The Applicant's own traffic engineer, testified that the proposed development will not open in 2011, the year studied as the opening year in the Applicant's traffic impact study, and admitted that the opening year might easily be 2016, the year which was assumed as five-years post-development. The Applicant's traffic impact study provides very little useful information, as the years which the Applicant analyzed are based upon the unfounded assumption that the Property will be developed in the 2011.

The Applicant asserts that it was not required to present evidence regarding the traffic impact of the proposed development because there is no provision in the Zoning Ordinance which requires it do so. The Applicant concedes that Section 140-37.C(5) of the Zoning Ordinance provides that the Board shall consider the potential physical impact upon the nearby streets, roads and highways in terms of vehicular traffic and pedestrian safety, but still asserts that it had no affirmative duty to present a traffic study in support of its Application. However,

the Applicant ignores Section 140-37.D(2) of the Zoning Ordinance, which provides that the Board may require specific studies prior to or subsequent to approval of the use, including, but not limited to, traffic impact analyses.

The Applicant was specifically advised during the Planning Commission review that a traffic impact study would be required for the conditional use approval, and submitted its traffic study to the Northampton Township Planning Commission. Prior to the commencement of the conditional use hearings, the Applicant was informed by the Planning Commission and its consultants that the study should be revised to address specific items raised by the Township Engineer, including, but not limited to, a revision to remove the Giamo/Giuseppe improvements (see Exhibit T-2), but the Applicant did not revise its traffic impact study prior submitting it to the Board.

As the traffic engineers for the Township and the Protestants credibly demonstrated, the Applicant's traffic impact study is based upon incorrect assumptions regarding the opening year for the development and assumes the installation of traffic improvements which may never be installed. In addition, the proposed improvement of taking away the entire inside northbound lane of travel on 2nd Street Pike between its intersection with Bustleton Pike and Almshouse Road was found to be a reckless danger to the driving public. This would in effect remove one of only two already overburdened lanes of travel through the heart of Richboro. Instead of lessening traffic conflicts it would only needlessly increase them.

If implemented, drivers would be permitted, indeed encouraged, to travel either north OR south in one of the four busiest travel lanes in the Township as they attempted to make "center" (but really, off center) left turns across traffic in either direction. This was disconcertingly characterized by Applicant's Traffic Engineer as an "improvement" but was more aptly

described during Public Comment as a "Suicide Lane" since it would encourage dangerous head-on vehicle movements as drivers raced down the middle of Richboro in a dedicated lane that was open to oncoming traffic in either direction as drivers attempted making their respective left turns. (N.T., 8/4/11, pp. 397, 405-406; Exhibit A-20; and N.T. Oct. 11, 2011). The dangers to drivers, passengers and pedestrians posed by implementing such a "Suicide Lane" right in the heart of Richboro are obvious, intolerable, and cannot be condoned in good conscience by this Board.

The Township's traffic engineer, Mr. DeSantis, when performing his own analysis, credibly concluded that the proposed development would create significant additional and unsafe delays at the intersection of Second Street Pike and Almshouse Road, and that there will be unacceptable delays for the left turn movement from the northern access drive onto Second Street Pike. Moreover, Mr. DeSantis also credibly demonstrated that the queue lengths for the northbound traffic at the intersection of Second Street Pike and Almshouse Road will present a dangerous condition, especially if the Applicant installs the two-way, head-on "Suicide Lane" it denominates as an "improvement" with its proposed Application.

The Applicant's own traffic engineer also conceded that, while his analysis assumes that the four units in the Church Building will be specialty retail uses, it is likely that those units will be used for general retail or restaurant uses, which generate still more traffic than specialty retail. The alternative trip generation analysis prepared by Mr. DeSantis, and his subsequent level of service analysis based upon that trip generation study, clearly demonstrate that the Applicant's proposed standalone supermarket with four additional uses creates a significantly different impact upon the traffic in the surrounding area than a typical shopping center.

And in fact, all three traffic engineers agreed that the Applicant's proposed use is not a shopping center as that term is classified in the ITE Trip Generation Manual. All agreed that the proper classification of the use for the purpose of analyzing traffic generation would include a standalone supermarket, with four additional uses that could be general retail, specialty retail, restaurant or some other use. However, Mr. DeSantis discussed the differences between a shopping center and a standalone supermarket as those uses are classified in the Trip Generation Manual and concluded that one of the major differences between the two uses is the number of internal trips generated by a shopping center and the corresponding reduction in the number of external trips for a shopping center.

Mr. DeSantis prepared an alternative trip generation study based upon a typical shopping center comprising the same amount of square footage proposed by the Applicant for the standalone supermarket and four additional units, as well as a level of service analysis based upon that alternative trip generation study. Mr. DeSantis' analysis reveals that a typical shopping center would generate 927 fewer trips per day than the Applicant's proposed standalone supermarket, including 100 fewer trips during the weekday afternoon peak hour. Mr. DeSantis testified that the left turn movement for the northern access driveway at the afternoon peak with the proposed standalone supermarket provides a Level of Service E with a delay of 43 seconds, while the typical shopping center of comparable size would provide an acceptable Level of Service D with a 30 second delay.

