

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BOROUGH OF FAIR LAWN
ZONING BOARD OF ADJUSTMENT
MONDAY, APRIL 18, 2016
COMMENCING AT 8:36 P.M.

.....
IN THE MATTER OF: : TRANSCRIPT
Application #2016-02 : OF
Fair Lawn J & S Holdings, LLC: PROCEEDINGS
23-08 Maple Avenue :
Block 5903 Lots 5, 5.01 & 36:
Proposed new Dunkin Donuts :
.....

B E F O R E:

BOROUGH OF FAIR LAWN ZONING BOARD OF ADJUSTMENT
THERE BEING PRESENT:

- RICHARD SEIBEL, CHAIRMAN
- KEVIN PUZIO, VICE CHAIRMAN
- JAMES LOWENSTEIN, SECRETARY
- SAMUEL RACENSTEIN, MEMBER
- JEANNE BARATTA, MEMBER
- YELENA PERCHUK, MEMBER
- AVI NAVEH, ALTERNATE II
- JOSHUA REINITZ, ALTERNATE III

LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.
CERTIFIED COURT REPORTERS
P.O. BOX 505
SADDLE BROOK, NJ 07663
201-641-1812
201-843-0515 FAX
LauraACaruccillc@gmail.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A L S O P R E S E N T:

ANN PECK
Assistant Zoning Officer

PAUL AZZOLINA, P.E.
Board Engineer

FRANK MISKOVICH
Board Traffic Engineer

PETER VAN den KOOY, PP, AICP
Board Planner

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

BRUCE R. ROSENBERG, ESQUIRE
Counsel to the Board

GACCIONE POMACO, P.C.
BY: MICHAEL J. PIROMALLI, ESQUIRE
524 Union Avenue
P.O. Box 96
Belleville, New Jersey 07109
Counsel to the Applicant

LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.
CERTIFIED COURT REPORTERS
P.O. BOX 505
SADDLE BROOK, NJ 07663
201-641-1812
201-843-0515 FAX
LauraACaruccillc@gmail.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

<u>WITNESS</u>	<u>SWORN</u>	<u>PAGE</u>
FRANK MISKOVICH	10	
PAUL AZZOLINA	10	
PETER VAN DEN KOOY	10	
ANN PECK	10	
CALISTO J. BERTIN, P.E.	10	
Direct Examination by Mr. Piromalli		11, 38, 40
Board Questions		22, 39, 41
Public Questions		48
DAVID NOVAK, PP, AICP	61	
Direct Examination by Mr. Piromalli		62
Board Questions		75
Fulvio Grosso	49	48
Craig Miller	52	52

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVID</u>
H	Supplemental Traffic Report dated 4/18/16		13
I	Gap video dated Thursday, 4/14/16		22
J	Gap video dated Monday, 4/18/16		22
K	Supplementing mapping and Site photograph		62

1 CHAIRMAN SEIBEL: We are going to hear
2 Application #2016-02, Fair Lawn J&S Holdings LLC,
3 23-08 Maple Avenue, Block 5903, Lots 5, 5.01, and 36.
4 Proposed new Dunkin Donuts.

5 Let's do a roll call.

6 MR. LOWENSTEIN: Mr. Racenstein?

7 MR. RACENSTEIN: Here.

8 MR. LOWENSTEIN: Mr. Blecher?

9 Ms. Baratta?

10 MS. BARATTA: Here.

11 MR. LOWENSTEIN: Ms. Perchuk?

12 MS. PERCHUK: Here.

13 MR. LOWENSTEIN: Mr. Lowenstein is
14 here.

15 Mr. Puzio?

16 VICE-CHAIRMAN PUZIO: Here.

17 MR. LOWENSTEIN: Mr. Naveh?

18 MR. NAVEH: Here.

19 MR. LOWENSTEIN: Mr. Reinitz?

20 MR. REINITZ: Here.

21 MR. LOWENSTEIN: Mr. Seibel?

22 CHAIRMAN SEIBEL: Here.

23 I just want to let you know we have a
24 hard curfew at 10:00. We'll see where we're at, and,
25 if we have to, we can poll the board, correct?

1 MR. ROSENBERG: Sure.

2 CHAIRMAN SEIBEL: All right, but the
3 floor is yours.

4 MR. PIROMALLI: Good evening,
5 Mr. Chairman, members of the board, once again,
6 Michael Piromalli with the law firm Gaccione Pomaco,
7 524 Union Avenue, Belleville, representing J&S
8 Holdings, LLC as applicant with regard to the subject
9 property located at 2308 Maple Avenue.

10 We are before the board in connection
11 with the present application for preliminary and
12 final site plan approval, as well use and bulk
13 variance approvals to demolish the existing office
14 building on the site and to construct a new,
15 one story, 1,860 square foot building for use as a
16 Dunkin Donuts restaurant location.

17 At the previous special meeting of this
18 board held on April 7, 2016, the applicant presented
19 testimony from professional engineer Eric Hough of
20 Bertin Engineering. Mr. Hough testified as to the
21 revisions which were made to the site plans as a
22 result of several recommendations by the Bergen
23 County Planning Board. He also then moved into
24 testimony regarding the traffic and parking, and
25 ultimately the ability of the site to accommodate the

1 proposed Dunkin Donuts use.

2 At the conclusion of Mr. Hough's
3 testimony, it was clear the board had some additional
4 traffic-related questions and concerns.

5 Tonight, we intend to start with some
6 additional traffic testimony, which we hope will
7 answer the traffic-related questions which remained
8 an issue.

9 Once we have addressed the traffic and
10 proposed parking for the site, we hope to have enough
11 time to present planning testimony and hopefully
12 complete the application.

13 Also at the conclusion of Mr. Hough's
14 testimony, there was a recommendation made by board
15 member Samuel Racenstein to possibly condition the
16 application to prohibit left turns exiting the site
17 during the peak a.m. and PM hours of 7:00 to 9:00
18 a.m. and 4 to 6:00 PM.

19 Just to repeat, although the applicant
20 was willing to accept such a condition at the last
21 meeting, it was not permitted by the applicant's
22 agreement with Dunkin Donuts, and, as a result, their
23 approval as franchisor was necessary, prior to the
24 applicant accepting such a condition.

25 I'm glad to say, since the last board

1 meeting the applicant has negotiated their franchise
2 agreement with Dunkin Donuts to allow such a
3 condition limiting the prohibition of left turns
4 exiting the site during those a.m. peak and PM peak
5 hours, again of 7 to 9:00 a.m. and 4 to 6:00 PM, as
6 Mr. Racenstein recommended.

7 So although the applicant and Dunkin
8 Donuts alike would prefer that the board see fit not
9 to restrict left turn movements exiting the site, the
10 applicant can and will accept such a condition, if
11 the board sees it necessary.

12 At this time, with your permission, Mr.
13 Chairman, I'd like to call our first witness for this
14 evening, Mr. Calisto Bertin of Bertin Engineering.

15 CHAIRMAN SEIBEL: Please do.

16 MR. ROSENBERG: Mr. Chairman, just one
17 housekeeping matter, if I may.

18 Can you ask Ms. Peck to certify who is
19 qualified to act on the application, just so we all
20 know, because I know there were a few and some folks
21 were here and some weren't.

22 Thank you, Mr. Chairman.

23 ASSISTANT ZONING OFFICER PECK: I
24 believe everyone sitting tonight is eligible.

25 CHAIRMAN SEIBEL: Everybody?

1 ASSISTANT ZONING OFFICER PECK: I
2 received certifications at the last meeting from Ms.
3 Baratta and Mr. Racenstein. Everyone else heard.

4 CHAIRMAN SEIBEL: But was it --

5 ASSISTANT ZONING OFFICER PECK: The
6 last two meetings, April 7th and March 8th.

7 CHAIRMAN SEIBEL: But was it paper or
8 was it a CD?

9 ASSISTANT ZONING OFFICER PECK: They
10 were transcripts.

11 CHAIRMAN SEIBEL: Transcripts. Okay.
12 So you got the transcripts?

13 ASSISTANT ZONING OFFICER PECK:
14 Transcript.

15 MR. LOWENSTEIN: Mr. Chairman, one
16 other housekeeping detail.

17 I've been provided with a copy of a
18 check and receipt dated April 15th of this year, an
19 additional \$4,500 has been paid by the applicant to
20 the town in this matter.

21 CHAIRMAN SEIBEL: That was for?

22 ASSISTANT ZONING OFFICER PECK: Escrow.

23 MR. LOWENSTEIN: Additional fees.

24 CHAIRMAN SEIBEL: Okay.

25 Let me swear my experts in, if you

1 will.

2 Guys, if you'll please state your name
3 one at a time, name and business address.

4 MR. VAN den KOOY: Peter Van den Kooy,
5 Zoning Board planner, Matrix New World Engineering,
6 442 Route 35 Eatontown, New Jersey.

7 MR. MISKOVICH: Frank Miskovich, board
8 traffic consultant, Metuchen, New Jersey.

9 MR. AZZOLINA: Paul Azzolina, Board
10 Zoning Engineering, Azzolina & Feury Engineering, 30
11 Madison Avenue, Paramus, New Jersey.

12 ASSISTANT ZONING OFFICER PECK: Ann
13 Peck, Assistant Zoning Officer for the Borough of
14 Fair Lawn.

15 CHAIRMAN SEIBEL: If you'll all raise
16 your right hand, I'll swear you in.

17 Do you swear or affirm that the
18 testimony you are about to give is true and accurate?

19 MR. AZZOLINA: I do.

20 P A U L A Z O L I N A,

21 Having been duly sworn, testifies as follows:

22 MR. MISKOVICH: I do.

23 F R A N K M I S K O V I C H,

24 Having been duly sworn, testifies as follows:

25 MR. VAN DEN KOOY: I do.

1 P E T E R V A N D E N K O O Y ,

2 Having been duly sworn, testifies as follows:

3 ASSISTANT ZONING OFFICER PECK: I do.

4 A N N P E C K ,

5 Having been duly sworn, testifies as follows:

6 CHAIRMAN SEIBEL: Now that we got that
7 out of the way, Mr. Bertin, please state your name,
8 spell it for the record, and your address.

9 MR. BERTIN: Yes. It's Calisto,
10 C-A-L-I-S-T-O, Bertin, B-E-R-T-I-N.

11 My office is at 66 Glen Avenue in Glen
12 Rock, New Jersey.

13 CHAIRMAN SEIBEL: And you've testified
14 before us before?

15 MR. BERTIN: Yes, I have, as a
16 Professional Engineer.

17 CHAIRMAN SEIBEL: If you'll raise your
18 right hand, I'll swear you in.

19 Do you swear or affirm that the
20 testimony you're about to give is true and accurate?

21 MR. BERTIN: Yes, I do.

22 C A L I S T O B E R T I N ,

23 66 Glen Avenue, Glen Rock, New Jersey, having
24 been duly sworn, testifies as follows:

25 CHAIRMAN SEIBEL: Please proceed.

1 MR. PIROMALLI: Thank you, Mr.
2 Chairman.

3 Would you like me to qualify the
4 witness or do you accept him, his qualifications?

5 CHAIRMAN SEIBEL: I accept him. We
6 know Mr. Bertin.

7 MR. PIROMALLI: Thank you very much. I
8 just wanted to confirm.

9 DIRECT EXAMINATION

10 BY MR. PIROMALLI:

11 Q. Mr. Bertin, at the last meeting,
12 Mr. Eric Hough of your office presented the results
13 of his traffic and parking analysis for the proposed
14 development. However, the board had some additional
15 traffic-related questions they would like to be
16 addressed.

17 To the best of my memory, I believe
18 those issues that needed to be addressed were: Can
19 the existing driveways in the area and the proposed
20 Dunkin Donuts driveway be safely navigated
21 considering the speed of the traffic in the area and
22 available traffic counts? What analysis would the
23 future development of the former Pathmark site have
24 on the traffic analysis which was conducted? And are
25 there sufficient gaps in the traffic during the peak

1 periods to get people out of the site? And what
2 would the net effect be of a possible condition
3 prohibiting left turns, again, during those a.m. and
4 p.m. peak hours, 7:00 to 9:00 a.m., 4:00 to 6:00
5 p.m.?

6 I leave it up to you.

7 A. Okay. I was hoping those were yes or
8 no questions.

9 Q. Unfortunately not.

10 A. After the last meeting, our office took
11 upon itself to conduct some additional studies during
12 last week and again today.

13 Just to give you some background, you
14 know, our office is in Glen Rock. I bank at the TD
15 Bank, I've gone to Johnny & Hanges for lunch on
16 occasion, and I go to that car wash. And I go
17 through this interchange at least twice a day, you
18 know. So I am more than just a traffic engineer, I
19 am familiar because I live here, I mean, I work here
20 and I'm familiar with the area.

21 So I'm just giving you that as a
22 backdrop.

23 Well, so we wanted to address a couple
24 of things. The first thing, when you have to enter
25 and exit a site, you have to have adequate sight

1 distance. And I think our report just said there was
2 sufficient sight distance.

