

**MANALAPAN ZONING BOARD OF ADJUSTMENT
MINUTES OF THE REGULAR MEETING
Thursday, August 20, 2020
TOWNSHIP OF MANALAPAN
Manalapan, NJ 07726**

PUBLIC MEETING~ HD OFFICE SUITES

**DUE COVID-19, IN ACCORDANCE WITH GOVERNOR MURPHY'S EXECUTIVE
ORDER NO. 107, THE PUBLIC WAS PERMITTED TO PARTICIPATE IN THIS
MEETING VIA HD OFFICE SUITES BY ACCESSING THE LINK AND MEETING ID**

Join Office Suite Meeting

<https://meeting.windstream.com/j/11114976662?pwd=Vk81SFdsTkFveGVrTFFKTmdlN2tMQT09>

Password: Aug202020

Open Public Meetings Act: Stephen Leviton

Roll Call: Janice Moench

In attendance at the meeting: Mollie Kamen, Terry Rosenthal, Larry Cooper,
Eliot Lilien, Robert Gregowicz, David Schertz,
Robert DiTota, Basil Mantagas, Stephen
Leviton

Absent from the meeting: Adam Weiss

Also, present John Miller, Esq., Zoning Board Attorney
Brian Boccanfuso, Zoning Board Engineer
Jennifer Beahm, Zoning Board Planner
Nancy DeFalco, Zoning Officer
Janice Moench, Recording Secretary

MINUTES:

A Motion was made by Mr. Cooper, Seconded by Mr. Gregowicz, to approve the Minutes of **August 6, 2020** as written.

Yes: Kamen, Rosenthal, Cooper, Gregowicz, Schertz, DiTota, Mantagas,
Leviton

No: None

Abstain: None

Absent: Weiss

Not Eligible: Lilien

RESOLUTIONS:

A Motion was made by Mr. Cooper, Seconded by Mr. Gregowicz
to approve the Resolution of memorialization for **Application ZBE1953,**
G and N Realty Holding, LLC

Yes: Kamen, Rosenthal, Cooper, Gregowicz, Schertz, DiTota, Leviton
No: None
Abstain: None
Absent: Weiss
Not Eligible: Lilien, Mantagas

A Motion was made by Mr. Schertz, Seconded by Mr. Cooper
to approve the Resolution of memorialization for **Application ZBE1942, Patel**

Yes: Rosenthal, Cooper, Gregowicz, Schertz, Leviton
No: None
Abstain: None
Absent: Weiss
Not Eligible: Kamen, Lilien, DiTota, Mantagas

A Motion was made by Mr. Cooper, Seconded by Ms. Kamen
to approve the Resolution of memorialization for **Application ZBE2013,**
Pearlman

Yes: Kamen, Rosenthal, Cooper, Gregowicz, Schertz, DiTota, Leviton
No: None
Abstain: None
Absent: Weiss
Not Eligible: Lilien, Mantagas

A Motion was made by Mr. Gregowicz, Seconded by Mr. DiTota
to approve the Resolution of memorialization for **Application ZBE2019,**
Sevinsky

Yes: Kamen, Rosenthal, Cooper, Gregowicz, Schertz, DiTota Leviton
No: None
Abstain: None
Absent: Weiss
Not Eligible: Lilien, Mantagas

A Motion was made by Mr. Rosenthal, Seconded by Mr. Cooper to approve the Resolution of memorialization for **Application ZBE2020, Soriano**

Yes: Kamen, Rosenthal, Cooper, Gregowicz, Schertz, DiTota, Leviton
No: None
Abstain: None
Absent: Weiss
Not Eligible: Lilien, Mantagas

PUBLIC HEARINGS:

Application No. ZBE2011 (carried from 7.16.20)

Applicant: Yum & Chill TB Holdings, LLC
Proposal: Demo service station/Proposed Taco Bell Restaurant
Request: Preliminary & Final Major Site Plan w/Use Variance & FAR
Location: 199 Highway Route 9 South
Block/Lot: 18.01/1.03
Zone: OP3

Peter Licata, Esq. of Sonnenblick, Parker and Selvers was present on behalf of the applicant. Mr. Licata explained the applicant would provide additional testimony from their traffic engineer Jay Troutman. Providing testimony for the first time would be Professional, Planner, John Chadwick. Also in attendance for additional testimony as needed is Marc Leber, Project Engineer and Nirav Mehta a principle owner of Yum & Chill Tb Holding, LLC. The application was carried to the October 15, 2020 Zoning Board Meeting

Please refer to the attached transcript provided by court reporter, Betsy Candiotti.

ADJOURNMENT:

A Motion was offered by Mr. DiTota to adjourn the meeting at 11:00 PM. All were in favor and none opposed.

Respectfully Submitted,



Janice Moench
Recording Secretary

RECORDED VIDEO OF THE ZONING BOARD OF ADJUSTMENT ARE AVAILABLE FOR REVIEW, IN THE PLANNING/ZONING BOARD OFFICE BY APPOINTMENT.

TOWNSHIP OF MANALAPAN
ZONING BOARD OF ADJUSTMENT
THURSDAY, AUGUST 20, 2020
Commencing 7:41 p.m.

In The Matter of:

YUM & CHILL TB HOLDINGS, LLC
199 Highway Route 9 South

Application No. ZBE2011

TRANSCRIPT OF
PROCEEDINGS VIA
VIDEOCONFERENCE

B E F O R E:

STEPHEN LEVITON, Chairman
LARRY COOPER, Vice Chairman
MOLLIE KAMEN
ROBERT GREGOWICZ
DAVID SCHERTZ
TERRY ROSENTHAL
ELIOT LILIE
ROBERT DiTOTA
BASIL MATAGAS
BRIAN BOCCANFUSO, P.E., Board Engineer
JENNIFER BEAHM, P.P., Board Planner
JOHN P. MILLER, ESQ., Board Attorney
NANCY DeFALCO, Zoning/Code Enforcement/Admin. Officer
JANICE MOENCH, Board Secretary

A P P E A R A N C E S:

SONNENBLICK, PARKER & SELVERS, P.C.
Attorneys for the Applicant
BY: PETER G. LICATA, ESQ.

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TOWNSHIP OF MANALAPAN ZONING BOARD YUM & CHILL TB HOLDINGS, LLC, 8/20/20

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1 JAY TROUTMAN, was duly sworn/affirmed
 2 and testified under his oath/affirmation as
 3 follows:
 4 MR. MILLER: Thank you very much. Please
 5 state and spell your name for the record.
 6 MR. TROUTMAN: Jay Troutman,
 7 T-r-o-u-t-m-a-n.
 8 MR. MILLER: Thank you very much.
 9 MR. TROUTMAN: Thank you.
 10 FURTHER DIRECT EXAMINATION BY MR. LICATA:
 11 Q. Good evening, Jay. When you appeared
 12 last time, there were a number of questions and
 13 requests for additional information and research,
 14 were there not?
 15 A. Yes, I have a copious list of notes from the
 16 last hearing.
 17 Q. Thank you. And did you, in fact, take
 18 additional investigation, study and interview of the
 19 applicant into the questions that were noted during
 20 that prior hearing?
 21 A. Yes, I did.
 22 Q. Thank you. Did you also file a written
 23 report summarizing those findings on or about July
 24 31st to the Zoning Board?
 25 A. Yes.

3

1 CHAIRMAN LEVITON: All right, now we're
 2 going to enter into the public hearing portion of
 3 tonight's meeting, and there is only one application
 4 to be heard tonight. It's been carried from
 5 July 16th. It is Number ZBE-2011. The applicant is
 6 Yum & Chill TB Holdings, LLC. We welcome them back.
 7 And on behalf of Yum & Chill, Mr. Licata.
 8 MR. LICATA: Thank you, Mr. Chair,
 9 members of the Board, professionals and staff. Peter
 10 G. Licata of the law firm of Sonnenblick, Parker and
 11 Selvers of Freehold, New Jersey on behalf of the
 12 applicant.
 13 Our intended order of presentation
 14 tonight would be to provide additional testimony from
 15 our traffic engineer, Mr. Jay Troutman, as well as
 16 testimony for the first time from our Professional
 17 Planner, John Chadwick.
 18 Also in attendance as needed are Marc
 19 Leber, our Professional Engineer/project engineer, as
 20 well as Mr. Nirav Mehta, a principal of the
 21 applicant.
 22 At this point I would ask that we call
 23 Jay Troutman to be sworn in again, please.
 24 CHAIRMAN LEVITON: Welcome back, Mr.
 25 Troutman. Mr. Miller will swear you in again.

5

Direct - J. Troutman - Licata

1 Q. Thank you. Could you share with the
 2 Board what you reviewed and the information that you
 3 have compiled?
 4 A. Yes, I will. The main piece that I'd like to
 5 discuss tonight is the site-specific data that the
 6 Board and their professionals had requested. So my
 7 number one task was to find a good comparable site
 8 to go do this study at and to find a good day to
 9 find some peak loading at that site, and I think I
 10 accomplished both.
 11 The site is an existing Taco Bell, on the
 12 same highway, Route 9, in the same county, Monmouth
 13 County, and it's in Howell Township at Route 9 and
 14 Aldrich Road. It's got a somewhat similar layout
 15 and configuration, so it lends itself well to
 16 comparison to the plan that's before you.
 17 The next task was to find a day, a normal
 18 good weather day when people would be using the
 19 site, and I, based on the data I'm going to present,
 20 I was able to accomplish that as well, and I had the
 21 advantage of this pandemic, which has caused, by
 22 countless reports, all time highs, all time high
 23 usage of drive-through facilities. I've experienced
 24 that at other uses and we found that at this site as
 25 well.

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Direct - J. Troutman - Licata

1 So what I did was I went out to the site
 2 during a lunch peak hour. The date was Wednesday,
 3 July 22, 2020 and the time period was 12 noon to
 4 2:15 p.m., so that's a 135-minute time period of
 5 study.
 6 And basically what the study consisted of was
 7 getting -- by noting how many cars were parked on
 8 the site at the beginning of the study, and for your
 9 information at 12 noon there were two customer
 10 vehicles and four employee vehicles for a total of
 11 six vehicles at the start of the study at 12 noon.
 12 And then from there, each vehicle that
 13 entered the site was noted, including the time it
 14 entered, a description of the vehicle and its
 15 destination. And there are two destinations; the
 16 drive-through window or a parking space. Each
 17 vehicle that exited the site was noted, along with
 18 the time it departed.
 19 In addition, the number of cars from the menu
 20 board back was noted for each minute of the study.
 21 So our concern here in Manalapan is people stopping
 22 at that order board and how far back does that
 23 stack.
 24 And that's going to stack back for two
 25 reasons. It's going to stack back if the pickup

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Direct - J. Troutman - Licata

1 was summarized in my report. And within that
 2 135 minutes we found the highest hour. That's
 3 called the peak hour. And we found that -- I had
 4 presented last time NJDOT would predict 128 peak
 5 hour trips for this site as a generic fast food with
 6 drive-through, and the Howell site was 120. So very
 7 close -- those intervals of trips are summarized in
 8 my report.
 9 I will note that at the time of the study
 10 indoor dining was not permitted, so the majority of
 11 the customers were using the drive-through window.
 12 That window activity was heavier than would normally
 13 occur if there was not indoor dining restrictions.
 14 I will also note that some vehicles took a
 15 parking space after exiting the drive-through for
 16 the purpose of eating in their car or waiting in a
 17 space for their order to be brought out to them.
 18 Some people were told, you know, leave the window,
 19 go park, we'll bring your order out so they could
 20 keep the line moving. These vehicles were included
 21 in the parked vehicle counts that are in our report,
 22 so if somebody pulled and took a spot that was
 23 noted, that the parking just went up by one as they
 24 went into the spot.
 25 There were four employee vehicles parked

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Direct - J. Troutman - Licata

1 window isn't processing quick enough and people,
 2 they may have placed their order but they can't move
 3 because there's five cars in front of them waiting
 4 to pick up, or that can stack up if somebody is
 5 staying at the speaker for a long time, putting in
 6 an order or not getting attended to right away. And
 7 both of those things happen.
 8 But it really doesn't matter what the reason
 9 is. We want to know how far back those cars stack.
 10 So those were noted for every minute of the study.
 11 And then at the end we all -- we did a count
 12 of the number of cars parked on the site at the end,
 13 and it was similar to what was at the beginning.
 14 There was one customer vehicle and four employee
 15 vehicles for a total of five cars parked at 2:15.
 16 I will tell you that during the period that
 17 parking number went up, but at the beginning and
 18 end, which is why you can kind of tell the site had
 19 settled back down, and it was kind of quiet when we
 20 got there, we saw the main crunch time during the
 21 study period.
 22 What we were able to distill from all of that
 23 were several things. Number one, we could verify
 24 the trip generation, because we counted every car
 25 that came in and every car that came out. And that

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Direct - J. Troutman - Licata

1 during the entire count period, and the total
 2 parking never exceeded 12. And there were also some
 3 employees that were dropped off and picked up.
 4 We'll also note that -- just bear with me for
 5 a moment. Something happened on my computer here.
 6 Okay. I apologize. We'll also note that 100
 7 percent of the cars that came on the site were cars
 8 and pickup trucks. There were no vehicles with
 9 trailers or delivery trucks during the count period.
 10 Regarding queueing, the length of the queue
 11 from the menu board back into the parking lot varied
 12 widely during the count period. Again, the
 13 drive-through was being used more heavily than
 14 normal. When the longer queues occurred, they were
 15 blocking empty parking spaces because the
 16 drive-through demand was high and the parking demand
 17 was low. I think under normal conditions the
 18 drive-through queues would be shorter and the
 19 parking usage would be higher.
 20 And then we just, we put a table in the
 21 report that basically breaks down the size of the
 22 queues so that we could compare it to the plan that
 23 we're discussing in Manalapan.
 24 So there was one category of queues I'll call
 25 zero to three vehicles, and that's the good

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Direct - J. Troutman - Licata

1 **category. That's what we want to happen most of the**
 2 **time because that means that regular customer**
 3 **parking spaces aren't going to be blocked on the**
 4 **Manalapan plan. So that size queue occurred for**
 5 **75 minutes out of the 135 minutes, about 56 percent**
 6 **of the study period.**

7 **And then increasing, four vehicle queues**
 8 **occurred for 17 minutes, five vehicle queues for**
 9 **17 minutes, six vehicle queues for 18 minutes. The**
 10 **seven vehicle queue occurred for five minutes, and**
 11 **then the eight to ten vehicle queue occurred for**
 12 **three minutes, or two percent of the study period.**

13 **So this was kind of a way just to tabulate**
 14 **what I was trying to describe last time when Brian**
 15 **was asking questions about what's my opinion of the**
 16 **queue, and obviously these queues are very fluid;**
 17 **they're going to come and they're going to go, and**
 18 **this gives us an idea of how large they are and for**
 19 **how long.**

20 **And, you know, based on this -- and attached**
 21 **to the report you could see all the columns of data,**
 22 **you know, when a car entered, did it go in the**
 23 **drive-through or a parking spot, when it exited the**
 24 **site, how many were parked in any given minute and**
 25 **how much the queue was. All those little**

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Direct - J. Troutman - Licata

1 **observations are in the back of the report, all**
 2 **those little details.**

3 **But basically, you know, our finding was that**
 4 **this sort of substantiates this use as a traditional**
 5 **fast food use in terms of trip generation. The**
 6 **parking was a little bit low; it's only 12. We're**
 7 **going to have 25 in Manalapan, so we have plenty of**
 8 **room if that number comes back up if we get back to**
 9 **indoor dining.**

10 **But basically that was our finding, was that**
 11 **the traffic report assumptions in the prior**
 12 **testimony were sort of confirmed, you know, by what**
 13 **we saw and that the site plan that you're looking at**
 14 **here is going to work just like that site and all**
 15 **the other Taco Bell sites that we've had experience**
 16 **with.**

17 **So I'll pause for a moment. I know I threw a**
 18 **lot at you there. And I don't know if there's any**
 19 **follow-up. I'm sure there's going to be discussion.**
 20 **But that summarizes.**

21 **CHAIRMAN LEVITON: Thank you, Mr.**
 22 **Troutman. Did you get a chance to observe what**
 23 **happens at Taylor Mills Road regarding queueing at**
 24 **the existing fast food restaurant there?**

25 **MR. TROUTMAN: Yes. Yes.**

12

1 **CHAIRMAN LEVITON: Could you speak to**
 2 **that, please? And then I'm going to ask Mr. Licata**
 3 **to call Mr. Chadwick and have the Board and**
 4 **professionals hold their questions until after his**
 5 **affirmative case has been fully presented.**

6 **MR. TROUTMAN: Okay. Thank you. Yes, I**
 7 **did go sit at the Wendy's site during the dinner peak**
 8 **hour, and I also did some measurements. And I think**
 9 **that drive-through system is -- has similar storage**
 10 **capacity around the building and back out towards**
 11 **Route 9. And basically you could store about the**
 12 **same amount of vehicles on that site as you're going**
 13 **to be able to store on this site if there's a long**
 14 **queue.**

15 **I observed one brief stage where a car**
 16 **pulled in off of Route 9 and they were the last car**
 17 **that could fit on the site. So if another car had**
 18 **shown up, it was going to be on the Route 9 shoulder.**
 19 **And then immediately after that, three people bailed**
 20 **out of the line. Two people left the site completely**
 21 **and one person took a parking spot and was figuring**
 22 **out how to order through the dining room.**

23 **And that's consistent with what I've**
 24 **seen. I think once that line gets to a certain**
 25 **point, people are going to choose other options. And**

13

1 **I actually saw that for myself. Once that line**
 2 **reaches that point, people vie for other options to**
 3 **get it done quicker, and it's sort of a**
 4 **self-regulating thing.**

5 **So I think the Taco Bell site plan is**
 6 **going to operate that way. The people aren't going**
 7 **to join a line where the wait's going to be too long.**

8 **CHAIRMAN LEVITON: Thank you so much.**
 9 **MR. LICATA: Thank you, Jay. At this**
 10 **point I would ask Mr. Chadwick to make himself known**
 11 **in the window boxes and be sworn in.**

12 **MR. CHADWICK: Good evening.**
 13 **MR. LICATA: Good evening, John. Could**
 14 **you state your name, address and professional**
 15 **qualifications for the record so that Mr. Miller can**
 16 **then -- well, let's let Mr. Miller swear you in**
 17 **first.**

18 **JOHN CHADWICK, P. P., was duly**
 19 **sworn/affirmed and testified under his**
 20 **oath/affirmation as follows:**

21 **MR. MILLER: Thank you very much. Please**
 22 **restate your name for the record.**

23 **MR. CHADWICK: My name is John Chadwick,**
 24 **C-h-a-d-w-i-c-k. I'm a licensed Professional Planner**
 25 **in the State of New Jersey and have been for some**

14

1 time. My background is an undergraduate degree from
 2 Rutgers and a graduate degree, a Master's in City
 3 Regional Planning/architectural design from Pratt
 4 Institute in Brooklyn, New York.
 5 I've served municipalities and private
 6 clients throughout the State. In fact, a number of
 7 years ago I was the planner for Manalapan Township.
 8 CHAIRMAN LEVITON: Thank you, Mr.
 9 Chadwick. The Board accepts your credentials.
 10 MR. LICATA: Thank you.
 11 DIRECT EXAMINATION BY MR. LICATA:
 12 Q. John, could you share with the Board what
 13 materials you reviewed in preparation for your
 14 testimony tonight?
 15 A. **First I was present at the previous hearing in
 16 July and have reviewed all the reports from the
 17 professionals, appropriate sections of the zoning
 18 ordinance and Master Plan of the community.**
 19 Q. Thank you, John. And obviously you've
 20 reviewed the plans and so forth?
 21 A. **Yes.**
 22 Q. Thank you. Could you explain to the
 23 Board the variance relief that we're seeking tonight
 24 and the burdens of proof that we have to establish in
 25 that regard?