Mr. DeSantis further credibly demonstrated through his own analysis that that the traffic-related improvements proposed by the Applicant are not sufficient to ameliorate the adverse impact upon the surrounding area resulting from the increased traffic that the Applicant's standalone supermarket will generate. Mr. DeSantis also testified that the greatly increased

traffic volume caused by shoe-horning this Big-Box Giant into a C-2 District, actually warrants the placement of a red light to control traffic. Mr. DeSantis, however, candidly admitted that PennDOT would never approve a red light at the busy north entrance to this supermarket because it was too close to the existing red lights at 2nd Street & Bustleton Pike to the south and the red light to the north at 2nd Street & Almshouse Road. Since both of these existing red lights are within several hundred feet of the proposed north-entrance abutting Ohev Shalom synagogue, Mr. DeSantis credibly testified that PennDOT would not approve a third red light between the two. Without a red light to control traffic, the safety of the public is recklessly endangered by this too intensive development that is neither permitted in a C-2 District or which has been planned to comply with the specific Village Overlay design.

Again, this case is not a matter where a development that is typical of that permitted in the zoning district by conditional use will simply put more traffic onto congested highways. The increased traffic and the adverse effect upon the nearby streets, roads and highways in terms of vehicular traffic and pedestrian safety is not due to the existing conditions or additional traffic created by a use which is typical of that permitted in the zoning district by conditional use. This is a matter where the proposed development is atypical, as it is not a shopping center by any reasonable traffic engineering analysis. Mr. DeSantis testified that the additional traffic created by this proposed, atypical development will create multiple dangerous conditions due to increased delays for left turn movements at the nearby intersections that may cause drivers to attempt to turn into traffic before there is a safe gap in the traffic flow.

As the fact finder and judge of credibility of the witnesses presented, this Board

unanimously determined that the testimony provided by the traffic experts for the Township and Intervenor-Protestants was more credible, and more accurately depicted the impact of vehicular traffic from the proposed development than the testimony of Applicant-Richboro Partners' traffic expert. Since conditional use applications, similar to special exceptions, fall to the governing body to decide, the role of the governing body, is that of fact finder. *SPC Co., Inc. v. Zoning Bd. of Adjustment of the City of Philadelphia*, 773 A.2d 209, 213 (Pa. Cmwlth. 2001), *appeal denied*, 697 A.2d 302 (Pa. 2002).

The Board abuses its discretion only if its findings are not supported by relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Joseph v. North Whitehall Bd. of Supervisors*, 16 A.3d 1209, 1215, (Pa. Cmwlth. 2011). Determinations as to credibility of witnesses and the weight to be given to evidence are matters left solely to the discretion of the Board in its role as fact finder. Indeed, the Pennsylvania Supreme Court recently reiterated that the "Board as fact-finder is the sole judge of credibility and conflict in the testimony and has the power to reject even un-contradicted testimony that the Board finds to be lacking in credibility. *See Nettleton v. Zoning Bd. of Adjustment*, 574 Pa. 45, 58 (Pa. 2003).

We find that the evidence presented by the Township and Intervenor-Protestants in objection to the conditional use applications under the C-2 and VOD plans was more credible than the evidence presented by Applicant Richboro Partners. The expert witnesses offered by the Township and Intervenor-Protestants, credibly testified in comprehensive detail how Applicant's conditional use, if granted, would substantially and detrimentally affect the health, welfare, and safety of the Township, its residents and general public. We find the evidence and expert testimony presented to be comprehensive, detailed and credible.

For this reason and those addressed above, Applicant's conditional use applications under the C-2 and VOD Plans, as amended, are denied in their entirety.

CONCLUSIONS OF LAW

1. The Applicant is the equitable owner of the Property and has the requisite interest in the subject premises to present its application for conditional use approval to the Board.
2. The Board met the requirements of the Zoning Ordinance of Northampton Township and the Pennsylvania Municipalities Planning Code as to the requisite legal notices of the hearings held on the application.
3. The Property is located partially within the R-2 Zoning District and partially within the C-2 Zoning District.
4. A supermarket is not permitted in the C-2 Zoning District, unless the property is located in the Village Overlay District, where a supermarket is permitted to be located within a shopping center by conditional use but only if it complies with all other provisions mandated by the Village Overlay District Regulations.
5. The Applicant's C-2 Plans (Exhibits A-2 and A-9) must be denied because a supermarket is not permitted in the C-2 District.
6. The maximum permitted impervious surface ratio for the portion of the Property located in the R-2 District is 12%.
7. The maximum permitted impervious surface ratio for the portion of the Property located in the C-2 District is 70%.