3 Well, Bergen County requirements for
4 this road would be 325 feet to the left and to the
5 right.

6 We have -- oh, I have a supplemental
7 report I'd like to, I guess we have to mark it.

8 MR. PIROMALLI: That is correct.

9 MR. ROSENBERG: I have exhibit H.

10 MR. PIROMALLI: I have exhibit H as
11 well.

12 Mr. Bertin --

13 MR. ROSENBERG: We'll mark that in as
14 an exhibit.

15 MR. PIROMALLI: What would we call
16 this, Mr. Bertin?

17 THE WITNESS: Well, it's a supplemental
18 traffic report.

19 MR. PIROMALLI: Supplemental traffic
20 report.

21 THE WITNESS: I'll go through it
22 quickly.

23 (Supplemental Traffic Report, dated
24 4/18/16, is marked as Exhibit H in evidence.)

25 THE WITNESS: It's got today's date.

1 You want it?

2 Okay. I could testify to all this, but
3 it's sometimes better for you to see the numbers.

4 So, the available sight distance we
5 measured was well over 500 feet. And if you know,
6 you've been to the site, if you look to the south,
7 you can see past the shopping center and where the
8 road starts to turn, down by Rivara's Restaurant.

9 When you look north, you can see the
10 Maple Avenue -- I mean the Harristown Road traffic
11 light.

12 The road bends a little bit, but you
13 have clear sight distance in both directions. So,
14 it's safe from the standpoint that we have adequate
15 sight distance.

16 So the next thing is: Do we have
17 enough opportunities for a car to turn in and turn
18 out of this site without creating a traffic hazard?

19 We call those gaps.

20 The Federal Highway Administration,
21 along with other organizations, came up with the size
22 of a gap that you need to make a left turn out of a
23 driveway or a left turn into the driveway and then
24 again a right turn out.

25 So, to make a left turn from this site

1 onto the road requires a 7.1 second gap in traffic.
2 That means no traffic in either direction for
3 7.1 seconds.

4 Now, if you have an additional three
5 and a half seconds and making that almost 11 seconds,
6 now you can get two cars out. If one car is behind
7 the other, two cars can make a left.

8 So this is stuff that's promulgated by
9 the Federal Highway Administration and then we use it
10 in our studies.

11 What Eric had done at the last meeting
12 was we took the highest 15-minute period during an
13 hour, and got that, and did a gap study during that
14 period, and then projected it over the entire hour.

15 Now, firsthand you might say, oh,
16 that's cheating, but what happens is the traffic
17 during an hour isn't constant. We have a thing
18 called a "peak hour" factor. If every 15 minutes you
19 had the same amount of traffic, the peak hour factor
20 would be one.

21 You take the highest 15-minute periods
22 times four, divide it, and then the sum of all the
23 other 15-minute periods.

24 But the traffic volume in an hour over
25 a 15-minute period fluctuates 20 percent.

1 So he took the highest peak hour, which
2 we measured the gaps at that time, and then he
3 projected it. So that's one way of doing it.

4 The board had some concerns, so we went
5 and did it again. So this past Thursday, we went and
6 did the gap study for an entire hour.

7 Now, we did the left turns, because
8 that's critical. We didn't do right turns, because
9 if you can make a right turn, you can make a heck of
10 a lot more right turns, but we did both.

11 If we go back to the third and fourth
12 page, I'll give you some studies there. If you go
13 back to the third page, this measures the number of
14 gaps available to make a left turn. And there are
15 two pages back from that is each gap that we
16 measured, some are seven seconds. Anything less than
17 7.1 seconds, we didn't take, and then we just took
18 the gaps larger than that.

19 So on the extreme left column, we have
20 the gap size. So the first one is 7.1 seconds, and
21 then it's 10.6 seconds, because that's what you need
22 for the next car, right, and then we go on. And if
23 you notice, we go all the way up to 35.6 seconds.

24 Now, the next column is the theoretical
25 number of vehicles that can make a left turn out with

1 a gap that size.

2 So for a 7.1 second gap, you can get
3 one car out. And for a 10.6 second gap, you can get
4 two cars out. And, theoretically, if you have a 35
5 second gap, you can get nine cars out.

6 Well, the third column or the middle
7 column in the middle of the page is the number of
8 gaps in that hour that were that long. So the seven
9 second gap, there were 56 of them. So right there,
10 just with those gaps, we can get 56 cars out to make
11 a left turn out.

12 But I want to bring this to your
13 attention, because in order to study traffic, you
14 have to watch it, you can't see it by driving in it.

15 There were gaps that were over
16 30 seconds long on that road. And why are there gaps
17 that are that long?

18 Most of the northbound traffic comes
19 over the bridge coming from River Road, from Paterson
20 heading north, from I guess Route 21 or 20, whatever
21 it's called, I get them confused. That traffic light
22 really controls the northbound flow of traffic.

23 From Harristown Road, the traffic light
24 on Maple Avenue really controls most of the traffic
25 that heads south. Two-thirds of the southbound

1 traffic comes from that intersection or from up there
2 by the bridge. About a third of the traffic comes
3 of, what's it called, Elm Avenue by the TD Bank, so
4 that's coming from Hawthorne and on Harristown Road
5 there and from 208. So both those traffic lights do
6 a good job at controlling traffic.

7 So the gaps are going to vary over
8 time, because these two traffic lights are not
9 synchronized, you know. And the cycles will change
10 and sometimes it will hit that they'll both stop
11 traffic at the same time and some, one will stop
12 traffic and then the other one will stop traffic, and
13 so forth.

14 So we measured 92 gaps, this is
15 Thursday morning, last week, where you can make a
16 left turn out, and if we apply the size of those
17 gaps, we have a theoretical opportunity to make 157
18 left turns out of the site. That's what this -- now,
19 you can't use it exactly, because maybe there's two
20 cars that want to make a right turn, maybe, you know,
21 no one's there to make, because we don't have 157
22 cars leaving the site. So, anyway, but that's the
23 theoretical capacity of the road.

24 If you turn to the next page, which is
25 the right turns --

1 VICE-CHAIRMAN PUZIO: Can I just make
2 one point. You just said left turns, but the survey
3 says number of "right" turns.

4 MR. PIROMALLI: That's a typographical
5 error.

6 THE WITNESS: If you look at the top of
7 the page, it says "left" turns. We were typing this
8 real fast to get it out.

9 VICE-CHAIRMAN PUZIO: Just want to make
10 sure.

11 THE WITNESS: Thank you. That should
12 say "left."

13 MR. PIROMALLI: That should say "left."

14 THE WITNESS: I had a meeting in
15 Trenton this morning, and I only had a few minutes to
16 proof this.

17 MR. ROSENBERG: For the record, it's
18 page two on the right column should say "left" turns.

19 THE WITNESS: Yes.

20 MR. ROSENBERG: Thank you, Mr. Bertin.

21 THE WITNESS: So the next column, the
22 next page, which does say right turns, it's for right
23 turns, I'll go to the end, and it says there's 400
24 opportunities to make a right turn out, because
25 obviously there's a lot more opportunities to make a

1 right turn.

2 So our prior study that we had done, we
3 projected that there were 112 opportunities to make a
4 left, we did the study last week, and we measured
5 157.

6 There's two things.

7 One, there's going to be more gaps when
8 you do it over an hour, because, as I said, there's
9 less traffic during certain periods in that hour.
10 But, also, and I want to be completely honest, last
11 week was spring break, and school was out here and in
12 Glen Rock. So we called to check, so that's why we
13 went ahead and did it again this morning. We don't
14 have all the statistics, but we went and checked the
15 traffic again this morning.

16 Now, because I wasn't sure whether or
17 not you'd believe me, just being frank, we actually
18 took a video. And if you want, we have it and we
19 have a copy to submit, of Thursday morning and of
20 this morning around 8:30, to get the peak hour, and
21 so you could see the cars could make the turn.

22 And what we did is we had one of our
23 employees make a left out of the site, make a left
24 into the site, make a left out of the site, make a
25 left into the site, and just keep going around. And

1 so on Thursday when he did it, he was able to do that
2 32 times. Just kept on driving around. And this
3 morning when we did it, we had a different driver,
4 maybe he wasn't so heavy on the foot, we could do it
5 25 times. And that was in a 15-minute period.

6 So, if you really want to see it, I
7 have a video here, and you could just pick any point
8 and watch it.

9 CHAIRMAN SEIBEL: How long is it?

10 THE WITNESS: Well, there's two
11 15 minutes, they're both 15, but what I would do is
12 just, you know, after a minute, you can say, okay,
13 I've seen enough.

14 CHAIRMAN SEIBEL: All right. What do
15 we call this?

16 MR. ROSENBERG: It's an exhibit I, Mr.
17 Chairman.

18 CHAIRMAN SEIBEL: Exhibit I.

19 MR. ROSENBERG: As I heard Mr. Bertin
20 say he has a copy, which will be available in the
21 record, because that's what's important. So you want
22 to give us a copy that we can have in the record,
23 that's what matters, I don't get it.

24 MR. PIROMALLI: What would we call the
25 exhibit, Mr. Bertin?

1 THE WITNESS: There's two, there's the
2 Thursday last week and then Monday this morning.

3 ASSISTANT ZONING OFFICER PECK: So you
4 want to do each one individually as an exhibit?

5 MR. ROSENBERG: H was the supplemental
6 traffic report dated April 18th.

7 ASSISTANT ZONING OFFICER PECK: I we'll
8 do Thursday April 14th, which is the video, and then
9 the next one is Monday, April 18th.

10 MR. ROSENBERG: This is a gap video,
11 correct?

12 MR. PIROMALLI: Correct.

13 MR. ROSENBERG: Thank you.

14 (Gap video dated Thursday, 4/14/16, is
15 marked as Exhibit I in evidence.)

16 (Gap video dated Monday, 4/18/16, is
17 marked as Exhibit J in evidence.)

18 CHAIRMAN SEIBEL: Now, you were saying
19 a 7.1 second gap. That's 7.1 seconds for both
20 directions?

21 THE WITNESS: Correct.

22 CHAIRMAN SEIBEL: So that's quite a
23 delay. All right.

24 THE WITNESS: So this is just traffic
25 traveling -- Eric, do we have a car coming out, is

1 that our car?

2 MR. HOUGH: That is our video.

3 THE WITNESS: That's our guy pulling
4 out, and now he's pulling back in. So he used the
5 same gap to both pull out and pull in.

6 He has to go around and come out again,
7 and maybe what we'll do, we'll go to the other one,
8 you don't have to see much of this to get the idea.

9 Here he is.

10 MR. LOWENSTEIN: You don't have elapsed
11 time on this, do you?

12 MR. MISKOVICH: Do you know what time
13 this was taken?

14 THE WITNESS: About 8:45 to 9, because
15 that's the peak hour that we measured.

16 And this was when, Thursday, you can
17 say you could walk right across the street.

18 CHAIRMAN SEIBEL: This past Thursday?

19 THE WITNESS: That was this past
20 Thursday.

21 CHAIRMAN SEIBEL: Well, my car was
22 stuck in traffic on the other side of town, I guess.

23 THE WITNESS: And I checked to make
24 sure that the construction being done at River Road
25 wasn't interfering with northbound flow.

1 MR. REINITZ: I think we discussed last
2 time, 8:45 is really the end of it.

3 THE WITNESS: Well, actually --

4 MR. REINITZ: I mean, our concerns
5 were, or, I would say some of our concerns were the 7
6 to 9 period, and I think we may be beating a dead
7 horse at this point, but if the testimony last time
8 was nine is really the end of it, our position last
9 time was, you know, the vast majority of people are
10 at work at this point or close to work. So I don't
11 know if this is, but please --

12 THE WITNESS: And I understand that,
13 and, actually, and I normally don't go out and do
14 these things, but I was here at 7:30 that morning and
15 I stayed until almost 8:30, and this is indicative of
16 the traffic. Our counts happen to show that it was
17 heavier at almost 9:00, which you're right, I would
18 have thought it was earlier.

19 MR. REINITZ: But your counts are
20 actually lower than your estimates, correct?

21 From what I read, and maybe, I mean we
22 just got this today, five minutes ago, but from what
23 I read, it seems that if you break out your
24 15 minutes, it's 100 or 128, not 112 and 157,
25 correct?

1 THE WITNESS: Well, the 157 is what we
2 measured as last time.

3 MR. REINITZ: Right, but your actual
4 amount of turns, when you count how many turns you
5 can actually make, rather than what you estimate, was
6 really 120 not 150, and 100, not 112, correct?

7 THE WITNESS: I guess I'd have to --

8 MR. REINITZ: I mean, it's right here,
9 the first page.

10 THE WITNESS: Oh, where we said the
11 157, 112?

12 MR. REINITZ: Well, it says the new
13 study shows the existing traffic would support 157
14 turns, but then when you did the actual numbers, it
15 was really 128 was all that was able to be made,
16 correct?

17 THE WITNESS: No, it was 157, that's on
18 the third page. That's where we get that chart that
19 we made.

20 CHAIRMAN SEIBEL: So the previous study
21 gave you 112 left turns, and the new study gave you
22 157?

23 THE WITNESS: Right, and that would
24 happen because we did it over the course of an hour,
25 and, also, and I want to be frank about it, school

1 was out, so traffic is going to be a little bit
2 lower, it's not like summertime, but it's going to be
3 lower.

