

BOROUGH OF MIDLAND PARK – ZONING BOARD OF ADJUSTMENT MINUTES

August 9, 2023

PLEASE TAKE NOTE:

ON WEDNESDAY, AUGUST 9, 2023, THE ZONING BOARD OF ADJUSTMENT OF THE BOROUGH OF MIDLAND PARK HELD A REGULAR MEETING IN THE MIDLAND PARK COUNCIL CHAMBERS, 280 GODWIN AVE., MIDLAND PARK, NJ. THE FORMAL MEETING BEGAN AT 7:30 P.M

FORMAL MEETING

READING OF THE OPEN PUBLIC MEETINGS ACT

PLEDGE OF ALLEGIANCE

ROLL CALL:

Mr. Les Andersen	present	Mr. Mark Divak	excused
Mr. David Zuidema	present	Mr. William Placier	present
Mr. Richard Formicola	present	Mr. David Barlow	excused
Mr. Nick Papapietro	present	Mr. Joseph Eliya, Alt #1	present
		Mr. James Capalbo, Alt #2	present

Attendance by Board Professionals: R. Wostbrock, Engineer; D. Siss, Acting Attorney; D. Novak, Planner; J. Yakimik, Traffic Consultant

Minutes of the 7/12/23 meeting - approved

PUBLIC HEARINGS

MHF Midland Park LLC/Taco Bell – 80 Godwin Avenue – BL 6 LT 17.02 – see attached transcript

RESOLUTIONS

None.

CLOSED SESSION

Discussion of Appointment of New Board Attorney – Motion to go into closed session made by Mr. Papapietro at 10:10 PM. Seconded by Mr. Formicola, all voted in favor.

There being no further business to discuss, the Board adjourned the closed session at 10:26 PM and resumed the regular meeting.

Meeting Adjourned – 10:26 PM
Jessica Harmon

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BOROUGH OF MIDLAND PARK
ZONING BOARD OF ADJUSTMENT
WEDNESDAY, AUGUST 9, 2023
7:30 P.M.

IN THE MATTER OF:) TRANSCRIPT OF
)
APPLICATION OF) PROCEEDING
MHF MIDLAND PARK, LLC)
TACO BELL -)
80 GODWIN AVENUE,)
BLOCK 6, LOT 17.02.)

- B E F O R E:
- LES ANDERSON, CHAIRMAN
 - NICK PAPAPIETRO, VICE CHAIRMAN
 - RICHARD FORMICOLA, SECRETARY
 - DAVID BARLOW, MEMBER (ABSENT)
 - JAMES CAPALBO, MEMBER
 - WILLIAM PLACIER, MEMBER
 - MARK DIVAK, MEMBER (ABSENT)
 - JOSEPH ELIYA, MEMBER
 - DAVID ZUIDEMA, MEMBER

LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.
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A P P E A R A N C E S :

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Counsel for the Objector, Burger Barn

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

JESSICA HARMON, Board Secretary

DAVID NOVAK, P.P., Board Planner

JOHN YAKIMIK, P.E., P.P., Board Engineer

RICHARD WOSTBROCK, P.E., Special Traffic Engineer

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I N D E X (Continued)

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>IDENT/EVID</u>
A-10	Taco Bell Truck Circulation Exhibit Prepared by Dolan & Dean, Dated July 31, 2023 (2 pgs.)	9
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1 CHAIRMAN ANDERSON: I call this meeting
2 to order.

3 This is a special meeting [sic] of the
4 Zoning Board of Adjustment. This is not a special
5 meeting.

6 MS. HARMON: Oh, I'm sorry. Turn it
7 around.

8 CHAIRMAN ANDERSON: I'll ad lib it.
9 This is a regular meeting of the Zoning
10 Board of Adjustment held on Wednesday, August 9,
11 2023.

12 Adequate notice of this meeting has
13 been provided to the public by written notice of the
14 time, date and place of the meeting having been
15 delivered to The Ridgewood News and The Record and by
16 posting a copy of the said notice on the bulletin
17 board at the Municipal Building and by filing a copy
18 of the said notice with the Borough Clerk, all as
19 required by the Open Public Meetings Act.

20 Please stand for the Flag Salute.

21 (Whereupon, all rise for a Recitation
22 of the Pledge of Allegiance.)

23 MS. HARMON: Mr. Zuidema?

24 MR. ZUIDEMA: Here.

25 MS. HARMON: Mr. Formicola?

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MR. FORMICOLA: Here.

MS. HARMON: Mr. Papapietro?

VICE CHAIRMAN PAPAPIETRO: Here.

MS. HARMON: Mr. Placier?

MR. PLACIER: Here.

MS. HARMON: Mr. Eliya?

MR. ELIYA: Here.

MS. HARMON: Mr. Capalbo?

MR. CAPALBO: Here.

MS. HARMON: Mr. Anderson?

CHAIRMAN ANDERSON: Here.

Does anybody have any comments or
proposed changes to the minutes of July 12?

(No response.)

CHAIRMAN ANDERSON: If not, I need a
motion to approve.

VICE CHAIRMAN PAPAPIETRO: Motion to
approve the minutes.

MR. ZUIDEMA: Second.

MS. HARMON: Mr. Placier?

MR. PLACIER: Yes.

MS. HARMON: Mr. Eliya?

MR. ELIYA: Yes.

MS. HARMON: Mr. Capalbo?

MR. CAPALBO: Yes.

1 MS. HARMON: Mr. Anderson?

2 CHAIRMAN ANDERSON: Yes.

3 We have one matter on tonight, the
4 public hearing, MHF Midland Park, LLC, Taco Bell.

5 Mr. Whitaker, would you like to enter
6 your appearance?

7 MR. WHITAKER: Yes.

8 Good evening, Mr. Chairman, Members of
9 the Board, for the record, Bruce Whitaker from the
10 firm of McDonnell & Whitaker, representing the
11 applicant.

12 This is a continuation of the public
13 hearing in connection with the applicant's proposal
14 for the installation of a Taco Bell on the property
15 at 80 Godwin Avenue in the Borough.

16 At the last meeting, we concluded with
17 Mr. Dean's testimony. The board had requested that
18 we have a plan just to show you delivery ingress and
19 egress.

20 We submitted a plan to that effect to
21 the board ten days in advance of the hearing. And
22 Mr. Dean is here tonight just to explain that exhibit
23 very briefly.

24 From there, I would have our architect
25 testify as to the building, the architectural

1 elements of the building.

2 And then after that I have our planner,
3 Mr. Seckler, just for the purpose of testifying on
4 the planning testimony. That's the outline of what
5 we will do.

6 CHAIRMAN ANDERSON: Go ahead.

7 MR. WHITAKER: Mr. Dean is still under
8 oath.

9 MR. DEAN: So I understand.

10 G A R Y D E A N, P.E., P.P.

11 181 West High Street, Somerville, New Jersey,
12 having been previously duly sworn, continues to
13 testify as follows:

14 MR. DEAN: Good evening.

15 CHAIRMAN ANDERSON: I'm sorry,
16 Mr. Dean.

17 Mr. Whitaker, I would be remiss.

18 Just for the record, Mr. Formicola was
19 not at the last meeting, but he has signed the
20 certification that he's listened to the tapes.

21 And, Mr. Whitaker, we have seven
22 members, all of whom are eligible to vote.

23 MR. WHITAKER: Understood.

24 CHAIRMAN ANDERSON: Okay, I'm sorry.

25 MR. WHITAKER: I have a revised or

1 updated, I should say, exhibit list.

2 I'll pass those down.

3 DIRECT EXAMINATION

4 BY MR. WHITAKER:

5 Q. Mr. Dean, you were requested to provide
6 a diagram from the site plan that has been submitted
7 as it pertains to ingress and egress of trucks that
8 would make a delivery at the site, recognizing that
9 the truck delivery that's been stipulated to and
10 testified to are deliveries that are made well before
11 the business is open, the Taco Bell is open, and
12 typically well before anything else in the shopping
13 center is open for business.

14 And you've created that exhibit,
15 correct?

16 A. Yes, I have.

17 (Whereupon, Taco Bell Truck Circulation
18 Exhibit Prepared by Dolan & Dean, Dated
19 July 31, 2023, Two Pages, is marked as Exhibit
20 A-10 for identification.)

21 BY MR. WHITAKER:

22 Q. And we have that exhibit marked tonight
23 as A-10. If I can have you describe what that
24 depicts.

25 A. Certainly.

1 And, hopefully, all the board members
2 have it.

3 But it is a site circulation exhibit
4 prepared by my office based on the plans by Lapatka
5 Associates.

6 By way of identification, it's entitled
7 "Taco Bell Truck Circulation Exhibit." It is dated
8 7-31 of 23.

9 And just to orient the board, it's in
10 the same consistent pattern as the site plan with
11 north to top of the page, Rea Avenue to the right,
12 and Godwin Avenue to the bottom of the sheet
13 (indicating).

14 As we discussed at the hearing, the
15 truck would follow a path -- and we've shown the
16 right-hand turns just because those are typically the
17 tightest for the truck.

18 But if the truck were to make a
19 left-hand turn from eastbound Godwin Avenue, it would
20 follow a tighter path.

21 But it shows the trucks circulating and
22 entering the site from the main driveway, continuing
23 in a clockwise pattern across where the trash
24 enclosure would be located and several parking
25 spaces, with the truck positioning itself with the

1 cab facing Rea Avenue or facing to the east.

2 And that follows the same traffic
3 pattern that is marked on the pavement, which as
4 drivers, we all drive to the right.

5 The truck, once it's completed its
6 delivery, would continue in a counterclockwise
7 pattern, would circulate, as I described, through the
8 parking lot and come right back out to Godwin Avenue.