15

Direct - J. Chadwick, P.P. - Licata

1 **A. The report from Jennifer -- my latest report is
 2 June 25th. I don't believe there's been another
 3 report issued.**
 4 MR. LICATA: I'm just pulling up my
 5 copies.
 6 MS. BEAHM: That's the latest one, Mr.
 7 Chadwick. That is my last report.
 8 **A. Jennifer outlines what needs to be discussed as
 9 part of this application.**
 10 **The first issue would be particular
 11 suitability. This is a State -- or U.S. land
 12 service highway. It clearly is -- meets the
 13 standard for site suitability. It's level; it's
 14 been developed, and it is at a controlled cross
 15 street intersection.**
 16 **Really it's a repurposing of the site. It is
 17 a nonconforming use, service station/garage. It is
 18 -- in terms of the comparison of the site design,
 19 the new development proposed corrects those
 20 driveways that are at the immediate intersection.**
 21 **Overall nonconformities, if you look at the
 22 table in the site plan, are reduced significantly in
 23 terms of both lot coverage, current lot coverage, is
 24 about 90 percent; our proposal is less than 70.**
 25 **There is zero setback in terms of parking. We're**

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Direct - J. Chadwick, P.P. - Licata

1 **providing landscaping and buffering between the
 2 roadway and the development.**
 3 **The building itself, historically the Taco
 4 Bells had a bright catch-your-eye architecture.
 5 This one is almost minimalist. It's gray and dark.
 6 And it has logo signs appropriate to either side.**
 7 **The use itself, as I said, is repurposing the
 8 site. I believe it meets the purposes of the Land
 9 Use Law in a number of respects. Those are defined
 10 as the, what is it, 40:55D2. And those items would
 11 be under appropriate location, good visual
 12 environment, public and private cooperation in terms
 13 of improvement of the overall site, as well as
 14 providing sufficient open space; that's sections A,
 15 C, H, I and M.**
 16 **When we get to the negative criteria, the
 17 negative criteria, in my judgment, this site
 18 improves the circumstances by improving the traffic
 19 flow at the intersection, particularly with
 20 elimination of the driveways right at the
 21 intersection.**
 22 **The overall site itself is being less intense
 23 developed than its current. As I said, it's
 24 currently about 90 percent blacktop and building.
 25 With the new development, it will have almost 30 --**

17

Direct - J. Chadwick, P.P. - Licata

1 **more than 30 percent of the site in landscaping and
 2 (technical glitch - inaudible)**
 3 **Signage is being reduced on the overall site.**
 4 **We do require variances. The logo signs -- the
 5 canopy and the logo signs on the building are
 6 appropriate in terms of scale and size, and I think
 7 if you look at the architectural plans, this is not
 8 a billboard of a building but a tastefully done
 9 sign.**
 10 **The one ID sign, in discussion with the
 11 client, we will reduce that to conform with the
 12 height restriction for the zone of 20 feet in
 13 height. That variance will be eliminated.**
 14 **Taking and looking at --**
 15 MS. BEAHM: Mr. Chair, I have to jump in.
 16 Mr. Chadwick, you're like all over the place. Can we
 17 just focus first and foremost on the use variance?
 18 MR. CHADWICK: Okay.
 19 MS. BEAHM: So are you saying -- and I
 20 had to jump in because you're saying that part of the
 21 positive criteria for the use variance, that this is
 22 a public/private partnership? Is what you're saying?
 23 MR. CHADWICK: Yeah, we're improving --
 24 MS. BEAHM: Where is the public
 25 partnership? The town is not involved in this in any

TOWNSHIP OF MANALAPAN ZONING BOARD YUM & CHILL TB HOLDINGS, LLC, 8/20/20

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Direct - J. Chadwick, P.P. - Licata

1 way.

2 MR. CHADWICK: In terms of the general

3 public in terms of circulation at that intersection.

4 MS. BEAHM: No. That is totally

5 inappropriate. So can we -- can you cite for me what

6 letters are you talking about on the positive

7 criteria?

8 Because public and private partnership is

9 not going to work out. That's where a town and an

10 individual work together for the betterment of the

11 public. This is a private land development

12 application that has no public involvement at all.

13 There is no public/private partnership at all.

14 So let's leave that aside and then tell

15 me what -- which, like, positive criteria, what goal

16 of zoning are you advancing, once we eliminate that,

17 which is totally inappropriate?

18 MR. CHADWICK: We'll go with subsection

19 C, providing sufficient light and air. We basically

20 match or exceed your standard for both setback and

21 intensity of development in terms of --

22 MS. BEAHM: Well, stop right there. You

23 need variances for your parking setback, right?

24 MR. CHADWICK: Yes, yes.

25 MS. BEAHM: Okay. So maybe we should try

19

Direct - J. Chadwick, P.P. - Licata

1 something else.

2 MR. CHADWICK: And the variances for the

3 parking setback -- well, let's just stay with the

4 public purposes and --

5 MS. BEAHM: Yes. I mean, you also need a

6 front yard setback from your -- for the building. So

7 like I'm struggling here. Like I'm trying to see

8 where this is going, but, like, you're not helping

9 me.

10 MR. CHADWICK: Okay. And I missed your

11 comment on the parking setback.

12 MS. BEAHM: Well, you need parking

13 setback; side yard, front yard, rear yard.

14 MR. CHADWICK: Correct.

15 MS. BEAHM: So as far as like providing

16 adequate setbacks, you need setbacks front yard for

17 the building, rear yard for the building, front,

18 rear, side for the parking. So you don't comply with

19 any of the setbacks. So like I'm trying here, but

20 you're making it very difficult for me.

21 MR. CHADWICK: Well, the setbacks

22 standard are designed for a three-acre lot, and this

23 --

24 MS. BEAHM: I understand that, but I'm

25 asking for a purpose of zoning you're advancing. And

20

Direct - J. Chadwick, P.P. - Licata

1 when you say you provide adequate setbacks, you

2 don't. So that's not working out for me. So let's

3 try something else.

4 MR. CHADWICK: I think we disagree on

5 what adequate setback of parking. If we go from zero

6 setback to five and ten feet, which provides a clear

7 separation of cars in the --

8 MS. BEAHM: You're misunderstanding me.

9 I'm begging you for a goal of zoning under your D(1)

10 standard. And as of right now, you are not providing

11 me with any one that is applicable. So, please,

12 let's back up and start at the D(1). What goal of

13 zoning are you advancing?

14 MR. CHADWICK: The item H, which is

15 dealing with traffic and transportation. The

16 elimination of those driveways clearly is an

17 advancement in terms of public safety.

18 MS. BEAHM: I mean, Mr. Chair, I don't

19 even know what to say. Let's just keep going.

20 MR. CHADWICK: The item I, in terms of

21 visual appearance of the site, in my judgment the

22 proposed building is clearly a more attractive

23 construction than is existing.

24 I'm also going to go back to the item H.

25 And in item H, you didn't feel it was being advanced.

21

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1 It reads to encourage the location and design of

2 transportation routes which would promote the flow of

3 traffic while --

4 MS. BEAHM: I don't feel like that's

5 appropriate. I mean, you can absolutely put that on

6 the record, but I just want to put my opinion on the

7 record. You're not promoting the free flow of

8 traffic. You're a private entity that is taking --

9 like ...

10 Mr. Licata, I don't even know what to

11 say. Like, I'm begging you to, like, step in here

12 and, like, maybe work this out. But this is becoming

13 very jumbled as far as I'm concerned. This is a D(1)

14 use variance.

15 Number one, particular suitability;

16 number two, what goal of zoning are you advancing.

17 Then we get to negative criteria.

18 Like I can't even get over, like, where

19 -- like the goal of zoning we're advancing. So, I

20 don't know, maybe we want to take five minutes and

21 you guys want to confer offline, but like this is

22 going to the left very quickly and it's not being

23 rehabilitated in any way.

24 You are not promoting the free flow of

25 traffic. You're a private entity, asking us to

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1 approve a fast food restaurant. How does that
 2 promote the free flow of traffic? It doesn't.
 3 So, Mr. Chair, I would maybe ask if Mr.
 4 Licata wants five minutes to confer with his
 5 witnesses offline, because I don't know where to go
 6 from here.

7 CHAIRMAN LEVITON: Yeah, that's going to
 8 be fine, but also, Jennifer, he cited for meeting the
 9 negative criteria that it -- because there's less
 10 impervious surface and because the egress onto Taylor
 11 Mills is being shut down, that that meets the
 12 negative criteria. Are you good with that?

13 MS. BEAHM: I mean, that's -- hold on.
 14 That's definitely an improvement. The closure of
 15 those driveways, a hundred percent is an improvement
 16 for that intersection. There is no question about
 17 that.

18 CHAIRMAN LEVITON: Okay.
 19 MS. BEAHM: And the reduction of
 20 impervious surfaces a hundred percent is a benefit.
 21 So, yes, I do think that those are definitely things
 22 that are positive attributes associated with this
 23 application.
 24 I'm just looking for the first prong,
 25 which is the positive criteria, to be met. And as of

23

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1 right now, I don't -- I'm not hearing that. So I
 2 think that maybe we need to take five for them to
 3 confer to figure out which direction we're going with
 4 that.

5 CHAIRMAN LEVITON: Thank you, Jennifer.
 6 Before we do that, before we go to Mr. Licata, for
 7 the benefit of the public in attendance this evening,
 8 the Zoning Board of Adjustment applies the rule of
 9 law which is set forth in the Municipal Land Use Law.
 10 An applicant needs to establish and meet criteria,
 11 both positive and negative.

12 Ms. Beahm, who has just been speaking, is
 13 employed by the Township; she is our planner. And
 14 Mr. Chadwick is employed by the applicant; he is
 15 their planner. And Ms. Beahm has difficulty, as she
 16 has stated, with the applicant's proof for the
 17 positive criteria.

18 And so, Mr. Licata, we're going to turn
 19 to you, sir. Would you like five minutes to confer
 20 with your team? Peter? Oh, dear. Did we lose
 21 Peter?

22 It appears that the applicant's counsel
 23 is having technical difficulties. Mr. Miller, what
 24 would you recommend, sir?
 25 MR. MILLER: I would recommend that we

24

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1 take a break, Mr. Chairman.
 2 CHAIRMAN LEVITON: Okay, and Mr. Miller
 3 is our counselor and so we will do that. Let's give
 4 the applicant five to ten minutes, what they need.
 5 Folks, don't go far.

6 MR. MILLER: What I would recommend, Mr.
 7 Chairman, let's lean toward ten minutes, just to give
 8 enough time to get everybody back online, and we're
 9 not sure whether the applicant's team wants to
 10 discuss something; maybe ten minutes is better.

11 CHAIRMAN LEVITON: Okay. Ten minutes it
 12 shall be. We are on a break for ten minutes.
 13 (Whereupon a brief recess was taken.)
 14 MS. MOENCH: Okay. Nancy, are you
 15 recording as well?

16 CHAIRMAN LEVITON: She said she is.
 17 MS. MOENCH: Okay, perfect.
 18 CHAIRMAN LEVITON: Okay.
 19 MR. LICATA: Thank you, Mr. Chairman, for
 20 the break. For the benefit of everybody, I lost my
 21 audio feed for several minutes and needed to
 22 reestablish a connection.

23 Q. Mr. Chadwick, when I dropped off the
 24 line, you were in the process of discussing the
 25 positive criteria and specifically special reasons.

25

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1 Can I ask you to comment on the applicability of
 2 subsection A, as well as the promotion of appropriate
 3 development and location of uses?

4 A. **Yes. I think first you have to look at what**
 5 **the O3 Zone permits, and it goes down through --**
 6 Q. But, John, let me just interrupt you.
 7 I'm sorry.

8 That is an important point, but in terms of
 9 the lettered purposes of zoning, can I direct your
 10 attention to subsection A. Could you comment on
 11 what, if any, opinion you hold on that purpose of
 12 zoning as it relates to this application?

13 A. **Yes. In my opinion, the appropriate location**
 14 **of this kind of use is along a major highway, and**
 15 **this subsection A, appropriate use in appropriate**
 16 **location, meets that criteria.**

17 Q. Thank you. And now, as to your
 18 additional thoughts regarding the positive criteria.
 19 A. **Well, I think the other two we discussed, I**
 20 **guess it was -- your audio was off. The item C,**
 21 **which is to provide adequate light and air, clearly**
 22 **the plan demonstrates that.**

23 Q. And it's your opinion that that is a
 24 function of the -- not the actual satisfaction of all
 25 bulk criteria, but the improvement of the existing

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1 nonconformities or the reduction of existing
 2 nonconformities?
 3 **A. That's correct.**
 4 **Q.** Thank you. Please continue.
 5 **A. That was discussed earlier before our break.**
 6 **The last item would be a visual environment.**
 7 **I think that's subsection I in the purposes of the**
 8 **Land Use Law, and that, again, we discussed in my**
 9 **judgment the proposed development is clearly more**
 10 **attractive, a good fit to the Route 9 corridor.**
 11 **Q.** Okay. Thank you. And then can you also
 12 discuss your thoughts on site suitability?
 13 **A. The criteria for this kind of use is clearly a**
 14 **highway frontage. This is proposed in that**
 15 **location, and if you're going to have these kind of**
 16 **uses, which you do, on Route 9, this site is clearly**
 17 **suitable.**
 18 **Q.** Because of the traffic improvements and
 19 its location?
 20 **A. Because of the traffic improvements and because**
 21 **of the general aesthetics that will result from this**
 22 **development. We're taking a property that's**
 23 **basically a building backdrop, turning it into a new**
 24 **understated building with, in my judgment, very**
 25 **reasonable signage and with (technical glitch -**

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1 **inaudible) landscaping throughout, coupled with the**
 2 **safety aspects of the driveways being eliminated.**
 3 **Q.** Thank you. Can you discuss for us the
 4 permitted uses in this zone at this location and how
 5 those uses would interplay with this particular tract
 6 by way of its shape and size?
 7 **A. Well, the size of it, in my judgment,**
 8 **constrains almost all of these.**
 9 **Q.** Can you list them for us?
 10 **A. One of the principal uses is planned office**
 11 **park. The site clearly can't accommodate or provide**
 12 **for that.**
 13 **The professional office and bank uses that**
 14 **are allowed in the zone are -- the banking industry**
 15 **is being contracted; it is not expanding.**
 16 **Professional office uses, there is a plethora of**
 17 **office space, not just in Manalapan but up and down**
 18 **New Jersey.**
 19 **Q.** And, again, John, as a function of this
 20 site, an office park, remind us how large or small
 21 this property is in area?
 22 **A. This property is -- I'll read the note. This**
 23 **property is .765 acres.**
 24 **Q.** Okay. And, again, your opinion as to the
 25 suitability of that size as you're discussing these

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1 permitted uses, please continue with the list of
 2 permitted uses in that vein.
 3 **A. The permitted uses either require larger tracts**
 4 **of property which would be appropriate on three**
 5 **acres, or they're types of uses that -- one of the**
 6 **uses permitted, for instance, is a township library.**
 7 **A township library is a major facility next to town**
 8 **hall.**
 9 **Q.** Mm-hm.
 10 **A. We also have the branch library. I don't think**
 11 **there's a -- that type of use is going to be needed.**
 12 **You can have --**
 13 **MS. BEAHM:** Mr. Chadwick, I mean, come
 14 on. There are a million other uses that are
 15 permitted in the zone that could easily fit on this
 16 site. I just don't think this is helpful. You know,
 17 a bank, you know, other types of situations that
 18 could, you know, be permitted in the zone. We're not
 19 talking about, you know, municipal facilities here.
 20 **I mean, this is getting a little far**
 21 **afield. Let's focus on what we're doing here. We**
 22 **provided particular suitability; we provided positive**
 23 **criteria, provided negative criteria. Like I really**
 24 **would caution you on going through the uses that are**
 25 **permitted in the zone because there are plenty that**

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1 could fit there. So I don't know that that's
 2 helpful.
 3 **Q.** John, could you press on to other areas
 4 of your observations?
 5 **A. I think we have moved beyond the site**
 6 **suitability, special reasons, and focus on what the**
 7 **negative criteria might or might not be associated**
 8 **with the site.**
 9 **Q.** Okay.
 10 **A. The negative criteria, generally from a**
 11 **planning standpoint, you would look at the site**
 12 **itself. Is it wetlands; is it steep slope; is it**
 13 **heavily wooded. None of those conditions exist**
 14 **here. So we're basically taking and redeveloping a**
 15 **site, repurposing the site. In my opinion, none of**
 16 **the environmental criteria play into this.**
 17 **In terms of the man-made criteria, we're**
 18 **taking a site that has, in my judgment, an unsafe**
 19 **entering and exiting driveway situation. You have**
 20 **two driveways on Taylors Mill and two driveways on**
 21 **Route 9. With the new development you'll have**
 22 **controlled access from Taylors Mills and you'll have**
 23 **controlled access onto and egress onto Route 9. All**
 24 **of those in my judgment go to addressing negative**
 25 **criteria.**

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1 **When you now take in balance the improvements**
 2 **proposed versus the negative criteria, in my**
 3 **judgment there really are no negatives.**
 4 **When you get to the variances, the variances**
 5 **are a function of the lot size, which was described**
 6 **before, and any use of this property. I think the**
 7 **most telling standard would be the intensity of**
 8 **development of the site.**
 9 **As I said several times previous, it's**
 10 **basically building and blacktop. The new site will**
 11 **be just slightly over what the criteria is. The**
 12 **criteria is 65 percent; we're at 79 -- 69 and**
 13 **change.**
 14 Q. Which criteria is that, John?
 15 A. **That's on total site improvements.**
 16 Q. Is that lot coverage? Just --
 17 A. **Yes.**
 18 Q. -- be specific. Thank you.
 19 A. **The other issue is in terms of the current**
 20 **site, there is no setback from parking lot from**
 21 **property lines. And this plan proposes setback and**
 22 **landscaping to I think substantially improve the**
 23 **roadside appearance.**
 24 Q. Thank you, John.
 25 A. **Again, does it conform to -- if you had to**

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1 **conform to setbacks with the zone in terms of**
 2 **parking location, you could develop it.**
 3 MR. LICATA: John, and Mr. Chairman, as
 4 it relates to some of the questions that had been
 5 thrown out, I wonder if I could ask that we permit
 6 Mr. Leber, who is also a licensed Professional
 7 Planner and also the designing engineer, to weigh in
 8 with his thoughts in answer to some of the questions
 9 that Ms. Beahm has posed.
 10 CHAIRMAN LEVITON: Of course, Mr. Licata.
 11 MR. LICATA: Thank you.
 12 CHAIRMAN LEVITON: Mr. Miller will swear
 13 him in.
 14 M A R C L E B E R, P. P., was duly
 15 sworn/affirmed and testified under his
 16 oath/affirmation as follows:
 17 MR. MILLER: Please state and spell your
 18 name for the record.
 19 MR. LEBER: Yes, it's Marc with a C,
 20 M-a-r-c. Last name is Leber, L-e-b-e-r.
 21 MR. MILLER: Thank you very much.
 22
 23 VOIR DIRE EXAMINATION BY MR. LICATA:
 24 Q. And, Marc, you are a licensed
 25 Professional Planner?

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Voir dire - M. Leber, P.P. - Licata

1 A. **That's correct.**
 2 Q. And could you just share some additional
 3 information about those credentials and your previous
 4 testimony experience?
 5 A. **Yes. I have a Bachelor of Science degree in**
 6 **Civil Engineering from Drexel University. Following**
 7 **graduation I went on to graduate school to finish an**
 8 **MBA program at Rutgers Graduate School.**
 9 **Then, believe it or not, my career directed**
 10 **me across the street from this property working at**
 11 **Schoor DePalma on the corner of Taylor Mills Road**
 12 **and Route 9. And although they're long gone, I've**
 13 **gone on to work at other engineering firms and I'm**
 14 **presently at East Point Engineering, which is in**
 15 **Marlboro.**
 16 **I'm licensed as an engineer and also as a**
 17 **planner, also a Certified Municipal Engineer. And**
 18 **I've testified hundreds of times before both**
 19 **planning and zoning boards, in and out of Monmouth**
 20 **County and Middlesex County. Actually, in the**
 21 **entire State of New Jersey. And I've testified**
 22 **before county boards as well.**
 23 Q. And have you testified in multiple
 24 locations and counties in the capacity as a
 25 Professional Planner?

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Voir dire - M. Leber, P.P. - Licata

1 A. **Yes, I have.**
 2 Q. And have you testified before this Board
 3 before in that capacity?
 4 A. **Yes.**
 5 MR. LICATA: Thank you.
 6 CHAIRMAN LEVITON: Thank you, Mr. Leber.
 7 The Board accepts your credentials.
 8 MR. LICATA: Thank you.
 9 MR. LEBER: Thank you.
 10 DIRECT EXAMINATION BY MR. LICATA:
 11 Q. Marc, you've listened to the -- Mr.
 12 Chadwick's testimony as well as the questions that
 13 have been raised regarding positive criteria and
 14 negative criteria.
 15 If I could ask you to briefly share any
 16 additional thoughts on areas that may not have been
 17 fully explored based on your knowledge and
 18 observation.
 19 A. **Yes, certainly. And when we first started the**
 20 **project, you know, we look at potentially suitable**
 21 **sites for this type of a use, being a drive-through**
 22 **fast food. And I'm sure if the Township of**
 23 **Manalapan had looked around throughout their town**
 24 **and all the towns to, you know, take notice to where**
 25 **these types of uses exist, you're going to find that**

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Direct - M. Leber, P.P. - Licata

1 they're all located on state highways. Corner lots
 2 are better than mid block lots. But for the most
 3 part, you wouldn't look to put this type of use on a
 4 side street.

5 The traffic that comes in and out of a Taco
 6 Bell is what we call mostly drive-by traffic; people
 7 heading on the highway, in this case southbound, see
 8 the sign, they say, you know what, I'm going to stop
 9 in at Taco Bell. And I'm going to either go to the
 10 drive-through or I'm going to go inside because it's
 11 right on my way home.

12 And, you know, in this particular case, we
 13 always look to see if it's a permitted use in the
 14 zone. So in your zone, OP-3, there's a small list
 15 of permitted uses, which Mr. Chadwick had mentioned
 16 and I'll just reiterate again. You have planned
 17 office parks, professional offices and business
 18 offices, banks, convention centers, daycare,
 19 municipal purposes, meaning, you know, a municipal
 20 use could be situated in the zone, such as a
 21 library. There's an agricultural use that's
 22 permitted, which is horse boarding. And then
 23 there's a conditional use allowed which includes
 24 billboards.