4 CHAIRMAN SEIBEL: And then you did
5 this?

6 THE WITNESS: Well, yes, and we did it
7 again this morning, so I have the same thing, and
8 it's pretty similar.

9 See, when you watch traffic -- and
10 that's because of the two traffic lights.

11 MR. REINITZ: But, sir, and I don't
12 mean to cut you off, but I guess what I'm asking, and
13 correct me if I'm wrong, because again I went to law
14 school because numbers are not my friend, but it says
15 here, you know, your gap study, which I assume is the
16 theoretical study based on the video, says that it,
17 the Maple Avenue traffic supports 157 left turns on
18 the school break week.

19 But when you actually put the car out
20 there and had the car run the test, it was only 120
21 were able to be made.

22 THE WITNESS: Now I get where you're
23 coming from, but that's not right, because --

24 MR. REINITZ: And right there you
25 almost got hit, because that car made an illegal

1 turn, I mean.

2 THE WITNESS: No, that guy had come to
3 almost a stop to make the left turn into the Toyota,
4 so it wasn't that he was cutoff and the signal light
5 was on.

6 MR. REINITZ: I represented plenty of
7 clients who have gotten tickets for that same
8 maneuver.

9 THE WITNESS: When you do that, this is
10 not the same thing.

11 When cars leave the site, they're all
12 queued up, they're looking for a gap, and they go.

13 Now, I don't know if anyone here has
14 used the daycare center just two doors down, but it
15 would be traffic like that. This is just someone
16 driving around. This is just to show you how we can
17 do it, that you can make these turns, and you have to
18 wait sometimes and sometimes you don't.

19 But this is just using the gaps, this
20 is not predicting how many gaps there are, because
21 he's waiting to turn in. He's not in the site coming
22 out.

23 MR. REINITZ: But isn't that --

24 THE WITNESS: No, no, it's different
25 because he's not using all the gaps. See, there's

1 gaps here now that he's not using.

2 MR. REINITZ: I get that. No, I get
3 that, but...

4 THE WITNESS: And even this morning,
5 when we did it again, the traffic is similar, we can
6 switch. Why don't we do that, Eric, we're just going
7 to stop this.

8 CHAIRMAN SEIBEL: And nobody called the
9 cops?

10 THE WITNESS: Actually, the police were
11 stopped, the police went to the daycare center this
12 morning, I thought he was going to come over and
13 check on us.

14 Now, traffic here is less, this part of
15 the street is less congested than it is by the TD
16 Bank or clearly by Elm Avenue, and that intersection
17 I take a lot because at Elm when you're coming say
18 south on 208, you get off over there by the big Bank
19 of America site, and you come up by the firehouse,
20 and then you come up to Maple Avenue and you have to
21 make a left, not only do you have the normal traffic
22 that's on Maple Avenue, but you have the other leg,
23 no, actually, you have the people who are heading
24 south on 208 and get onto Maple Avenue north there,
25 that ramp.

1 CHAIRMAN SEIBEL: They cut straight
2 across and get on 208.

3 THE WITNESS: Sometimes.

4 So that is a congested area, it works,
5 and sometimes traffic backs up from the light all the
6 way to Elm Avenue, but, again, we're quite a ways
7 away from there. So, yes, the interchange can be
8 congested, but, again, we're a little bit away.

9 So he's just going to show you this
10 morning. Okay, he's loading it.

11 Okay.

12 CHAIRMAN SEIBEL: Now --

13 THE WITNESS: Okay, here we go. We
14 even have sound.

15 CHAIRMAN SEIBEL: Just identify this
16 for the record, Mr. Bertin, this is exhibit J.

17 THE WITNESS: Yes, taken this morning,
18 so we're using a different vehicle here.

19 CHAIRMAN SEIBEL: The black one.

20 THE WITNESS: Yes, the little black
21 Ford escape, is it?

22 MR. HOUGH: Yes.

23 THE WITNESS: Okay.

24 CHAIRMAN SEIBEL: You can see a little
25 busier.

1 THE WITNESS: So here's an occasion
2 where he has to wait a while.

3 Eric, you couldn't cut this time off, I
4 mean?

5 The one thing, and even the county
6 planning and engineering department will tell you
7 that if cars are going to wait, you want them to wait
8 on-site. So in that case, he had to wait.

9 Here he comes again, and you can sense
10 it that there's less traffic.

11 So when the traffic light up at
12 Harristown Road turns green, you're going to have a
13 slug of cars coming down.

14 Now, while you're watching, just to do
15 a right turn, it's 6.2 seconds for the first, you
16 need a gap of six seconds, and --

17 CHAIRMAN SEIBEL: I'm surprised there
18 aren't more cars going onto 208 from --

19 THE WITNESS: Northbound, I just did a
20 quick study, about a third of the cars heading north
21 go onto 208 towards Paramus, about 30 percent. And I
22 just did it for 10 minutes, but just to get a handle
23 on it, because the ramp to go northbound is -- no,
24 no, the ramp to go northbound is way over here.

25 CHAIRMAN SEIBEL: So what's that,

1 Toyota?

2 THE WITNESS: That's the Toyota
3 driveway.

4 CHAIRMAN SEIBEL: So you are losing
5 traffic?

6 THE WITNESS: Yes, and that would be
7 when you get to TD Bank or Johnny & Hanges, that's
8 when you've already lost the traffic.

9 So I guess the point here is that
10 there's opportunities to make left turns, that's all
11 I want to say.

12 So, I mean, Dunkin Donuts agreed to it,
13 if you really feel or you could put it as a test
14 period, but I just didn't think it was necessary.
15 And, again, I drive here, and because it's my
16 client's Dunkin Donuts, I guess I'm going to start
17 going here.

18 Anyway, I just, you know, there's the
19 car wash opens up at 8:00, and then the child care
20 center is busiest in the morning too. They don't
21 generate as much traffic as this, but we have the
22 opportunity to make it.

23 MR. AZZOLINA: When is the time of day
24 on this second video?

25 THE WITNESS: Same time.

1 MR. AZZOLINA: Same time, 8:45?

2 THE WITNESS: And, again, I have been
3 there during the time period and I was there earlier,
4 and it's not much different than this.

5 CHAIRMAN SEIBEL: Any thoughts, Frank?

6 MR. MISKOVICH: Today's modern day, I
7 don't know why it's not in color.

8 THE WITNESS: It is in color. It is.
9 It was done with a cellphone.

10 MR. MISKOVICH: I think what he's
11 trying to show is that a lot of us drive a road in a
12 particular time, so you have a snapshot of the road
13 at that period or whatever, and what we do
14 professionally, stay there for a period of time,
15 you'll see fluctuations. This shows gaps in there.
16 That's on that particular day and that reflection
17 rate.

18 What's more important is the fact that
19 he actually counted the gaps and the time distance
20 between it. It was getting quite a bit that were
21 over the seven seconds, and the seven second gap that
22 is used by the federal highway DOT we use in the
23 industry, is basically predicated on kind of not the
24 aggressive driver, because seven seconds is a lot.
25 At 35 miles an hour, that's almost a football field

1 length of no cars. And if we try to wait for that in
2 New Jersey, and I think you would have problems with
3 people honking the horn at you, so I think it's on
4 the conservative side.

5 If I look at his numbers, just as a
6 point of comparison, he found 92 gaps, period,
7 greater than seven seconds. We're only estimating 98
8 cars exiting the driveway. So forget that you might
9 get the second car or third car in the gap, we're
10 just about balancing even.

11 CHAIRMAN SEIBEL: That's with the 7.1
12 second gap?

13 MR. MISKOVICH: Correct. Correct.

14 CHAIRMAN SEIBEL: So it's clearing
15 everything out?

16 MR. MISKOVICH: Right.

17 The other part, as he mentioned before,
18 is the sight distance. When we design an
19 intersection, especially unsignalized, you want to
20 make sure you got adequate sight distance, one, for
21 the car exiting the roadway, but also the car in the
22 road, Maple Avenue in this case, to react and stop in
23 time, and the sight distance here quite exceeds. So
24 it comes down to a perception of how much delay the
25 driver wants to accept. And, in this case, where

1 there is a queue, it's going to queue into the
2 driveway and it's not blocking other driveways. But
3 that's how we look at the traffic, that's really a
4 judgment call what the board feels is congestion.
5 But I think the gap study shows and the numbers and
6 what the video is showing, that there's probably
7 adequate gaps, there's good sight distance. So
8 there's nothing from a traffic engineering or a
9 highway design perspective that says it's a bad
10 location, it's just maybe subjective as far as
11 someone feels traffic-wise.

12 CHAIRMAN SEIBEL: And he's driving
13 pretty slow. I mean, he's not on two wheels.

14 THE WITNESS: It's a brand new car. He
15 wasn't going to drive fast.

16 MR. MISKOVICH: Mr. Chairman, the video
17 is showing that he's not like jumping out at traffic
18 to beat it, that he's pulling out relatively slow,
19 and that's the more critical movement. The left turn
20 is the less critical because the gaps are much
21 smaller, because you're only dealing with one
22 direction of traffic.

23 CHAIRMAN SEIBEL: Is this the same guy
24 driving?

25 THE WITNESS: Yes.

1 CHAIRMAN SEIBEL: He got a new car?

2 THE WITNESS: No, it's a different
3 person from the Thursday.

4 CHAIRMAN SEIBEL: I'm in the wrong
5 business.

6 THE WITNESS: No, no, I was going to
7 use our survey vans, they're white, they were busy.

8 CHAIRMAN SEIBEL: All right. Anybody
9 have any questions about the video? Anyone?

10 MR. LOWENSTEIN: The only thing I want
11 to know, and I don't know if Mr. Bertin or
12 Mr. Miskovich analyzed this, but if it's busy
13 on-site, so busy with cars because now we have one
14 guy making a loop, there's nobody else on that site
15 when you're doing your test drive, but if you have
16 cars on-site and you got a number, whether it's 50 or
17 somewhere in that range vehicles in an hour, entering
18 and exiting the site, I think it's closer to 100,
19 matter of fact.

20 MR. PIROMALLI: Correct.

21 MR. LOWENSTEIN: Some of those guys are
22 going to back and fill and wait for somebody to come
23 across and so on. So traffic is going to have some
24 impediments internally. And that, even though you
25 say that the traffic will queue on-site, it may queue

1 on the ingress road, not just on the egress, and,
2 therefore, that may impact Maple Avenue traffic,
3 particularly trying to make the left turn by the --

4 THE WITNESS: Right.

5 MR. LOWENSTEIN: Trying to enter the
6 site.

7 THE WITNESS: And the only way someone
8 will be blocked from entering the site is when a car
9 backs out of the parking space and blocks the
10 driveway. And that's one of the requirements why
11 Bergen County, no parking within 20 feet of the
12 right-of-way line. So a car can get, not only can
13 get off the sidewalk and sit there while that person
14 maneuvers, and it's just how many times that parking
15 space is going to turn over. You know, someone parks
16 there, they're inside on line, getting whatever they
17 get, and then come out.

18 So, yeah, they'll be turnover, but it's
19 not constant, you know, of those first few parking
20 spaces are the only thing that's going to block the
21 traffic from entering.

22 MR. LOWENSTEIN: Would you concur with
23 that assessment, Mr. Miskovich?

24 MR. MISKOVICH: Yes. I mean, because
25 what you want to do is avoid that conflict right at

1 the entrance driveway, so by eliminating some spaces
2 farther into the site, you've got that buffer of
3 allowing at least a car to exit -- I mean to enter.

4 There will be obviously some congestion
5 to some extent, because of the number of parking
6 spaces on-site. Some of that I think has been
7 addressed by providing parking on the adjacent lot.
8 If you remember the testimony, they also said they're
9 going to sign the inside and advise the people that
10 there is parking on the adjacent property. And I
11 think what happens is normal course, which is the
12 hard thing to calculate, some people may decide to
13 just go to the other site, park and exit there.

14 If this gets too congested, they may
15 say, look, this is too busy, I'm just going to go on
16 my way, because it's the time of day. And so it's a
17 balancing act. That's hard to project what may
18 happen, so we use our numbers and the studies that
19 say here's what we expect.

20 And, again, with Dunkin Donuts, the
21 thing is somewhat unique compared to other
22 fast-foods. It's really a morning phenomena, it
23 occurs at morning peak activity. And the testimony
24 was probably 65 percent of the morning period from
25 about 7 to 10. The rest of the day is very minimal.

1 So compared to like having something that's a
2 lunchtime and evening crowd and then a morning crowd.

3 So that's a matter I think the board
4 has to weigh, given the fact it has a certain peak in
5 the morning, there's good sight lines, and maybe the
6 gaps. There might be some congestion on-site,
7 depending on where the driver is trying to exit, and
8 that might have some impact on queuing, but as far as
9 an engineering perspective, it's been at least laid
10 out the best it can.

11 THE WITNESS: I just want to make one
12 correction. We talked about, you asked about using
13 208, and you realize now that's not the 208 ramp and
14 the northbound traffic, I have to correct myself,
15 it's around 20 percent of the northbound traffic
16 takes 208 towards Paramus. I said 30 percent, that
17 was from the north heading south.