9 As an alternative, we looked at a
10 second exhibit. I didn't submit it, but I know there
11 was some discussion at the last hearing, and that is,
12 couldn't the truck just go straight out to Rea
13 Avenue?

14 And the answer is, yes, it can. There
15 is an island that is in that, I'll call it,
16 separating the ingress and egress.

17 If anyone isn't familiar with that, I
18 just have a photograph.

19 Bruce, it's nothing more than -- we
20 could look it up on the internet if we wanted to.

21 But it's from what's called Google
22 Street View.

23 And just to refresh the board members'
24 recollection, it shows -- I have multiple copies that
25 I'll... but it just shows the island that's in the

1 driveway that separates ingress and egress and also
2 directs traffic only to travel to and from the south
3 towards Godwin Avenue.

4 That island is, I'll call it,
5 mountable. I just drove over it in a truck, a pickup
6 truck.

7 But, obviously, a delivery truck would
8 be able to do it equally -- with greater ground
9 clearance.

10 What that would allow -- and we're not
11 saying it has to. I'm just offering it for
12 discussion with the board. I have a second exhibit
13 dated the same date.

14 But all it depicts is the same entering
15 path. And it shows the truck positioned in the same
16 manner, but it shows the truck exiting directly out
17 to Rea Avenue. It would travel over the island.

18 Alternatively, the truck could also
19 enter on Rea Avenue, drive over the same island, and
20 then be facing in a westbound direction so that the
21 tailgate is closer to the restaurant, but then it
22 would be on the wrong side of the aisle. So I didn't
23 show that.

24 You know, I wanted to show what, I'll
25 say, follows traffic flow convention. But all of

1 them work so...

2 And I do want to point out that the
3 truck -- and we were involved with another Taco Bell
4 application in Parsippany, New Jersey. We consulted
5 with the operator of this store. And it's
6 consistent. They use the same truck. It is not a
7 53-foot truck. It is a 39-foot trailer.

8 And as a result, the turning radii are
9 a little more forgiving. And they are specifically
10 used to get in and out of smaller commercial shopping
11 center sites, not over-the-road long-haul type
12 delivery.

13 So it is specific to the needs of the
14 restaurants. Obviously fewer restaurants can be
15 served.

16 But Taco Bell is understanding of
17 that. And if it requires more frequent deliveries,
18 so be it.

19 And that is all I have, Board Members.
20 We just wanted to show you graphically how that truck
21 circulates through the site conservatively.

22 Even if there happened to be a vehicle
23 parked in the lot, which was not the representation,
24 the truck can still circulate.

25 So we have a lot of different options.

1 But I wanted to hopefully convey to you a level of
2 comfort that it works and it will be more than
3 adequate to serve the needs of the -- of the store.

4 Q. Mr. Dean, would it be correct to say
5 that there's other retail and other commercial
6 facilities on this site, and the pattern for trucks
7 going to make deliveries at other commercial
8 facilities on this site would use the same type of
9 pattern coming in or out of Godwin Avenue?

10 A. Correct.

11 Where they ultimately go -- obviously
12 CVS has a little different delivery scheme. Dunkin'
13 has a little different delivery scheme, but -- I'm
14 sorry.

15 The former Dunkin' now. I know there
16 have been some improvements. I don't believe the
17 tenants have been selected.

18 But if they happen to have that size
19 delivery truck, there is a loading area on the south
20 side of that expanded building.

21 Presumably that was designed to
22 accommodate their loading as well.

23 MR. WHITAKER: Thank you.

24 I have nothing further.

25 MS. SISS: Do you want to mark this

1 picture?

2 MR. WHITAKER: Yeah.

3 We'll mark this picture as A-11.

4 (Whereupon, Google Street View Photo is
5 marked as Exhibit A-11 for identification.)

6 CHAIRMAN ANDERSON: Is A-10 two sheets,
7 or it just one sheet.

8 MR. DEAN: I offered it for
9 information.

10 If the board -- and I'll leave it to
11 the attorney. If it warrants being marked. I did it
12 for illustrative purposes so...

13 MS. SISS: It's two sheets.

14 MR. DEAN: But I will leave it with the
15 board.

16 MR. WHITAKER: I have it as two pages.

17 CHAIRMAN ANDERSON: Okay, fine.

18 Before we get to board questions,
19 Mr. Yakimik, do you have any comments on the
20 testimony?

21 MR. YAKIMIK: No, Mr. Chairman.

22 Quite simply, I looked at
23 Mr. Dobiszewski's previous report. I've looked
24 through the meeting minutes from the previous meeting
25 -- or the court stenographer's notes.

1 And I visited the site before this
2 evening. And I could conclude or advise the board
3 that I really have no questions or comments with
4 regard to what was presented.

5 CHAIRMAN ANDERSON: Thank you.

6 Board, he's here for Frank Dobiszewski.
7 He's our traffic expert.

8 I'm sorry.

9 VICE CHAIRMAN PAPAPIETRO: I wasn't
10 sure who you were.

11 MR. YAKIMIK: I was just some guy
12 walking in.

13 MS. SISS: After the fact, why don't we
14 swear you in.

15 MR. YAKIMIK: Yes. I'm sorry.

16 Do you want me to repeat my testimony?

17 MS. SISS: Do you swear the testimony
18 you will give and have just given will be the truth,
19 the whole truth, and nothing but the truth?

20 MR. YAKIMIK: I do.

21 J O H N Y A K I M I K, PE

22 330 Phillips Avenue, South Hackensack, New
23 Jersey, having been duly sworn, testifies as
24 follows:

25 MS. SISS: Thank you.

1 CHAIRMAN ANDERSON: Okay. Board
2 questions?

3 MR. FORMICOLA: A question. I'm sorry.
4 What is the frequency of the
5 deliveries, and the timing?

6 MR. WHITAKER: We had testimony at the
7 first meeting that it was no more than one a day, and
8 not even that, and it is at 5 o'clock in the morning
9 generally, long before it opens.

10 MR. FORMICOLA: Yeah, I figured that.
11 Thank you.

12 CHAIRMAN ANDERSON: Anybody else?
13 Questions for this witness?

14 MR. ZUIDEMA: Yeah.

15 I just -- I find it kind of amusing
16 actually that you as an expert just could say the
17 next thing we could ride over a curb. It wouldn't be
18 problem because, you know, it's not a big deal.

19 Now we're riding over an island, which
20 you're not supposed to, I mean. And you're going
21 to...

22 So where do you end this? As you as
23 the expert, you know, where do you say -- are you
24 saying that because, obviously, you're here for them?

25 But this doesn't make any sense to me.

1 Like, we can ride wherever we want because we'll make
2 it work. Don't worry, Mr. Zuidema. We'll make this
3 work. We'll ride over the island. If we have to,
4 we'll ride over the curb. And we could even ride
5 over the curb on the other side of Rea Avenue
6 because, you know what, we have to make it work. And
7 I don't buy that.

8 MR. DEAN: I'll do my best. And that's
9 why I wanted to show the picture. I have an enlarged
10 version as well just with the exhibits.

11 That island, I obviously don't
12 understand or know its genesis other than its purpose
13 is to direct automobile traffic so that it doesn't go
14 to and from the north on Rea Avenue. It is a very
15 low profile --

16 MR. ZUIDEMA: I've been over it many
17 times.

18 MR. DEAN: -- mountable type curb. If
19 we really wanted to make it to prevent truck traffic,
20 it would be a 4- or 6-inch reveal.

21 But either because of emergency vehicle
22 access or for truck circulation, it was intentionally
23 designed to be mountable.

24 And that is a very common design
25 technique that is used to make sure that car drivers

1 behave, but it is recognized that in this case for
2 one truck a week, it can accommodate it.

3 I'm not suggesting it is the path. And
4 if this board so chooses and you say, we don't want
5 the trucks circulating on Rea Avenue, well, we're
6 back to exhibit -- I'm sorry, Bruce, A, the first
7 one?

8 CHAIRMAN ANDERSON: Ten.

9 MR. DEAN: Thank you, Mr. Chairman.

10 So I'm not suggesting that the truck
11 needs to do this, but so that you all understand that
12 it can.

13 So I don't have a problem with it.
14 Mountable curbs, we use them for DOT driveways for
15 this exact same reason, is because if we designed it
16 to make it so that the trucks could fit with that
17 restriction, it would be so wide, it wouldn't serve
18 its purpose for cars.

19 So it was intentionally designed so
20 that a passenger vehicle driver can't make these
21 turns that are restricted.

22 MR. ZUIDEMA: I think it was
23 intentionally designed in one sense because you can't
24 make a right coming south on Rea Avenue.

25 MR. DEAN: Correct.

1 MR. ZUIDEMA: So you're driving, and
2 then you're going to drive into this parking lot,
3 you're going to end up hugging the left side. That's
4 why that was put there, because then you'd have --
5 you know, you'd have people going in, kind of, the
6 wrong direction.

7 That's why that island was put there,
8 so you keep the people over to the right, the cars.
9 And I don't think you're introducing the truck thing
10 in that -- I just don't -- I don't see that.

11 But you're kind of the expert -- you
12 are the expert, but I don't see that at all.

13 MR. WHITAKER: Mr. Dean, would it be
14 correct to say that you can have ingress and egress
15 to this site without using Rea Avenue and the trucks
16 can adequately drive in and out.

17 MR. DEAN: 100 percent correct.

18 So my second exhibit was just again so
19 that the board has all of the information.

20 The truck can fit. If you don't want
21 it and you don't want that truck traffic on Rea
22 Avenue, fine; that's a condition of hopefully a
23 favorable consideration.