25 So for this type of use, naturally the only

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1 appropriate location would be on a state highway
 2 where you have the pass-by traffic and also have the
 3 accessibility.

4 Now, it doesn't necessarily mean that this is
 5 the only feasible use for this property, because
 6 certainly you could perhaps construct a professional
 7 office on the property. However, there's absolutely
 8 zero demand for a professional office, and on top of
 9 that, that creates a different traffic pattern which
 10 is more in conflict with rush hour because you have
 11 everybody trying to go to one place at one
 12 particular time of day and then leave the same place
 13 at five p.m.

14 So those types of uses, though they are
 15 permitted, generate different traffic patterns which
 16 are directly in conflict with rush hour traffic
 17 patterns.

18 There's zero market whatsoever for a bank to
 19 be situated on this corner. And frankly, the other
 20 uses just simply don't make any sense. No one's
 21 going to build a planned office park here or a
 22 convention center or a library. They're not going
 23 to board horses here; they're not going to put up a
 24 billboard.

25 And honestly, the existing use right now,

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1 which is a gas station, is not even permitted in the
 2 zone.

3 So in Manalapan, this type of use in the OP-3
 4 Zone already seems to be compatible because the use
 5 already exists next door. You have a Wendy's there.
 6 It's, again, right on Route 9, and same use.

7 Now, just to bolster my comment that there's
 8 no demand at all for office space, directly behind
 9 this property you have an office building that was
 10 constructed I believe in the year 2000 for
 11 professional office and they had to return to the
 12 Zoning Board to get additional variance relief
 13 because I believe they wanted to put a medical
 14 office which is not allowed in the zone.

15 So all up and down Route 9, come to Route 79
 16 where my office is, take a look on 520, there's for
 17 rent signs everywhere. There's just no demand. And
 18 there's probably going to be less demand for office
 19 space because one of the side-effects of the
 20 pandemic is more and more people are able to work
 21 from home, and that might be a lasting effect that
 22 could be around for quite some time.

23 With regard to, you know, why this site is so
 24 great is, frankly, it's a great location. It's a
 25 prime corner lot and it has great access. And I'm

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1 not saying to you that this lot can only be used for
 2 a Taco Bell, but I'm saying to you that for a Taco
 3 Bell it's a suitable location and it makes a lot of
 4 sense for what's proposed.

5 The building is frankly beautiful. It's a
 6 big improvement to what's there now. And, you know,
 7 there are positive aspects of closing the two
 8 driveways and reducing impervious coverage. We are
 9 providing a significant amount of landscaping to
 10 dress up this property, where frankly there's no
 11 landscaping right now.

12 The existing building on the property is
 13 about 2200 square feet. The building we're
 14 requesting is 2500 square feet. But the bulk of the
 15 building is going to come across from a -- someone
 16 passing by as much smaller because you don't have
 17 the look of the gas station canopy right in the
 18 front yard.

19 So, from the bulk of the actual construction
 20 as to what exists on the property, it's going to be
 21 minimized from a visual perspective because you
 22 don't have the look that you have right now.

23 The gas station signage, I had showed you
 24 photos at the last hearing. We had estimated that
 25 that was maybe 15 to 18 feet high. Our sign is

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1 going to be dramatically smaller in area, which is
 2 going to, you know, allow for more of a visual sight
 3 down along the highway to eliminate that sign that
 4 you're used to seeing along Route 9 north of this
 5 property.
 6 You know, when we talk about negative aspects
 7 of applications, the first thing we always look at
 8 is what are the effects of the environment. Are we
 9 filling in wetlands; are we cutting down a lot of
 10 trees; are we doing massive earthwork; are we
 11 working next to stream corridors; do we need permits
 12 from the State for, you know, working in
 13 environmentally sensitive areas.
 14 And the types of things that usually come up
 15 as a negative that, you know, the Board's used to
 16 seeing frankly don't exist on the property. To me,
 17 this is a redevelopment project. It's taking an
 18 existing property and, you know, repurposing it to
 19 something else.
 20 You heard the testimony with regard to the
 21 traffic, you know, that there is no negative impact.
 22 Unfortunately, this intersection does have traffic.
 23 And the fact that it has traffic lends itself to
 24 this use, because we like cars driving by these
 25 types of uses.

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1 But that traffic is not our traffic. That's
 2 just background traffic that's been like that and
 3 frankly, we're not increasing the amount of that
 4 traffic, which is why, you know, I don't see there
 5 being a detriment to changing the use of the
 6 property from a service station to a fast food
 7 restaurant.
 8 MR. LEBER: Let me just see. Are there
 9 any other questions about some of these items at this
 10 point?
 11 MR. LICATA: Mr. Chair, I would make Mr.
 12 Leber available to the Board's professionals and
 13 members as they would see fit.
 14 CHAIRMAN LEVITON: Thank you, Mr. Licata.
 15 Is there any other testimony you want to offer onto
 16 the record this evening?
 17 MR. LICATA: No, sir.
 18 CHAIRMAN LEVITON: All right, then at
 19 this time let us go to our Board professionals, our
 20 planner, because it's still fresh, and then our
 21 engineer. Ms. Beahm?
 22 MS. BEAHM: Thank you, Mr. Chair.
 23 So, Mr. Leber, just to be clear, what
 24 you're basically saying is that the application
 25 promotes purpose A, health, safety and general

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1 welfare, because of the closure of those driveways,
 2 correct?
 3 MR. LEBER: Yes, and just to piggyback on
 4 purpose A, you know, purpose A is a broad planning
 5 purpose to make sure that applications are guided in
 6 a format where really the type of development is
 7 guided in a fashion that promotes the public health,
 8 safety, morals and welfare.
 9 You know, honestly, if we were here
 10 tonight and said we want to open up a Taco Bell in a
 11 residential zone, that clearly would not further the
 12 public health, safety and welfare.
 13 MS. BEAHM: Correct.
 14 MR. LEBER: But in this particular
 15 instance, it's a major State highway in Manalapan.
 16 The use already exists next door to us, so it's
 17 clearly compatible with the zone. And I think that
 18 this is the type of location you would want this use
 19 on, as compared to other streets and other zone
 20 districts that would be less favorable to accommodate
 21 this type of operation.
 22 MS. BEAHM: I'm not disagreeing. And
 23 then so that kind of piggybacks onto my next
 24 question, which is it advances purpose G, which is
 25 basically appropriate development in appropriate

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1 location, correct?
 2 MR. LEBER: Yes. And I want to add as
 3 far as item C, which is another broad one about
 4 adequate light, air and open space.
 5 You know, when we look at air, light and
 6 open space, some people think about not building
 7 housing too dense and too close to one another, but
 8 also in this particular instance we're reducing lot
 9 coverage.
 10 I think aesthetically driving by the
 11 property, it's going to look less intrusive because
 12 the canopy is going to be gone and the gas station is
 13 going to be changed to a very modest-sized building
 14 that is, quite frankly, very attractive, with a lot
 15 more landscaping than that's there today, and I think
 16 that that would further, you know, a goal of
 17 providing additional air, light and open space.
 18 Especially, I mean, everybody knows on
 19 Route 9 just north of this there's more sign
 20 pollution than probably anywhere else in the county.
 21 In fact, the county, in their various planning
 22 reports, repeatedly show photos of that segment of
 23 Route 9 with all the signs for Alexander Plaza, et
 24 cetera all one after another, and that's the type of
 25 look we're trying to eliminate and break it up, so

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1 when you get to this part of Route 9 what you see is
 2 something that's very aesthetically pleasing.
 3 MS. BEAHM: So in addition to the D(1)
 4 variance, you also have an FAR variance, of which is
 5 a D(4). And the criteria is a little less.
 6 So would you stipulate on the record that
 7 you feel -- so the requirement is .65; you're at .69.
 8 So that .04 increase over what is provided (sic),
 9 would you state based upon the testimony that you've
 10 already provided that in your opinion the site can
 11 accommodate this .04 increase over what is required
 12 based upon the reduction of the coverage, the
 13 landscaping and all the other testimony, the removal
 14 of the canopy, et cetera, that you feel that the site
 15 can accommodate this increase over the .65?
 16 MR. LEBER: Yes, and just to further
 17 explain that to the Board, you know, in Manalapan
 18 it's a little unique in the way they calculate FAR.
 19 MS. BEAHM: Mm-hm.
 20 MS. LEBER: They do include, which is
 21 unusual in my experience, the area I believe of a
 22 parking lot.
 23 MS. BEAHM: They do, yes.
 24 MR. LEBER: So if you were to strictly
 25 look at just the building itself as a function of

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1 FAR, it would be far below the .65 limitation.
 2 MS. BEAHM: Well, I mean, in fairness,
 3 Marc --
 4 MR. LEBER: Yes.
 5 MS. BEAHM: -- if we didn't include the
 6 parking lot, the requirement will be way lower than
 7 .65.
 8 MR. LEBER: Okay.
 9 MS. BEAHM: It would be around .2.
 10 MR. LEBER: That's fair. But I wanted to
 11 point out that if you were to calculate the FAR based
 12 upon the existing use, then we would be an
 13 improvement.
 14 MS. BEAHM: Correct. That's what I was
 15 asking for.
 16 And then can you just touch upon the
 17 relief that's necessary for the signage? Because you
 18 do need a significant number of variances for the
 19 proposed signage that you're asking for. And so I
 20 would just ask for some testimony, because, you know,
 21 we just discussed that -- the sign clutter to the
 22 north of this, but you're requiring like eight or ten
 23 variances for the signage that you're requesting.
 24 MR. LEBER: That's correct. And I might
 25 want to do a screen share, if that's possible, just

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1 to walk through the various signs that are actually
 2 proposed.
 3 MS. BEAHM: That might be a good idea.
 4 MR. LEBER: Let me see if I have the
 5 right permissions. Okay, it's working.
 6 MS. BEAHM: Okay.
 7 MR. LEBER: All right, so let's start
 8 with the main sign, which is the monument sign on the
 9 corner. There was -- when the application was filed,
 10 we were asking for a variance from the maximum square
 11 footage, which is 80 square feet. I believe at the
 12 last hearing we withdrew that request and said we
 13 would comply with both the height and the square
 14 footage permitted for that freestanding sign, which
 15 is 22 feet and 80 square feet. And I think we
 16 testified the sign we were providing was 75 square
 17 feet.
 18 However, that doesn't eliminate the fact
 19 that we need a variance just to have that sign
 20 because in this office zone you're not permitted to
 21 have a freestanding sign.
 22 Now, in my experience a freestanding sign
 23 is actually critical to the safety of this type of an
 24 operation because it provides an alert to drivers
 25 heading on the highway that this is coming up, either

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1 to move over to the right lane if you're going to
 2 turn in there or to slow down and decelerate because
 3 the entrance will be, you know, in the next thousand
 4 feet or whatever. So I think that having a
 5 freestanding sign is pretty much part of this type of
 6 use.
 7 Again, there's an existing freestanding
 8 sign with the gas station, which, you know, our sign
 9 is going to be smaller than that. So, you know, I
 10 think that that's a reasonable request.
 11 The other signs include the building-
 12 mounted signs, which you could see in this photo,
 13 there's a bell logo above the door and there's a
 14 lettering above the door as well.
 15 The sign on the building, there's a
 16 feature here called a tower that has also a combined
 17 bell logo and lettering.
 18 There are no other signs around the
 19 building. It's only on these two facades. But based
 20 upon the definition in the ordinance, a menu board is
 21 technically a sign. So we are asking for relief in
 22 that sense because, you know, obviously as a drive-
 23 through use, for a matter of practicality you need to
 24 have some kind of a menu board so that people can
 25 order off a screen and, you know, what they call an

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1 order confirmation screen that when the -- I guess
 2 the clerk reads back your order, you could see on the
 3 computer screen if you're being I guess charged for
 4 the correct items that you want to buy.
 5 So those types of so-called signs are a
 6 necessity to this type of a use.
 7 And honestly, every town is different.
 8 Some towns look at that as an ancillary use; some
 9 towns require variances. But I don't see any
 10 negative impact because it is associated with the use
 11 and frankly, I don't feel like it's overdone.
 12 One thing that you will not find on this
 13 property that is common to fast food restaurants is
 14 they'll put large banners up and down the highway
 15 with flags waving in the wind and things like that.
 16 That type of look is not proposed here. You know, we
 17 like to keep these properties looking very neat and
 18 clean, so to say.
 19 So, you know, these types of menu boards
 20 and whatnot are pretty much part of the use in that,
 21 you know, the application would need a variance to
 22 provide those types of features.
 23 The other last package of signs are
 24 namely small directional signs that direct drivers,
 25 you know, similar to a bank, which way you go for the

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1 drive-through, which way is the exit, which way is
 2 the entrance.
 3 And you'll see at the entrance on Route 9
 4 there's a sign that says "Enter"; there's a sign on
 5 the left that says "Exit"; there's a sign that points
 6 you to the right to the drive-through. Similarly, on
 7 Taylor Mills Road you'll have an exit sign, you know,
 8 to the west and then on the east side you'll have an
 9 -- I'm sorry, an exit sign on the east and an enter
 10 sign on the west.
 11 So that's really the type of sign that's
 12 proposed. Again, I understand there's variances
 13 necessary for these signs, but hearing the positive,
 14 that they are there for the safe flow of traffic and,
 15 you know, there's really no negative criteria, I
 16 think these signs are rather unobtrusive in nature
 17 and they do facilitate the operation of the property.
 18 But nonetheless, I obviously have to tell
 19 you that they do need relief from the ordinance.
 20 MS. BEAHM: Mr. Chair, I don't disagree
 21 with anything that Mr. Leber has testified to. I do
 22 agree that the freestanding sign is essential for the
 23 safe flow of traffic, and I don't feel like the
 24 facade signs are a negative, and I do agree that
 25 obviously there needs to be some kind of menu board

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1 associated with a fast food restaurant, and so I take
 2 no exception to any of the testimony provided in this
 3 with regard to the signage if the Board were to act
 4 favorably on the application.
 5 CHAIRMAN LEVITON: Thank you, Jennifer.
 6 What about the use variance, the relief they need for
 7 the use?
 8 MS. BEAHM: I think that Mr. Leber
 9 testified to the -- both the positive and negative
 10 criteria. I think the testimony is on the record. I
 11 think that it meets the statutory criteria, and I do
 12 think he also provided testimony in support of the
 13 FAR variance.
 14 Obviously it's totally up to the Board
 15 with respect to whether you agree or disagree, but I
 16 do think that testimony was put on the record with
 17 respect to the closure of the driveways, which
 18 promotes the health, safety and general welfare, the
 19 appropriate location -- appropriate use in
 20 appropriate location, which is a goal of zoning, a
 21 desirable visual environment with the reduction in
 22 the impervious coverage, and then, you know, based
 23 upon -- his testimony is based upon the traffic
 24 testimony that Mr. Troutman had given earlier with
 25 respect to the traffic and, again, that goes back to

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1 what, you know, the Board decides what they want to
 2 -- with respect to that. But I do think that Mr.
 3 Leber put on the record the requisite testimony with
 4 respect to the statute.
 5 Now, it comes down to whether you guys
 6 want to agree with it or not, but I do think that he
 7 has done his job associated with putting the
 8 necessary testimony on the record.
 9 CHAIRMAN LEVITON: Thank you. Let's go
 10 to our Board Engineer, Mr. Boccanfuso. Brian?
 11 MR. BOCCANFUSO: Thank you, Mr. Chairman.
 12 I'll defer to our planner obviously in all matters
 13 relative to planning and the variance relief that's
 14 requested from the applicant. With that said, from
 15 an engineering standpoint, I don't take any exception
 16 to the conclusions that she's drawn or to Mr. Leber's
 17 testimony.
 18 The questions and comments I have are
 19 largely relative to the supplemental traffic study
 20 and the questions that came up at the previous public
 21 hearing relative to the operation of the proposed
 22 drive-through.
 23 I did have an opportunity to review the
 24 supplemental traffic study that was prepared by Mr.
 25 Troutman. I will say that I think that he chose a

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1 good comparison with the Taco Bell restaurant in
 2 Howell. I'm familiar with the site; it's actually
 3 very close to my office. Obviously the use is
 4 exactly the same. The site geometry is very similar
 5 to what's being proposed here. It's on a State
 6 highway; in fact, the same State highway that the
 7 proposed use is on. It's at an intersection,
 8 similar to what this site is located at.

9 And there are competitors in the general
 10 area in the form of other fast food restaurants. Not
 11 necessarily right next door, but in the general area.
 12 So I think from a comparative standpoint, they chose
 13 a good site.

14 One thing that I noticed in reviewing the
 15 report, and Mr. Troutman did touch on it but I think
 16 it's important to highlight it, is that when they
 17 analyzed each minute of the operation of the
 18 drive-through facility, they counted the number of
 19 vehicles and prepared a table, which is in the
 20 report, which details the percentage of time at which
 21 there were zero to three vehicles, four, five, six,
 22 seven, eight to ten.

23 On the subject site, the drive-through
 24 can store up to seven vehicles before it conflicts
 25 with any of the parking spaces on site at all. And I

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1 can tell you that based upon the study, there was
 2 only two percent of the time that was observed where
 3 there were more than seven vehicles in the queue.

4 So if we kind of transpose the data and
 5 the analysis to the subject site, it's a very, very
 6 small percentage of time where the drive-through
 7 facility is going to impact any parking on site.

8 I'm not sure if Mr. Troutman addressed it
 9 in his direct testimony, but when he and I discussed
 10 his report previously, he did indicate that those
 11 first two parking spaces would be designated for
 12 employee only and were marked as such at plan.

13 So, in essence, those spots, the
 14 employees would come in to start their work; they
 15 would park there; obviously they'd be coming in
 16 before the peak hours, and they would not be moved
 17 during the peak hours. So, in effect, the cars would
 18 be in those spots. Even though they would be blocked
 19 in, that blocking is temporary and they wouldn't need
 20 to move during the peak hours.

21 One of the things I would like to get
 22 some clarity on from Mr. Troutman is while the study
 23 was thorough and did a good job, it does only
 24 represent one lunch period on one day. So I would
 25 like him to provide some testimony as to whether his

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1 observations represent a typical peak, whether
 2 they're reasonably representative of what he could
 3 expect to see during an evening peak, you know,
 4 during the dinner rush, as well as on a Saturday,
 5 just to give myself and also the Board members some
 6 comfort level that the detailed study that he
 7 performed is going to reflect the other peak hours at
 8 the site.

9 MR. TROUTMAN: Sure. I did have a chance
 10 to discuss this with the applicant, who has a lot of
 11 knowledge about when peak sales occur. And the
 12 overall two largest periods of peak sales of the
 13 entire week are a weekday lunch and a weekday dinner.
 14 The weekend never has such an intense period as you
 15 find on these weekday mealtimes because the
 16 transactions are more spread out and generally lower,
 17 and Sunday is the lowest day in the entire week for
 18 transactions. So by picking either a lunch or a
 19 dinner, we could be sure that we've gotten a heavy
 20 period.

21 And what I observed and documented at
 22 this site was actually more than I've ever seen in a
 23 Taco Bell, and I've done several of these in my
 24 career. And it kind of lines up with some of the
 25 statements we've seen in business reporting. There's

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1 actually business reports out that say that Taco Bell
 2 is one of the things that's doing better year over
 3 year during this period than they were last year in
 4 terms of sales, as well as a public statement either
 5 by the COO of Taco Bell where he stated that they're
 6 seeing drive-through activity higher than they've
 7 ever seen at their sites.

8 So I'm very confident that I caught
 9 something that's higher than usual, and that's what's
 10 documented in my report.

11 MR. BOCCANFUSO: Understood. And I
 12 appreciate that supplemental information.

13 With regard to the testimony that you
 14 provided on your observations of the next door
 15 Wendy's, the Chairman had asked you earlier whether
 16 you took a look at it and you described what you
 17 observed there recently.

18 Did you have -- you indicated that for a
 19 short period of time there was traffic at or stacked
 20 vehicles that almost approached the point at which
 21 they may back out onto Route 9. Approximately how
 22 many vehicles were in the traffic queue when you
 23 observed that condition?

24 MR. TROUTMAN: I would say it was on the
 25 order of 13.

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1 MR. BOCCANFUSO: Okay. And I can tell
 2 you that based on my review of the site, the stacking
 3 capacity, or the length of the queue, from the
 4 service window at the Wendy's to the point at which
 5 vehicles would impact Route 9 is comparable, if not
 6 slightly less than, the associated distance on the
 7 Taco Bell site.
 8 So, in other words, if you look at the
 9 distance along the lane from the drive-through window
 10 on Wendy's going through the site and out to Route 9,
 11 I believe it's about 280 feet. Whereas on the Taco
 12 Bell site that same distance is about 300 feet.
 13 So the Taco Bell, the proposed Taco Bell
 14 drive-through could probably accommodate, based upon
 15 what you're telling me you observed, it could
 16 accommodate 13 to 14 vehicles before the point at
 17 which it would start to impact Route 9. And based on
 18 your testimony, you indicated that there appears to
 19 be kind of a self-regulating condition where there
 20 comes a point at which people will just simply not
 21 wait. I know that's my personal experience. If I
 22 saw a drive-through lane of that length, I would just
 23 keep on driving.
 24 I think that based on the study that you
 25 performed and the observation that you performed at

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1 the next door Wendy's, it is a reasonable conclusion
 2 to say that it's unlikely that vehicles would stack
 3 up on the site to the point at which they would
 4 impact Route 9.
 5 MR. TROUTMAN: I agree.
 6 MR. BOCCANFUSO: Now, with regard to the
 7 impact on parking, can you just talk about the kind
 8 of ebb and flow of parking versus drive-through
 9 demand as we hopefully get past this COVID situation
 10 at some point in the near future?
 11 Your observations were that you had a
 12 very, very high traffic stack at the drive-through
 13 window and a very, very low parking demand during
 14 this period, which was -- the study was performed
 15 several weeks ago.
 16 Can you just talk about what you'd expect
 17 to see as things get back to the normal that we've
 18 all grown accustomed to?
 19 MR. TROUTMAN: I believe it would even
 20 out a little more. I think the drive-through window
 21 would have less of the queueing than is in my report.
 22 But I think, at the same time, you would have -- you
 23 have people that like to take their lunch break --
 24 they're out for their break and they want to go sit
 25 down and dine inside.