18 CHAIRMAN SEIBEL: You didn't study what
19 percent going north take 208, did you?

20 THE WITNESS: Yes, yes, that's what I'm
21 saying, it's about 20 percent.

22 CHAIRMAN SEIBEL: How about the other
23 way, going south?

24 THE WITNESS: South, about a third of
25 the traffic comes from Elm Avenue -- Elm, yeah, yeah,

1 so that would be 208 south and Harristown Road, down
2 that end of Harristown Road by the park would come up
3 to the intersection and then head south in front of
4 TD Bank. So it's about a third of the southbound
5 traffic comes from, well, 208 and Harristown Road.

6 CHAIRMAN SEIBEL: Okay. Anybody have
7 any questions?

8 MR. PIROMALLI: Just quickly, just two
9 points of clarification.

10 BY MR. PIROMALLI:

11 Q. Mr. Bertin, there was one question a
12 board member had with regard to the former Pathmark
13 site and how that would impact our analysis, if it
14 were developed in the near future.

15 A. Yes, and thank you.

16 Because that site could open up just as
17 it is again tomorrow, if someone wanted to, and I
18 don't know if it's going to be that or residential or
19 mixed use, I guess I've heard a number of stories.

20 But we said, okay, if that center
21 opened up again, how much traffic would it generate,
22 and let's add that traffic to the street and onto the
23 street as some new traffic.

24 So we did that and we performed this
25 level of service analysis again. And obviously

1 adding more traffic does increase the delays, because
2 there will be more traffic here, but it still
3 operates the same level of service as you see here.
4 I mean, I forgot. Let me just pull it out.

5 CHAIRMAN SEIBEL: It's completely
6 hypothetical, because we don't know what will ever
7 be.

8 THE WITNESS: We don't know what's
9 going in there, but it could be that they go back,
10 that that center opens up again.

11 Yes, so the morning peak -- the average
12 delay is 28 seconds coming out of the site without
13 the shopping center being open, and it goes to
14 30.5 seconds with the shopping center being open.

15 Now, I said the average delay is
16 28 seconds. You notice that car did not wait, maybe
17 the first time it waited 20 seconds, but it didn't
18 wait that long.

19 So it will increase the delay 3 or
20 4 seconds for the cars exiting the site.

21 CHAIRMAN SEIBEL: If the Pathmark
22 opened up as a Pathmark again --

23 THE WITNESS: Correct.

24 CHAIRMAN SEIBEL: -- it will add three
25 seconds?

1 THE WITNESS: To our cars leaving, on
2 average. Some will go right out, some will wait a
3 while.

4 CHAIRMAN SEIBEL: I think was it Sam,
5 was that you -- who was it? Was it you?

6 Oh, so there's really no way to know
7 what will ever go in there?

8 THE WITNESS: Right.

9 And a supermarket generally does not
10 have that much traffic in the a.m., because the big
11 morning traffic generators are gas stations and
12 convenience stores and coffee shops. A supermarket
13 does not generate that much in a morning. Now, on a
14 Saturday afternoon, forget about it.

15 BY MR. PIROMALLI:

16 Q. Just one other question, Mr. Bertin, I
17 had.

18 Part of this application includes eight
19 off-site parking spaces at the Johnny & Hanges
20 restaurant available for our use, for Dunkin Donuts'
21 use between 5:00 a.m. and 11:00 a.m. what's the
22 effect of that? I know you couldn't incorporate that
23 into your parking calculation or your traffic study,
24 but we do essentially during those hours of 5 to 11
25 have a second driveway that's going to be utilized.

1 How will that work for safety purposes and for gap
2 analysis?

3 A. It will disburse our traffic over two
4 driveways. Instead of it all being concentrated on
5 one driveway -- as a matter of fact, this driveway in
6 the foreground of this photograph is Johnny & Hanges'
7 exit driveway.

8 So you can actually make use of the
9 same gap theoretically that two cars can make a left
10 out because we have two driveways. So it will just
11 lessen the impact by having more sites to disburse
12 the traffic.

13 CHAIRMAN SEIBEL: Less intensity?

14 THE WITNESS: Right, because not
15 everyone is coming out of the proposed Dunkin Donuts
16 driveway, some will be using the other driveway, to
17 the extent that it gets used.

18 MR. PIROMALLI: I have no further
19 questions of this witness, Mr. Chairman.

20 CHAIRMAN SEIBEL: That lease for the
21 spaces is a five-year lease?

22 MR. PIROMALLI: Five years with two
23 options to renew for five-year terms, so a total of
24 15 years.

25 CHAIRMAN SEIBEL: How does that affect

1 us and what we do here?

2 MR. ROSENBERG: Mr. Chairman, in order
3 for you to consider the use of that property, and the
4 attorney and I have talked about this together with
5 Ms. Peck, is that there's an ordinance in the borough
6 and it was put in place to allow cooperative parking,
7 and that's the term in the ordinance.

8 There's an actual agreement form that
9 the applicant, I believe, has agreed that if the
10 application is approved, that they would follow that
11 form. And that requires, among other things, Mr.
12 Chairman, that that agreement be in place in
13 perpetuity and that it be recorded. And so that's
14 the way in which the ordinance dealt with, I think
15 what you're trying to get at, which is, how can a
16 board approve something with a cooperative parking
17 plan and then the property which is encumbered by
18 that parking agreement changes ownership or someone
19 changes their decision or mind and then you've given
20 approval.

21 So the bottom line is that I believe
22 the applicant has agreed that if the application is
23 approved by the board, that there will be the
24 cooperative parking agreement in the form required by
25 the borough.

1 Am I correct?

2 MR. PIROMALLI: You are correct in all
3 but one part.

4 MR. ROSENBERG: Sure.

5 MR. PIROMALLI: The term part. It does
6 need to be recorded, that is correct, but I will read
7 right here on page seven of the ordinance: For a
8 term not less than the leasehold term of the party
9 leasing the space, or, in the alternative, if no term
10 is set forth in the agreement, for a duration of not
11 less than five years.

12 So that's why we crafted it in that
13 particular way for the five-year term with the two
14 5-year options to renew, for a total of 10 years
15 renewal option, 15-year total.

16 To go any further at this point would
17 be premature. We don't know how successful the
18 Dunkin Donuts would be. So that's why we drafted it
19 in that way.

20 MR. ROSENBERG: Forgive me, Mr.
21 Chairman, I didn't realize it. I don't have it in
22 front of me. I looked at it last night. If that's
23 what the ordinance requires and the applicant
24 complies with it, then the board relies on that.

25 CHAIRMAN SEIBEL: So it's five years.

1 Let's say, just being the devil's advocate, a feud
2 breaks out after 15 years, and they don't want to
3 renew the eight parks spaces. Do they have to come
4 in front of the board again for a variance?

5 MR. ROSENBERG: No, because they comply
6 with the code, Mr. Chairman.

7 CHAIRMAN SEIBEL: That's interesting.

8 MS. BARATTA: A question for our
9 attorney.

10 So you said it was forever and forever,
11 amen, but it's five years.

12 MR. ROSENBERG: It's limited.

13 MS. BARATTA: So, of course, you know
14 I'm thinking McDonald's and IHOP, and we have a
15 situation there where we had an agreement and then
16 things changed.

17 MR. ROSENBERG: Yes.

18 MS. BARATTA: And then towing started
19 and things like that.

20 That's not another road we want to go
21 down.

22 MR. ROSENBERG: But, again, I think the
23 difference here is that they comply with the code,
24 but you certainly, and the ordinance even says that
25 you can take into account how that operating

1 agreement is to work, and the applicant is presenting
2 it to be 15 years.

3 MS. BARATTA: Okay.

4 MR. ROSENBERG: So be mindful, yes,
5 you're absolutely right, be mindful of what happens,
6 as the Chairman is saying, after the end of 15 years.

7 MS. BARATTA: Right.

8 CHAIRMAN SEIBEL: You said it's
9 five-year with two 5-year options?

10 MR. PIROMALLI: That is correct,
11 Mr. Chairman.

12 CHAIRMAN SEIBEL: What if they decide
13 after five years they don't want to pick up the
14 five-year option?

15 MR. ROSENBERG: Well, the options, as I
16 recall, are exercisable by you.

17 MR. PIROMALLI: Correct.

18 MR. ROSENBERG: An option normally
19 can't be terminated by the property owner.

20 CHAIRMAN SEIBEL: But what's to stop
21 them from saying we don't need this?

22 MR. ROSENBERG: Well, no, the
23 cooperating agreement that would be signed as a
24 condition of any approval would attach the lease
25 agreement itself, and we would mandate that it would

1 be a minimum of 15 years.

2 CHAIRMAN SEIBEL: Okay.

3 MR. ROSENBERG: You have that, because
4 the lease provides for that, Mr. Chairman.

5 CHAIRMAN SEIBEL: Okay, that they
6 exercise the entire --

7 MR. ROSENBERG: Correct, they would
8 have to exercise the option.

9 CHAIRMAN SEIBEL: All right.

10 Yes.

11 MR. LOWENSTEIN: Regarding the lease
12 agreement, I have a couple of questions for counsel,
13 not our counsel, applicant's counsel.

14 CHAIRMAN SEIBEL: Of course.

15 MR. LOWENSTEIN: And I'm referring to
16 the lease consisting of four pages, dated March 23rd
17 of this year.

18 MR. PIROMALLI: I have it in front of
19 me, Mr. Lowenstein.

20 MR. LOWENSTEIN: So two questions.

21 The tenant is identified as Maple QSR
22 trading as Dunkin Donuts.

23 Who is that, relative to this
24 transaction?

25 MR. PIROMALLI: Basically it's a parent

1 corporation of Fair Lawn J&S Holdings. J&S Holdings
2 is a holding company, the parent company is Maple QSR
3 Incorporated, a related business entity.

4 MR. LOWENSTEIN: Right, and jointly
5 they are referred to as the tenant, correct?

6 MR. PIROMALLI: Correct.

7 MR. LOWENSTEIN: So I see a tenant
8 identified and I see a landlord identified, but I
9 don't see a seller identified.

10 In paragraph 15, sale of property, it
11 says, should seller convey title.

12 Should that not be "landlord"?

13 MR. PIROMALLI: It should. That is
14 correct. That will be corrected.

15 MR. LOWENSTEIN: Okay.

16 MR. PIROMALLI: As the board attorney
17 has mentioned, this lease agreement will be basically
18 re-drafted in the form that's appropriate and
19 acceptable to the board attorney. That's certainly
20 something that we would do and we would accept. And
21 that is correct, this is incorrect, I apologize for
22 that, 100 percent it should be landlord.

23 MR. LOWENSTEIN: Okay. Thank you.

24 CHAIRMAN SEIBEL: Anybody have any
25 questions?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

None.

Oh, hold on. Seeing none from the board, I'll open it up to property owners within 200 feet. Anyone within 200 feet?

Oh, where did you go?

THE WITNESS: I was trying to sit down.

CHAIRMAN SEIBEL: Okay. Would you like to ask a question?

MR. GROSSO: Yes.

CHAIRMAN SEIBEL: Come on up.

MR. GROSSO: They're pushing me here. Sorry.

CHAIRMAN SEIBEL: Please state your name and spell it and tell me your address.

MR. GROSSO: Sure.

Fulvio Grosso, G-R-O-S-S-O, Fulvio, F-U-L-V-I-O. Home address is 64 Mazur Place, Hawthorne, and my business address is next door to the applicant, 23-20 Maple Avenue, Fair Lawn.

CHAIRMAN SEIBEL: Hold up your right hand, I'll swear you in.

MR. GROSSO: Sure.

CHAIRMAN SEIBEL: Do you swear or affirm that the testimony you're about to give is true and accurate?

1 MR. GROSSO: I do.

2 F U L V I O G R O S S O,

3 64 Mazur Place, Hawthorne, New Jersey, having
4 been duly sworn, testifies as follows:

5 CHAIRMAN SEIBEL: And which --

6 MR. GROSSO: Johnny & Hanges.

7 Now they were pushing me to get up
8 here, Mr. Chairman.

9 So, first of all, I understand your
10 concerns, and I'm not familiar of course with what
11 you people do, but I know that I'm listening to a lot
12 of this no left turn, and I've been doing this for
13 17 years now at that site, I've been watching cars
14 and I do it personally myself. And I haven't known
15 of an instance that's happened with cars making a
16 left turn in.

17 Our property itself is a little more
18 difficult than the proposed site is, because we've
19 got the Toyota dealer in front of us, that's their
20 main lot. They're constantly pulling out and they
21 have the right-of-way. So I know, even myself
22 personally coming out, I find it difficult because
23 the parking lot of the Glen Toyota and also the ramp
24 in front of me, where they are, I think is obviously
25 a lot easier to make this tough left-hand turn that

1 they would be making. But, further, most important,
2 I get into these lots like this where you can't make
3 left turns and all that. I know what happens, they
4 don't make the left turn, they make the right, and
5 they're pulling into someone else's lot, which I
6 believe is more dangerous.