24 MR. WHITAKER: We can stipulate to
25 that.

1 MR. DEAN: And we stipulate. And the
2 drivers will be notified. And then we can even post
3 supplemental signs that say "No Trucks," so as the
4 driver is looking towards Rea Avenue, maybe he's
5 tempted to want to exit, there's a sign that says "No
6 Truck Exit," and so he just completes his maneuver in
7 parking lot.

8 But I wanted to share with you all of
9 the possibilities.

10 MR. ZUIDEMA: What is the other option.
11 Is it on here?

12 CHAIRMAN ANDERSON: Counterclockwise
13 through the --

14 MR. DEAN: You don't have it.

15 MR. ZUIDEMA: Oh, we don't have it.

16 MR. WHITAKER: The original.

17 MR. DEAN: No.

18 The original one you do. That shows --
19 that shows it staying completely on the site, never
20 going to or from Rea Avenue. That's what you should
21 have.

22 MR. ZUIDEMA: Entering through Godwin.

23 MR. DEAN: Correct.

24 MR. WHITAKER: We did the alternative
25 just in anticipation if somebody would say what would

1 happen at Rea Avenue.

2 MR. DEA: I've been doing this too long
3 where it's always asked. And if I didn't have the
4 ability to show it to you, I really didn't want to
5 come back. It's for consumption discussion.

6 But again...

7 MR. ZUIDEMA: So you know that trucks
8 -- truck people don't obey signs. When what happens
9 is at a Starbucks, it says "No Parking," and I would
10 think is it three or four nights of the week he parks
11 on County Road and unloads his truck.

12 So, in other words, I don't know if I,
13 kind of, buy into that oh, he's a trucker, he'll see
14 the sign and he'll just obey it. I don't think
15 that's going to happen either.

16 MR. DEAN: There's two schools of
17 thought. One is enforcement.

18 And again decisions are made at this
19 level to restrict traffic, much in the way Rea Avenue
20 is restricted for passenger cars.

21 Can people come out of that driveway
22 and turn left? They can in a car. You can do it.
23 It requires enforcement.

24 So the second one is if it happens,
25 it's because it can happen.

1 It physically fits. We've demonstrated
2 that.

3 So I then am left with, why do we want
4 to prohibit it?

5 MR. ZUIDEMA: Just a follow-up. You
6 physically demonstrated it.

7 So did you take the 39-footer in there?

8 MR. DEAN: No.

9 I demonstrated it on the sheet that I
10 didn't submit. This exhibit --

11 MR. ZUIDEMA: So there never has
12 anybody, like, physically there? I would before --
13 if it does get passed, that it would be a
14 stipulation.

15 But how do you enforce a 39-footer
16 versus a 53? You can't.

17 MR. DEAN: That's why we asked Taco
18 Bell, is this the vehicle which is the same as they
19 were using Parsippany? And it was yes. It was
20 designed for these types of environments.

21 VICE CHAIRMAN PAPAPIETRO: A couple of
22 questions.

23 Mr. Whitaker, I know earlier on when
24 this started, you testified the hours of operation.
25 Can you let us know, again, the opening time in the

1 morning for this business?

2 MR. WHITAKER: I can go back to look at
3 my notes and tell you, yes.

4 VICE CHAIRMAN PAPAPIETRO: While you're
5 doing that, Mr. Dean, you mentioned a 39-foot
6 trailer.

7 Is that the entire length, or is there
8 a tractor that's part of that trailer as well?

9 MR. DEAN: If you look on the left-hand
10 side of the exhibit, you'll see all the dimensions.
11 So it is a 39-foot trailer. Unfold your page. Then
12 we have the tractor.

13 VICE CHAIRMAN PAPAPIETRO: All right.
14 So it's 39.

15 So it's so it's a 46-and-a-half-foot
16 vehicle that would be parked there, not 39.

17 MR. DEAN: Right.

18 Because there's a gap, correct.

19 VICE CHAIRMAN PAPAPIETRO: Okay. So
20 then my question is, first of all, it's 46-and-a-half
21 feet. And then when that truck is parked there
22 behind the cell tower, how much room is left on the
23 lane of traffic, like, by parking spots 15, 16, 17
24 and 18?

25 MR. DEAN: Well, from the testimony,

1 there won't be any cars there but I --

2 VICE CHAIRMAN PAPAPIETRO: Well, you
3 can't say that for sure. That's not a... Someone
4 can park there overnight, CVS customers. CVS is open
5 24/7. It's not likely to happen. I just would like
6 to know what the width is of that.

7 MR. WHITAKER: I would think if
8 somebody parked in CVS, they'd be a little bit
9 closer, unless they're trying to get their steps in.

10 VICE CHAIRMAN PAPAPIETRO: And that
11 plus there's no guarantee that deliveries would be
12 5 a.m.

13 MR. WHITAKER: We stipulated that we
14 would have 5 a.m. deliveries because that's what they
15 do at all their other sites.

16 They have early site deliveries, as
17 testified to, before the business opens. And the
18 business opens 8 a.m. And it was testified that it
19 closes at 1 a.m., if business warrants it. That was
20 the testimony. It was a fluid closing time,
21 depending upon activity.

22 MR. DEAN: Can I answer the questions
23 now.

24 MR. WHITAKER: It fits within the
25 hours.

1 MR. DEAN: Seventeen feet.

2 VICE CHAIRMAN PAPAPIETRO: Seventeen
3 feet would be the width from the side of the trailer
4 to the parking space.

5 MR. DEAN: Correct.

6 MR. ZUIDEMA: If the Dunkin' Donuts had
7 stayed -- now, I know it's an if -- but there's going
8 to be another tenant go in there.

9 I might say something a little later
10 on, but, like, we're just assuming that no one is
11 going in Dunkin' Donuts. And I -- as far as getting
12 coffee in the morning at Dunkin' Donuts, if it was
13 there, there would be cars there.

14 In fact, that would be the whole place
15 where the cars were.

16 So you're allowing for no tenant -- a
17 tenant that's going to be open at 9 o'clock after
18 everything is done. Because you're not going to --
19 if you have a tenant in there, you're not going to be
20 able to make that turn, then.

21 MR. DEAN: Well, we are. And that's
22 what this exhibit shows. If there's one vehicle
23 parked in Spot 110, that's the only spot that may
24 require that truck, for example, to pull through,
25 slightly reverse to get a better angle and then make

1 his turn.

2 That's the only spot.

3 MR. ZUIDEMA: 111 is not.

4 MR. DEAN: No, not at all. That's not
5 affected. If we look at the turning path of that
6 exhibit, 111 is --

7 MR. ZUIDEMA: You couldn't do 110
8 because there's a light pole there. You're never
9 going to go that way. You'd hit the pole before you
10 block 110.

11 MR. DEAN: I did a bad job of
12 explaining what is shown on this -- on this plan.

13 You'll see parallel lines that vary in
14 width. That represents the sweep path of the truck
15 from its outer edge of its bumper, depending on which
16 way it's turning, to the inner edge of the trailer.

17 So those parallel lines are the path --
18 the sweep path that that truck follows. And,
19 obviously, as it makes a turn, it needs a little
20 wider width, because as the trailer pulls forward and
21 then the cab turns, the trailer swings in wider.

22 So 110, you'll see is unaffected, as is
23 111. There's no part of those two parallel lines
24 that are affected by any part of the vehicles.

25 So again, we've looked at this in

1 anticipation of all these what ifs. It fits. It
2 works.

3 MR. WHITAKER: I think we need to be
4 cognizant of the fact it's still over 160 spaces on
5 the entire site.

6 MR. ZUIDEMA: No, there isn't. I'll
7 bring that up later. There's at least 30 to 40 that
8 are occupied with construction material.

9 MR. WHITAKER: Well, the stipulation
10 was, for this to be approved, that has to be made
11 viable.

12 MR. ZUIDEMA: Well, then you're
13 probably -- yeah, I know.

14 So how could you do that, though.
15 How could they -- how could they put the new
16 building, get the new building up and active and all
17 the parking area is cleared and us approve it
18 tonight?

19 It's impossible.

20 All that building material has to get
21 moved then before I would vote yes.

22 MR. WHITAKER: No.

23 You don't move it before. You make it
24 a condition before --

25 MR. ZUIDEMA: No.

1 MR. WHITAKER: Well, Mr. Siss, I'll let
2 you explain it.

3 MS. SISS: Yeah.

4 We could make it a condition that they
5 don't get a CO until it's moved.

6 MR. ZUIDEMA: Well, I'd say as we vote.

7 But, I mean, there's a condition. That
8 guy has been there two years building the building.
9 And it's still -- there's rodents in the building
10 now.

11 So I just think that the landlord there
12 is like, oh, Midland Park don't say nothing. And
13 Dutch Girl Cleaners is empty. Dunkin' Donuts is
14 empty. We have a building that's half finished. And
15 we have construction equipment over the entire lot.
16 And then we're going to give them a conditional
17 approval. I mean, you guys can do that. I just
18 think that's odd.

19 CHAIRMAN ANDERSON: They won't be
20 allowed to go in until that's resolved.

21 MR. ZUIDEMA: Okay, fine.

22 I get it.

23 CHAIRMAN ANDERSON: Well, that's their
24 choice.

25 All right. Anybody else?

1 By any chance, did you have anything to
2 add after all that?

3 MR. YAKIMIK: Not really, Mr. Chairman.

4 CHAIRMAN ANDERSON: Okay. Okay.

5 MR. WOSTBROCK: Mr. Chairman, may I?

6 CHAIRMAN ANDERSON: Driving over the
7 curb.

8 MR. WOSTBROCK: Driving over the curb.

9 CHAIRMAN ANDERSON: Over the island, do
10 you have...

11 MR. WOSTBROCK: No. We heard his
12 comments on that.

13 CHAIRMAN ANDERSON: Go ahead.

14 MS. SISS: You've been sworn in in this
15 hearing previously, I assume.

16 MR. WOSTBROCK: Yes.

17 R I C H A R D W O S T B R O C K, P.E.

18 44 Garret Place, Midland Park, New Jersey, having
19 been previously duly sworn, continues to
20 testify as follows:

21 MR. WOSTBROCK: I'm not following your
22 comments.

23 As a result of the original exhibit
24 where it comes in through Godwin Ave, I did want to
25 point out that as proposed they're showing that it

1 backs up in the turning maneuver next to the former
2 Dunkin' Donuts.