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1 So you're going to have more people
 2 parking, but never would you exceed the 25 that's
 3 proposed on the Manalapan site. The most we ever saw
 4 during this study was 12. And that included people
 5 dining in their cars, so those would equate to
 6 somebody sitting inside dining except they were just
 7 sitting in their cars instead.
 8 MR. BOCCANFUSO: Understood. So with
 9 that surplus of parking that you believe is on the
 10 site, wouldn't that afford the operator of this
 11 facility, if it's approved and built, the ability to
 12 -- say they had a complicated or lengthy order at the
 13 drive-through and they weren't able to prepare it in
 14 a quick fashion, which was resulting in extending the
 15 traffic stack at the drive-through lane, would they
 16 have the ability to direct that customer to pull into
 17 a parking space and wait for their order to be
 18 prepared and brought out to them?
 19 MR. TROUTMAN: Yes, they would. At
 20 Howell they had -- (technical interference). At
 21 Howell they had -- (technical interference)
 22 MR. MILLER: Mr. Troutman, this is John
 23 Miller, the Board Attorney.
 24 Brian, I would just ask you to ask that
 25 question again because we're getting a lot of

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1 feedback. Somebody doesn't have mute on, and there's
 2 a lot of loud noise coming through.
 3 So if you could, Brian, just ask your
 4 question again, and then, Mr. Troutman, if you could
 5 respond, just so everyone listening here on the
 6 hearing and participating can hear the questions and
 7 answers properly. Thank you.
 8 MR. BOCCANFUSO: Of course, Mr. Miller.
 9 No problem at all.
 10 Basically, the question was -- it was a
 11 follow-up to Mr. Troutman's previous testimony that
 12 based on his observations and professional opinion
 13 there's a surplus of parking on the site, even when
 14 we get back to a non-COVID environment where there's
 15 the typical walk-in customer base.
 16 And the question was, with that surplus,
 17 would it afford the operator of the site the ability
 18 to direct drive-through traffic that has ordered
 19 large or complicated orders to park temporarily while
 20 their order is being prepared in an effort to
 21 alleviate traffic stacking within the drive-through
 22 lane.
 23 MR. TROUTMAN: And the answer to that is
 24 yes. We noticed that Howell, that the spots -- they
 25 have some parking spaces right in the back, right

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1 convenient to where someone pulls out of the drive-
 2 through, and they had temporarily designated those
 3 for pull-off spots.
 4 And that would be an operational thing
 5 that the applicant could do if he saw the need for
 6 that during the course of operations. I don't
 7 believe they practice that in any of their stores
 8 currently.
 9 MR. BOCCANFUSO: But if the need arose
 10 they could with some temporary signage or something
 11 like that?
 12 MR. TROUTMAN: Correct.
 13 MR. BOCCANFUSO: Okay. The last question
 14 I have doesn't necessarily deal with the supplemental
 15 study that was performed. It deals with something
 16 that came up during the public portion at the last
 17 meeting after Mr. Troutman had concluded his direct
 18 testimony and I had asked all the questions I had.
 19 As the Board is aware, the applicant has
 20 agreed to restrict the Taylors Mills Road access
 21 driveway to right turn out only, where left turns
 22 would be prohibited from the site.
 23 And a member of the public asked a
 24 question whether or not that would -- what impact
 25 that would have, if any, on Briar Hill Drive and

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1 Country Lane, because someone -- a patron of the site
 2 seeking to head west on Taylors Mills Road may be
 3 apt, if they didn't want to make the illegal left
 4 turn out of the site, they may be apt to use Briar
 5 Hill Drive and Country Lane in order to head to
 6 Taylors Mills Road westbound.
 7 So I would ask Mr. Troutman if he's
 8 looked into that, what he thinks the impact would be,
 9 if possible provide some quantitative data based upon
 10 trip generation and distribution, and just sort of
 11 clarify for the Board whether or not there would be
 12 any significant impact.
 13 MR. TROUTMAN: I did have a chance to
 14 look into that issue. As we all know, restricting
 15 the left turns out to Taylors Mill -- Taylor Mills
 16 Road is the right thing to do from a safety
 17 perspective. But it does bring into play, you know,
 18 what's the alternative now that I can't make that
 19 left. So good question.
 20 This business, as Mr. Leber testified,
 21 really feeds off the highway traffic, the Route 9
 22 traffic. So a majority of the trips wouldn't even
 23 have an interest in Briar Hill Drive; it doesn't do
 24 anything for them.
 25 There will be motorists who live within

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1 those neighborhoods that are accessed by Briar Hill
 2 that are going to go back home, which is okay because
 3 they live there, and there will also be ones with
 4 local knowledge that will use it simply to get back
 5 to Taylors Mills Road quicker. That potential pool
 6 of trips that would use it, and it would only be
 7 during these peak meal hours, I think it's very low.
 8 I looked at the -- kind of broke down all
 9 the exiting traffic. I would estimate that to be,
 10 during a peak meal hour, probably about five in the
 11 hour, which is a trip every 12 minutes.
 12 That leads me to conclude that that's --
 13 there wouldn't be a noticeable impact to Briar Hill,
 14 especially when you consider that traffic from this
 15 property, you know, can do the same thing right now
 16 and go through there to get back west on Taylors
 17 Mills Road; and I think, you know, restricting that
 18 left turn is the right decision, especially given the
 19 fact that there's not going to be a noticeable impact
 20 on Briar Hill in my opinion.
 21 And I would just add, you know, I
 22 actually went out and looked at it and nobody from
 23 Wendy's turned right out of the Wendy's and then went
 24 in Briar Hill, and also I couldn't find Briar Hill.
 25 It's so well hidden; there are so many mature trees

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1 in the way that drive -- it almost looks like a
 2 private driveway that you shouldn't go into. So you
 3 really have to know it's there. I missed it the
 4 first time and had to go make a U-turn and come back
 5 around to actually find it.
 6 MR. BOCCANFUSO: Okay. Now, the five
 7 vehicles you estimated, that's -- is that based upon
 8 the DOT-accepted trip generation for the site as well
 9 as a trip distribution to the various directions
 10 around the site?
 11 MR. TROUTMAN: Yes.
 12 MR. BOCCANFUSO: Okay, and approximately
 13 what trip distribution did you assign to Taylors
 14 Mills Road westbound to come up with those five
 15 vehicles?
 16 MR. TROUTMAN: Of the primary trips
 17 exiting going south on Route 9, it was about 25
 18 percent.
 19 MR. BOCCANFUSO: Okay.
 20 MR. TROUTMAN: So 75 percent continue
 21 south; 25 percent of the primary trips. The pass-by
 22 trips all got assigned to Route 9.
 23 MR. BOCCANFUSO: Understood. And I think
 24 that that's probably a conservative estimate, 25
 25 percent. I don't think that one-quarter of the

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1 patrons of this site are seeking to head westbound on
 2 Taylors Mills Road.
 3 But I do appreciate the effort in taking
 4 a look at that because I think it was a good question
 5 that came from the member of the public, and I
 6 apologize that I don't know exactly who it was. But
 7 I appreciate that you took a look at that.
 8 Mr. Chairman, that's all the questions
 9 and comments I have at this time. I'm available for
 10 questions from the Board should they have any. And
 11 you're muted, sir.
 12 MS. KAMEN: Brian, can I ask a question?
 13 It's Mollie.
 14 CHAIRMAN LEVITON: Go ahead, Mollie.
 15 MS. KAMEN: Do you feel in your
 16 professional opinion that with restaurant next to
 17 restaurant and the peak hours of stacking would be
 18 similar potentially, that in addition to the
 19 potential of the cars (technical interference -
 20 inaudible) that the Wendy's cars are not typically
 21 going and cutting through Country Lane and Briar Hill
 22 because they have that service road; however, this
 23 particular property does not have a service road, and
 24 my concern would be that people would pull out of
 25 Taco Bell and then immediately pull into Wendy's to

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1 access the service road and there could be potential
 2 congestion or somebody doesn't want to wait on line
 3 with stacking, et cetera and there could be a
 4 potential hazardous incident. Do you think that that
 5 is a concern?
 6 MR. BOCCANFUSO: I'm a little unclear.
 7 What is the concern you're asking about? Is it
 8 conflicts within --
 9 MS. KAMEN: People pulling out of Taco
 10 Bell and cutting through Wendy's. And you've got
 11 restaurant next to restaurant, and based upon the
 12 testimony from Mr. Troutman and the stacking of cars
 13 and he had stated that, you know, potentially there
 14 are people that are backed up and will then
 15 immediately pull out.
 16 Is there a potential for a hazard and
 17 liability, et cetera if people are pulling out of
 18 Taco Bell and pulling into the Wendy's to access that
 19 service road? Because if you're from this area you
 20 know about that service road.
 21 MR. BOCCANFUSO: Yes. I am familiar with
 22 the service road.
 23 As far as potential, I mean, "potential"
 24 is a tricky word because obviously there's always
 25 potential. I mean, you know, whenever humans are

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1 involved there's always the potential for something
 2 to go wrong.
 3 Is it likely? I don't think so. And one
 4 thing I will offer is that if someone were to leave
 5 the Taco Bell site and try to cut through the
 6 Wendy's, unless there's a public access easement or
 7 something like that, technically it's illegal. So
 8 they'd be breaking the law in doing that.
 9 Secondly, there's -- there really isn't a
 10 -- as Mr. Troutman indicated, his observations were
 11 that this -- the people leaving the drive-through
 12 queue, it was -- it happened relatively quickly once
 13 the queue reached a certain point. So it's not a
 14 situation where it's happening constantly. It's a
 15 self-regulating condition whereby it happens
 16 periodically, occasionally when the queue reaches a
 17 certain point.
 18 As far as the actual left turn onto
 19 Taylors Mills Road from that access road or service
 20 road, as far as I'm aware there's no restriction
 21 against that, and because that isn't the applicant's
 22 site, I don't think that they have the ability to
 23 accept that turn restriction or even seek to have it
 24 done; it's private property.
 25 So is there the potential? Of course, I

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1 think there's always the potential. Do I think it's
 2 likely? I do not.
 3 MR. SCHERTZ: Brian, this is David
 4 Schertz. I have a concern about the westbound
 5 traffic on Taylors Mills Road. You know you're going
 6 to have a car that's going to want to go into Taco
 7 Bell off of Taylors Mills, and they're going to try
 8 and make that left turn in a heavy traffic situation.
 9 How do you prevent the traffic stopping,
 10 because that's what's going to happen, to the single
 11 lane either way?
 12 MR. BOCCANFUSO: I don't know -- so
 13 you're saying someone's coming westbound on Taylors
 14 Mills Road; they're coming from the opposite side;
 15 they come across Route 9?
 16 MR. SCHERTZ: Correct.
 17 MR. BOCCANFUSO: Okay. First of all, if
 18 they're coming from that direction, my belief is
 19 their propensity would be to make a left on Route 9
 20 and access the site from the Route 9 driveway.
 21 MR. SCHERTZ: I understand that, but
 22 there's going to be somebody that's not going to make
 23 that left turn onto Route 9. And they're going to
 24 come across on Taylors Mills and they're going to
 25 want to make that left turn into that single lane cut

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1 to the back of the structure, and they're going to
 2 stop traffic heading westbound on Route 9. How do we
 3 prevent that from happening?
 4 MR. BOCCANFUSO: I'm not sure that we
 5 can. I'd like to hear from Mr. Troutman on this.
 6 And the reason that I'm not sure that we can is
 7 because I believe that the intersection is going to
 8 be under DOT jurisdiction. And I don't know that the
 9 Township can impose a left turn restriction at that
 10 location because it's under DOT jurisdiction.
 11 Mr. Troutman, in your investigations or
 12 discussions and correspondence with DOT, was there
 13 any conversations about the potential to restrict
 14 westbound left turns into the site from Taylors Mills
 15 Road? I think you're going to have to unmute
 16 yourself.
 17 MR. TROUTMAN: Thank you. We haven't
 18 gotten that far with DOT. Because of all these
 19 furloughs during the pandemic, they are just
 20 extremely unresponsive right now. I've been
 21 e-mailing and calling, and I used to be able to go
 22 visit them there on a regular basis and find out
 23 stuff and I can't even do that.
 24 So we just -- we haven't gotten to that
 25 discussion. They haven't given any feedback on our

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1 restrictions yet, except for the fact that I would --
 2 that I had testified last meeting that we are going
 3 to make sure if they don't, that we are strong about
 4 pointing out that this is the pattern that the town,
 5 you know, should you act favorably, wants us to
 6 enforce.
 7 I weighted the concern, and I think the
 8 proper pattern is for somebody to turn left and go
 9 south on Route 9 and make a right into that driveway
 10 just like they do for Wendy's. They could -- you
 11 know, people for Wendy's actually could be going west
 12 on Taylors Mills and try to make a left into that
 13 service road. I mean, that might be happening; I
 14 don't know.
 15 But it seems like the prudent move if you
 16 know the area is just to -- you have a split-phase
 17 signal there with a green arrow, so you can easily
 18 make the left. You don't get hung up. You have a
 19 free flow left. Make the left, go south, turn right
 20 in.
 21 You know, you need reasonable and prudent
 22 driver behavior. I mean, if somebody's not behaving
 23 properly, you know, then that's something that needs
 24 to be enforced. But I don't think that's going to be
 25 the norm.

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1 MR. BOCCANFUSO: Do you think that it
 2 would be enforceable and feasible to restrict
 3 westbound -- and I'm not suggesting. I'm asking if
 4 you think that's something that could be done, to
 5 enforce a left turn restriction into the site from
 6 westbound Taylors Mills Road.
 7 MR. TROUTMAN: Yes, it is.
 8 MR. BOCCANFUSO: Okay, is that something
 9 you can review with the DOT when you're able to get
 10 an audience with them?
 11 MR. TROUTMAN: I absolutely will. And,
 12 you know, our goal here is to minimize that movement
 13 as much as possible, make the world a better place by
 14 not allowing it. Today you have two curb cuts to a
 15 gas station where people can do it. And it's
 16 unrestricted; there's no way to control it. At
 17 least, you know, we bring the opportunity to go to
 18 DOT and, you know, clamp down on this.
 19 MR. BOCCANFUSO: Okay. Mr. Schertz, does
 20 that answer your question sufficiently, that as they
 21 proceed with the NJDOT application they will request
 22 a left -- a westbound left turn restriction for
 23 traffic seeking to enter the site?
 24 MR. SCHERTZ: Yes, that's fine. But I'd
 25 like to add that to the application to approve it,

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1 that this is part of the approval of the application,
 2 since there seems to be a delay in negotiating with
 3 the Department of Transportation. Is that okay, Mr.
 4 Miller?
 5 MR. MILLER: That would be -- it will be
 6 put in the Resolution, whether the Board approves the
 7 application or not, that that was Mr. Troutman's
 8 testimony. So Mr. Troutman made that testimony;
 9 they're bound by it, and we'll include it in the
 10 Resolution.
 11 MR. SCHERTZ: Very good.
 12 CHAIRMAN LEVITON: Larry?
 13 UNIDENTIFIED MEMBER OF PUBLIC: Yes.
 14 Yes.
 15 CHAIRMAN LEVITON: No, sir, I'm asking
 16 Mr. Cooper, Larry Cooper. He's a Board member.
 17 We'll go out to the public after the --
 18 MR. COOPER: I have a few questions.
 19 MR. MILLER: Well, Larry, before you
 20 start your questions, I think the Chair just had some
 21 comments geared toward the public. So you just let
 22 him finish and then we'll pick up with you, Larry.
 23 CHAIRMAN LEVITON: Yeah, for the benefit
 24 of the public, it's now the Board's turn to question
 25 the experts that entered testimony onto the record

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1 this evening. They're going to get them all out into
 2 the open; you'll be privy to all of them, and then
 3 we'll go out to you. You'll be able to address the
 4 Board and ask the professionals that offered
 5 testimony questions as well.
 6 Go ahead, Mr. Cooper.
 7 MR. COOPER: Okay. This one's for Mr.
 8 Leber. You had mentioned about the signs. I wanted
 9 to know, I didn't hear that you said there should be
 10 a right-hand turn only exiting on Taylors Mill Road.
 11 Is there going to be a sign like that?
 12 MR. LEBER: Yes, there will be.
 13 MR. COOPER: Okay. Thank you.
 14 And to Mr. Troutman, when the cars come
 15 in off of Taylors Mill Road and it's backed up in the
 16 queue, is there going to be signage saying to go
 17 around to get to the menu board?
 18 MR. TROUTMAN: Yes. That's the -- it's
 19 actually a one-way pattern, so there is traffic
 20 control signage to that extent. To that effect I
 21 mean.
 22 MR. COOPER: Going to the menu board?
 23 MR. TROUTMAN: Yes, you have to circulate
 24 around counterclockwise, exactly.
 25 MR. COOPER: Okay. One more question,

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1 and I'm not sure who it goes to. Today watching the
 2 news, the Taco Bell came out with a new model for
 3 their buildings that they will do, and what it said
 4 was it was different from what it had before.
 5 I wanted to know, is this the model that
 6 we're going to be voting on; is this what's going to
 7 be built or is it going to be the new model that
 8 they're pushing?
 9 MR. LEBER: No. I'm up to date on that
 10 information as well. They're going to build two
 11 specific prototype models, which is not the type of
 12 building that's proposed in this application.
 13 MR. COOPER: Okay. Because they also
 14 proposed two drive-through lanes.
 15 MR. LEBER: No, that's not proposed here.
 16 We have a single drive-through with a bypass lane.
 17 MR. COOPER: Fair enough. Thank you.
 18 CHAIRMAN LEVITON: Terry?
 19 MR. ROSENTHAL: Yeah, I just had one
 20 question. We talked about the traffic, that there's
 21 no traffic increase because people are already on the
 22 road.
 23 I was just curious, there's got to be
 24 some percent of people that are home and saying let's
 25 go to Taco Bell for lunch that aren't already on the

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1 road. I'm just curious how much of an increase that
 2 would be or what percent that would be.
 3 MR. TROUTMAN: Yeah, in our report -- in
 4 my testimony at the last hearing, I reviewed that.
 5 There is an increase. The Taco Bell has a higher
 6 peak hourly trip generation than the gas station.
 7 But it's not a significant increase in traffic; it
 8 doesn't rise to that definition.
 9 So if we weren't changing these driveways
 10 and making them better, we wouldn't even have to go
 11 to DOT because we would just get a letter of no
 12 interest to use those existing driveways because
 13 we're not significantly increasing traffic over that
 14 existing use.
 15 But there will be some increase. It is a
 16 slightly higher use. Probably on the order of,
 17 during the peak hour, probably 20, 25 in, 20, 25 out,
 18 something like that.
 19 MR. ROSENTHAL: Okay. Well, that's
 20 probably a good thing. We used to say nobody goes to
 21 Denny's; they just end up there. So I'm glad you
 22 have some ...
 23 MR. BOCCANFUSO: Mr. Troutman, I think
 24 that Terry's question was actually relevant to the
 25 pass-by percentage. I appreciate the testimony that

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1 you provided; it did help clarify, but I think he was
 2 asking about percentage of pass-by that was used and
 3 where those numbers come from. If you could clarify
 4 that, that would be helpful.
 5 MR. TROUTMAN: Yeah, so you have the
 6 total trips that come in and out of the site, which I
 7 counted in Howell. I counted every car that came in
 8 and every car that came out. But I didn't know where
 9 they came from, right; I just saw them come in and I
 10 saw them go out and I know the number.
 11 Studies have shown where those come from.
 12 And about half of those were people that were already
 13 on Route 9 South traveling south; it was lunchtime.
 14 They came in; they got their lunch. When they were
 15 done, they left and went back out and continued on
 16 their way on Route 9. That's called a pass-by trip.
 17 That trip was already in the area and that just
 18 changed into a turn in and a turn out, like a stop.
 19 About half the traffic comes from that type of
 20 pattern.
 21 The other half are people who say, oh, I
 22 want to go to Taco Bell; where is it? I have to come
 23 to a new intersection I usually don't go to because
 24 now I want to go to Taco Bell. That's the other
 25 half. So it's about 50/50.