7 So I know the concerns of the board is
8 that left turn, which it is a difficult one, but
9 ultimately if they're making a right turn because
10 they want to go left, I think it's tougher, because
11 they can only go down to River Road, that's a schlep
12 to get there, so they're going to make a turn in
13 someone's parking lot, and I think that's even more
14 dangerous.

15 CHAIRMAN SEIBEL: Is there a question
16 you had?

17 MR. GROSSO: No, I have no question.
18 Just for the board, because I've been there, I'm sort
19 of a veteran, I guess, of that site, you know, and I
20 haven't heard of any problems over that period of
21 time.

22 CHAIRMAN SEIBEL: At the very end,
23 we'll bring you up, and anything you didn't tell us,
24 we'll let you say.

25 MR. GROSSO: You want to go home?

1 CHAIRMAN SEIBEL: Well, we do the
2 comments at the end, this is questions.

3 MR. GROSSO: I'm done with the
4 comments. They were pushing me up here. Thank you
5 for listening to me, I appreciate it.

6 CHAIRMAN SEIBEL: One away, right.

7 MR. GROSSO: That's it.

8 CHAIRMAN SEIBEL: Open it up, any other
9 property owners within 200 feet?

10 Seeing none.

11 Open it up to the general public.

12 Craig.

13 MR. MILLER: That's all right, I got a
14 big mouth, I don't need a microphone.

15 CHAIRMAN SEIBEL: State your name,
16 spell it and your address.

17 MR. MILLER: Craig Miller, Five Ramapo
18 Terrace. Miller as in the beer.

19 CHAIRMAN SEIBEL: Do you swear or
20 affirm that the testimony you're about to give is
21 true and accurate?

22 MR. MILLER: Yes.

23 C R A I G M I L L E R,

24 Five Ramapo Terrace, Fair Lawn, New Jersey,

25 having been duly sworn, testifies as follows:

1 MR. MILLER: Two questions.

2 One, I'm not sure if it's for this
3 witness, because I may have missed it. Is this site
4 proposed to have a drive-through?

5 THE WITNESS: No.

6 CHAIRMAN SEIBEL: No drive-through.

7 MR. MILLER: With the cooperative
8 parking, what happens in the reverse, when Johnny &
9 Hanges has a massive sale and the overflow goes into
10 Dunkin Donuts lot, is there going to be a feud that
11 day saying, well, you're taking up my spaces?

12 MR. REINITZ: I'm not certain if the
13 gentleman testifying is aware that the Dunkin Donuts
14 parking is only for a limited amount of time. I
15 think 11:00, is that when it ends? So there would be
16 signage up. I think at the last meeting the
17 testimony was there's going to be signage that allows
18 parking there for Dunkin Donuts' customers only until
19 11 a.m..

20 MR. MILLER: But nothing going back the
21 other way, meaning if Johnny & Hanges has a sale, go
22 back the other way too?

23 THE WITNESS: The answer is yes, that
24 our applicant will allow Johnny & Hanges to park on
25 his property, obviously not in the mornings.

1 MR. MILLER: I'm saying at 6:00 at
2 night, if Johnny & Hanges is packed, can they park
3 now in the Dunkin Donuts, Dunkin Donuts parking is
4 not being used?

5 CHAIRMAN SEIBEL: I mean, if you want
6 to keep your neighbor happy and keep those eight
7 spots, quid pro quo, right?

8 THE WITNESS: Correct. The answer is
9 yes.

10 MR. MILLER: Thank you.

11 CHAIRMAN SEIBEL: All right.

12 MS. BARATTA: Mr. Chairman, that opens
13 up some more questions now.

14 MR. PIROMALLI: I agree. It opens up a
15 ton of more questions.

16 MS. BARATTA: Thanks a lot, Craig,
17 because --

18 MR. PIROMALLI: How would people be
19 notified of the availability of the Johnny & Hanges
20 parking on the Dunkin Donuts lots now?

21 We've arranged for the signing on the
22 Johnny & Hanges lot with eight signs that indicate
23 the 5 to 11 parking.

24 MS. BARATTA: But there's no signs
25 going the other way, there's no signs in Dunkin

1 Donuts, and it would be ridiculous, because the
2 problem with the Dunkin Donuts is the lack of spaces,
3 so you're not going to be dictating spots for Johnny
4 & Hanges' customers, correct?

5 MR. PIROMALLI: Correct.

6 Now, there can certainly be an informal
7 agreement. These business owners are working in
8 different competing times, Dunkin Donuts is busiest
9 from 6 to 10 in the morning, Johnny & Hanges doesn't
10 open until 11 in the afternoon.

11 MS. BARATTA: Because you can't handle
12 that in the morning.

13 MR. PIROMALLI: In the afternoon,
14 Dunkin Donuts is absolutely quiet, probably won't be
15 a sole car in the parking lot, and if that is the
16 case, no one will complain if Johnny & Hanges'
17 customers park in the Dunkin Donuts.

18 With that being said, to try to
19 formalize that in a manner that would be suitable for
20 the board, I think that causes more problems than
21 solves problems.

22 MS. BARATTA: Is it going to be
23 formalized in any way or just a handshake agreement?
24 We've seen those before.

25 MR. PIROMALLI: I'll leave it to the

1 board's discretion. If the board decides it's
2 something they want to explore, we could try to
3 tackle that. These two business owners are happy to
4 enter into any arrangement that the board sees fit.
5 The parameters of that have not been explored at this
6 point in time.

7 CHAIRMAN SEIBEL: It's my thinking that
8 the peak hours for each business complement each
9 other, they don't conflict with each other, but
10 stranger things have happened. So, I mean, there's
11 just no way to know.

12 Anybody have any questions? Any other
13 questions?

14 MS. BARATTA: How about our expert,
15 does he want to weigh in on this development?

16 CHAIRMAN SEIBEL: Yes, he was hoping
17 you weren't going to say it.

18 MS. BARATTA: I know he was. I know.

19 CHAIRMAN SEIBEL: Mr. Miskovich?

20 MR. MISKOVICH: I agree, since we have
21 limited parking on the Dunkin Donuts' property,
22 having an agreement that says they can officially
23 park here kind of defeats that purpose, it's a
24 problem. As long as the two property owners are in
25 agreement that they're not, you know, going to stop

1 it, I think it will balance out and, quite honestly,
2 whether you have an agreement in place or not, if
3 someone is parking and they can't park and there are
4 spaces next door, they're going to go there anyway.

5 I think as long as the two property
6 owners are in agreement, it functions. And, again,
7 as the chairman pointed out and look at the hours,
8 the peak hours, it's really they're compatible with
9 parking. So I don't foresee it being a real issue
10 that they peak at the same time, as where you said
11 McDonald's and IHOP, they have morning peaks, so
12 that's an issue. So here it's a compatible use
13 between the two.

14 MS. BARATTA: Okay. Thank you.

15 CHAIRMAN SEIBEL: Any of our other
16 experts, anything, weigh in?

17 Ann?

18 ASSISTANT ZONING OFFICER PECK: I have
19 to think about it, but right off the top, if you were
20 to dedicate spots for Dunkin Donuts to Johnny &
21 Hanges, at that point in time, Dunkin Donuts would be
22 deficient. So in my eyes, I would think that we
23 should not enter into anything that way. And we
24 don't know if Johnny & Hanges has a parking variance
25 already, it could create a whole big snowball.

1 MR. PIROMALLI: They do not, Johnny &
2 Hanges is appropriately parked.

3 ASSISTANT ZONING OFFICER PECK: But if
4 you were to dedicate X amount of hours during the
5 operating times of Dunkin Donuts for Johnny & Hanges
6 officially, then Dunkin Donuts would be deficient at
7 that time.

8 MR. PIROMALLI: That's correct.

9 ASSISTANT ZONING OFFICER PECK: All
10 right.

11 CHAIRMAN SEIBEL: All right.

12 ASSISTANT ZONING OFFICER PECK: I mean,
13 understanding that they're not going to tow one
14 another would be between them, that's where that's
15 going, but that also goes back to enforcing.

16 CHAIRMAN SEIBEL: What do you think,
17 counselor?

18 MR. ROSENBERG: I agree with Ms. Peck.
19 I think it should flow one way.

20 CHAIRMAN SEIBEL: Flow one way.

21 One way flow.

22 Anybody, anything?

23 We called all the 200 feet?

24 MR. ROSENBERG: You did.

25 CHAIRMAN SEIBEL: Okay. Any other

1 experts?

2 MR. PIROMALLI: I have a planner, Mr.
3 Chairman. It's 9:30. If you're willing to go on,
4 I'm ready to move forward.

5 CHAIRMAN SEIBEL: Yes, let's go, 9:30.
6 Let's take a quick five-minute recess.

7 (Whereupon, a brief recess is taken.)

8 CHAIRMAN SEIBEL: All right. Let's
9 call the meeting back to order.

10 Zoning Board of Adjustment, April 18,
11 2016, it's looks like 9:42 p.m.

12 MR. LOWENSTEIN: Mr. Racenstein?

13 MR. RACENSTEIN: Here.

14 MR. LOWENSTEIN: Ms. Baratta?

15 MS. BARATTA: Here.

16 MR. LOWENSTEIN: Ms. Perchuk?

17 MS. PERCHUK: Here.

18 MR. LOWENSTEIN: I am also here.

19 Mr. Puzio?

20 VICE-CHAIRMAN PUZIO: Here.

21 MR. LOWENSTEIN: Mr. Naveh?

22 MR. NAVEH: Here.

23 MR. LOWENSTEIN: Mr. Reinitz?

24 MR. REINITZ: Still here.

25 MR. LOWENSTEIN: Chairman Seibel?

1 CHAIRMAN SEIBEL: Here.

2 MR. LOWENSTEIN: A quorum has
3 reassembled, Chairman.

4 CHAIRMAN SEIBEL: Before you get
5 started, is he your last?

6 MR. PIROMALLI: He is, Mr. Chairman.

7 CHAIRMAN SEIBEL: Because we still have
8 bills and other things we have to get to, I forgot
9 all about. So how long do you anticipate?

10 MR. PIROMALLI: I anticipate 15,
11 20 minutes, at most, Mr. Chairman, depending on the
12 questions.

13 Thank you.

14 CHAIRMAN SEIBEL: Oh, let me swear him
15 in.

16 Please state your name and spell it for
17 the record.

18 MR. NOVAK: Sure.

19 David Novak, N-O-V-A-K. My firm is
20 Burgis Associates, located at 25 Westwood, Avenue in
21 Westwood, New Jersey.

22 CHAIRMAN SEIBEL: And keep your right
23 hand up.

24 Do you swear or affirm that the
25 testimony you're about to give is true and accurate?

1 MR. NOVAK: I do.

2 D A V I D N O V A K,

3 25 Westwood, Avenue, Westwood, New Jersey,

4 having been duly sworn, testifies as follows:

5 CHAIRMAN SEIBEL: And you're a

6 Professional Planner?

7 MR. NOVAK: Yes, I am.

8 CHAIRMAN SEIBEL: How long have you

9 been a Professional Planner?

10 MR. NOVAK: I've been a Professional

11 Planner for two years now.

12 CHAIRMAN SEIBEL: And have you ever

13 been in front of this board before?

14 MR. NOVAK: Not in front in this board,

15 no.

16 CHAIRMAN SEIBEL: Any board?

17 MR. NOVAK: Yes. In Bergen County,

18 Midland Park, Westwood, Hackensack, Upper Saddle

19 River.

20 CHAIRMAN SEIBEL: Do you belong to any

21 professional organizations?

22 MR. NOVAK: I'm a member of the New

23 Jersey Planning Officials and a member of the

24 American Institute of Certified Planners.

25 CHAIRMAN SEIBEL: They must have a heck

1 of a get-together when they meet every year.

2 MR. NOVAK: It's a wild party, I'll tell
3 you that.

4 CHAIRMAN SEIBEL: All right. I'll
5 accept him as an expert witness.

6 Anybody have any questions or issues?

7 (No response.)

8 CHAIRMAN SEIBEL: None.

9 Fire away.

10 MR. PIROMALLI: Thank you, Mr.
11 Chairman.

12 DIRECT EXAMINATION

13 BY MR. PIROMALLI:

14 Q. Mr. Novak, would you describe the
15 existing site and the area surrounding the site?

16 A. Sure.

17 Before I get started, I do have an
18 exhibit to pass out.

19 Q. Okay. K.

20 What would you call that, Mr. Novak?

21 A. We can call this supplemental mapping
22 and site photograph.

23 (Supplementing mapping and site
24 photograph is marked as Exhibit K in
25 evidence.)

1 A. So, the subject site is located at
2 23-08 Maple Avenue. It's identified by your
3 municipal tax records as Block 5903, Lots 5, 5.01,
4 and 36. It has an area of 28,203 square feet. It
5 fronts along Maple Avenue for 125 feet and has a
6 depth of approximately 225 feet.