3 There's a reverse movement there. So
4 the truck isn't making a continuous sweep around, so
5 there is a need to back up.

6 So more than likely the truck will be
7 going through the parking spaces.

8 CHAIRMAN ANDERSON: And not out Rea.

9 MR. WOSTBROCK: Well, as far as out
10 Rea, as Mr. Dean said, they can go either way.

11 The original path requires a backing
12 movement to respect Stall 110. And Rea Ave, you're
13 going over a mountable curb.

14 CHAIRMAN ANDERSON: Well, if we get
15 that far and it gets approved, they've already agreed
16 that they're not going to go out Rea Avenue.

17 MR. WOSTBROCK: Right.

18 My other concern is, in the picture the
19 rear of the truck is furthest away from the Taco
20 Bell.

21 So if you're unloading the back of the
22 truck, you're going to be taking your handcart,
23 taking your pallet, moving whatever mechanism they're
24 using and blocking both lanes, the lane the truck is
25 in and the opposite -- and the lane across from it to

1 the north of it. If you're unloading from the back
2 of truck, you need to walk around the truck to get to
3 Taco Bell.

4 CHAIRMAN ANDERSON: Yes. Okay.

5 MR. WOSTBROCK: It's an awkward
6 unloading.

7 If you remember, the original loading
8 space for this site was proposed to be in the
9 drive-through aisle. It's now been moved out into
10 the parking field.

11 CHAIRMAN ANDERSON: If it was back in
12 its original location --

13 MR. WOSTBROCK: The truck -- the truck
14 couldn't make the turning movements. That's why it
15 was moved.

16 CHAIRMAN ANDERSON: Okay. So that's
17 not possible.

18 MR. WOSTBROCK: Correct.

19 CHAIRMAN ANDERSON: Okay.

20 MR. WOSTBROCK: Lastly, it's not
21 related to Mr. Dean's testimony, but I do see it, as
22 I'm looking at it, is the handicap stall that's
23 proposed, while there's 24 feet, which is what's
24 required to back up, the way it's striped, it
25 actually projects into the current drive aisles. I'm

1 just looking at 2 or 3 feet to scale it.

2 MR. DEAN: We can amend that to be
3 parallel with the curb line.

4 MR. WOSTBROCK: In looking at it, if
5 the truck wasn't there and a car was driving from the
6 main entry towards Rea Ave, that handicap stall
7 actually projects out into the drive aisle.

8 MR. DEAN: Well, to correct, the
9 handicap stall does not. The striping that we show
10 next to it, which is code -- required by code to
11 assist and give a little extra width for a wheelchair
12 and maneuverability, the striping for that gore area,
13 if you want to call it that, extends 2 or 3 feet into
14 the aisle. If you look on my plan, there's a little
15 radius. We'll make that striped. The space, itself,
16 does not encroach into the aisle.

17 CHAIRMAN ANDERSON: Wait, wait, wait.

18 The space is the entire both the car
19 space and the space for the wheelchair or whatever it
20 is that's being off-loaded.

21 MR. DEAN: It's a maneuvering area
22 adjacent to the parking space. It's required by ADA.

23 All I'm saying is -- it's difficult, I
24 know, to see -- we'll just strike a line between the
25 two ends of curbing and get rid of that little bit of

1 striping. It will totally be code compliant.

2 MR. WOSTBROCK: That would be
3 reasonable if they were to shift that so that it's
4 code compliant and not project out into the drive
5 aisle.

6 MR. WHITAKER: The engineer's report
7 says it has to be code compliant. We know it has to
8 be code compliant. It will be code compliant.

9 MR. DEAN: That one is easy.
10 Thank you.

11 CHAIRMAN ANDERSON: Anyone else?

12 MR. PLACIER: I just have one real
13 quick question about the trailer. I've seen a lot of
14 food companies with the trailer. Does that have a
15 side door access; do you know?

16 MR. DEAN: That, I do not.

17 MR. PLACIER: Okay.

18 CHAIRMAN ANDERSON: Anyone else?

19 (No response.)

20 CHAIRMAN ANDERSON: Motion to open it
21 to the public.

22 MR. CAPALBO: So moved.

23 CHAIRMAN ANDERSON: It was either Jim
24 or Bill.

25 MS. HARMON: Mr. Zuidema?

1 MR. ZUIDEMA: Yes.

2 MS. HARMON: Mr. Formicola?

3 MR. FORMICOLA: Yes.

4 MS. HARMON: Mr. Papapietro?

5 VICE CHAIRMAN PAPAPIETRO: Yes.

6 MS. HARMON: Mr. Placier?

7 MR. PLACIER: Yes.

8 MS. HARMON: Mr. Eliya?

9 MR. ELIYA: Yes.

10 MS. HARMON: Mr. Capalbo?

11 MR. CAPALBO: Yes.

12 MS. HARMON: Mr. Anderson?

13 CHAIRMAN ANDERSON: Yes.

14 I apologize in advance to those of you
15 who may have heard this several times already, but in
16 case there's someone who hasn't been here before,
17 we're about to open the meeting to the public for
18 questions of this witness regarding his testimony
19 tonight.

20 You're going to have two opportunities
21 or more to speak. At the end when all the evidence
22 and testimony is in and the application is complete,
23 we're going to open the meeting to the public again.
24 At which point, you can tell us whatever it is you
25 want to tell us regarding this application.

1 However, for right now, we're opening
2 it up only if you have questions of this witness
3 regarding his testimony tonight. Okay.

4 So does anybody in the public have a
5 question?

6 MR. GILSON: Good evening,
7 Mr. Chairman, Members of the Board, my name is
8 Matthew Gilson from the Weiner Law Group.

9 We've entered an appearance, not
10 myself, but the firm on behalf of the Burger Barn.

11 CHAIRMAN ANDERSON: Oh, okay.

12 MR. GILSON: The board answered a lot
13 of the questions that I had.

14 But I just had a few follow-up for
15 Mr. Dean.

16 CROSS-EXAMINATION

17 BY MR. GILSON:

18 Q. Mr. Dean, you stated that the egress --
19 ingress and egress on this property would work
20 similar to the Parsippany location on which you were
21 familiar?

22 A. No.

23 I said it will work the same truck.
24 I drew no comparison to that site.

25 In fact, I don't know the layout of

1 that site.

2 MR. GILSON: Then I have no further
3 questions for Mr. Dean.

4 CHAIRMAN ANDERSON: Thank you.
5 Does anyone else have questions?

6 (No response.)

7 CHAIRMAN ANDERSON: Seeing none, may I
8 have a motion to close?

9 MR. FORMICOLA: Motion.

10 MR. CAPALBO: Second.

11 MS. HARMON: Mr. Zuidema?

12 MR. ZUIDEMA: Yes.

13 MS. HARMON: Mr. Formicola?

14 MR. FORMICOLA: Yes.

15 MS. HARMON: Mr. Papapietro?

16 VICE CHAIRMAN PAPAPIETRO: Yes.

17 MS. HARMON: Mr. Placier?

18 MR. PLACIER: Yes.

19 MS. HARMON: Mr. Eliya?

20 MR. ELIYA: Yes.

21 MR. HARMON: Mr. Capalbo?

22 MR. CAPALBO: Yes.

23 MS. HARMON: Mr. Anderson?

24 CHAIRMAN ANDERSON: Yes.

25 And, Mr. Novak, I apologize. I assumed

1 that you didn't have anything about this, but I
2 should have asked you anyway.

3 MR. NOVAK: That's okay.

4 I have no additional questions.

5 Thank you.

6 CHAIRMAN ANDERSON: Thank you.

7 VICE CHAIRMAN PAPAPIETRO: I have one
8 additional question.

9 When the delivery happens at 5 a.m.,
10 will the truck's engine be turned off, or will it be
11 idling?

12 MR. DEAN: Oh, is that for me?

13 Yeah, I think it's more of a legal
14 question. I don't know if the municipality has a no
15 idling ordinance, but typically it's turned off.

16 MR. WHITAKER: If you have a no idling
17 ordinance, then we have to comply with it.

18 CHAIRMAN ANDERSON: Assume we don't
19 have a no idling ordinance, do you know whether it
20 would be?

21 If you don't know, you don't know.

22 MR. DEAN: I do not know.

23 MR. WHITAKER: But it's not a zoning
24 issue.

25 If idling -- if idling is a problem for

1 a borough, with trucks idling, they create an
2 ordinance that says no idling.

3 VICE CHAIRMAN PAPAPIETRO: At 5 a.m. in
4 the morning, we have houses right behind there.

5 MR. WHITAKER: I'll -- I mean, we don't
6 have a problem with it.

7 But I'm saying to you, there are
8 municipalities that have a no idling ordinance.

9 And if that's an issue, then the Mayor
10 and Council can create that type of ordinance.

11 Even after an approval, if that comes
12 into effect, it has to be adhered to. Mr. Siss can
13 confirm that.

14 CHAIRMAN ANDERSON: We understand that.

15 But it's also a concern to us if the
16 neighbors are going to be disturbed.

17 MR. WHITAKER: If you're saying you
18 want the trucks turned off, we can stipulate to that
19 the same way as we stipulate that we come in at
20 5 o'clock in the morning before the business opens,
21 yeah, certainly.