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1 MR. ROSENTHAL: Okay. Good answer; thank
 2 you. That answers my question.
 3 CHAIRMAN LEVITON: Bob?
 4 MR. GREGOWICZ: Yeah, Bob Gregowicz. I
 5 have a question. It's probably directed to Nancy.
 6 It's just for my own clarification.
 7 The Manalapan Police Department, they did
 8 review the application, and I believe they forwarded
 9 a letter that they had no recommendations, which
 10 would tend for me to believe that there was no issues
 11 that they felt that had to be addressed. Correct?
 12 MS. DeFALCO: That's correct. And Janice
 13 can answer that question better than me since she has
 14 the report on file. But I believe that's correct.
 15 No comment means that they had no comment.
 16 MS. MOENCH: No issues with it at all,
 17 correct.
 18 MR. GREGOWICZ: Okay. Thank you.
 19 MS. MOENCH: You're welcome.
 20 CHAIRMAN LEVITON: Now, before I go out
 21 to the rest of the Board, there was also a letter
 22 from our Board of Health that indicated that the
 23 septic system needed to be shut down and I'm
 24 confident that the Yum & Chill are working in concert
 25 with Mr. Boccanfuso and all of those things will be

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1 resolved through the Board's Engineer.
 2 Brian, can you confirm that?
 3 MR. BOCCANFUSO: Yes. I will not be
 4 involved in the nuts and bolts of the abandonment of
 5 the existing septic, assuming that there is one.
 6 Is that correct, Marc, that there is an
 7 existing septic on the site?
 8 MR. LEBER: It's a well.
 9 CHAIRMAN LEVITON: Oh, right, it's a
 10 well.
 11 MR. LEBER: Yes.
 12 MR. BOCCANFUSO: Okay.
 13 MR. LEBER: That will be closed in
 14 accordance with the DEP requirements for, you know,
 15 abandonment of a drinking well.
 16 MR. BOCCANFUSO: Yes. Typically, Mr.
 17 Chairman, in Manalapan, we as the municipal engineer
 18 don't get involved in the details of that type of
 19 thing. The Board of Health will oversee it. The one
 20 thing that we will require is that the necessary
 21 documentation be submitted upon completion of the
 22 work, and that's something that we would confirm if
 23 the application is approved, of course, prior to the
 24 issuance of a Certificate of Occupancy or at the
 25 appropriate time.

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1 CHAIRMAN LEVITON: Thanks, Brian. That
 2 is sufficient oversight.
 3 Mr. DiTota?
 4 MR. DiTOTA: I have no questions. I have
 5 no questions, Mr. Chairman.
 6 CHAIRMAN LEVITON: Mr. Lilien?
 7 MR. LILIEN: I'm sorry, Mr. Chairman. I
 8 just had a quick question. With the weather getting
 9 a little -- the weather is going to get -- we're
 10 going to turn into winter eventually, and the outdoor
 11 dining is going to get a little bit less, I would
 12 imagine.
 13 Do you think that would impact this
 14 drive-through situation with fast food down the line
 15 as far as the increase in traffic or potential for
 16 hazard, just if there is an increase? It's kind of
 17 an open-ended question.
 18 MR. TROUTMAN: From what I could tell at
 19 Howell, there really wasn't any outdoor dining. So
 20 everybody was kind of staying in their cars either,
 21 you know, getting their food and going off site or
 22 getting their food and going into spots, so they
 23 could do that during inclement weather as well.
 24 MR. LILIEN: I appreciate the answer.
 25 Thank you.

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1 CHAIRMAN LEVITON: Mr. Mantagas.
 2 MR. MANTAGAS: Yes, I have a question for
 3 Mr. Troutman. Have you taken into consideration the
 4 people going northbound, getting off at the jug
 5 handle, coming across into the parking lot and then
 6 exiting trying to get back north?
 7 Because that one lane then when you come
 8 out is a right turn only. Now, the people that are
 9 going north want to go back north. They're going to
 10 try to cut over to make that left turn. Have you
 11 studied that?
 12 MR. TROUTMAN: I mean, that is a movement
 13 that could occur. It's going to be a minor movement.
 14 But that certainly is a trip that could occur. And I
 15 did take a look at that, and the best thing you can
 16 do for that is push the driveway on Taylors Mills as
 17 far west as possible.
 18 And the way -- what happens at that
 19 signal is once that eastbound queue clears out, the
 20 cars that are waiting in the jug handle or in the
 21 driveway, like that movement, would fill in and be
 22 able to go to their lane at that point, so it kind of
 23 ebbs and flows with those gaps that the signal
 24 creates when it clears.
 25 MR. MANTAGAS: Because I could tell you I

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1 lived in this town for 30 years and that's a very bad
 2 intersection. A lot of traffic builds up. So I'm
 3 just wondering like, you know -- I'm going to say
 4 cars are going to be coming out there and they want
 5 to go northbound, they're going to be making a left.
 6 So they're going to have to cut over, and there's
 7 going to be a lot of cars trying to prevent them from
 8 going left, so it's going to back up that parking
 9 lot.

10 MR. TROUTMAN: I mean, that's not the
 11 primary movement that this site's going to generate,
 12 but I do see that that movement will occur, and,
 13 again, it's going to have to be done on a gap when
 14 the traffic light clears out the approach.

15 MR. MANTAGAS: Was any consideration
 16 taken to close that exit and just let the exit on
 17 Route 9, going back southbound?

18 MR. TROUTMAN: No. No, that wasn't
 19 considered. That would be poor on-site access and
 20 traffic circulation and I don't think the property
 21 would function properly.

22 MR. MANTAGAS: Okay. That's all the
 23 questions I have.

24 CHAIRMAN LEVITON: Is there anyone else
 25 from the Board who wants to ask a question or make a

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1 statement? You're muted, Larry.

2 MR. COOPER: Okay. You hear me now?

3 CHAIRMAN LEVITON: I can, yes.

4 MR. COOPER: Okay, good. At the last
 5 meeting we discussed the delivery times of the
 6 tractor trailers that are going to be coming in. Was
 7 there a time -- was there a time that was -- that we
 8 have affixed for that?

9 MR. TROUTMAN: Yes, the testimony was
 10 that three a.m. to five a.m. is the typical. And I
 11 believe the applicant agreed to have no later than
 12 six a.m., in case somebody's running late.

13 MR. COOPER: Okay. Thank you.

14 And, John, you can put that into the
 15 Resolution?

16 MR. MILLER: Yes, again, that's testimony
 17 from the applicant and they are bound by that, so
 18 that no matter what the Board decides on the
 19 application it will be in the Resolution.

20 MR. COOPER: Thank you.

21 MS. KAMEN: Mr. Miller, will that hold
 22 true also for when the trash removal and cardboard
 23 removal is done?

24 MR. MILLER: If they testified to that
 25 previously, and Mr. Troutman would be able to address

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1 that, just to clarify, then, yes, if they testified
 2 to that, then they are bound by that.

3 MR. TROUTMAN: I don't have that one in
 4 my notes, but I believe that was the agreement for
 5 all deliveries including trash.

6 MR. MILLER: And, Mr. Troutman, that was
 7 my understanding as well. I didn't have anything
 8 specific as far as recycling or garbage, but I do
 9 recall the three to five a.m. window.

10 MR. LICATA: Mr. Miller, I can stipulate
 11 my memory is yes as well.

12 MS. DeFALCO: Okay, just keep in mind
 13 that there is a noise ordinance and there may be some
 14 residential properties that would have an issue with
 15 a five a.m. trash or dumpster being unloaded at that
 16 time.

17 MR. LICATA: We would make the
 18 stipulation. I have notes to that effect.

19 MS. DeFALCO: Okay. Thank you.

20 MR. LICATA: Thank you.

21 CHAIRMAN LEVITON: Okay, and I personally
 22 have no questions. So at this time, if there's no
 23 one else from the Board who wants to ask a question,
 24 I'm going to go out to the public. Okay.
 25 So if you're a member of the public and

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1 you want to speak, please press star 9 and we'll
 2 queue you up. We'll swear you in. And I'll ask that
 3 anyone who addresses the Board or asks a question, to
 4 keep their remarks to three minutes or less, and as
 5 we progress, to try not to repeat what other people
 6 have said.

7 When the public has finished, the Board
 8 will discuss the application in public and then Mr.
 9 Licata will sum up his case and then the Board will
 10 take action.

11 Janice, do we have folks from the public
 12 who are interested in speaking?

13 MS. MOENCH: We do. Nancy, I wasn't sure
 14 if you were taking an order. I just see --

15 MS. DeFALCO: Sure. We can start with
 16 732-294-79026 (sic). I'll unmute you. Start by
 17 stating your name.

18 MR. COHEN: Are you talking to me?

19 MS. MOENCH: Yes.

20 MR. COHEN: Hi. My name is Lawrence
 21 Cohen. I live at 22 Alexandria Drive, Manalapan by
 22 the library.

23 MR. MILLER: Okay, Mr. Cohen, this is
 24 John Miller, the Board Attorney. I know you're not
 25 on video, but we're going to swear you in.

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1 LAWRENCE COHEN, was duly affirmed and
 2 testified under his affirmation as
 3 follows:
 4 MR. MILLER: Thank you. And it's -- did
 5 you say 22 Alexandria; did I hear that correctly?
 6 MR. COHEN: Yes, you did.
 7 MR. MILLER: Okay. Thank you.
 8 MR. COHEN: Okay. I want to say that I
 9 learned about this from the News Transcript, and I
 10 wrote a letter, sent it in to Janice Moench, who
 11 advised me that my letter will be considered hearsay
 12 unless I read it aloud.
 13 We have lived here for nearly 40 years
 14 this January. There has always been a gas station at
 15 that corner of Route 9 South and Taylor Mills Road,
 16 and I confirmed it was a Shell. It's convenient to
 17 gas up just before our exit on Symmes Road,
 18 especially with all the added traffic ever since the
 19 Manalapan Mall of 22 stores was torn down for no
 20 better reason than it provided extra parking for a
 21 Wegmans supermarket, which we really did not need
 22 this close to our home.
 23 The Shell station has the friendliest and
 24 most considerate staff of any in the area. The man
 25 who works there always cleans the windshields and the

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1 other windows without being asked while filling up.
 2 It is not too busy. I always give him a tip for the
 3 consideration and the old-fashioned gas station
 4 service.
 5 The only other gas station that does this
 6 service is located on the Parkway near (technical
 7 interference - inaudible) exit. Now, why would we
 8 locals want to lose this station? No other reason
 9 than greed on the part of the owner.
 10 By comparison, traffic onto Taylors Mills
 11 and Symmes Road exits has increased on Route 9 South
 12 at the Wendy's restaurant. This is especially true
 13 ever since Governor Murphy issued his COVID-19
 14 Executive Order and nobody can dine inside the
 15 Wendy's.
 16 Around rush hour, it was on August 12th
 17 at around four o'clock, 3:30, four o'clock, the
 18 entire service lane is backed up, with at least three
 19 cars on Route 9 itself waiting their turn at the
 20 drive-through sitting at the service lane.
 21 Immediately before Taylors Mills Road, we
 22 have to slow down from 55 to a crawl or not move at
 23 all, mainly because of increased traffic of the
 24 Wegmans supermarket mega mall and people trying to
 25 get a meal at the run at Wendy's.

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1 If our town Council actually approves
 2 this variance and allows this --
 3 MR. MILLER: Whoa, whoa.
 4 MR. COHEN: -- restaurant --
 5 MR. MILLER: Mr. Cohen.
 6 MR. COHEN: -- selfish --
 7 MR. MILLER: Mr. Cohen.
 8 MR. COHEN: Yes, sir.
 9 MR. MILLER: This is John Miller, the
 10 Board Attorney. I got to stop you. The town Council
 11 is not --
 12 MR. COHEN: Okay.
 13 MR. MILLER: The town Council is not
 14 involved with this. This is the Zoning Board. An
 15 applicant has applied for a use variance. The
 16 Township Council is not -- this is not before the
 17 Township Council.
 18 MR. COHEN: I understand. I'm reading
 19 from a letter I wrote.
 20 MR. MILLER: Well, I'm telling you it's
 21 incorrect.
 22 MR. COHEN: Okay. It's the Zoning Board,
 23 correct. I stand corrected.
 24 The traffic will then become impossible.
 25 I can easily picture Route 9 traffic backing up all

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1 the way halfway to Marlboro and that's not much of an
 2 exaggeration. I request that the State perform --
 3 well, you have performed a traffic study obviously.
 4 When we moved here in 1981 I was a young
 5 teenager and Route 9 traffic moved along quite
 6 fluidly. I was even able to ride my ten-speed bike
 7 along the country back roads like Tennent and Pond
 8 Roads. I used to visit the lady on Craig Road with
 9 her horses and barn after school.
 10 You cannot do this any longer. Any
 11 bicyclists would be killed. Indeed I just had my car
 12 totaled while stopped at a red light on Tennent Road
 13 a year ago by a woman who was texting and driving.
 14 The town Councils and Zoning Boards of the past few
 15 decades have turned our beautiful idyllic rural home
 16 into another Staten Island.
 17 MR. MILLER: Whoa, hold on, hold on.
 18 Hey, Mr. Cohen.
 19 MR. COHEN: Yes, sir.
 20 MR. MILLER: The town Council and the
 21 town Zoning Boards aren't turning any property into
 22 anything. The owner of the property, the applicant
 23 here, with the consent of the owner filed a land use
 24 application with the Zoning Board for a use variance
 25 for the use that's proposed. By law, the Zoning

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1 Board is obligated to conduct a hearing on that
 2 application.
 3 You're absolutely incorrect that the
 4 Zoning Board is changing land uses or the Township
 5 Council changing land uses. The Zoning Board doesn't
 6 have any jurisdiction for that as far as what an
 7 owner wants to do. An owner or an applicant decides
 8 to file an application with the Board. We, the
 9 Board, by law, have to hear it. So your --
 10 MR. COHEN: I understand now.
 11 MR. MILLER: -- characteristics as far as
 12 the role of the Zoning Board and the town Council is
 13 completely incorrect.
 14 MR. COHEN: Okay. Can I state what I
 15 witnessed on August 12th?
 16 MR. MILLER: You already did.
 17 MR. COHEN: I went through the
 18 drive-through at Wendy's. And I went through that
 19 long line to buy a soda. And there were at least two
 20 cars that were cutting in to the parking lot line
 21 that clearly drove all the way around the building
 22 just to cut in line to get ahead of everybody else to
 23 get to that drive-through. And this is just the
 24 Wendy's.
 25 Now, I can't imagine the traffic that

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1 will be caused, additional traffic, if you replace a
 2 gas station with a Taco Bell. It's going to be
 3 murder just getting home.
 4 CHAIRMAN LEVITON: Have you finished your
 5 letter, Mr. Cohen?
 6 MR. COHEN: I've finished with the
 7 letter. Just one more statement.
 8 I didn't know there was a noise ordinance
 9 before. I do hear a lot of noise in my backyard
 10 coming from Route 9 and also the Goodyear station on
 11 the corner, they have this loudspeaker that they call
 12 their employees by. I hear that all the time in my
 13 own backyard. That's all.
 14 CHAIRMAN LEVITON: Thank you, sir.
 15 Janice, who's next?
 16 MR. LAZEWSKI: I'd like to say something,
 17 but I don't know how to do it on the star nine.
 18 MS. MOENCH: Nancy, are you going in
 19 order down the --
 20 MS. DeFALCO: Yeah, let's do that; that's
 21 easy that way. So 908-770-4563.
 22 CHAIRMAN LEVITON: And, Rex, we'll get to
 23 you, I promise, sir.
 24 MS. DeFALCO: I have unmuted you. Hello?
 25 908-770 --

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1 MR. CLOSE: Hello. That's my phone
 2 number.
 3 MS. DeFALCO: Okay, you're on.
 4 CHAIRMAN LEVITON: Hello, sir. Mr.
 5 Miller is going to swear you in.
 6 MR. CLOSE: Okay.
 7 F R E D C L O S E, was duly sworn/affirmed
 8 and testified under his oath/affirmation as
 9 follows:
 10 MR. MILLER: Thank you very much. Please
 11 state and spell your name and provide your home
 12 address for the record.
 13 MR. CLOSE: Okay, my name is Fred Close,
 14 C-l-o-s-e, 184 Taylors Mills Road.
 15 MR. MILLER: Okay. Thank you very much.
 16 MR. CLOSE: That happens to be west of
 17 Route 9.
 18 MR. MILLER: Okay.
 19 MR. CLOSE: Okay. I wrote an e-mail to a
 20 Nancy DeFalco and she said that I should attend the
 21 meeting and read the e-mail.
 22 CHAIRMAN LEVITON: Well, go ahead, sir.
 23 What would you like to say?
 24 MR. CLOSE: Okay. So I'm going to read
 25 it. I just came across the plan for the Taco Bell

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1 restaurant in the News Transcript and I'm very upset
 2 about this. I have resided at 184 Taylors Mills Road
 3 for over 40 years. I avoid the intersection of
 4 Taylors Mills Road and Route 9 whenever possible, as
 5 I have witnessed several accidents and experienced
 6 several traffic situations which make navigating that
 7 intersection dangerous; basically people are blocking
 8 the road.
 9 I will not -- well, I assume that you are
 10 aware that there are problems with this intersection.
 11 The additional traffic on Taylors Mills Road caused
 12 by Taco Bell would only make a bad situation worse.
 13 For the above reasons, I strongly object to any exits
 14 or entrances from the Taco Bell onto Taylors Mills
 15 Road.
 16 There are many restaurants on Route 9. I
 17 don't understand why -- I mean, I listened to the
 18 entire meeting. I don't understand why we even need
 19 an entrance and an exit on Taylors Mills Road. Isn't
 20 Route 9 -- why wouldn't Route 9 be sufficient? This
 21 is my question to whoever wants to answer it.
 22 There are plenty of restaurants on Route
 23 9 that only have entrance and exit points on Route 9.
 24 So I'm not understanding why you would do this
 25 because it's just going to make a terrible situation

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1 as far as the traffic.
 2 I also wanted to make a -- I just heard
 3 one of the questions about -- someone mentioned a car
 4 proceeding westbound on Taylors Mills Road and they
 5 wouldn't be able to make an entrance into the
 6 restaurant, into the Taco Bell. I think the only way
 7 to stop that would be to put a medium (sic) up on
 8 Taylors Mills Road. All right?
 9 And also, I, many times, because it
 10 happens all the time, I get off -- I'm going south on
 11 Route 9; I get off at the jug handle; the car in
 12 front of me got off at the jug handle and crosses
 13 Taylors Mills Road to enter the Wendy's driveway.
 14 How ridiculous. I think that that driveway should be
 15 closed down completely. But that's another subject
 16 out of hand.
 17 I'm not against the Wendy's (sic), but I
 18 think that putting -- allowing an exit and an
 19 entrance on Taylors Mills Road is ridiculous for
 20 that. It would increase traffic; it makes the
 21 situation worse. That's all I have to -- and
 22 somebody -- someone answered the question --
 23 CHAIRMAN LEVITON: Very well, Mr. Close.
 24 Go ahead.
 25 MR. CLOSE: Go ahead. That's all I have

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1 to say.
 2 CHAIRMAN LEVITON: I'm going to --
 3 there's a lot of people in the queue, and it's
 4 already almost 10 o'clock. So I want to get to
 5 everyone. I'm going to ask going forward that you
 6 limit your remarks to three minutes. Police
 7 yourself, please.
 8 And let's get Mr. Licata to direct one of
 9 his experts to answer the question about why there
 10 needs to be curb openings on Taylor Mills Road at
 11 all.
 12 MR. LICATA: Thank you, Mr. Chairman.
 13 Mr. Troutman, could you address that question for us?
 14 MR. TROUTMAN: Yes. The site really
 15 wouldn't function properly without that. And what I
 16 mean by that is you need to have the ability to get a
 17 vehicle into the site from eastbound Taylors Mills
 18 Road; otherwise, you're going to drive that car into
 19 the queue to wait at the light and then they're going
 20 to add a right turn to the intersection and then
 21 another right turn off of Route 9. So it creates a
 22 circuitous entrance pattern if you don't have that
 23 entrance.
 24 And the same thing with the exit. If you
 25 don't have that exit, then people can't get back to

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1 the traffic light to go north on 9 or go east on
 2 Taylors Mills Road. They're all going to have to go
 3 on Route 9 South to another jug handle or to Briar
 4 Hill and it's going to, again, send an unnecessary
 5 burden onto other facilities when it could easily be
 6 solved by having that right in/right out.
 7 And keeping in mind that the situation
 8 out there is being dramatically improved because
 9 right now there are two driveways where all movements
 10 are permitted, so you have eight movements that can
 11 happen. You have four movements at each driveway
 12 that are allowed to happen right now, and we're
 13 taking that down to two by having one right in/right
 14 out.
 15 CHAIRMAN LEVITON: Thank you, Mr.
 16 Troutman. Ms. Moench?
 17 MS. DeFALCO: Okay. Next up is
 18 732-577-9340.
 19 MS. KORNBLUM: Yes, hi. Thank you. My
 20 name is Ilene Kornblum, K-o-r-n-b-l-u-m. And I live
 21 at 40 Ogden Lane.
 22 MR. MILLER: Ms. Kornblum, this is John
 23 Miller, the Board Attorney. Let me swear you in and
 24 then you can continue with your testimony.
 25 I L E N E K O R N B L U M, was duly