7 In regards to existing development,
8 it's presently developed with a medical office, the
9 Maximized Living and Wellness Center. It's a
10 one-story frame building. It's located towards the
11 front of the lot, has a footprint of just about
12 1,600 square feet. There's 11 parking spaces
13 currently on-site and two existing driveways that
14 connect to Maple Avenue, a one-way in on the
15 northeasterly corner and a one-way out on the
16 southeasterly corner. Maps 1, 2, and site photograph
17 pages 1 and 2 give an overview of the property and
18 the surrounding area.

19 Q. What is the zoning at the site,
20 Mr. Novak?

21 A. Zoning at the site is the B-1
22 restricted business district.

23 Q. What is the zoning in the area
24 surrounding the site?

25 A. Sure.

1 To the immediate north, south, and east
2 we also are the B-1 restricted business district. If
3 we go farther out east, we have the R-1-1, one family
4 residential zone, but that actually contains a
5 cemetery; to our immediate west is the R-1-1, one
6 family residential zone, and that contains the DeBrow
7 Sports Field, I apologize if I am pronouncing it
8 incorrectly. I am a Fair Lawn resident, so I should
9 know.

10 Q. What are the permitted uses in the B-1
11 zone?

12 A. Permitted uses include residences for
13 clergy; public and nonprofit private day schools;
14 home occupations; parking for certain recreational
15 vehicles; advertising signs; animal hospitals;
16 bakeries and confectionary style foods; business
17 services; financial institutions; funeral homes and
18 mortuaries; offices; outdoor cafes; personal and
19 household thrift shops; private schools; retail sales
20 and services; photographer, artist and studios;
21 theaters; bowling alleys; indoor tennis courts and
22 similar recreational uses; printing establishments;
23 and sit-down restaurants.

24 Q. And what is the proposed use of the
25 subject property?

1 A. The proposed use of the subject
2 property is a Dunkin Donuts. It's approximately
3 1,860 square feet. It is a fast-food establishment,
4 not quite a bakery, not quite a sit-down restaurant,
5 really meets your definition of fast-food, provides
6 over-the-counter service, provides immediate service
7 to patrons, and has a standardized menu of quickly
8 prepared and prepared foods. So it meets the
9 definition of a fast-food establishment.

10 Typically when we hear "fast-food," we
11 think of a Taco Bell or a Wendy's or a Burger King.

12 Dunkin Donuts is really more like a
13 coffee shop, a less expensive and a quicker
14 Starbucks.

15 The interesting thing about your master
16 plan is that it does acknowledge the variety and the
17 evolving nature of fast-food establishments. It has
18 a code recommendation on page 45: "'Fast-food
19 establishment' should be updated to ensure that
20 establishments that will enhance the culture and
21 character of the borough are not excluded."

22 But, at the end of the day, we do meet
23 the definition of "fast-food," and that's why we're
24 here today.

25 Q. Speaking of the definition of

1 "fast-food," would you please go over the specific
2 variance relief which is being requested in
3 connection with this application?

4 A. Yes.

5 We have two (d)(1) variances that we're
6 requesting. The first is for a non-permitted use,
7 which would be fast-food. That's actually not
8 permitted anywhere in the borough.

9 The second (d)(1) variance is for the
10 24-hour operation. That's actually a conditional
11 permitted use in the district, but it's for retail
12 uses. And, so, since we are not technically a retail
13 use, we are a fast-food use, we require (d)(1)
14 variance relief for that.

15 In regards to the (c) variances, we do
16 have a number of them. I'll list them very quickly
17 for you.

18 We have a (c) variance required for the
19 front yard setback, 20 feet is required, whereas six
20 feet is proposed.

21 We have a (c) variance required for the
22 number of signs, one is permitted, whereas three are
23 proposed.

24 We have a variance required for the
25 number of freestanding signs, as zero is permitted,

1 and one is proposed.

2 Variance relief is required for the
3 height of that freestanding sign, wherein 10 feet is
4 permitted and 18 feet is proposed.

5 Variance relief is required from the
6 area of a freestanding sign, where eight square feet
7 is permitted and 37 square feet is proposed.

8 Variance relief is required for the
9 maximum building height sign, wherein two feet is
10 permitted, and 7.6 feet is proposed.

11 And, finally, variance relief is
12 required for the maximum lettering height wherein
13 16 inches is permitted and 33 inches are proposed.

14 Q. In your professional opinion, is the
15 proposed use an appropriate use of the property?

16 A. It is.

17 Q. And why?

18 A. To address the statutory criteria, we
19 need to address the positive criteria and the
20 negative criteria.

21 In regards to the positive criteria, we
22 need to show that the site, that there's special
23 reasons for the granting of the variance. In
24 addition, we need to show that the granting of the
25 variance will further the purposes of the Municipal

1 Land Use Law.

2 On the flip side, we have the negative
3 criteria. We need to demonstrate that there's no
4 substantial detriment to the public good and no
5 substantial impairment to the master plan.

6 Because fast-food is not considered to
7 be an inherently beneficial use in New Jersey, we
8 also have an enhanced burden of proof where we need
9 to show that the site is particularly suited for the
10 use and that the site is not inconsistent with the
11 master plan.

12 Based on the testimony that we've
13 heard, we can see that the site is particularly
14 suited for the use. One of the things that we look
15 at when we review a fast-food establishment is what
16 the impact on surrounding residential properties is
17 going to be. And one of the advantageous features of
18 the site is that there are no immediately adjoining
19 residential properties. The nearest residential
20 dwelling is about a third of a mile away, located on
21 Fern Street. What that distance allows for is an
22 appropriate buffering. A typical concern of lighting
23 and noise aren't going to have as big of an impact on
24 the residential neighborhoods, but it's close enough
25 where we can still consider it to be a community

1 coffee shop.

2 Furthermore, the site is located with a
3 number of preexisting uses that are complementary
4 towards it. Towards the north, we have Johnny &
5 Hanges, which is another restaurant. To the west we
6 have the DeBrow sports field. So hypothetically, if
7 you have a child who has a game on a Saturday or
8 Sunday morning, you need a little caffeine to get
9 through it, you can swing by your Dunkin Donuts and
10 get your cup of coffee and then go to the field.

11 So there's no uses in the area that
12 would clash with this use. In fact, the uses in the
13 area are complementary.

14 In regards to special reasons, we can
15 see that not only is the use not inconsistent with
16 the master plan, but it will actually promote your
17 master plan. Specifically, one of the goals of your
18 master plan is to "promote a balance of variety of
19 residential, commercial, industrial, recreational and
20 public uses."

21 If you look within a .5-mile radius or
22 a half mile radius around the site, there's only a
23 few places to grab a bite to eat and fewer places to
24 get a cup of coffee.

25 To the north, there's a bagel store,

1 there's a sushi restaurant and a Chinese food
2 restaurant, so that's located on the opposite end of
3 208 and Glen Rock. To the west, we have another
4 Chinese food restaurant and a cafe, and that's
5 located in Hawthorne.

6 So along Maple Avenue, within a half
7 mile radius of our site, we only have a Johnny &
8 Hanges, a Subway shop, and a bar. So the addition of
9 a Dunkin Donuts will increase the variety of
10 commercial eating establishments in the area. And
11 that actually goes to further one of the purposes of
12 the Municipal Land Use Law, and that's goal (g),
13 which is provide sufficient space in appropriate
14 locations for a variety of agricultural, residential,
15 recreational, commercial and industrial uses.

16 In regards to the negative criteria, I
17 think we can safely conclude that there's no
18 substantial detriment to the master plan and no
19 substantial detriment to the public good.

20 Again, we're not located adjacent to
21 any residential dwellings. We are providing for
22 occupancy with a maximum number of seats. We're not
23 located within a glut of fast-food. It seems like
24 the two potential largest detriments going into this
25 that the board was concerned about and that the

1 applicant was also concerned about was parking and
2 that left turn movement.

3 In regards to parking, we are leasing
4 eight additional spaces from the adjoining Johnny &
5 Hanges, so we can meet any potential overflow parking
6 that's required for the morning hours.

7 And in regards to the left turn
8 movement, we've heard testimony tonight from two
9 traffic engineers indicating that it appears like the
10 left turn movement out of the site is appropriate for
11 the use.

12 That covers the (d)(1) criteria for the
13 fast-food establishment. I'll go through the same
14 for the 24-hour operation, and treat it somewhat
15 differently.

16 If we look at the positive criteria,
17 again, we can see that the site is particularly
18 suited. Again, it's not located adjacent to any
19 residential dwellings. It has direct access to Route
20 208 off-ramp, so that way if somebody does need to
21 access the site at night off of 208, they don't
22 necessarily have to drive through a residential
23 neighborhood to get there, they have immediate
24 access.

25 In regards to special reasons, again,

1 we're supporting that master plan goal of providing
2 for a variety of commercial uses. We're not
3 infringing on a residential neighborhood.

4 Another special reason is that we are
5 largely conforming to the conditions set forth in
6 your zoning ordinance for 24-hour operations. For
7 example, we're not abutting any residential use.
8 Headlights will not shine directly into residential
9 properties. Lighting will be downcast. I think
10 they're only 14 feet high. Lighting is appropriate
11 for the security levels for the site. No light
12 spillage will be onto any residential properties. It
13 will likely not be visible from any adjacent
14 residential properties. The building ingress and
15 egress are located away from residential properties.
16 And the entrance and exit is not facing any
17 residential properties.

18 The only condition we're not meeting
19 100 percent of that would be the delivery and
20 trash/recycling removal. I believe the testimony
21 would indicate that the applicant is willing to have
22 trash pickup in between the required hours, which
23 would be 7:00 a.m. and 6:00 PM. It's just that bagel
24 delivery and donut delivery happens between midnight
25 and 4:00 a.m., that's just the nature of the use.

1 So, again, we're not inconsistent with
2 the master plan. We are promoting some of the goals,
3 and we're actually largely in conformance with your
4 existing conditions for a 24-hour operation that you
5 set for retail uses.

6 And, again, one of the purposes of the
7 Municipal Land Use Law, which is, again, goal (g) in
8 regards to provide sufficient space in appropriate
9 locations.

10 In regard to the negative criteria,
11 again, we can see there's no substantial detriment to
12 the public good, no substantial impairment to the
13 master plan, again, largely for the reasons we just
14 covered in regards to the site's location, the
15 residential properties.

16 Now, moving on to the variance relief
17 for the bulk items. I believe that the architect
18 addressed the bulk items for the wall-mounted
19 signage, so I'll address the front yard setback and
20 the pylon sign. If you need me to repeat any
21 testimony for the wall-mounted, I can do that.

22 First thing I'd like to address would
23 be the front yard setback. Again, 20 feet is
24 required, whereas six feet is proposed. I think we
25 can look at this as a (c)(1) variance, which would be

1 a physical features test.

2 And the physical feature would be the
3 shallowness of the developable portion of the lot.

4 Now, earlier I said that the total
5 depth of the lot is 225 feet. But due to the
6 easement in the back, we really only have 110 feet to
7 work with, and then, on top of that, the county would
8 like a five-foot dedication or easement towards the
9 front of the property, which reduces us down to
10 105 feet, which is where we're trying to fit this
11 development. And I believe that we do successfully
12 fit it in. There's no substantial detriment to the
13 public good, no substantial impairment to the intent
14 of the master plan. We're still providing for a safe
15 circulation. We're providing for sufficient PM
16 parking lot on-site, and a.m. parking when we combine
17 with Johnny & Hanges. And interesting enough, the
18 front of the building will be nearly lined up with
19 the Johnny & Hanges, and the medical office at the
20 south will be approximately only eight feet back. So
21 we are actually creating a nice straight street
22 frontage, which usually lends for a more attractive
23 streetscape.

24 Now, moving on to the variances
25 required for the freestanding sign and the area sign

1 and the number of signs.

2 Again, we are only permitted to have
3 one sign, whereas three are proposed.

4 And in regards to the freestanding
5 signage, zero is permitted, whereas one is proposed.

6 And, finally, the area of the
7 freestanding sign, eight square feet is permitted and
8 37 square feet is proposed.

9 And finally the height, we're only
10 allowed a height of 10 feet, we're proposing a height
11 of 18 feet.

12 In regards to the positive criteria, we
13 can really look at this more as a (c)(2). It will
14 advance the intent and purposes of the Municipal Land
15 Use Law. Mainly it is going to promote goal A, which
16 is to promote the health, safety and general welfare,
17 and it is going to do that through a proper
18 way-finding method.

19 We are located within a bit of a
20 transition area. In terms of transportation routes,
21 we're right next to Route 208, we have two off-ramps.
22 Unfortunately the size of signage that we are
23 permitted isn't really large enough to safely direct
24 travelers. Typically, the United States Sign Council
25 would recommend a sign of 35 square feet for a two

1 lane road with a speed limit of 35 miles an hour, and
2 that's just a general benchmark. And we're meeting
3 that, largely. We're at 37 square feet.

4 The benefits would outweigh any
5 potential detriments in the master plan or zoning
6 ordinance. Again, we'll be safely directing traffic
7 through the signage. And by safely directing
8 traffic, we're meeting your master plan goals in
9 ensuring that signage controls offer effective and
10 efficient communication while minimizing potentially
11 negative neighborhood effects.