22 MR. ZUIDEMA: That's not the point,
23 though.

24 Is that there's refrigeration on the
25 truck, and the refrigerator is louder than the truck.

1 So you don't turn the refrigerator off.

2 These trucks are refrigerated because
3 they deliver perishables. So it doesn't really make
4 any difference if you turn the truck off. No. I'm
5 saying you've got the refrigerator making more noise
6 than the truck.

7 CHAIRMAN ANDERSON: I think Nick was
8 talking about turning --

9 MR. ZUIDEMA: No. I know that. No,
10 you can't turn.

11 MR. WHITAKER: You've got deliveries to
12 other commercial establishments that's ongoing there
13 for years.

14 I don't know what conditions, if any,
15 you've imposed for those other tenants.

16 CHAIRMAN ANDERSON: Well, if you're
17 talking about other sites, they don't all have
18 residences in close proximity.

19 But whatever. Right.

20 So just to make clear that Mr. Whitaker
21 is not stipulating to something that he doesn't want
22 to, he's stipulating that they can agree to turn the
23 truck off. But are you comfortable with Mr. Zuidema's
24 comment that you can't turn off the refrigerator?

25 MR. WHITAKER: I don't know. I'd have

1 to check with our operator. It's beyond my
2 expertise.

3 CHAIRMAN ANDERSON: We'll discuss that
4 at the end. All right.

5 MR. WHITAKER: You have -- you have
6 other commercial -- just for the record, you have
7 other commercial establishments in Midland Park that
8 leave at 3 or 4 o'clock in the morning and have
9 refrigeration.

10 CHAIRMAN ANDERSON: And we may actually
11 have a no idling ordinance. I just don't know. And
12 that's why I said assume we don't.

13 VICE CHAIRMAN PAPAPIETRO: I don't know
14 if we do have one.

15 CHAIRMAN ANDERSON: Did you have a
16 question, Rich.

17 MR. FORMICOLA: No, no.

18 I got him.

19 CHAIRMAN ANDERSON: All right. Anybody
20 else?

21 (No response.)

22 CHAIRMAN ANDERSON: Do you want to call
23 your architect.

24 MR. WHITAKER: Our next witness is Erik
25 Liepins. He's our architect.

1 CHAIRMAN ANDERSON: One minute,
2 Mr. Whitaker.

3 MR. Yakimik?

4 MR. YAKIMIK: Yes, sir.

5 CHAIRMAN ANDERSON: I don't know if you
6 have any interest in -- I'm not...

7 MR. YAKIMIK: I have an interest in all
8 municipalities.

9 CHAIRMAN ANDERSON: No, no.
10 I'm saying -- I'm trying to give you an
11 opportunity, if you don't think there's anything in
12 the architectural, if the traffic is complete.

13 MR. YAKIMIK: I serve at the pleasure
14 of the board.

15 CHAIRMAN ANDERSON: Okay. Then you can
16 stay. Okay.

17 MS. SISS: Will you raise your right
18 hand, please?

19 Do you swear the testimony you're about
20 to give in this matter will be the truth, the whole
21 truth, and nothing but the truth?

22 MR. LIEPINS: I do.

23 E R I K L I E P I N S, RA

24 139 Chestnut Street, Nutley, New Jersey, having
25 been duly sworn, testifies as follows:

1 MR. SISS: State your name, please.

2 MR. LIEPINS: Sure.

3 Erik Liepins. That's Erik, E-R-I-K;
4 Liepins, L-I-E-P-I-N-S.

5 VOIR DIRE EXAMINATION

6 BY MR. WHITAKER:

7 Q. Give your address.

8 A. Sure.

9 I'm the principal architect at Zelta
10 Design. And my office is at 139 Chestnut Street in
11 Nutley, New Jersey.

12 Q. Mr. Liepins, would you give the board
13 and the members of the public the benefit of your
14 education and professional background?

15 A. Sure.

16 I received my Bachelor's of
17 Architecture from the New Jersey Institute of
18 Technology.

19 As mentioned, I'm the principal
20 architect for Zelta Design. And my license is active
21 and in good standing her in New Jersey.

22 Q. And have you had occasion to testify
23 before various land use boards in the State of New
24 Jersey?

25 A. Yes.

1 Q. And you've been qualified as such an
2 expert witness in the field of architecture?

3 A. That's correct.

4 MR. WHITAKER: I would ask that
5 Mr. Liepins be qualified as an expert witness in the
6 field of architecture so he can render an opinion in
7 that field as he testifies.

8 CHAIRMAN ANDERSON: Does anyone have
9 any questions about Mr. Liepins?

10 (No response.)

11 CHAIRMAN ANDERSON: All right. You're
12 accepted as an expert in architecture.

13 MR. WHITAKER: Thank you.

14 DIRECT EXAMINATION

15 BY MR. WHITAKER:

16 Q. Mr. Liepins, you worked in conjunction
17 with Mr. Missey.

18 Is that correct?

19 A. Yes.

20 Q. In developing the plans that have been
21 submitted as exhibits for this application?

22 A. Yes.

23 Q. You are familiar with the Taco Bell
24 style building and what I'll use the term of a
25 prototype for a building for their facility.

1 Is that correct?

2 A. Yes.

3 Q. Would it be correct to say that the
4 building that they design is efficient for their
5 particular type of restaurant use?

6 A. Yes.

7 Q. And so would it be correct to say that
8 location of various things inside the building as
9 well as outside, the ingress and egress, is all part
10 of a prototype package that Taco Bell would have?

11 Is that correct?

12 A. That's correct.

13 Q. You've been to the site?

14 A. Yes.

15 Q. And at this point, what I'd like you to
16 do is walk us through, from an architectural
17 standpoint, the style of the building, the size of
18 the building.

19 We've already had the testimony as to
20 where it's located. Then explain the various aspects
21 architecturally?

22 A. Sure.

23 Thank you.

24 So on my first sheet here, which is
25 Sheet A2 entitled "Proposed Plan First Floor," dated

1 October 4th of 2022, it shows the floor plan of the
2 building.

3 MS. SISS: I'm sorry to interrupt. Is
4 this something that's been introduced before?

5 MR. LIEPINS: Yes.

6 MR. WHITAKER: Yes.

7 You have it on your exhibit already as
8 A-2.

9 I'm sorry. I'm sorry. A-4. My eyes.
10 A-4.

11 MS. SISS: Thank you.

12 MR. LIEPINS: So the building has a
13 footprint of 25-feet-by-80-feet with roughly the --
14 if looking at the plan, roughly the left half is
15 composed of the seating area for customers and the
16 main service area where the food is assembled and
17 then delivered to the guests.

18 And the approximate right 50 percent is
19 for the back of house kitchen and two restrooms. The
20 two restrooms are shared for both customers and
21 staff. Both are ADA compliant.

22 And the drive-through window is on the
23 eastern façade, pulled all the way up as far as it
24 can on the eastern façade, just to help with that
25 stacking, as we discussed in the past.

1 The seating, there's 22 seats. And the
2 main entry door is the double door on the left of the
3 plan here. That is the north façade. And then the
4 service door, which is off the kitchen, is on the
5 west façade towards the right-hand side.

6 So I'll go to my sheet here A4, which
7 is labeled "Exterior Elevation." This is an
8 elevation of the west elevation, which is the start
9 of the drive-through lane.

10 So as cars come in, they come down in
11 this direction and loop around the building
12 (indicating).

13 So the main parapet of the building is
14 at 18 feet. Then you have the tower element, which
15 you can see a little bit on the left, that in the
16 background on the north façade is at 20 feet. And
17 then on the south façade, which you can see on the
18 background here, is at 23-feet high.

19 So the tallest element is this tower at
20 23, but the majority of the building is at 18 feet.

21 You'll see a lot of the storefront
22 windows here, which is where all of the seating is in
23 the dining room. You'll see two murals, the service
24 door, and one sign on this side of the building.

25 The materials consist of fiber cement

1 siding and panels in the various colors here.

2 Going to my next sheet here labeled
3 "Exterior Elevations Continued, Sheet A4.1," we'll
4 start with the east elevation here. You'll see the
5 18-foot parapet is maintained.

6 You'll see more of that 23-foot tower
7 element which has an illuminated bell logo,
8 additional murals and then that pickup window on the
9 far right-hand side. The same materials throughout
10 the siding and panels.

11 Then moving over to the north
12 elevation, which is what faces Godwin -- sorry --
13 faces the parking lot, you'll see the main double
14 door entry, one Bell logo over the entry door. This
15 is that 20-foot-high tower element, basically a
16 portal entry into the building.

17 And then moving to the south elevation,
18 which has one additional sign, you'll see that tower
19 element which hugs that corner and then more of that
20 fiber cement siding. That's the summary of the
21 building.

22 BY MR. WHITAKER:

23 Q. Okay. I'd like you to move on to what
24 is being proposed as far as signage is concerned.

25 A. Sure.

1 So I'll start with the north elevation,
2 which is the lower left here. We have one internally
3 illuminated Bell logo. That Bell logo is 4.48 square
4 feet, and the height of the bell is 2 feet, which
5 complies with the ordinance. And it also complies
6 with the percentage allowed for this size façade.

7 Moving to the south elevation, the
8 lower right here, it's an internally illuminated
9 channel letter signage which just states "Taco Bell."
10 And the area of that is 16.6 square feet and
11 18-inches high, again fully compliant with the
12 ordinance there.

13 The upper elevation, the east, has a
14 Bell logo, which is 10 square feet and 3-feet high.

15 And then we have four murals here,
16 which are just artwork that's printed on an aluminum
17 panel and fastened to the building. And those are
18 3-and-a-half-feet-by-7-feet, each one of them in
19 total, because I know that the ordinance states that
20 these are considered signage.