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1 sworn/affirmed and testified under her
 2 oath/affirmation as follows:
 3 MR. MILLER: Okay, thank you. There was
 4 a little bit of an echo when you first came on, so if
 5 you could please state and spell your name once again
 6 and provide your address, that would be very helpful.
 7 MS. KORNBLUM: Yes. It's Ilene,
 8 I-l-e-n-e, last name K-o-r-n-b-l-u-m. And the
 9 address is 40 Ogden Lane.
 10 MR. MILLER: Okay. Thank you very much.
 11 MS. KORNBLUM: Okay. And I don't want
 12 to, as you requested, repeat what other people have
 13 said. I just want to make a few comments.
 14 We do agree that the traffic will be
 15 horrendous. It's already like the Wild West on
 16 Taylor Mills Road over by that intersection.
 17 And although it's commented before it's
 18 not prudent driving to cut across, but people exiting
 19 Route 9 South at Taylor Mills Road often do cut
 20 across from the jug handle across both lanes of
 21 traffic to go into either the service road or the gas
 22 station. Doesn't make sense but it happens. So that
 23 is also a consideration needs to be taken.
 24 Also currently, regarding Wendy's
 25 backups, my husband and I have seen many times where

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1 Wendy's is already backing up onto Route 9 onto the
 2 shoulder. Several cars will be sitting on the
 3 shoulder.
 4 And the last comment I'd like to make is
 5 I believe the buses travel down the shoulder. So if,
 6 in fact, that is the case, that would also be
 7 problematic, I believe, for this project. And we
 8 really don't want to see a project that requires
 9 three acres squeezed onto less than one acre. So I
 10 want to thank you for your time.
 11 CHAIRMAN LEVITON: Thank you, Ms.
 12 Kornblum, and thank you for your remarks.
 13 Ms. Moench? Janice? You're muted,
 14 Janice.
 15 MS. MOENCH: Unmuting myself.
 16 CHAIRMAN LEVITON: Okay.
 17 MS. MOENCH: Okay, I think we have
 18 462-5199. Correct?
 19 MS. DeFALCO: Yes, they're on mute.
 20 MR. PRESSER: Yes, thank you. I'm
 21 waiting to be sworn in.
 22 M A R K P R E S S E R, was duly sworn/affirmed
 23 and testified under his oath/affirmation as
 24 follows:
 25 MR. MILLER: Thank you very much. Please

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1 state and spell your name for the record and provide
 2 your address.
 3 MR. PRESSER: My name is Mark Presser,
 4 M-a-r-k P-r-e-s-s-e-r. And I live at 25 Ogden Lane
 5 in Manalapan.
 6 I have a question for Mr. Troutman. At
 7 the hearing last month in July, you testified that
 8 there was going to be an increase in the traffic
 9 during those -- the peak times, lunch and dinner,
 10 over the current use at the gas station.
 11 And I don't remember the numbers that you
 12 actually gave. I think they were somewhere around 60
 13 cars per hour, something like that. Am I correct?
 14 MR. TROUTMAN: It will be 47 during the
 15 weekday lunch hour and 43 during the dinner hour. So
 16 that's about 23 in and 23 out at lunch and 21, 22 out
 17 at dinner.
 18 MR. PRESSER: What were the actual
 19 numbers going in and out of the gas station during
 20 those times? Not the increase, but the actual number
 21 of cars that were recorded going in and out of the
 22 gas station.
 23 MR. TROUTMAN: The gas station trips are
 24 estimated to be, because we -- this was, you know --
 25 things are different during COVID, but that was an

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1 estimate based on DOT criteria. Those trips are
 2 about 43 in and 43 out.
 3 MR. PRESSER: But you said there was
 4 going to be an increase over that with -- for the use
 5 of the Taco Bell.
 6 MR. TROUTMAN: That's correct.
 7 MR. PRESSER: So the gas station is 43 in
 8 and 43 out and the Taco Bell is going to be -- add 47
 9 and 43 to those numbers?
 10 MR. TROUTMAN: Yes, the Taco Bell will be
 11 like 65 in and 65 out.
 12 MR. PRESSER: So basically what you're
 13 saying is it's almost doubling?
 14 MR. TROUTMAN: No, it's not almost
 15 doubling. It's not a significant increase in traffic
 16 as defined by the State. I wouldn't even have to go
 17 to the State.
 18 MR. PRESSER: Yes, I understand that.
 19 The term "significant" as used by the State is merely
 20 bureaucratic semantics to alleviate themselves of the
 21 need to have to review anything that's less than a
 22 hundred cars.
 23 But certainly to say that going from 47
 24 to 63 is not a significant increase, that's still a
 25 significant number of -- it's a 33 percent -- or 50

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1 percent increase in the number of vehicles. I can
 2 tell you that --
 3 MR. TROUTMAN: I couldn't disagree more
 4 with that statement. That's utterly false, what you
 5 just said. That's not accurate. The State has their
 6 fingers in everything. They look at everything. I
 7 don't know why, but they want to be involved in
 8 everything. It's very hard to get them out of stuff.
 9 CHAIRMAN LEVITON: Okay, gentlemen, this
 10 is Steve Leviton. A question was asked and it was
 11 answered. Let's just move on, Mr. Presser. Anything
 12 else, sir?
 13 MR. PRESSER: Yeah, I just wanted to say,
 14 again, as a resident who's lived in this Township for
 15 40 years and who's gone through that intersection
 16 repeatedly, the number of vehicles coming out of the
 17 gas station onto Taylor Mills Road either to go east
 18 or west is de minimus. It's not significant in any
 19 way, especially since the traffic in and out of the
 20 gas station is scattered throughout the day.
 21 People, as was said earlier, people don't
 22 necessarily get up and say, hey, let's go to the
 23 Shell station. It's not a destination location.
 24 It's a place people pass by. They're in and they're
 25 out.

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1 A great deal of stress has been placed on
 2 the improvement to the property by reducing the
 3 number of driveways from four to I guess two or
 4 two-and-a-half. And I don't really see how reducing
 5 the number of driveways in any way improves the
 6 property if the number of vehicles going in and out
 7 through those driveways are going to increase,
 8 especially when some of those vehicles are going to
 9 be going onto Taylor Mills Road and choking an
 10 already choked intersection.

11 Thank you. That's all I have.

12 CHAIRMAN LEVITON: Thank you, sir, for
 13 your contribution.

14 Rex, you're up.

15 MR. LAZEWSKI: That's unmuted; that
 16 should be it, right?

17 CHAIRMAN LEVITON: Yes, sir.

18 R E X L A Z E W S K I, was duly sworn/affirmed
 19 and testified under his oath/affirmation as
 20 follows:

21 MR. MILLER: Thank you very much. Please
 22 state and spell your name for the record and provide
 23 your address.

24 MR. LAZEWSKI: My name is Rex Lazewski,
 25 L-a-z-e-w-s-k-i. I live at 186 Taylors Mills Road,

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1 been here for 40 years. And I've been in Manalapan
 2 for 70 years.

3 MR. MILLER: Thank you very much.

4 MR. LAZEWSKI: Okay. Mr. Troutman, don't
 5 you agree that most traffic for the gas station is
 6 pass-by traffic? Is that a true statement?

7 MR. TROUTMAN: The gas station has a
 8 pass-by component as well, yes.

9 MR. LAZEWSKI: Yes.

10 MR. TROUTMAN: It's at least 50 percent;
 11 it might be the majority, yes.

12 MR. LAZEWSKI: Okay. And most people
 13 that are going to go to Taco Bell are going to drive
 14 by, but a lot of people are going to drive up and
 15 say, let's go to Taco Bell and then let's go home.
 16 And they're going to come from northern Manalapan,
 17 Marlboro, wherever and want to go back up Route 9,
 18 out the Taylor Mills Road exit, which has been a
 19 sticking point with a lot of the commentators here
 20 this evening.

21 You stated that that is a very minimal
 22 amount of people, is that correct?

23 MR. TROUTMAN: Yes.

24 MR. LAZEWSKI: Okay. Well, if it's such
 25 a minimal amount of people, why do you need that

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1 exit?

2 MR. TROUTMAN: I explained that. That's
 3 a repeat question. It's for the complete circulation
 4 through the site and to provide cars with access to
 5 Taylors Mills Road to go east and access to the
 6 traffic light to go north.

7 MR. LAZEWSKI: Yes. I understand that
 8 you answered that. But since it's such a minimal
 9 amount of people and a minimal amount of customers
 10 that are coming out of the Taco Bell that want to go
 11 north, instead of punishing everybody that's using
 12 the intersection, why don't we just inconvenience the
 13 person that's going to Taco Bell since it's so few
 14 and let them go down Route 9?

15 CHAIRMAN LEVITON: So, Mr. Lazewski,
 16 that's more rhetorical in nature. The question was
 17 asked and answered. Is there anything else you want
 18 to ask?

19 MR. LAZEWSKI: No. Well, one other
 20 thing. Mr. Chadwick earlier said that they were
 21 going to improve the parking by moving -- there's
 22 parking on Route 9 -- at the Shell station right on
 23 Route 9 and they were going to move it back.

24 There's absolutely no parking at the
 25 Shell station on Route 9. The parking at the Shell

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1 station is between the Shell station and Wendy's.

2 CHAIRMAN LEVITON: Okay. Mr. Chadwick?

3 MR. CHADWICK: I think we talked about
 4 the pavement. The pavement goes right to the
 5 property boundary lines.

6 MR. LAZEWSKI: You said parking but okay,
 7 maybe --

8 MR. CHADWICK: No, it will not.

9 MR. LAZEWSKI: Okay. All right, that's
 10 about all I have, other than the fact that you've got
 11 a very, very small lot and you're trying to put
 12 something on it. It's a three-acre zone. You've got
 13 a hundred and -- you're asking for variances for
 14 setbacks that are ridiculous, and I don't think you
 15 should change the use of the property. Thank you.

16 CHAIRMAN LEVITON: You're welcome. Thank
 17 you, sir, for your input and for your patience.

18 MR. LAZEWSKI: You're welcome.

19 CHAIRMAN LEVITON: Rob 22?

20 MR. SCHECHTER: Yes? Am I unmuted?

21 CHAIRMAN LEVITON: Yes, sir. You're
 22 going to be sworn in now.

23 R O B E R T S C H E C H T E R, was duly
 24 sworn/affirmed and testified under his
 25 oath/affirmation as follows:

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1 MR. MILLER: Thank you, sir. Please
 2 state and spell your name and provide your address
 3 for the record.
 4 MR. SCHECHTER: My name is Robert
 5 Schechter, S-c-h-e-c-h-t-e-r. Address is 67 Heron
 6 Drive. And I basically am going to repeat what's
 7 been said, but I just want to go on the record in
 8 terms of the access onto Taylor Mills Road.
 9 I've lived here for 35 years. It's a
 10 dangerous intersection. At rush hour times it backs
 11 up incredibly at this point. Clearly it's going to
 12 increase the traffic coming out onto Taylors Mill
 13 Road. Clearly there is no reason to have that exit
 14 and entrance from Taylor Mills Road other than to
 15 make it more attractive for the operator, and, again,
 16 creating a dangerous situation on Taylor Mills Road,
 17 increasing traffic needlessly.
 18 When the expert says we have to have it
 19 or it should be there to make -- increase flow on the
 20 site, that is a ridiculous statement. The traffic
 21 would work better just coming in and out onto Route 9
 22 and all going one way through the place, not going in
 23 multiple directions, and it's just done for
 24 profitability of the (technical glitch - inaudible).
 25 That's all I have to say.

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1 CHAIRMAN LEVITON: Thank you, Mr.
 2 Schechter. Salvatore.
 3 SALVATORE VISCUSI, was duly
 4 sworn/affirmed and testified under his
 5 oath/affirmation as follows:
 6 MR. MILLER: Thank you very much. Please
 7 state and spell your name and provide your address.
 8 MR. VISCUSI: My name is Salvatore
 9 Viscusi, S-a-l-v-a-t-o-r-e, V, like in Victor,
 10 i-s-c-u-s-i. I live at 5 Claytons Lane, Manalapan,
 11 New Jersey.
 12 I've been a resident in Manalapan now for
 13 over five years. It's a great little town. I feel
 14 we have more than we need for fast food restaurants.
 15 We have Taco Bell already six miles south of the
 16 location you wanted to put another one and about six
 17 miles north of where you want to put another one.
 18 It's a beautiful little town. I feel we
 19 shouldn't congest it with fast food restaurants. I
 20 think we should keep it for what it's known for,
 21 being a nice little family town, and not turn it into
 22 a circus. Seeing a fast food place pop up every
 23 other block is just doing that.
 24 So my comment is do we really need
 25 another fast food restaurant in this little town that

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1 is a pleasant little place to live. That's all I
 2 have to say.
 3 CHAIRMAN LEVITON: Thank you, Mr.
 4 Viscuci.
 5 Up next, we have E280510. Good evening.
 6 MR. COHEN: Good evening. Can you hear
 7 me now?
 8 CHAIRMAN LEVITON: Yes.
 9 MR. COHEN: Thank you, Mr. Chairman.
 10 S T E V E C O H E N, was duly sworn/affirmed
 11 and testified under his oath/affirmation as
 12 follows:
 13 MR. COHEN: Can I state my name and
 14 address?
 15 MR. MILLER: Yes, please do.
 16 MR. COHEN: My name is Steve Cohen and I
 17 live at 18 Briar Hill Drive. And I am a very proud
 18 resident of Manalapan for 24 years and a former
 19 member of the Zoning Board.
 20 Are you ready, sir?
 21 MR. MILLER: Go right ahead, sir.
 22 CHAIRMAN LEVITON: I am ready, and thank
 23 you for your service, Mr. Cohen. Welcome back.
 24 MR. COHEN: You're quite welcome. I
 25 enjoyed it very much and maybe look forward to doing

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1 it again one day when I have more time.
 2 So for the record, I want to state four
 3 things.
 4 Number one, I agree wholeheartedly that
 5 cars exiting the potential Taco Bell from the
 6 existing Shell station and making -- exiting onto
 7 Taylors Mill Road and trying to make a right-hand
 8 turn, since they're not allowed to make a left, but
 9 trying to make a right-hand turn, and then cross over
 10 to get into the left-hand lane to go onto Route 9,
 11 that's already an existing problem from people doing
 12 it from Wendy's, so now to add a second fast food
 13 restaurant and have two sets of cars doing that,
 14 especially at rush hour, that's a nightmare. I don't
 15 -- you know, that alone, I don't think you should
 16 approve this application. That's number one.
 17 Number two, I agree with a statement made
 18 by a very nice woman who asked a question to the
 19 professional about cars exiting the Taco Bell onto
 20 Route 9, then entering the Wendy's property and going
 21 to the back to get to the access road and then coming
 22 out the access road and even potentially illegally,
 23 or maybe it's not illegal from the access road, maybe
 24 it's only illegal from the new Taco Bell, but trying
 25 to make a left then onto Taylors Mill Road.

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1 So I view that to be a serious problem as
 2 well. And someone's going to get hurt and God forbid
 3 killed. So that, in addition to number one, is, you
 4 know, another reason why this shouldn't happen.
 5 Number three, I live on Briar Hill Drive.
 6 I disagree wholeheartedly with Mr. Troutman, even
 7 though I respect his profession as an expert in
 8 traffic, that he said Briar Hill Drive looked like a
 9 driveway and that he couldn't even find it the first
 10 time and that he had to go back to find it the second
 11 time. Well, that's because he doesn't live there and
 12 doesn't maybe, you know, try to use that road.
 13 But cars coming out of this new Taco Bell
 14 will cut through Briar Hill and then make a
 15 right-hand turn onto Country and go up to Taylors
 16 Mill, and so, you know, this is another potential
 17 problem for the residents, which, by the way, that's
 18 what this town is for; it's for the residents. It's
 19 not just to accommodate new businesses that are
 20 trying to make money.
 21 And finally, number four, what I've
 22 already noticed is that during the lunch and
 23 dinnertime hours, that cars are backed up onto the
 24 shoulder of Route 9 headed south. These cars are
 25 backed up from entering to the Wendy's drive-through

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1 right now.
 2 So if you have enough of those cars
 3 backed up on the shoulder of Route 9 South trying to
 4 get into the Wendy's, the exit from the new proposed
 5 Taco Bell is right there. So either they're going to
 6 block the new exit to the Taco Bell or, God forbid
 7 even worse, someone coming out of the Taco Bell will
 8 now have to go around one of those cars on the
 9 shoulder and they're going to get killed by a car
 10 coming down Route 9 at 65 miles an hour.
 11 So for, you know, for the record, I state
 12 that I am wholeheartedly against this application --
 13 this applicant's application for a use variance and I
 14 ask that you not approve it. Thank you.
 15 CHAIRMAN LEVITON: Thank you, Mr. Cohen.
 16 547-1425.
 17 MS. DAMORE: Hi. I'm also going to put
 18 myself on my video because I'm on both.
 19 CHAIRMAN LEVITON: Hi.
 20 MS. DAMORE: Hello.
 21 CHAIRMAN LEVITON: Mr. Miller will swear
 22 you in.
 23 MICHELLE DAMORE, was duly
 24 sworn/affirmed and testified under her
 25 oath/affirmation as follows:

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1 MR. MILLER: Thank you very much. Please
 2 state and spell your name and provide your address.
 3 MS. DAMORE: My name is Michelle Damore
 4 and I sold my house 13 days ago. I lived at --
 5 MR. MILLER: Whoa, whoa, whoa. Slow down
 6 just a little bit. Say your name again and spell
 7 your name?
 8 MS. DAMORE: Michelle Damore. It's
 9 Michelle, M-i-c-h-e-l-l-e, D-a-m-o-r-e. Can you hear
 10 me?
 11 MR. MILLER: I can. You just need to
 12 talk a bit slower. And your address?
 13 MS. DAMORE: Well, I just sold my house
 14 at 38 Livingston Lane 13 days ago. I'm currently
 15 looking for another house, so I'm temporarily living
 16 out of town. But I've lived here for 34 years. I
 17 have a vested interest in the town. I lived at the
 18 Taylor Mills intersection area for six years, the
 19 past six years. So I -- you know, I do have concerns
 20 about this.
 21 To agree quickly with some of the
 22 previous callers, I have seen the line at Wendy's way
 23 back out onto Route 9. My mother picks up my young
 24 children from preschool and elementary school and she
 25 has been cut off numerous times by people trying to

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1 get over real quick to get to Wendy's, which scares
 2 me obviously with my young children.
 3 I keep hearing that you care about the
 4 health and safety of people so you need different
 5 exits and entrances and all this stuff, but what
 6 about the health and safety of our community that we
 7 keep putting these fast food places that are awful,
 8 that cause obesity and other problems? So that
 9 doesn't really care about the health and well-being
 10 of Manalapan as a whole.
 11 I am a public school health teacher.
 12 Obviously I care about health. And this is not
 13 something I condone. But the only people I know that
 14 eat Taco Bell are usually drunk or high 20-something-
 15 year-olds or older teens who go out after a night of
 16 drinking to go eat this stuff.
 17 MR. MILLER: Ms. Damore, that's not
 18 relevant testimony here. I mean --
 19 MS. DAMORE: These are people who are
 20 going there until one o'clock in the morning. And
 21 unfortunately you see this on people's Instagram
 22 stories. So I'm just stating facts of who's going to
 23 be driving there at midnight.
 24 MR. MILLER: And I'm telling you under
 25 the Municipal Land Use Law, if there's testimony by

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1 anyone sworn in and it's irrelevant, that the Board
 2 doesn't have to consider it.

3 MS. DAMORE: Okay.

4 MR. MILLER: And I think the accusation
 5 of the classification of customers that may go to
 6 Taco Bell is not relevant to the merits of the use
 7 variance relief sought by the applicant.

8 MS. DAMORE: Okay. The last thing that
 9 I'd like to say then is that, as the previous caller
 10 said, the man that owns that station, I met him from
 11 going there for gas; obviously that's the corner that
 12 I turn around to go home. And he is -- they are the
 13 nicest, most hard-working people. They have put so
 14 much time and money into that business.

15 And then to take it away to do this, you
 16 know, to build another fast food when we have so much
 17 fast food in town I don't think helps our town in any
 18 way, when having nice business owners like that who
 19 keep you happy, smiling and coming back for more is
 20 much more positive for the community than a fast food
 21 restaurant.

22 MR. MILLER: Ms. Damore, I just want to
 23 make it clear that this Board is not taking away
 24 property from anyone. And as I mentioned previously,
 25 this application was brought by an applicant with

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1 consent of the owner. If there is some type of
 2 dispute or disagreement between the owner and the
 3 operator of the gas station, that is not the Board's
 4 jurisdiction.

5 The Board received a land use application
 6 for a future use of this site. By law, this Board
 7 has to hear the application. So the implication that
 8 somehow the Board is changing the property or taking
 9 it away from the gas station owner is just simply
 10 wrong. It's just simply incorrect. And I just want
 11 to be clear on that for the record.

12 MS. DAMORE: Okay. I just don't -- I
 13 think that it's better for the community. That's
 14 just my opinion.

15 MR. MILLER: I understand.

16 CHAIRMAN LEVITON: Thank you, Ms. Damore.
 17 And thank you, Mr. Miller, for setting the record
 18 straight.

19 I believe that is the last member of the
 20 public who wishes to speak this evening. Can we
 21 confirm that? Is there anyone else who wants to
 22 talk?