12 In regards to the negative criteria,
13 again, there's no substantial detriment to the public
14 good.

15 The signage is in character with the
16 surrounding area. There's six properties around the
17 immediate area that have freestanding signs right
18 now: The TD Bank, the dentist, the Lightbridge
19 Academy, the car wash, the bowling alley, and the
20 Glen Toyota.

21 So what we're proposing isn't largely
22 out of character with the surrounding neighborhood.

23 MR. PIROMALLI: I have no further
24 questions of this witness, Mr. Chairman.

25 CHAIRMAN SEIBEL: Okay. So, there's

1 like a little pocket there of business uses. Where
2 is the nearest residential property?

3 THE WITNESS: The nearest residential
4 property is located on Fern.

5 CHAIRMAN SEIBEL: Fern, you said?

6 THE WITNESS: Fern Avenue, about a
7 third of a mile away.

8 CHAIRMAN SEIBEL: So the building to
9 the south is strictly straight commercial?

10 THE WITNESS: Yes, it's a medical
11 office.

12 CHAIRMAN SEIBEL: Okay. Anybody have
13 any questions for the witness?

14 (No response.)

15 CHAIRMAN SEIBEL: None.

16 How about our professionals, any
17 questions?

18 MR. VAN den KOOY: Sure.

19 We're just wondering, I don't know if
20 this question is best directed to you or another
21 witness, but the overall height of the freestanding
22 sign, can you give a dimension?

23 THE WITNESS: Yes. It is a little
24 vague on the plan.

25 From what I understand, the dimensions

1 of the sign would be 18 feet high, with a 37-square
2 foot area, and that would include the Dunkin Donuts
3 sign and the smaller sign below that.

4 MR. VAN den KOOY: And is that a
5 typical sign package for Dunkin Donuts for property
6 of this size, a facility of this size?

7 THE WITNESS: From what I understand,
8 yes. I might not be the best expert to ask that
9 question to.

10 MR. PIROMALLI: Our architect had
11 previously testified to that, Mr. Chairman, and this
12 is in fact one of three standard Dunkin Donuts' sign
13 packages in size, and this is the smallest sign
14 package available for a Dunkin Donuts franchise.

15 CHAIRMAN SEIBEL: Okay.

16 MR. VAN den KOOY: Thank you.

17 And then, I guess, is it your opinion
18 that the sign package is in character generally with
19 the other signs?

20 THE WITNESS: Yes. I would say yes.
21 In terms of height, it wouldn't be the tallest sign
22 in the neighborhood, and there are more properties to
23 the farther south that also have freestanding signs.

24 MR. VAN den KOOY: Okay. I think that
25 was pretty comprehensive testimony. That's actually

1 all I have at this point.

2 CHAIRMAN SEIBEL: Okay. Ann, anything?

3 ASSISTANT ZONING OFFICER PECK: No.

4 CHAIRMAN SEIBEL: Anybody else?

5 No?

6 MR. LOWENSTEIN: I just want
7 clarification. The height of the channel letters is
8 that 16 feet or 16 inches?

9 THE WITNESS: 16 inches. The letters
10 on the building are 16 inches. When you combine them
11 together, the upper and the lower levels of the
12 lettering, the "Dunkin" and the "Donuts," that equals
13 33 inches, which is why we need variance relief. But
14 if you were to take measurement for just the height
15 of "Dunkin" and just the height of "Donuts,"
16 16 inches.

17 MR. LOWENSTEIN: The reason I query
18 that is because on virtually all the papers I see
19 submitted there's the mark, the single apostrophe
20 mark, which is feet rather than inches. So it should
21 just be corrected.

22 Thank you.

23 ASSISTANT ZONING OFFICER PECK: Yes.

24 CHAIRMAN SEIBEL: Anyone?

25 MS. BARATTA: Just one other question.

1 Is this sign, this height and this
2 width, so that it's visible to people that are on
3 Route 208, is that why we're going with such a big
4 sign?

5 THE WITNESS: I, and this is just me
6 speaking somewhat anecdotally, but I've driven past
7 on 208 in both directions looking to my right, and
8 you really only see it for about a good 3, 5 seconds.
9 It's really not that long of a timeframe. This is
10 really more for directing traffic on and off the 208
11 off-ramps.

12 MS. BARATTA: That is exactly what I
13 said.

14 THE WITNESS: I'm sorry, I thought you
15 said 208.

16 MS. BARATTA: So you can see it from
17 208? That's why the sign is so large, so people will
18 be able to view it from Route 208?

19 THE WITNESS: I think it's more for
20 people getting on and off Route 208, if you're
21 driving on 208, by the time you see the sign --

22 MS. BARATTA: It would be too late.

23 THE WITNESS: Yes.

24 VICE-CHAIRMAN PUZIO: Would it be fair
25 to say if the sign was lowered it would be in the

1 visibility pattern coming in and out of the
2 driveways?

3 THE WITNESS: I think it's fair to say
4 so. I would recommend that you don't decrease the
5 height of the sign from the lowest base of the sign
6 to the ground, the reason being is that you still
7 want to maintain a sight triangle in that area.

8 CHAIRMAN SEIBEL: Anyone else? Any
9 other questions for the witness?

10 (No response.)

11 CHAIRMAN SEIBEL: Seeing none, I'll
12 open it up to property owners within 200 feet.
13 Anyone?

14 (No response.)

15 CHAIRMAN SEIBEL: Seeing none, I'll
16 close it.

17 I'll open it up to the general public.

18 (No response.)

19 CHAIRMAN SEIBEL: Seeing none, I
20 will -- so he's your last?

21 MR. PIROMALLI: That is correct, Mr.
22 Chairman.

23 CHAIRMAN SEIBEL: So we're at a
24 crossroads, folks. It's already after 10:00. How
25 much more do we have?

1 MR. PIROMALLI: This is it for me, Mr.
2 Chairman. I have a brief summation, if I'm allowed
3 the opportunity to give one. I won't keep you long,
4 I promise, and we're ready to finish up, if you're
5 ready.

6 CHAIRMAN SEIBEL: It's easier to --
7 okay. All right. Fire away.

8 MR. PIROMALLI: Thank you very much.
9 First and foremost, I'd like to thank
10 the board for its time in hearing this application
11 and in recognition of this late hour, I'd like to say
12 a few brief, final words in support of the
13 application.

14 As you're aware, the present
15 application proposes a new Dunkin Donuts building
16 1,860 square feet. This bright new building will be
17 one of the first that drivers will see as they exit
18 onto Maple Avenue.

19 This building will be a further
20 aesthetic improvement to the area, benefitting the
21 neighborhood and Fair Lawn as a whole.

22 The board, I am sure, is familiar with
23 the operation of the Dunkin Donuts' brand and the
24 fact that they carry out multiple inspections of
25 their franchises to ensure that they look and operate

1 in a manner befitting the reputation of Dunkin
2 Donuts. The present site will be no different.

3 Our present applicant, Jay Patel, has
4 testified to the operations of the Dunkin Donuts
5 restaurants he already owns, and is committed to the
6 successful operation of this new Fair Lawn location,
7 if approved.

8 In addition, the new Dunkin Donuts
9 location will also strive to achieve the Go Green
10 Certification that the applicant had discussed,
11 illustrating Mr. Patel's commitment to the
12 environment and the future.

13 Further, the application does not
14 propose an overuse of the subject property. The size
15 of the Dunkin Donuts restaurant proposed is one of
16 its smallest.

17 And, further, despite the bulk
18 variances requested in connection with the signage
19 for the present application, the sizes of the signs
20 proposed are the smallest allowed for Dunkin Donuts
21 franchises.

22 Of course, the board is aware that
23 Maple Avenue is a busy street, but we have heard from
24 both Eric Hough and Calisto Bertin, our two traffic
25 engineers, previously, that the site and the street

1 can both support the traffic and parking need
2 generated by the proposed Dunkin Donuts without
3 detrimental effect to the surrounding neighborhood.

4 You've also heard tonight extensively
5 from our planner, David Novak, who provided the basis
6 for justification of the variances requested, and
7 further testified that the proposed Dunkin Donuts
8 location would not impair the intent or purpose of
9 the zone plan or the zone ordinance and would not be
10 a detriment to the surrounding neighborhood.

11 Along with the project experts, the
12 applicant himself strongly believes in the subject
13 property and believes that it's an appropriate Dunkin
14 Donuts location for the restaurant. If customers
15 could not easily ingress, park, and egress from this
16 site, they would just simply continue to drive by and
17 the market would dictate the fact that the restaurant
18 would not succeed. That is obviously not in the
19 applicant's best interest.

20 Due to the fact that Maple Avenue is a
21 county roadway, a good part of the site plan design
22 has been a result of their input.

23 With that in mind, as well as the fact
24 that the rear of the site is constrained by a
25 riparian buffer that cannot be developed, I think our

1 engineers have done an excellent job, and the Dunkin
2 Donuts location would not only be appropriate but a
3 successful location of the site which would continue
4 to serve the community of Fair Lawn for years to
5 come.

6 On the evidence presently to the board,
7 it is our position that sufficient proofs have been
8 provided, and I ask that the board approve this
9 application. Again, I thank the board for its time,
10 I understand this was a complicated application, and
11 we appreciate your time and efforts.

12 Thank you.

13 CHAIRMAN SEIBEL: Thank you.

14 All right. Would anyone like to say
15 anything or I guess we can deliberate a little bit.

16 Yes, Sam.

17 MR. RACENSTEIN: I can make a
18 statement, right?

19 CHAIRMAN SEIBEL: Sure.

20 MR. RACENSTEIN: Okay. First of all, I
21 would like to thank the owners of Burger King [sic],
22 because on April 7th meeting on the rush hour from --

23 MR. PIROMALLI: You mean Dunkin Donuts?

24 MR. RACENSTEIN: I apologize. It's
25 getting late at night, I'm tired.

1 The Dunkin Donuts.

2 On the April 7th meeting, we talked
3 about the impact of cars leaving on rush hour from 7
4 to 9 and 4 to 6.

5 The owner, Mr. Patel, he was able to go
6 back to corporate and get permission to have no
7 left-hand turns on those hours.

8 It shows that Dunkin Donuts is willing
9 to work with the community on everything, and so far
10 what I heard, the gap and the timing, they're willing
11 to work with us, with the Zoning Board, with the
12 community, to be a good neighbor on Maple Avenue and
13 in Fair Lawn.

14 So as a board member, I would like to
15 thank you for going the extra mile and getting the
16 okay from corporate about no left-hand turns on rush
17 hour.

18 Thank you.

19 MR. PIROMALLI: You're welcome.

20 CHAIRMAN SEIBEL: Very good.

21 Anybody else? Anything?

22 MS. BARATTA: Sure.

23 CHAIRMAN SEIBEL: Yes.

24 MS. BARATTA: Thank you.

25 I'd like to echo some of the things

1 that Sam said, because that's exactly what I was
2 thinking.

3 I was very impressed, Mr. Patel, by
4 your willingness to work with this board and that you
5 listened to all the concerns that we had, and that is
6 the type of neighbor that we want in Fair Lawn. You
7 know, the area that you're in, there's Nabisco, and
8 every time we read something in the newspaper about
9 Nabisco, Fair Lawn shutters, because a community, to
10 do well, wants to keep their residents happy but
11 wants to keep a strong business part, because most of
12 our rateables come from our businesses to get the
13 burden off of our residents. So I'd be happy to have
14 you in Fair Lawn. I think that you've really shown a
15 lot about your character and the type of business
16 that you're in, and no matter how this goes, I wish
17 you the best of luck and I thank you for that.

18 MR. PATEL: Thank you.

19 CHAIRMAN SEIBEL: Thank you. Very
20 good.

21 Anybody else?

22 Yes.

23 MR. REINITZ: I think, as we consider
24 this, based on the traffic studies that we've seen
25 and based on the testimony, I think frankly it would

1 be a mistake to require the no left turn signs at the
2 business, even during those hours. I don't think we
3 have any data justifying that, other than our own
4 anecdotal experiences, which I think have not been
5 borne out by the expert testimony. We don't have any
6 contradictory expert testimony from our own experts
7 at this point. I think really the marketplace will
8 dictate the traffic at that time and to, in some
9 sense, shackle a business and cutoff traffic patterns
10 there at those peak times I think will cause more
11 traffic problems than it would solve. So, you know,
12 I think, you know, despite not being able to cast an
13 actual vote, I just want my feelings on the record
14 that I think that the no left turn requirement, while
15 definitely a demonstration of good faith on behalf of
16 the business owner, I do not think it should be a
17 required part of any approval.

18 MS. BARATTA: Mr. Chairman, I would
19 agree with that as well.

20 CHAIRMAN SEIBEL: Yes.

21 VICE-CHAIRMAN PUZIO: So would I.

22 And I also would like to commend you
23 for working with the town and the county solving some
24 of the issues that have been brought up.

25 CHAIRMAN SEIBEL: And I too. The video

1 really reinforced in my mind that maybe the traffic
2 situation is not what I had perceived it to be. It's
3 true when you're sitting in your car waiting to make
4 that left turn things are a little hairy at times,
5 but when you sit here and you watch it on the video,
6 it's very compelling. But, more importantly, I don't
7 think for a minute anybody will follow that sign and
8 I don't think the police would enforce it.