21 The total square footage of everything
22 there is 108 square feet, the bell sign and the
23 Four murals, which is compliant with the sizes and
24 square footages and percentages allowed in the
25 ordinance.

1 Q. So as far as signage is concerned on
2 that side of the building, it's not lettering that's
3 there but it's murals, correct?

4 A. These four are murals, and then this is
5 the Bell logo.

6 Q. And that's just the logo?

7 A. Correct, yes.

8 Q. We understand there's --

9 CHAIRMAN ANDERSON: The lettering on
10 the south? There's lettering on the south.

11 MR. LIEPINS: On the south side.

12 MR. WHITAKER: Yeah. I haven't gotten
13 there yet.

14 BY MR. WHITAKER:

15 Q. On this side, so that we understand,
16 the murals count as part of the overall signage?

17 A. Yes, they do.

18 Q. And with the murals together with the
19 bell that's on that tower, they're code compliant,
20 correct?

21 A. It is, yes.

22 Q. Moving along to the next sign.

23 A. Then going back to the west elevation
24 here, we have two murals, an illuminated Bell and
25 lettering, so a combination of what we've seen in the

1 past.

2 The bell and letters has a height of
3 2-and-a-half feet at the highest for 29.3 square
4 feet.

5 And the two murals combined is
6 64 square feet. We're fully compliant with the
7 square footage allowed. We're fully compliant with
8 the percentage allowed.

9 The only notice here is that this does
10 not face a street or a municipal parking lot.

11 Q. So where is that facing?

12 A. This is facing the -- the property
13 that's in the middle of the parcel.

14 Q. Facing close to the drive-through?

15 A. Facing close to the drive-through, yes.
16 The start of the drive-through, not the window.

17 Q. And the purpose of putting the murals
18 and the signage there in connection with the design
19 of this building is what?

20 A. Is to attract motorists coming down
21 Godwin Avenue as they're approaching the building
22 there. And that's why it's situated all the way to
23 the right, as Godwin Avenue is on this side of the
24 building.

25 Q. So this is a sign that is facing as

1 you're driving down Godwin that you would be able to
2 see?

3 A. That's correct.

4 Q. And the bell is the logo for Taco Bell
5 --

6 A. That's correct.

7 Q. -- with the lettering?

8 A. Correct.

9 Q. The overall size of this, although it's
10 not code compliant because of what it's facing, but
11 sizing-wise it's compliant?

12 A. Sizing-wise it's fully compliant.

13 Q. Any other signs proposed?

14 A. No.

15 Q. The colors for the signage, whatever,
16 is all part of their trademark and insignia, correct?

17 A. That's correct.

18 So they have a standard signage
19 catalogue. These signs are pulled directly from that
20 catalogue that are installed in Taco Bells all
21 throughout the country, as well as these murals
22 installed in numerous Taco Bells all throughout the
23 country.

24 MR. WHITAKER: Nothing further for this
25 witness.

1 CHAIRMAN ANDERSON: What is the
2 variance required?

3 I hear it's compliant, but it's not
4 compliant.

5 MR. WHITAKER: The signs, themselves,
6 are compliant as far as size is concerned.

7 CHAIRMAN ANDERSON: Okay.

8 MR. WHITAKER: But a sign must be
9 facing a roadway, a municipal parking lot or a public
10 parking lot.

11 CHAIRMAN ANDERSON: Okay.

12 MR. WHITAKER: Technically this sign
13 faces a drive-through.

14 And I don't believe you interpret that
15 as being a roadway, a parking lot or a municipal
16 parking lot. It's facing...

17 CHAIRMAN ANDERSON: A public parking
18 lot.

19 MR. WHITAKER: Yes.

20 CHAIRMAN ANDERSON: It's part of the
21 shopping center.

22 MR. WHITAKER: Yes.

23 CHAIRMAN ANDERSON: So it's --

24 MR. WHITAKER: So that's the one that
25 was called out as requiring a variance.

1 CHAIRMAN ANDERSON: Is that a variance
2 or a site design waiver, do you know, off the top of
3 your head.

4 MR. WHITAKER: Your planner, I believe,
5 David, called it out as a variance, did you not.

6 MR. NOVAK: That is correct.

7 CHAIRMAN ANDERSON: All right. Thank
8 you.

9 MR. NOVAK: To specifically answer that
10 question, those regulations are located at Chapter 34
11 Zoning, so it would be a variance.

12 CHAIRMAN ANDERSON: Go ahead.

13 MR. FORMICOLA: On the signage, are
14 they neon signs.

15 MR. LIEPINS: No. They're LED.

16 MR. FORMICOLA: They shut off at night.

17 MR. LIEPINS: After business hours.

18 VICE CHAIRMAN PAPAPIETRO: What is the
19 color going to be when the lights are turned on for
20 the mural and the color of the signs?

21 MR. LIEPINS: So the murals are not
22 illuminated internally.

23 So it's going to remain the same
24 whether it's daytime or nighttime. And then the
25 actual signage will remain the same color. It's just

1 an LED backlit within that sign.

2 VICE CHAIRMAN PAPAPIETRO: Which is
3 what color?

4 MR. LIEPINS: Purple and white. Just
5 as you -- just as it's portrayed here.

6 MR. WHITAKER: That's our national
7 color.

8 MR. LIEPINS: So the white lettering as
9 shown would remain white, and the white and purple
10 bell would remain purple.

11 VICE CHAIRMAN PAPAPIETRO: What's the
12 size again of those signs that are going to be lit
13 up.

14 MR. LIEPINS: So each one is different.
15 But this one, the highest, which is the
16 bell, is at 30 inches. And I believe the letters are
17 -- I don't want to speak to -- either 18 or 24 inches
18 high.

19 But it's fully compliant with the
20 ordinance in terms of square footage.

21 VICE CHAIRMAN PAPAPIETRO: Okay. You
22 already testified they'll be turned off when the
23 restaurant closes down.

24 MR. LIEPINS: That's correct.

25 VICE CHAIRMAN PAPAPIETRO: So somebody

1 traveling down Godwin Avenue to Midland Park at
2 night, you're going to see a sign, or signs, up until
3 1 a.m. identifying Taco Bell.

4 MR. WHITAKER: Columbia Bank would have
5 a sign lit for their ATM 24 hours a day.

6 VICE CHAIRMAN PAPAPIETRO: They have
7 one sign. This is going to be multiple signs.

8 MR. WHITAKER: I don't know how many
9 they had on their building, but this is what we're
10 proposing.

11 Again, there's no ordinance that
12 regulates when signs have to be on and off. But
13 we're telling you when the business is not open, the
14 sign is off.

15 MS. SISS: Did I miss the testimony on
16 the size of the signage on south façade, what's
17 permitted and what was proposed.

18 MR. LIEPINS: Sure.

19 So per the code, 38.4 square feet is
20 allowed. And we're showing 16.6 square feet. And
21 the height of those letters are 18 inches.

22 MR. WOSTBROCK: Are there any murals on
23 the south side.

24 MR. LIEPINS: No.

25 MR. WOSTBROCK: I had murals from an

1 earlier plan.

2 MR. LIEPINS: Possibly.

3 MR. WHITAKER: So let me ask one other
4 question. This signage package that we're talking
5 about now is a package that's been reduced from what
6 was originally proposed, correct.

7 MR. LIEPINS: That's correct.

8 MR. WHITAKER: And is it correct to say
9 that all of the square footage of these signs is less
10 than the maximum that is permitted on any given sign.

11 MR. LIEPINS: That's correct.

12 MR. PLACIER: The murals that are up on
13 both sides of the building, will they remain the same
14 throughout the building, or will they get changed
15 out; do you know?

16 MR. LIEPINS: They remain the same.

17 VICE CHAIRMAN PAPAPIETRO: The wattage
18 of the lights, the brightness, Rich, do you know if
19 they're -- is there a maximum that signs could have
20 for brightness and illumination for signs like this
21 that they're talking about?

22 Is there a limit?

23 MR. WOSTBROCK: Not specifically to the
24 illumination of the sign. I don't think they've
25 indicated what illumination they're providing. You

1 have lighting levels for the site as a whole.

2 MR. WHITAKER: They have to be code
3 compliant.

4 MR. WOSTBROCK: There can't be glare.
5 But without information on -- aside
6 from an internal LED, I really don't know what light
7 levels these signs are going to produce.

8 VICE CHAIRMAN PAPAPIETRO: Okay. So
9 I'll ask it. What's the light level coming out from
10 those signs when they're lit up?

11 MR. LIEPINS: That's something I don't
12 have the answer to, but I know that they would comply
13 with any ordinance you may have.

14 CHAIRMAN ANDERSON: We do have a site
15 lighting and landscape plan from Mr. Missey's office.

16 MR. WHITAKER: Correct.

17 MR. WOSTBROCK: That's site lighting.
18 Usually you don't see on that sign lighting. You
19 usually don't see the code requirement for lights
20 over an egress lane.

21 CHAIRMAN ANDERSON: So the lights that
22 are on the Site Lighting Plan --

23 MR. WOSTBROCK: Are the poles, the
24 poles and building-mounted site lighting.

25 CHAIRMAN ANDERSON: These are going to

1 be separate lights on these murals.

2 MR. LIEPINS: They're not separate
3 light fixtures.

4 There's an LED light strip within the
5 sign.

6 So there's not additional light
7 fixtures on the building. It's an internally
8 illuminated sign.

9 MR. WHITAKER: The murals are not lit.

10 MR. LIEPINS: The murals are not lit.

11 MR. WHITAKER: The murals are not lit.

12 CHAIRMAN ANDERSON: The murals are not
13 lit. It's the bell and the Taco Bell.

14 MR. CAPALBO: I have a question.

15 Are these standard throughout the --
16 throughout the company, the lighting?

17 In other words, Taco Bell in Parsippany
18 or East Egypt have the same lighting.

19 MR. LIEPINS: Lighting for the signage?

20 Yes.

21 MR. WHITAKER: It's a standard signage
22 package.

23 MR. CAPALBO: That talks about going
24 through the catalogue or whatever it takes.

25 MR. LIEPINS: Correct.

1 They have the same illumination, yes.

2 MR. CAPALBO: Same illumination.

3 So if I wanted to inspect it someplace
4 else, I could see what the lighting was like, would
5 it be the same as it would be here?