23 MR. COHEN: This is Marc Cohen. I put in
 24 but I guess it didn't register.

25 CHAIRMAN LEVITON: Okay, Mr. Cohen. Mr.

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1 Cohen, have you spoken already?

2 MR. COHEN: No, it's a third Mr. Cohen.

3 CHAIRMAN LEVITON: I see. Okay, well,
 4 Mr. Cohen, Mr. Miller, our attorney, will swear you
 5 in.

6 M A R C C O H E N, was duly sworn/affirmed
 7 and testified under his oath/affirmation as
 8 follows:

9 MR. MILLER: Thank you, sir. Please
 10 state your name again for the record, spell it and
 11 provide your address.

12 MR. COHEN: It's Marc, M-a-r-c, Cohen,
 13 C-o-h-e-n. And I'm at 1 Country Lane, Manalapan.

14 MR. MILLER: Thank you very much.

15 MR. COHEN: I actually have a few
 16 specific questions in terms of the analytics that
 17 went into this.

18 The first one touches on the other Mr.
 19 Cohen's question. Did anybody look at the number of
 20 cars that can be backed up on Route 9 before it
 21 blocks the exit on the southbound side of 9 from the
 22 Taco Bell? That's my first question.

23 MR. MILLER: Well, let's deal with that
 24 question first.

25 CHAIRMAN LEVITON: Mr. Troutman?

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1 MR. TROUTMAN: The exit for the Taco Bell
 2 is as far south as we could get it along the
 3 frontage, so that's -- that would become blocked with
 4 probably about two cars on the shoulder.

5 MR. COHEN: Okay, because just from an
 6 observation coming through that intersection multiple
 7 times every day, you often see two to three cars out
 8 there. So that could compound the exit and force
 9 people to the Taylor Mills side.

10 My other question relates to the overall
 11 intersection of Route 9 and Taylor Mills. There
 12 could be -- has there been any study to the number of
 13 people that will be heading northbound on Route 9
 14 entering the jug handle to come around and make a
 15 left southbound?

16 Because currently that -- the eastbound
 17 side of Taylor Mills is blocked by people trying to
 18 make that left-hand turn to get in the left lane of
 19 Taylor Mills westbound. And conversely, on the other
 20 side, there's people coming from Route 9 South making
 21 a left on Taylor Mills west, block Taylor Mills
 22 heading westbound as well.

23 So there's the opportunity for
 24 significant compaction in that intersection. Was
 25 that looked at in terms of the time studies and

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1 volumes?
 2 MR. TROUTMAN: Yes. That move, I would
 3 estimate that move is probably about one car every
 4 12 minutes, that specific move. I think it's very
 5 similar to somebody who's getting serviced at that
 6 gas station who's coming from the south; they have to
 7 do the same thing, (technical glitch - inaudible)
 8 involved to make that left.
 9 MR. COHEN: That's not the question.
 10 Excuse me for interrupting because I have limited
 11 time. My question is the northbound people on Route
 12 9 that are entering the jug handle to go onto Taylor
 13 Mills westbound to make the left-hand turn onto Route
 14 9 South, because currently that backs up all the way
 15 through the jug handle with people trying to make the
 16 left-hand turn and, in essence, they block Route --
 17 Taylor Mills on the eastbound direction and it backs
 18 up traffic.
 19 And it happens every day at lunch and
 20 every day at dinnertime in rush hour. There's
 21 literally could be 10 to 20 cars backed up into that
 22 jug handle, causing massive congestion on that
 23 intersection. So that was my question.
 24 MR. TROUTMAN: That's a statement. But I
 25 understand what you're talking about.

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1 MR. COHEN: No, I asked was that study
 2 done. It wasn't a statement. I'm asking, were those
 3 volumes checked to identify the increase?
 4 MR. TROUTMAN: Yes, I studied the impact
 5 on that movement. I told you already how many cars
 6 per minute. It's going to be about another car every
 7 12 minutes in that movement.
 8 MR. COHEN: Is that public record, that
 9 analysis, what was it based on, assumptions?
 10 MR. TROUTMAN: Yes, it's a report dated
 11 April 14, 2020.
 12 MR. COHEN: Where is that available?
 13 MS. MOENCH: It is on the Google drive
 14 with the other information and documents relative to
 15 the Yum & Chill.
 16 MR. COHEN: And it's available to the
 17 public?
 18 MS. MOENCH: Correct, it's on the -- I'm
 19 sorry, it's on the website, the Manalapan Township
 20 website. It's www.mtnj.org.
 21 MR. COHEN: Okay, and to the extent those
 22 analytics are incorrect, what recourse does the town
 23 have?
 24 MR. MILLER: Mr. Cohen, you're making the
 25 implication that they're incorrect.

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1 MR. COHEN: No, no. He's saying that he
 2 -- before you said whatever statements they make are
 3 a part of the record. He's stating that it will only
 4 increase one vehicle per 12 minutes.
 5 MR. MILLER: Yes.
 6 MR. COHEN: In reality, if; I didn't say
 7 would, but if that is inaccurate, what recourse do
 8 they have based on those analytics?
 9 MR. MILLER: I don't understand that
 10 question.
 11 MR. COHEN: In other words, he's saying
 12 that one vehicle per 12 minutes is what his analysis
 13 is showing.
 14 MR. MILLER: Right.
 15 MR. COHEN: There's no consequence if his
 16 analysis is incorrect? And that's just if. I'm not
 17 saying it is. I'm saying if.
 18 MR. MILLER: Well, that's -- you asked
 19 the question. That's his testimony.
 20 MR. COHEN: Okay. But you've often said
 21 throughout the night that if -- his testimony is part
 22 of the record. What happens if that testimony is
 23 inaccurate?
 24 MR. MILLER: Well, you're implying that
 25 it's inaccurate.

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1 MR. COHEN: No, I'm using the word "if"
 2 pretty specifically to avoid that insinuation,
 3 because I don't know. I'm asking, if it is
 4 incorrect, what recourse does the town have, if any?
 5 MR. MILLER: Well, the Board has received
 6 the report and the Board will make a decision based
 7 upon the report and the testimony.
 8 CHAIRMAN LEVITON: That's what will
 9 happen, Mr. Cohen. We also have the Board
 10 professionals here to advise us. And, Mr. Miller,
 11 our attorney. Thank you, sir, for your input.
 12 We have two more people now. 547-1425.
 13 MR. BRIEVA: Also missed me.
 14 CHAIRMAN LEVITON: And Tom.
 15 MS. EASTMAN: And Karen.
 16 CHAIRMAN LEVITON: And Karen. Okay,
 17 remember, three minutes. We're running late.
 18 MR. MILLER: I'm not sure who's up next.
 19 Which number is up next, Mr. Chairman?
 20 MS. MOENCH: I believe it's -- they keep
 21 moving. I think --
 22 MR. MILLER: Yeah, I'm trying to track
 23 them myself.
 24 CHAIRMAN LEVITON: 239-0005.
 25 MS. EASTMAN: Hello.

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1 CHAIRMAN LEVITON: Hello.
 2 MS. MOENCH: Getting some feedback.
 3 MS. DeFALCO: Sorry, you have to wait
 4 your turn, Karen.
 5 MS. EASTMAN: That was my number.
 6 CHAIRMAN LEVITON: Oh, Karen, that was
 7 your -- you're 005, Karen?
 8 MS. EASTMAN: I am.
 9 CHAIRMAN LEVITON: Okay, then you're up.
 10 MS. MOENCH: And that's what's giving
 11 feedback.
 12 CHAIRMAN LEVITON: Where -- I muted
 13 because I see there's a Karen Eastman who wants to
 14 speak as well. We have 005, the first Karen.
 15 MS. DeFALCO: The one and only Karen.
 16 MS. MOENCH: I think she has both on and
 17 that's why she has the feedback.
 18 CHAIRMAN LEVITON: Okay, so --
 19 MS. EASTMAN: You didn't mention I was in
 20 the queue so I threw myself in again.
 21 CHAIRMAN LEVITON: Karen, Mr. Miller is
 22 going to swear you in. Go ahead, John.
 23 K A R E N E A S T M A N, was duly sworn/affirmed
 24 and testified under her oath/affirmation as
 25 follows:

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1 MR. MILLER: Thank you. Please state and
 2 spell your name for the record and provide your
 3 address.
 4 MS. EASTMAN: Karen, K-a-r-e-n, Eastman,
 5 E-a-s-t-m-a-n. Address is 236 Medford Court,
 6 Manalapan.
 7 MR. MILLER: Okay. Thank you.
 8 MS. EASTMAN: I travel down Route 9 South
 9 every single day to work. I know what the backup is
 10 at Wendy's when they open for breakfast. I don't
 11 know if they're still doing breakfast. But at lunch,
 12 it's the same. There are at least three cars in the
 13 park -- in the shoulder. It's beginning to resemble
 14 Starbucks on Route 9 northbound, with people trying
 15 to get in.
 16 Now, you have, like the lady said, the
 17 buses who ride the shoulder. And when the light
 18 changes, they go first. They have the right of way.
 19 I think the entrance and the exit to the
 20 Wendy's are too close together. I don't think this
 21 town needs two fast food restaurants on top of each
 22 other.
 23 But I do like having a service station.
 24 I need service stations. I don't need tacos. I need
 25 my tire plugged or windshield wiper fluid or

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1 something wrong with the air in my tire come winter.
 2 And that station, Mr. -- one of the gentlemen said
 3 was an eyesore. The station is clean, and I don't
 4 know what he find to be an eyesore. But I took
 5 affront to that because it's clean as can be. The
 6 inside is clean as can be if you go in. I've had
 7 service done there. There's no problem with that.
 8 It's not an eyesore. I think every town deserves
 9 service. They don't deserve just tacos.
 10 CHAIRMAN LEVITON: Thank you, Ms.
 11 Eastman.
 12 MS. EASTMAN: The congestion on Route 9
 13 and Taylors Mills Road -- I lived there in the
 14 nineties. I lived in Monmouth Heights on Taylors
 15 Mills Road. It's been a congested cowboy ride for a
 16 long time. And I don't think -- I think it's a
 17 detriment to this spot, two restaurants on top of
 18 each other. There's nothing so pretty about that.
 19 Thank you.
 20 CHAIRMAN LEVITON: Thank you, Ms.
 21 Eastman.
 22 Janice, is there anybody else? I can't
 23 tell. Oh, Tom. Tom, yes. Please, Tom, you'll be
 24 sworn in.
 25 MR. BRIEVA: Thank you. Can you hear me?

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1 MR. MILLER: Yes, we can.
 2 T O M B R I E V A, was duly sworn/affirmed
 3 and testified under his oath/affirmation as
 4 follows:
 5 MR. MILLER: Thank you. Please state
 6 your name and provide your address for the record,
 7 and spell your name as well. Thank you.
 8 MR. BRIEVA: Sure. My name is Tom and
 9 the last name is Brieva, B, as in boy, r-i-e-v-a. I
 10 live at 14 Country Lane, which is at the corner of
 11 Country Lane and Briar Hill Drive.
 12 MR. MILLER: Thank you.
 13 MR. BRIEVA: So I thank the Board for
 14 hearing me out. I'd like to bring to their attention
 15 my opinion that the testimony given earlier by the
 16 experts had a complete under-appreciation for the
 17 traffic on Briar Hill and Country because of its
 18 access to Route 9 and its ability to connect people
 19 to the jug handle.
 20 I know this because I see it all the
 21 time. My doctor, for example, is Lakshmi Nandiwada;
 22 she's our pediatrician. And I see her and her staff
 23 coming down my street to go backwards to the Taylors
 24 Mills intersection to make a jug handle and go north.
 25 I see the same accountants and doctors and so on from

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1 all of those as well as their patients that are up
 2 the street on the border of Route 9.
 3 In addition, we have a lot of traffic
 4 coming from the commercial in our area on Ikes Lane.
 5 We see Precision Tech Electric marked trucks, a lawn
 6 service and the pools passing through our street,
 7 using this street as access to Route 9 and again
 8 coming backwards to use the jug handle at Route 9.
 9 So, again, I just wanted the Board to be aware that
 10 the experts missed this point.
 11 There's Wendy's trash on my street. They
 12 missed that point. I think they -- they claim that
 13 no one's going to go down the street, but there's
 14 evidence that they have.
 15 I'd also like to point out Steve Cohen
 16 mentioned earlier that he disagrees that it's hard to
 17 find the intersection. I would come at that from a
 18 different perspective, is no one needs to find the
 19 intersection. GPS will lead people to that
 20 intersection. And indeed the reason I live in my
 21 house is because my GPS sent me there on a shortcut
 22 and I saw the house for sale. So I'm an example of
 23 that.
 24 Again, the traffic is there. I have a
 25 four-year-old. It's already a lot for a residential

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1 neighborhood. We have trash; we have accidents. And
 2 we had two bank robberies, by the way, and the FBI
 3 down our street. I kind of believe that the Taco
 4 Bell is not going to help that out any. And I please
 5 would request that the Board consider that
 6 perspective in your decision.
 7 I just have a quick question. I saw the
 8 drawings and some descriptions of the long lines to
 9 the drive-through. Can one of the experts please
 10 describe what would happen if there were a fire or an
 11 ambulance needed and how would the emergency vehicles
 12 access with all the commotion going on and crowding
 13 at that site during a lunch hour or dinner hour?
 14 CHAIRMAN LEVITON: Peter, who do you want
 15 to field that?
 16 MR. LICATA: Marc, do you want to take
 17 that question?
 18 MR. BRIEVA: I know Rob DiTota is in the
 19 fire department. He may have an opinion on that too.
 20 MR. LICATA: Jay, could you weigh in? Or
 21 Marc.
 22 MR. LEBER: I'm just looking back,
 23 because we had a letter on the project from the fire
 24 department. And they had asked for, you know, fire
 25 lane striping, which we did show on the plans. And,

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1 you know, there were specifics as to how tall those
 2 markings had to be, and that we install the no
 3 parking fire lane signs which was also shown on the
 4 plans; he had wanted them to be 75 feet apart each.
 5 But there was nothing in the report, you
 6 know, that stated that this site is not accessible or
 7 anything to that nature.
 8 MR. BRIEVA: I don't think that answers
 9 the question of when there's a large amount of cars
 10 there, whether there's parking or not, where those
 11 fire trucks are going to go in a tight area.
 12 CHAIRMAN LEVITON: Actually it does
 13 because the report was offered to the Board and to
 14 the applicant and it was written by our fire company.
 15 They don't have concerns.
 16 MR. BRIEVA: Okay. Thank you.
 17 CHAIRMAN LEVITON: Okay. You're welcome.
 18 I didn't mean to cut you off. I want you to make
 19 sure you ask everything you want to, Mr. Brieva. I
 20 just wanted to be helpful.
 21 MR. BRIEVA: Yeah, thank you.
 22 CHAIRMAN LEVITON: Was there anything
 23 else?
 24 MR. BRIEVA: I think my question about
 25 emergency vehicles is answered. I stand behind my

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1 other statements about the misunderstanding of the
 2 experts about the traffic on my street because I know
 3 that; I live there.
 4 CHAIRMAN LEVITON: Thank you for your
 5 input.
 6 Is there anyone else who has not been
 7 heard who wants to address the Board or ask an expert
 8 a question? Seeing none, I will close the --
 9 MR. WILLIAMS: Me.
 10 CHAIRMAN LEVITON: Hold it. Do we have
 11 someone?
 12 MR. WILLIAMS: Yeah, Gabriel Williams.
 13 CHAIRMAN LEVITON: Okay, Mr. Williams,
 14 our attorney will swear you in.
 15 G A B R I E L W I L L I A M S, was duly
 16 sworn/affirmed and testified under his
 17 oath/affirmation as follows:
 18 MR. MILLER: And please state and spell
 19 your name and provide your address.
 20 MR. WILLIAMS: Gabriel, G-a-b-r-i-e-l,
 21 Williams, W-i-l-l-i-a-m-s, 6 Wilson Boulevard in
 22 Jackson.
 23 MR. MILLER: I'm sorry, did you say
 24 Jackson?
 25 MR. WILLIAMS: Yeah.

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1 MR. MILLER: Okay.

2 MR. WILLIAMS: So I'm like a very

3 consistent customer at the Shell for almost -- not

4 like --

5 MR. MILLER: I'm sorry. I'm sorry, I'm

6 not understanding you. You're a consistent customer

7 of?

8 MR. WILLIAMS: The Shell.

9 MR. MILLER: Okay. Thank you.

10 MR. WILLIAMS: And I am constantly there

11 for either mechanical work or I'm always driving by

12 getting gas. And I have videos like of the traffic

13 that the Wendy's itself causes going way beyond the

14 Shell on the shoulder.

15 There's like -- I just feel like a Taco

16 Bell would just also add onto the traffic use, like

17 how I heard a lot of good points today of people

18 saying how it could cause an accident; if someone

19 would have to go around somebody on the shoulder, it

20 could cause an accident, and all of the points are

21 very true.

22 And there's a lot of other people who

23 agree with that and it just, it wouldn't be right to

24 put another fast food restaurant as there is another

25 one right down the road from it and -- well, not

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1 right down the road, but six miles north and six

2 miles south.

3 It's just -- like I said, I have two

4 videos from two separate days of traffic backing up

5 from the Wendy's. It's wrapping around the Wendy's

6 and then going out onto 9 past the Shell.

7 CHAIRMAN LEVITON: Thank you, Mr.

8 Williams. Is there anything else, sir? Anything

9 new?

10 MR. WILLIAMS: Anything new? It's just

11 -- I just notice daily constant traffic at that

12 Wendy's that keeps progressing out from it. That's

13 the only thing.

14 CHAIRMAN LEVITON: The Board appreciates

15 your input.

16 Is there anyone else? Okay. Seeing

17 none, then I'll close public. And we're going to go

18 to the Board. Let's start with Mr. Mantagas. We're

19 going to discuss what our thoughts are at this point.

20 Basil?

21 MR. MANTAGAS: She's got to take me off

22 of mute. Yeah, my main concern is that traffic. And

23 like a lot of these people that testified today are

24 concerned. I mean, I know I go to that intersection

25 a lot, and I know that one exit from Wendy's is a

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1 problem because people always want to make a left and

2 the people don't want to give them the courtesy, and

3 just backs everything up. And I could just imagine

4 with another driveway coming out of there how that's

5 going to be.

6 And my feeling is it's going to be --

7 it's going to really increase the traffic rate and

8 the traffic coming off of Route 9 on that jug handle

9 on both sides. So that's my main concern with this

10 whole thing.

11 CHAIRMAN LEVITON: Thanks. Rob?

12 MR. DITOTA: Yeah, I agree with Basil.

13 The traffic is an issue, and there's multiple car

14 accidents there on Route 9 southbound by Taylor Mills

15 Road consistently. I just -- you know, I have to

16 agree with him on that, and that's my main concern

17 here as well.

18 CHAIRMAN LEVITON: Eliot?

19 MR. LILIEN: All very good points that

20 were made. I couldn't agree more. I think the

21 traffic would just double. Even though it may not

22 say it in the actual literature, the reports, I think

23 the hazards would double, and there's nothing but

24 errors with humans and it's just a bad idea I think,

25 in my opinion.

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1 CHAIRMAN LEVITON: Bob?

2 MR. GREGOWICZ: Yeah, I just think as far

3 as the traffic goes, whether or not that Taco Bell is

4 going to be there, it's going to be traffic. And if

5 the police department feels it's fine, they've raised

6 no issues, and they know that better than anyone,

7 then I'm fine with it.

8 CHAIRMAN LEVITON: Mollie?

9 MS. KAMEN: As I expressed at the last

10 meeting, in regards to the homeowners being affected

11 that reside on Briar Hill as well as Country Lane and

12 again today, as well as the concern that people, with

13 the elimination of being able to make a left turn or

14 having access to make a left turn onto Taylors Mill

15 Road, I'm concerned that people will immediately turn

16 into the Wendy's, where Wendy's is congested already,

17 and I just don't feel comfortable with this

18 application and the type of traffic it's going to

19 generate and there's just too much exposure for my

20 comfort level at this point.