8. The maximum permissible impervious surface area permitted on the Property is determined as follows:
- a. The maximum impervious surface ratio for the R-2 District of 12% is applied to the net site area of the portion of the Property located in the R-2 Zoning District to arrive at the maximum impervious surface area for the R-2 portion of the Property;
 - b. The maximum impervious surface ratio for the C-2 District of 70% is applied to the net site area of the portion of the Property located in the C-2 Zoning District to arrive at the maximum impervious surface area for the C-2 portion of the Property; and
 - c. The maximum impervious surface area for the R-2 portion of the Property and the maximum impervious surface area for the C-2 portion of the Property are added together to arrive at the maximum impervious surface area permitted on the entire Property.
9. The maximum impervious surface area permitted on the Property is 4.916 acres.
10. The maximum permitted impervious surface area for the Property may be blended so as to be located entirely on the C-2 portion of the Property.
11. The Applicant's conditional use plans for the Village Overlay District (Exhibits A-6 and A-10) provide for 5.3018 acres of impervious surface.
12. The Applicant's conditional use plans for the Village Overlay District (Exhibits A-6 and A-10) do not comply with the maximum impervious surface limitations set forth in the Zoning Ordinance.

13. The Applicant has demonstrated that it will not comply with the requirements of the SALDO required for preliminary land development approval, including the Village Overlay District design criteria set forth in Sections 118-42.A(3)(a), 118-42.A(3)(c) and 118-42.A(5)(b) of the SALDO.

14. The Applicant's traffic impact study is based upon erroneous assumptions and provides invalid conclusions.

15. For the purpose of predicting trips generated from the Applicant's proposed development, the proposed shopping center is a standalone supermarket with four, small uses of an indefinite nature.

16. The Applicant's proposed development will generate greatly increased traffic volume that is not typical of a shopping center.

17. The greatly increased traffic generated by the Applicant's proposed development will create substantial, obvious and real dangers that greatly and significant adverse impact upon the public health, safety and general welfare.

18. The Applicant failed to meet its burden of proof that it has complied with the requirements for conditional use approval to use the property as a shopping center with a supermarket pursuant to the VOD regulations.

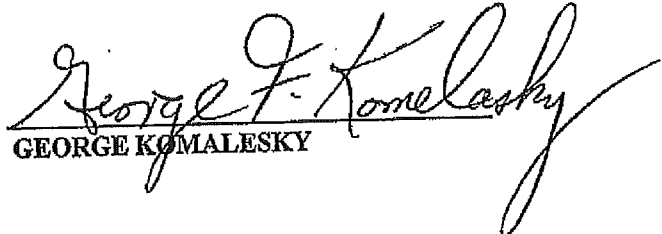
DECISION AND ORDER

AND NOW, after public hearings held on the applications for conditional approval submitted by applicant, Richboro Partners CP Partners, LLP, under the C-2 and VOD plans, as amended, and pursuant to a public vote by the Board of Supervisors of Northampton Township, the Board of Supervisors does hereby formally **ADOPT** the above **FINDINGS OF FACT, DISCUSSION & ANALYSIS, AND CONCLUSIONS OF LAW**. The Board hereby further **RATIFIES** its Decision

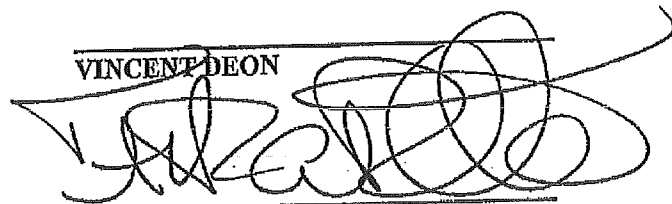
of December 14, 2011 and does hereby Order and Direct that the applications for conditional use approval under both the C-2 and VOD plans, as amended, are hereby DENIED.

THIS WILL SERVE AS THE REQUIRED WRITTEN NOTICE AND DECISION THAT YOUR APPLICATION HAS BEEN HEARD AND A DECISION HAS BEEN MADE BY THE BOARD OF SUPERVISORS OF NORTHAMPTON TOWNSHIP, IN ACCORDANCE WITH THE TOWNSHIP'S ZONING ORDINANCE AND THE PENNSYLVANIA MUNICIPALITIES PLANNING CODE. IF YOU, OR ANY OTHER PARTY OF INTEREST, WISH TO APPEAL THIS DECISION, YOU MAY DO SO ACCORDING TO PENNSYLVANIA LAW, AND GENERALLY, YOU HAVE THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE TO FILE AN APPEAL WITH THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA.

NORTHAMPTON TOWNSHIP BOARD OF SUPERVISORS:



GEORGE KOMALESKY

VINCENT DEON


FRANK ROTHERMEL



JAMES CUNNINGHAM



EILEEN SILVER