6 MR. LIEPINS: I can't speak to every
7 location, consideration there's newer locations,
8 older locations.

9 But if it's this signage, it's the
10 standard signage package.

11 MR. CAPALBO: But there is -- there is
12 a procedure to eliminate glare, I would assume, for
13 the people on Rea Avenue, or Erie, or whatever it is.

14 MR. LIEPINS: Yes.

15 MR. CAPALBO: Okay.

16 Thank you.

17 VICE CHAIRMAN PAPAPIETRO: So to answer
18 my question, then, you don't know what the wattage
19 would be of those lights?

20 MR. WHITAKER: We'll provide it to you.

21 But we'll stipulate, it's got to be
22 code compliant. I don't know that your code actually
23 has a provision for the signage, itself. I've done a
24 number of commercial locations in this town, and I
25 know we have to comply with the site requirement --

1 lighting requirements for a parking lot, but I don't
2 believe that there was anything that -- I mean, it's
3 factored in, but it's not called out specifically
4 additionally, I don't think.

5 MS. SISS: Several sections on that
6 sign language?

7 MR. NOVAK: So this is Dave Novak, for
8 the record.

9 The Borough does have a regulation;
10 however, it really seems to be geared more towards
11 external illumination. This is Section 34-17.11.
12 It's geared to the floodlight --

13 MR. WHITAKER: Floodlight on a sign.

14 MR. WOSTBROCK: Broadcasting onto a
15 sign, not a backlit sign.

16 The backlit sign meets the intent of
17 that section of the ordinance. There's no limit on
18 light level, or it's silent on what the light level
19 would be.

20 MR. NOVAK: There is a limitation,
21 though, on hours of operation for lighting. This is
22 Section 34-17.9K:

23 "Lighting used primarily to illuminate
24 a sign, whether internal or external, shall be
25 extinguished by 11 o'clock p.m."

1 MR. WHITAKER: But if the business is
2 open thereafter, the sign has to be turned off.

3 MR. NOVAK: That would be any
4 assumption, based on this.

5 MR. WHITAKER: I don't think -- I don't
6 think, with all due respect, that's being followed in
7 this town. The lights are on after that because the
8 businesses are open after that, restaurants.

9 CHAIRMAN ANDERSON: We're not going to
10 say it's okay.

11 MS. SISS: It's in the ordinance.
12 Do what you --

13 MR. WHITAKER: We'll do what we have
14 to.

15 CHAIRMAN ANDERSON: Other people may be
16 violating it, but that's --

17 MS. SISS: That's unfortunate.

18 CHAIRMAN ANDERSON: Yeah.

19 So to be clear, those LCDs have to be
20 off at 11 o'clock.

21 MR. WHITAKER: We have to comply with
22 all ordinances. That's all.

23 That's what any resolution says.

24 CHAIRMAN ANDERSON: Thank you, David.

25 MR. NOVAK: Or they can request a

1 variance technically thereof, too.

2 MR. WHITAKER: I'll just deal with
3 that.

4 I don't think I've ever requested a
5 variance for any signage on other facilities that are
6 open after 11 o'clock at night.

7 If I go down the street after
8 11 o'clock, there's a number of them still on. It's
9 identification. It's for safety.

10 CHAIRMAN ANDERSON: Any other
11 questions?

12 VICE CHAIRMAN PAPAPIETRO: Parking lots
13 that are on.

14 CHAIRMAN ANDERSON: That's different.

15 VICE CHAIRMAN PAPAPIETRO: That's
16 safety.

17 CHAIRMAN ANDERSON: Okay.

18 Anybody else?

19 (No response.)

20 CHAIRMAN ANDERSON: No.

21 Motion to open to the public.

22 VICE CHAIRMAN PAPAPIETRO: Motion.

23 MR. PLACIER: Second.

24 MS. HARMON: Mr. Zuidema?

25 MR. ZUIDEMA: Yes.

1 MS. HARMON: Mr. Formicola?

2 MR. FORMICOLA: Yes.

3 MS. HARMON: Mr. Papapietro?

4 VICE CHAIRMAN PAPAPIETRO: Yes.

5 MS. HARMON: Mr. Placier?

6 MR. PLACIER: Yes.

7 MS. HARMON: Mr. Eliya?

8 MR. ELIYA: Yes.

9 MS. HARMON: Mr. Capalbo?

10 MR. CAPALBO: Yes.

11 MS. HARMON: Mr. Anderson?

12 CHAIRMAN ANDERSON: Yes.

13 Does anybody in the public have any
14 questions for this witness?

15 (No response.)

16 CHAIRMAN ANDERSON: No?

17 Yes?

18 MR. WOSTBROCK: Can I speak out of
19 order?

20 A follow-up question for the architect
21 what I didn't hear testimony on, which is the HVAC
22 equipment for this building.

23 I believe that we were told earlier
24 that the architect would speak regarding where the
25 HVAC equipment would be, presumably on the roof.

1 MR. LIEPINS: Yeah.

2 Thank you for bringing that up. I did
3 not mention that.

4 But the 18-foot parapet, that's the
5 majority of the height around the building. The roof
6 line is a minimum of 42 inches below that, which will
7 have proper screening for the rooftop equipment.

8 MR. WOSTBROCK: How tall is the rooftop
9 equipment?

10 MR. LIEPINS: It's -- I don't have the
11 exact height on me.

12 But it's about 48 inches. So from eye
13 level, it's shielded. And 42 inches is the minimum.

14 So keep in mind that it's a sloping
15 roof, so on one end it would be 42, on the other end
16 it would be higher than that.

17 MR. WOSTBROCK: Thank you.

18 MR. WHITAKER: So it's understand that
19 all of the HVAC equipment is not going to be seen
20 from ground level --

21 MR. LIEPINS: That's correct.

22 MR. WHITAKER: -- on all four sides?
23 And the plans indicate that.

24 MR. LIEPINS: Yes.

25 CHAIRMAN ANDERSON: Anything else?

1 (No response.)

2 CHAIRMAN ANDERSON: Rich?

3 (No response.)

4 CHAIRMAN ANDERSON: Anybody in the
5 public, questions?

6 (No response.)

7 CHAIRMAN ANDERSON: Seeing none, motion
8 to close?

9 VICE CHAIRMAN PAPAPIETRO: Motion.

10 MR. FORMICOLA: Second.

11 MS. HARMON: Mr. Zuidema?

12 MR. ZUIDEMA: Yes.

13 MS. HARMON: Mr. Formicola?

14 MR. FORMICOLA: Yes.

15 MS. HARMON: Mr. Papapietro?

16 VICE CHAIRMAN PAPAPIETRO: Yes.

17 MS. HARMON: Mr. Placier?

18 MR. PLACIER: Yes.

19 MS. HARMON: Mr. Eliya?

20 MR. ELIYA: Yes.

21 MS. HARMON: Mr. Capalbo?

22 MR. CAPALBO: Yes.

23 MS. HARMON: Mr. Anderson?

24 CHAIRMAN ANDERSON: Yes.

25 MR. WHITAKER: I'll call our next

1 witness, Mr. Seckler, Matthew Seckler.

2 MS. SISS: Do you swear the testimony
3 you're about to give in this matter will be the
4 truth, the whole truth, and nothing but the truth?

5 MR. SECKLER: Yes, I do.

6 M A T T H E W S E C K L E R, PE, PP

7 92 Park Avenue, Rutherford, New Jersey, having
8 been duly sworn, testifies as follows:

9 MR. SISS: Name and address, for the
10 record.

11 MR. SECKLER: My name is Matthew
12 Seckler -- that's S-E-C-K-L-E-R -- with Stonefield
13 Engineering. Address is 92 Park Avenue, Rutherford,
14 New Jersey.

15 VOIR DIRE EXAMINATION

16 BY MR. WHITAKER:

17 Q. Mr. Seckler, would you give the board
18 and members of the public the benefit your
19 educational and professional background?

20 A. Certainly.

21 I have a Bachelor of Science in Civil
22 Engineering from Union College, a Master's in City &
23 Regional Planning from Rutgers University.

24 I'm a licensed engineer and licensed
25 planner in the State of New Jersey.

1 I've been practicing in the field for
2 over 15 years.

3 I've been accepted before over 70
4 boards as a planner, including locally Ridgewood,
5 Wyckoff, Paramus and again about 65 other ones.

6 Q. And you, in fact, have been qualified
7 in land use before in Midland Park?

8 A. Yes.

9 CHAIRMAN ANDERSON: Does anybody have
10 any questions about Mr. Seckler's qualifications?

11 (No response.)

12 CHAIRMAN ANDERSON: If not, we'll
13 accept him as a Professional Planner.

14 You're a Professional Planner, you
15 said?

16 MR. SECKLER: Yes, yes.

17 MR. WHITAKER: Thank you.

18 DIRECT EXAMINATION

19 BY MR. WHITAKER:

20 Q. Mr. Seckler, you've had the opportunity
21 to visit this site?

22 A. Yes, I have.

23 Q. And you've had the opportunity to
24 review the plan and were part of the team that
25 presented the -- put this plan together and reviewed

1 these plans, correct?