21 CHAIRMAN LEVITON: Terry?

22 MR. ROSENTHAL: I just had a -- I mean, I

23 agree that the traffic is obviously the issue, but

24 I'm getting a vibe here that some people think that

25 leaving the Shell station is an alternative, and I'm

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1 not sure that's the case here. Can somebody just
 2 clarify that? Leaving it as a Shell station, it's
 3 not an option, correct?
 4 CHAIRMAN LEVITON: It's not for us to
 5 consider. It's not in our purview.
 6 MR. ROSENTHAL: Okay.
 7 CHAIRMAN LEVITON: So there's no one to
 8 even ask. Clearly the owner wants to sell the
 9 property, but that's none of our business.
 10 MR. ROSENTHAL: Okay.
 11 CHAIRMAN LEVITON: David?
 12 MR. SCHERTZ: I have nothing --
 13 MR. ROSENTHAL: I have the same issues,
 14 the traffic.
 15 CHAIRMAN LEVITON: And, David, you have
 16 nothing?
 17 MR. SCHERTZ: No, I have nothing to add.
 18 CHAIRMAN LEVITON: Larry?
 19 MR. COOPER: No. Everything's been said
 20 right now.
 21 CHAIRMAN LEVITON: So I believe that
 22 their experts have reconciled the deviation from our
 23 Township's Master Plan, but there's an advanced
 24 quality of proofs standard that needs to be met for a
 25 use variance. And while I believe they've

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1 established that this site is suitable for a Taco
 2 Bell, I don't believe it's necessarily suitable from
 3 Manalapan Township at that site. And site
 4 suitability, it's a high bar to meet for a use
 5 variance.
 6 I think that the proximity of that
 7 intersection, that both Mr. Troutman and Mr. Leber
 8 called it, a bad intersection exists, and is a
 9 problem that has been a recurring theme this evening.
 10 Mr. Licata.
 11 MR. LICATA: I appreciate the Board's
 12 concerns certainly. And I agree that traffic has
 13 certainly been identified as the issue. It certainly
 14 appears to be the consensus of the professional
 15 testimony that the site improvements would result in
 16 an overall improvement of the access points and
 17 patterns, even though we can't, and no design could,
 18 eliminate every existing problem or potential
 19 concern.
 20 You know, I struggle with the question of
 21 is what's there now better or worse in the overall
 22 sense from a traffic, from an access point, from a
 23 planning perspective, an aesthetic perspective, the
 24 nonconformity than what is proposed. And perhaps
 25 there may be additional information or testimony we

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1 could present to you at a subsequent hearing to try
 2 and address the concerns that have been highlighted
 3 very specifically this evening.
 4 CHAIRMAN LEVITON: I don't know. I'm
 5 only one man.
 6 MR. LICATA: Right.
 7 CHAIRMAN LEVITON: I know that it's just
 8 a bad intersection, and to make a bad thing worse and
 9 to have my name attached to it could be a problem
 10 going forward if somebody gets hurt there. I'll
 11 second guess myself and hate myself for it. I don't
 12 know -- for me, what happens if circulation suffers
 13 and both of the curb openings on Taylor Mills Road
 14 gets closed. Maybe that might do it for me. Let's
 15 ask the Board.
 16 I'll start with Larry. I'm sorry, Mollie
 17 wants to say something. Go ahead, Mollie.
 18 MS. KAMEN: I know that the service road
 19 at this juncture is not an option for this applicant,
 20 but is it possible to potentially explore that again?
 21 Because cars backing up on the service road as
 22 congestion clears up on Taylors Mill Road could
 23 potentially be more palatable than having cars
 24 backing up and congesting Route 9 or access onto
 25 Taylors Mill Road to make lefts, et cetera.

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1 Is that something that could be potential
 2 -- you know, open that dialogue up again?
 3 MR. LICATA: I guess I would ask if
 4 perhaps Marc Leber, who has consulted most closely
 5 with Mr. Mehta regarding the design, may want to
 6 weigh in in terms of what our options could be for
 7 the site modifications -- consideration of additional
 8 site modifications to address these concerns.
 9 MR. LEBER: Just for clarification, is
 10 there a question about connecting to that service
 11 road? Is that what I'm understanding?
 12 MS. KAMEN: Yes. Connecting to it and
 13 having -- I don't know how we could say legally with
 14 regards to responsibility. I don't know who owns
 15 that service road specifically.
 16 MR. MILLER: Well, Mollie, I think, and
 17 Peter and his professionals -- this is John Miller.
 18 The applicant or the property owner doesn't own that,
 19 that property.
 20 MS. KAMEN: No, no, no, I understand
 21 that. But my question is, is that it's possible to
 22 open up a dialogue with the person that actually owns
 23 that access road, so that the congestion of people
 24 ingressing and egressing onto the different roadways
 25 is not being backed up anywhere except on that

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1 service road and the people that are utilizing it
 2 would have to just be patient until congestion moved
 3 off -- out of Taylors Mill Road --
 4 MR. MILLER: And I may be -- I may be
 5 stealing Mr. Licata's thunder, but it's a completely
 6 different application. The applicant would need
 7 consent from the owner of that property to do that.
 8 It would be a completely different application than
 9 what's before here. It's just not a modification
 10 that can be done on the fly, and I'll let Mr. Licata
 11 follow up on that.
 12 MS. KAMEN: No, I understand that, Mr.
 13 Miller, but Steve put it out there in regards to does
 14 anybody have any concerns or things that could be
 15 potentially addressed that could maybe give a little
 16 bit more level of comfort. So that's why I pose that
 17 question.
 18 MR. MILLER: But, Mollie, I'm saying it
 19 can't be addressed in this application.
 20 MR. LICATA: As it currently exists, I
 21 agree with you, John. And the purpose of the
 22 conversation or the dialogue would not be to try and,
 23 you know, attach a few words to the plans we have
 24 tonight, but really to get to the heart of what the
 25 possibilities are that may provide the level of

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1 comfort that Board members would want to see.
 2 But I agree, we would have to
 3 substantially modify the plans to come back before
 4 you in such a scenario.
 5 CHAIRMAN LEVITON: Also, Mollie, that
 6 wouldn't do it for me. That to me, that would be an
 7 exacerbation of the existing problem. Any left turn
 8 onto Taylor Mills Road from that access road is a
 9 problem in my opinion.
 10 I think the queue of lines at the Route 9
 11 light is beyond that access road. And I don't have
 12 faith in the patience of drivers. I'm often flipped
 13 off on the road. People lean on their horns. You
 14 know, it's just -- it wouldn't do it for me anyway.
 15 Is there anybody else who has feedback
 16 for Mr. Licata and his team? Bob?
 17 MR. GREGOWICZ: No.
 18 CHAIRMAN LEVITON: Rob?
 19 MR. DiTOTA: Yeah, I mean, I agree with
 20 you. I don't feel comfortable with any modifications
 21 at this point. I don't think they would solve the
 22 problem in any way, and I'm not comfortable tying my
 23 name to approving something that could potentially
 24 cause a worse traffic situation and, you know,
 25 accidents, any of that type of thing.

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1 So, I mean, the only thing that I think
 2 would be possible is to find a different location for
 3 it. But that's just not an ideal spot.
 4 CHAIRMAN LEVITON: Thanks, Rob.
 5 Larry? Still muted, buddy. Larry,
 6 you're still muted. Yeah, you're muted. I can see
 7 the red slash through your microphone.
 8 MR. COOPER: How about now?
 9 CHAIRMAN LEVITON: Good stuff.
 10 MR. COOPER: I don't think it's in our
 11 purview to redesign the site to make it workable for
 12 the applicant. I think that's up to the applicant,
 13 to go ahead and try to figure out what they have to
 14 do to make it, you know, feasible for the community
 15 and for the Board.
 16 CHAIRMAN LEVITON: It's not. That's not
 17 our place. But they're staring down a denial. Mr.
 18 Licata sees the writing on the wall and he wants to
 19 know what can I do. And I gave him what I thought
 20 from my perspective would change my mind.
 21 If every access to Taylor Mills Road was
 22 (technical interference - inaudible) it doesn't
 23 further the problem that's there. There are still
 24 other problems, but I don't think that they would
 25 rise to the standard that they would need to meet,

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1 which is a substantial detriment. I think as it is,
 2 it may well be. I don't think it's particularly
 3 suited for the additional traffic that's going to be
 4 there.
 5 So if there's anyone who has any other
 6 feedback for Mr. Licata, now would be the time.
 7 MR. ROSENTHAL: I would just -- this is
 8 Terry. I would just add that, you know, to me, the
 9 issue, I mean, it's a bad situation; is it going to
 10 be worse? I don't hold the applicant responsible for
 11 the current situation. And if it's not going to be
 12 worse, then it's not an issue. But if it is going to
 13 be worse, then that's the problem.
 14 So they would need to prove, to me, that
 15 it's not going to be worse than it already is. I
 16 mean, they can't make it better. But are they going
 17 to make it worse? That's the key.
 18 CHAIRMAN LEVITON: Anyone else? Jen, do
 19 you have any final thoughts?
 20 MS. BEAHM: I guess my question is, is
 21 that, you know, you've heard from all their
 22 professionals and if you feel like they haven't
 23 provided you enough information with respect to how
 24 things are today or currently versus how this would
 25 impact it, I would submit to Mr. Licata perhaps you,

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1 you know, request to adjourn the application and then
 2 go back and figure out a way to clearly differentiate
 3 the existing circumstance from what you anticipate it
 4 going to be in the proposed condition.
 5 I know you feel like you've done that,
 6 but clearly what I'm hearing from the Board is that
 7 that's not clear to them, and that maybe that would
 8 provide them with some, you know, level -- I don't
 9 know.
 10 But, you know, Steve, as far as I am
 11 concerned, as I said earlier, you know, obviously the
 12 decision's up to you and -- you know, do I feel like
 13 they've made their -- they've met their burden
 14 statutorily? I think they've provided testimony
 15 under the statute with respect to particular
 16 suitability, positive and negative criteria. What
 17 I'm hearing is that you're not feeling comfortable at
 18 this point with the traffic testimony on the negative
 19 criteria.
 20 So I don't know, Mr. Licata, whether you
 21 feel like that's something that you could provide
 22 additional information at a subsequent hearing or
 23 not. I'm guessing that's up to you.
 24 MR. LICATA: You know, and I appreciate
 25 that input. My preference, you know, absent my

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1 client, you know, interceding at this moment would be
 2 to ask that the application be carried so that my
 3 team can have an opportunity at length to reflect on
 4 the points of view that have been shared tonight and
 5 see if there is additional proofs and information we
 6 could bring, and report back accordingly.
 7 CHAIRMAN LEVITON: Oh, boy. It opens a
 8 whole can of worms, Mr. Miller. There are likely
 9 people in attendance this evening who have since left
 10 and if we carry the application, folks who would hope
 11 to be in attendance at a future meeting would not
 12 have an opportunity without notice.
 13 MR. MILLER: Well, if Mr. Licata is
 14 asking to carry the application, and he does have the
 15 right under the law to do that, if you carry the
 16 application, it would be carried without further
 17 notice and the members of the public would be advised
 18 here and now if the Board decides to carry it.
 19 And, again, the applicant has the right
 20 to ask it to be carried. And the public would be
 21 notified right here, right now and then it would also
 22 be stated on the Township website when the new
 23 hearing would be.
 24 So the public would have adequate notice
 25 of a hearing. And the carrying request, the

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1 applicant has the right to ask that. It's a right
 2 that he has under the law. It's their application.
 3 CHAIRMAN LEVITON: And we want to extend
 4 to him his rights under the law.
 5 So, Mr. Licata, if that's what you want
 6 to do, we should talk about a potential date going
 7 forward.
 8 MR. LICATA: Thank you. I would
 9 appreciate that, and I guess I would ask Janice or
 10 Nancy to provide us what they think at your
 11 discretion would be an appropriate date. Obviously
 12 it would need to give us time to reflect and act, you
 13 know, in the meantime.
 14 MS. MOENCH: So being that there -- am I
 15 on mute?
 16 CHAIRMAN LEVITON: No, you're good.
 17 MS. MOENCH: The first meeting date that
 18 we would have available unfortunately would be
 19 December. However, in our Resolution this year for
 20 the meeting dates, we took out the second November
 21 meeting because of the League of Municipalities.
 22 With that being -- not moving forward
 23 probably; if it moves forward, maybe virtual, we may
 24 be able to advertise to hold that second meeting.
 25 That's the only other thing I could think of.

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1 MR. MILLER: Janice, the only problem
 2 with that is that it's my understanding that the
 3 League is still on.
 4 MS. MOENCH: Okay.
 5 MR. MILLER: There's been talk about it
 6 being partially virtual, but it's a chance I wouldn't
 7 want the applicant to take.
 8 MS. MOENCH: Understood. Then I would
 9 have to say -- I'm sorry, go ahead, Steve.
 10 CHAIRMAN LEVITON: I'm not sure I'm clear
 11 on why. They were to have met in the courtroom. If
 12 we meet virtually, there's no problem.
 13 MS. DeFALCO: I guess as Steve was
 14 saying, we could pick another date. Is that what
 15 you're saying, Steve?
 16 CHAIRMAN LEVITON: No; what's wrong with
 17 the second date in November?
 18 MS. MOENCH: We don't have that -- we
 19 originally -- when we do the reorganization and we
 20 have the meeting dates in the Resolution, that --
 21 CHAIRMAN LEVITON: They need the
 22 software; is that what they need? They need what
 23 we're using?
 24 MS. DeFALCO: Who does?
 25 MR. MILLER: No, Mr. Chairman, I think

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1 the issue is that there just isn't a second meeting
 2 scheduled in November. And, Janice and Nancy, you
 3 could tell me if I'm wrong about that.
 4 MS. MOENCH: Correct.
 5 MS. DeFALCO: Correct.
 6 MR. MILLER: We only have one regular
 7 meeting scheduled in November.
 8 MS. DeFALCO: I don't think we have any.
 9 MR. MILLER: Oh, we don't have any.
 10 Okay.
 11 MS. MOENCH: Well, we do have the 5th. I
 12 think it's November 5th, I believe.
 13 CHAIRMAN LEVITON: Are we offering it to
 14 Mr. Licata and Yum & Chill?
 15 MS. MOENCH: I'm sorry, that's -- I'm
 16 sorry, wrong date. I think that -- I don't have it
 17 in front of me because I was out sick today, but,
 18 Nancy, November 5th is residential already, I
 19 believe?
 20 MS. DeFALCO: Do you want me to -- you
 21 don't have the agenda in front of you?
 22 MS. MOENCH: I do not. I have --
 23 MS. DeFALCO: Just give me one minute.
 24 CHAIRMAN LEVITON: I can look at a
 25 tentative one.

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1 MS. MOENCH: Right, that tentative one
 2 might have changed before I left yesterday. I think
 3 there's two or three people on November 5th already.
 4 MR. LICATA: Mr. Chairman, can I ask, I
 5 think perhaps Mr. Leber had noted to me in the past
 6 that he has an application before this Board on
 7 October 1st; is there -- is that a full agenda that
 8 meeting?
 9 CHAIRMAN LEVITON: On 10/1, yeah, we have
 10 already three. But they're all residential
 11 applications.
 12 MR. LICATA: I see.
 13 CHAIRMAN LEVITON: And, Peter, to be
 14 frank, I'm very -- I don't micromanage, and Janice
 15 and Nancy do all of the scheduling and it's always in
 16 flux. You have to ask them.
 17 MR. LICATA: Certainly. Understood.
 18 MS. DeFALCO: I'm having an issue with my
 19 Internet. I can't log in.
 20 MS. MOENCH: I mean, the only --
 21 MS. DeFALCO: What do we have on for the
 22 second week in October? Who do we have on?
 23 CHAIRMAN LEVITON: We have --
 24 MS. MOENCH: Manalapan Land Holdings?
 25 Am I wrong? I don't have it in front of me, I'm

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1 sorry.
 2 CHAIRMAN LEVITON: I see nobody. It
 3 shows me nothing.
 4 MS. DeFALCO: Well, Mr. Licata, do we
 5 have Manalapan Land Holdings for October?
 6 MR. LICATA: I anticipate that would go
 7 forward, particularly if it were a live meeting,
 8 which nobody truly knows. But we're getting closer.
 9 MS. MOENCH: All right.
 10 MS. DeFALCO: If it's not live, are you
 11 going to post -- are you going to carry?
 12 MR. LICATA: I can't say definitively. I
 13 think there's a very high likelihood of that.
 14 MS. DeFALCO: So why don't we put this on
 15 for the October meeting?
 16 MR. LICATA: Mm-hm.
 17 MS. DeFALCO: Does that give your client
 18 enough time, your team, to work on revisions?
 19 MR. LICATA: I expect it would, yes.
 20 Thank you.
 21 MS. DeFALCO: So why don't we do that and
 22 then if Manalapan Land Holdings takes up the whole
 23 night, we'll have to carry this application again.
 24 MR. LICATA: Understood.
 25 MS. DeFALCO: Maybe we'll talk about a

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1 special meeting.
 2 CHAIRMAN LEVITON: Yeah, I'm not averse
 3 to that either. That'd be fine.
 4 MR. LICATA: Thank you.
 5 CHAIRMAN LEVITON: You're welcome.
 6 MR. DITOTA: Mr. Chairman. Mr. Miller, I
 7 have a quick question for you. Do we have to carry
 8 or can we make a decision to allow the carry?
 9 MR. MILLER: Well, the applicant has
 10 requested to carry and he has the right to do that.
 11 It's their application.
 12 MR. DITOTA: Okay.
 13 CHAIRMAN LEVITON: So we're set for
 14 October 5th?
 15 MS. MOENCH: 15th.
 16 CHAIRMAN LEVITON: 15th, okay.
 17 MS. MOENCH: Right? Hold on, let me just
 18 double check. October 15th, right, Nancy? I just
 19 want to confirm.
 20 MS. DeFALCO: Yeah, it's the 15th. Yes.
 21 MS. MOENCH: I don't have my other
 22 agenda.
 23 MS. DeFALCO: It's October 15th, yes.
 24 MS. MOENCH: Okay, perfect.
 25 MR. LICATA: Thank you very much.

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1 John, did you want to make an official
 2 announcement or perhaps the Chairman did?
 3 MR. MILLER: Yeah, I'll make the
 4 announcement. The Chairman can certainly add to it.
 5 This is the notice for application --
 6 this is application ZBE-2011. The applicant is Yum &
 7 Chill TB Holdings, LLC. The applicant has requested
 8 this application be carried. This application is,
 9 therefore, carried to the Zoning Board's regular
 10 meeting on October 15th. That's Thursday,
 11 October 15, 2020 at 7:30 p.m. It will be held
 12 virtually on the same medium that is held -- that's
 13 held now.
 14 This is your notice. If you received
 15 written notice previously about this hearing, you
 16 will not receive a written notice. This is your
 17 notice that the meeting will be carried to
 18 October 15, 2020, that the new meeting date will be
 19 carried -- will be noted on the Manalapan Township
 20 website.
 21 Also, for anyone that may be interested,
 22 and there was reference made to it by Janice earlier
 23 this evening, any and all documents for this
 24 application are available for viewing by the public
 25 on the Township's website at any time. So any

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1 documents that are on there can be reviewed by the
 2 public at any time on the Manalapan Township website
 3 if you're so interested to do that.
 4 But this is your notice that the meeting
 5 will be carried -- this application will be carried
 6 to the Board's regular meeting Thursday, October 15,
 7 2020 to be held virtually, and the instructions will
 8 be published on the website as well and it will be
 9 held at 7:30 p.m.
 10 MR. LICATA: Thank you very much.
 11 MS. MOENCH: Just wanted to add one more
 12 thing. 10 days prior to the October 15th meeting the
 13 documents will be back on the website. They're not
 14 kept up on Manalapan Township website.
 15 MR. MILLER: Oh, okay. So then does the
 16 public have the ability to come in and then take a
 17 look at them if they wish, Janice?
 18 MS. MOENCH: Not come in, but they can
 19 view them 10 days prior or if they want to call me, I
 20 can e-mail them something or I guess they can OPRA or
 21 e-mail.
 22 MR. MILLER: Okay. Is there a way to
 23 keep those documents up there the whole time?
 24 MS. MOENCH: I don't see why not.
 25 MR. MILLER: All right, I would prefer

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1 that, because I think that's the way -- I think
 2 that's the way it should be.
 3 MS. MOENCH: Okay. I will have to talk
 4 with the IT Department.
 5 MR. MILLER: Okay.
 6 MS. MOENCH: Nancy? Nance? Oh, she's
 7 frozen.
 8 MR. MILLER: Yeah.
 9 MS. MOENCH: I thought she was just
 10 ignoring me. Yeah, I will talk with the IT
 11 Department to keep it ...
 12 MR. MILLER: Yeah, they should be
 13 available at all times. I mean, similar to it would
 14 if we weren't doing it virtually where someone could
 15 come into your office and review the documents.
 16 MS. MOENCH: I think they set a statute
 17 or something for 10 days prior to the meeting, but if
 18 you'd like me to check into that I most certainly
 19 can.
 20 MR. MILLER: Yes, please do.
 21 MS. MOENCH: And if interested, I won't
 22 be in the office tomorrow, but they can certainly
 23 call me or e-mail me and I can make things available
 24 to them.
 25 MR. MILLER: Okay.

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1 MR. LICATA: Mr. Chairman, we appreciate
 2 all of the time and your consideration.
 3 CHAIRMAN LEVITON: Mr. Licata, always a
 4 pleasure, sir. We look forward to seeing you again
 5 soon.
 6 MR. LICATA: Thank you.
 7 CHAIRMAN LEVITON: You're welcome.
 8 (Whereupon the public hearing was
 9 adjourned at 11:01 p.m.)
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C E R T I F I C A T E

I, BETSY CONDIOTTI, a Certified Court Reporter of the State of New Jersey, certify that the foregoing is a true and accurate verbatim transcript of the remote hearing as taken by and before me on the date hereinbefore set forth.

I FURTHER CERTIFY that I am neither attorney, nor counsel for, nor related to or employed by, any of the parties to the action in which this hearing was taken, and further that I am not a relative or employee of any attorney or counsel employed in this action, nor am I financially interested in this case.

Betsy Condiotti Jordan

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LAWYER'S NOTES

Multiple horizontal lines for notes.

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