9 MS. BARATTA: They can't.

10 CHAIRMAN SEIBEL: But that's just me.
11 I'm a little cynical at times they say.

12 MR. LOWENSTEIN: Mr. Chairman, I don't
13 want to put one of our colleagues on the spot, but I
14 know that Mr. Racenstein is the one who raised the no
15 left turn issue and he brought me along in terms of
16 his line of argumentation. I just want to know if I
17 might address this and ask if that's a deal breaker
18 for you, in other words, if the motion were not to
19 include that prohibition, would that be dispositive
20 for you and make you vote against it?

21 MR. ROSENBERG: Mr. Chairman, I don't
22 think that's an appropriate inquiry of one board
23 member to ask another board member. What's
24 appropriate is for a motion to be made, and each
25 board member then will vote based upon the motion

1 that is made. I'm sorry, Mr. Lowenstein, but that's
2 not --

3 MR. LOWENSTEIN: That's why I asked if
4 it were appropriate, because I'm not sure.

5 MR. ROSENBERG: I don't think it is
6 appropriate.

7 Thank you, Mr. Chairman.

8 MR. LOWENSTEIN: So let me then
9 articulate briefly that I think that that imposition
10 should be made, that is, that the no left turn
11 prohibition which the applicant has agreed to, that
12 that be imposed and perhaps it be done on a trial
13 basis as that's been floated for six months or a
14 year. You know, I saw that same montage there that
15 everybody else did. I have questions, but I'm not a
16 professional traffic engineer, but, again,
17 Mr. Calisto indicated that schools were off that week
18 to the two municipalities most directly affected.

19 I've been in this town over 20 years.
20 As I indicated previously, I worked two doors down
21 from there for six and a half years. I've used those
22 roads constantly, and I got some problems with that
23 data, just it's anecdotal, but to extrapolate from --
24 and I appreciate the fact that a second study was
25 made. I do commend the applicant for that. But

1 that's not enough for me to say yes, sure, let's go
2 ahead and let people make a left turn out there.
3 Because, while the police may not enforce it, if and
4 when traffic accidents occur, and I know that's been
5 a concern of many board members, we're always talking
6 about the safety of the community from the physical
7 perspective well, that if traffic accidents start to
8 occur, you know, then that rebounds to us, and I'd be
9 very reluctant to vote in favor of the application
10 without that restriction.

11 Thank you.

12 CHAIRMAN SEIBEL: Okay. It may go down
13 to us, but it's not an illegal left turn, so,
14 correct?

15 MR. ROSENBERG: That is correct.

16 CHAIRMAN SEIBEL: Now, to do something
17 temporarily or on a test basis, I mean, what is that?

18 MR. ROSENBERG: I don't know, Mr.
19 Chairman. We can ask Mr. Miskovich what he would
20 think about a test period. Actually, I believe the
21 applicant at one of the meetings actually proposed
22 that himself, did he not?

23 MR. PIROMALLI: We did. We did propose
24 just that, and, Mr. Rosenberg, I agree with you, it
25 is very difficult to try to craft such an agreement

1 and it's not something that's normal.

2 MR. ROSENBERG: It's not impossible.
3 It's not impossible, but if that was something that
4 the board was inclined to do, we would have to just
5 elaborate in terms of conditions, under which it
6 would be determined during a test period and then our
7 engineer or traffic engineer or both engineers would
8 have to come back and report to the board, and that
9 would have to be put into the resolution.

10 MR. PIROMALLI: And we would agree to
11 that.

12 CHAIRMAN SEIBEL: Can we ask?

13 MR. ROSENBERG: You can ask
14 Mr. Miskovich.

15 CHAIRMAN SEIBEL: Frank, what do you
16 think?

17 MR. MISKOVICH: Well, I'm trying to
18 think what it would show and what we'd be looking
19 for, because there's two parts to that. One is: Are
20 people obeying the left turn or not? Or if there's
21 accidents. And I don't know what the criteria would
22 be.

23 Obviously, if there's a lot of
24 accidents that would occur, the police would be the
25 first to tell you there's a problem there. That's

1 one form of the test.

2 But let me go back and answer the first
3 part of it is, for the left turn prohibition to be
4 enforceable by the police requires the town council
5 to adopt an ordinance saying no left turn at that
6 driveway. And since it's on a county road, it then
7 needs to have a county consent resolution for the
8 police to enforce it.

9 Now, if those two things are not there,
10 the police are not going to have anything in their
11 book to say it's an illegal left turn, so they're
12 probably not going to enforce it anyway, even though
13 the sign is there. So now you're asking the public
14 that uses it in good conscience to obey it, and if
15 you believe the video that you saw and there are
16 those gaps there, I don't think people are going to
17 obey that at some point. They may at first, but I
18 think they'll find out, if I can do it, it's easy to
19 do it, they're going to do it.

20 So I don't know what the test would
21 show, Mr. Lowenstein. I mean, it would be: Are they
22 obeying or they're not obeying it? But then what's
23 the measuring stick? A percent obey it and a
24 percent -- so I think you're trying to balance the
25 legality of it and enforcement from a safety aspect.

1 MS. BARATTA: Mr. Chairman, I hope
2 everybody understood what Frank said there. What
3 he's saying is we tend to throw around a phrase where
4 oh, the police aren't going to enforce it, but
5 there's something that backs that up, the police
6 cannot enforce it unless laws get changed on the
7 local and the county level. So that's very
8 important. It's not that the police have better
9 things to do, and, of course, they do, it is that
10 they cannot, it is not enforceable unless a number of
11 other steps happen. So I think that's a very
12 important distinction to make.

13 CHAIRMAN SEIBEL: True.

14 What if we went the other way, what if
15 we didn't put a sign up for six months, and at the
16 end of six months, we look at it to see if there's a
17 problem there, and then if there's a problem there,
18 then we can put a no left turn. Is that possible?

19 MS. BARATTA: How would that be
20 measured?

21 CHAIRMAN SEIBEL: Well, accidents.

22 MR. ROSENBERG: What is the criteria?

23 MS. BARATTA: You know, we had
24 testimony, Mr. Chairman, from Johnny & Hanges, and
25 where he was saying that in his area it would be more

1 difficult because he's closer to that entrance and
2 exit ramp to Route 208. So people making the left
3 out of his establishment would probably have less
4 gaps, for lack of a better term, than they would up
5 the street, because you have so many other things
6 going on.

7 We haven't, as a town, as a community,
8 seen a lot of accidents or any that I know of from
9 that establishment. That's something to think about.

10 CHAIRMAN SEIBEL: Sam.

11 MR. RACENSTEIN: Well, let me say this,
12 on the April 7th meeting, there was a lot of talk
13 about the left-hand turns. There was enough gap.

14 But from tonight's meeting is when you
15 had the video showing that there is plenty of gap
16 time for cars to make a left-hand turn, and this was
17 like 8:45, I believe the time was, that you had that
18 video.

19 I believe that without making problems
20 for Dunkin Donuts, should we put the sign on,
21 shouldn't be put the sign on, I revise my thinking
22 because majority of my colleagues said that it is not
23 necessary to put a left-hand turn on from hours from
24 7 to 9 and 4 to 6, because there is enough gap time
25 for cars to make a left-hand turn. And, also, if the

1 cars don't make a left-hand turn, they would just go
2 into a parking lot, TD Bank or another lot, and just
3 turn around and do what they have to do.

4 So, therefore, I go ahead with my
5 colleagues to say that we should not have any time
6 allotment, and I would like to thank -- it's not a
7 one-on-one, but I'd just like to thank Mr. Lowenstein
8 for speaking on behalf of his feelings, on behalf of
9 the board. So that's my revised feelings.

10 Thank you.

11 CHAIRMAN SEIBEL: Okay.

12 Avi.

13 MR. NAVEH: I don't want to step down
14 this rabbit hole, but I believe everybody's expressed
15 their opinions about the left turn issues, parking
16 and safety. That's everyone's concern when a new
17 business pops up on a busy road.

18 I echoed these feelings at the last
19 meeting that, you know, unless there was some kind of
20 serious safety concern to impose a left turn
21 restriction, I don't see how, you know, I don't want
22 to call it handicapping, but just limiting the
23 abilities of one business on a street where all the
24 other businesses have the ability to make those turns
25 themselves just seems a little unfair.

1 So I just share in the sentiment
2 tonight with some other members with we should look
3 at this issue cautiously and think about what it
4 could cause to the business.

5 CHAIRMAN SEIBEL: Okay. Anybody else?

6 Experts?

7 Nothing?

8 All right. And without further ado, I
9 guess I'll ask for a motion.

10 MS. BARATTA: I make the motion.

11 CHAIRMAN SEIBEL: Jeanne.

12 MS. BARATTA: On Application #2016-02,
13 Fair Lawn J&S Holdings LLC, at 23-08 Maple Avenue,
14 Block 5903, Lots 5, 5.01 and 36, for the proposed new
15 Dunkin Donuts - Fast-food restaurants are not
16 permitted in the B-1 zone and would require a (d)(1)
17 use variance. The proposed 24-hour establishment -
18 24-hour establishments are only permitted in the B-1
19 zone for a retail establishment, not fast-food
20 restaurant; requires a (d)(1) use variance as per
21 Section 125-57.D(1)(d)[1]. Would require a variance
22 for front yard setback of 11' where 20' is required
23 as per Section 125-12. A waiver is required for
24 loading area proposed 11' x 56', where ordinance
25 requires 12' x 56' as per Section 125-48. Parking

1 and loading areas - Sign variances required as per
2 Section 125-41. Only one sign is permitted for each
3 principal use, three are proposed here. Proposed
4 freestanding sign does not meet the requirements for
5 size of sign, height of sign and setback from the
6 front yard property line. Proposed coffee cup logo
7 does not meet the size. Proposed channel letters
8 exceed the permitted 16' total height permitted by
9 ordinance. Major site plan approval is required as
10 per Section 125-65 and any other variances and/or
11 waivers that may be required for this application.

12 Is there anything else that we need to
13 put in here as far as the cooperative parking
14 agreement? Is there anything else?

15 MR. ROSENBERG: Yes, that's exactly
16 right, I was just going to say, that the applicant
17 had agreed to enter into the cooperative parking
18 agreement, it has to be approved by the board
19 attorney.

20 MS. BARATTA: What he said.

21 MR. LOWENSTEIN: And just to correct
22 it, that 16 feet should be 16 inches.

23 MS. BARATTA: Thank you. Big
24 difference.

25 And I am making the motion to approve.

1 MR. RACENSTEIN: And I'll second the
2 motion.

3 CHAIRMAN SEIBEL: Who seconded it?

4 MS. PERCHUK: I'll second it. Thank
5 you.

6 MR. LOWENSTEIN: Mr. Racenstein?

7 MR. RACENSTEIN: Yes.

8 MR. LOWENSTEIN: Ms. Baratta?

9 MS. BARATTA: Yes.

10 MR. LOWENSTEIN: Ms. Perchuk?

11 MS. PERCHUK: Yes.

12 MR. LOWENSTEIN: Lowenstein?

13 Reluctantly I vote no. I don't think
14 the tests have been persuasive enough for me on a
15 (d)(1) variance, a use variance. I'm concerned about
16 that traffic flow on the site, and don't think we
17 heard a lot of testimony as to signage, I think we're
18 kind of signing a blank check here, so I vote no.

19 Mr. Puzio?

20 VICE-CHAIRMAN PUZIO: Yes.

21 MR. LOWENSTEIN: Mr. Naveh?

22 MR. NAVEH: Yes.

23 MR. LOWENSTEIN: Chairman Seibel?

24 CHAIRMAN SEIBEL: I'm going to vote
25 yes. I think it's a nice addition to the area. And

1 I believe in the market, and the market will, if the
2 lot is full, people aren't going to pull in, you're
3 going to lose those customers, but they'll come back
4 later on in the day, and I wish you a lot of luck.

5 MR. LOWENSTEIN: Motion carries 6/1.

6 MS. BARATTA: Good luck to you.

7 MR. PATEL: Thank you, Mr. Chairman and
8 board members. I'd like to thank you on behalf of me
9 and my family. Thank you very much.

10 (Whereupon, the matter is adjourned at
11 10:28 p.m.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T I O N

1
2
3
4 I, KIM O. FURBACHER, License No.
5 XIO1042, a Certified Court Reporter, Registered Merit
6 Reporter, Certified Realtime Court Reporter, and
7 Notary Public of the State of New Jersey, hereby
8 certify that the foregoing is a verbatim record of
9 the testimony provided under oath before any court,
10 referee, board, commission or other body created by
11 statute of the State of New Jersey.

12 I am not related to the parties
13 involved in this action; I have no financial
14 interest, nor am I related to an agent of or employed
15 by anyone with a financial interest in the outcome of
16 this action.

17 This transcript complies with
18 Regulation 13:43-5.9 of the New Jersey Administrative
19 Code.

20
21
22 _____
23 KIM O. FURBACHER, CRCR, CCR, RMR
24 License #XIO1042, and Notary Public
25 of New Jersey

My Commission Expires:
7/11/19