2 A. Yes, I have.

3 Q. Okay.

4 And with that said, what I'd like you
5 to do is tell the board what you did in preparation
6 for this hearing.

7 A. As part of this hearing, the
8 preparation, again as mentioned, I did visit the site
9 and got familiar with the area.

10 I also read all the transcripts for the
11 hearings that I was not in attendance for. I
12 reviewed all the application materials, review
13 letters and correspondence such as that.

14 I also reviewed the most recent
15 re-examination of the Master Plan, as well as looked
16 at the recent zoning ordinances that were put into
17 place and got myself familiar with all of those items
18 as part of this application.

19 Q. So what I'd like you to do is to
20 describe what the existing conditions are before you
21 address what we are seeking as far as the land use
22 approvals are concerned.

23 A. Certainly.

24 And I have an exhibit that may assist
25 with that. It's just an aerial exhibit. I don't

1 know if one was previously provided.

2 But I think this gives a good
3 understanding. And I can mark this for the record.

4 MR. WHITAKER: Have this as A-12.

5 (Whereupon, Aerial Image Prepared by
6 Stonefield Engineering & Design, Drawing 2 of
7 2, Dated August 9, 2023, is marked as Exhibit
8 A-12 for identification.)

9 MR. SECKLER: A-12.

10 For the record, this is an aerial image
11 prepared Stonefield Engineering & Design. It's
12 called Drawing 2 of 2.

13 The date prepared is August 9, 2023.

14 What it shows is an aerial image taken
15 from May 2023, with the outline of the site in
16 question in yellow on the center of the page. Godwin
17 Avenue goes from the top left corner to the bottom
18 right corner on this image.

19 What I want to show as it relates to
20 the site itself what's outlined in yellow is Block 6,
21 Lot 17.02, which is the property in question. It is
22 in the B-3 Zone, which is for business, retail and
23 office uses.

24 Behind the site is the residential
25 zone. That's the R-1 Zone that's behind the site.

1 Across the street, you have the Midland Park Shopping
2 Center.

3 On the top left corner, you kind of see
4 the Starbucks that is constructed at Godwin Avenue as
5 it backs up to Van Blarcom (indicating).

6 You also see on the bottom of the page
7 also businesses in the B-3 Zone include the Burger
8 King, which is located across the street from our
9 proposed building location. Then you have the
10 martial arts store. And also shown here is the
11 Wendy's drive-through location.

12 So you see again this commercial
13 corridor with various businesses, various lots of
14 size -- a number of different sizes, then the
15 residential development in the rear of the site.

16 Overall, the lot in question that's
17 outlined in yellow is 3.55 acres. That's about 15
18 times the size of the minimum lot size for the zone.
19 Again, this zone has various lot sizes.

20 This one is actually one of the
21 largest, I believe the third largest within the
22 borough that's in the B-3 Zone

23 You've heard about the application in
24 terms of the proposed sites, so I'm not going to get
25 into it too much because you've heard from the other

1 witnesses. But again, we have the bank building
2 that's located up on the corner currently at the
3 southeast corner of Godwin and Rea. It's going to be
4 removed. It's been vacant since about 2020. And
5 then the proposed Taco Bell quick-service restaurant
6 with drive-through is proposed at that location.

7 Inclusive of the improvements is the
8 removal of the right-out driveway, that anyone who
9 used to use the drive-through of the bank would have
10 to exit the site via the right-out driveway.

11 Again that would be closed as part of
12 the project.

13 Q. Is it correct to say that the building
14 being proposed is actually smaller square footage
15 than what's there now?

16 A. Yes.

17 A different shape as well. It's a
18 little narrower, deeper, as opposed to being a square
19 shaped building that was out there previously.

20 I think that summarizes the existing
21 conditions on the site.

22 Again, you do have the CVS, which again
23 I believe was constructed 2019 or -- I'm sorry --
24 2021.

25 I think it was approved back in 2021,

1 the CVS building with their drive-through on the
2 site. As was mentioned earlier, construction
3 activity that has been on the site for a number of
4 years is captured in this image as well.

5 Q. Now, you've been engaged for the
6 purposes of looking at the proposal by the applicant
7 from a planning perspective and for the variance
8 relief being sought.

9 Is that correct?

10 A. That's correct.

11 Q. And you've had the opportunity to
12 review the zoning ordinances, the various ordinances
13 in the municipality, as well as the Master Plans and
14 the re-examinations.

15 Is that correct?

16 A. That is correct.

17 And again, this is in the B-3 Zone.
18 Other permitted uses in the zone include retail
19 buildings; office buildings; medical offices, banking
20 buildings, such as the building that was previously
21 occupied in this area of the site; childcare centers;
22 supermarkets; restaurants that are not drive-through.

23 Q. So what I'd like you to do at this
24 point is provide us with a review of your analysis of
25 the variances being sought and your opinion from a

1 planning perspective as it pertains to the ability
2 for the board to grant this type of variance that's
3 being sought?

4 A. Certainly.

5 And again, starting with the reason why
6 we're before this board. We are seeking a
7 D variance, a D-1 use variance, for this project
8 because drive-through quick-service restaurants are
9 not permitted within the B-3 Zone. They're also not
10 permitted within the B-1 Zone. That was established
11 as part of the ordinance.

12 I believe the ordinance number is
13 19-21, in which it was passed by the Council that a
14 restaurant with a drive-through is not permitted in
15 these zones.

16 So that is the main variance that we're
17 seeking here is a D-1 variance.

18 Q. The D-1 variance is for the
19 drive-through aspect, correct?

20 A. Correct.

21 Q. Restaurants themselves are permitted?

22 A. Restaurants are permitted.

23 Quick-service restaurants are
24 permitted.

25 It's solely the drive-through aspect

1 that kicks us to this board for a D-1 variance.

2 Q. Please proceed.

3 A. So as part of a D-1 variance, we seek
4 to put on testimony, both obviously about the
5 operations of the site, the construction, the
6 architectural.

7 But what it comes down to is we need to
8 meet the Medici standards in order to justify -- or
9 for this board to approve an application such as this
10 from a D-1 perspective.

11 Now, the Medici standard for a D-1
12 variance looks at a highest threshold than other
13 D variances.

14 Specifically, we need to make sure that
15 this project meets the special reasons of a
16 requirement, and it's only to be used in particular
17 cases.

18 So again, the courts have shown, and
19 obviously you'll hear it from other experts tonight,
20 that we need to show specific site suitability as it
21 relates to this site, why this site is unique.

22 Then we also need to look at the
23 negative criteria in terms of how this site may
24 negatively impact the general public, as well as look
25 at how it may negatively impact the zone plan and

1 zoning ordinance.

2 So we have those thresholds that we
3 need to meet as part of this application.

4 So when looking at specifically the
5 positive criteria, with a site such as this where
6 it's not an inherently beneficial use, we are not
7 deemed to be benefitting the public just by having a
8 Taco Bell with drive-through.

9 It's different than a hospital, a
10 daycare center. Obviously the use, itself, is not
11 inherently beneficial.

12 But what we need to look at is to make
13 sure and see if this site -- if the site design
14 development is particularly suited and can support
15 this development that we're proposing, which is the
16 Taco Bell development.

17 So we need to look really at this site
18 and at this development and is it particularly
19 suited?

20 Is this site unique that it can support
21 this style of development, even though we are seeking
22 a use variance, even though it says drive-throughs
23 are not permitted under the ordinance.

24 So what we did as part of this
25 application -- and we'll also discuss this when I

1 look at the negative criteria -- is we took a look at
2 the zoning map for the borough. And I can mark this.

3 Q. It would be A-13.

4 (Whereupon, Colorized Zoning Map, Zone
5 District and Flood Hazard Area Overlay Map,
6 Dated March 2020 is marked as Exhibit A-13 for
7 identification.)

8 MR. SECKLER: A-13.

9 What I have here is a colorized zoning
10 map. It's called "Zone District and Flood Hazard
11 Area Overlay Map." It's dated March 2020.

12 This is what is provided on your
13 website if you look for the zoning map in color. I
14 did not make any edits to this. This is exactly what
15 was pulled off of your website.

16 What it shows is obviously a colorized
17 version of the borough. What you see in mainly that,
18 kind of, red-peach color, that's the R-1 Zone. That
19 obviously occupies a large majority of the borough.

20 But what we're interested here as part
21 of this property is our zone, which is the B-1 Zone,
22 as well as, again, the recent ordinance that was put
23 in place was also related to no drive-throughs in the
24 B-3 Zone.

25 So the B-1 Zone is areas in, I guess,

1 this darker green. And the B-3 Zone, which is the
2 zone that we're in, is in the -- I'm sorry, I may
3 have misstated it earlier B-1. We are in the B-3
4 Zone, which is the orange color, basically solely in
5 the southeast corner of the borough, itself.

6 Looking at this map, again you can see
7 the various portions of where there are some B-1
8 areas.

9 Within the borough there's three B-1
10 areas and one B-3 in which restaurants are permitted,
11 quick-service restaurants are permitted, but now
12 drive-throughs are not permitted.

13 What we've looked at as it relates to
14 the site is we looked at looking at the uniqueness of
15 our property as it relates to all the other
16 properties that were affected by this ordinance. And
17 I could hand out an exhibit. I have plenty for the
18 board. I don't know if opposing counsel wants one
19 and our counsel wants one.

20 MR. WHITAKER: This would be A-14.

21 (Whereupon, Midland Park Tax Record
22 Data from NJpropertyrecords.com is marked as
23 Exhibit A-14 for identification.)

24 MR. SECKLER: A-14. I can hand some
25 this way.

1 A-14 is a Tax Record Data for Midland
2 Park that I accessed via a website called
3 NJpropertyrecords.com.

4 It's cross-referenced the Midland Park
5 Zoning Map which you see here as A-13.

6 And I've listed all 109 properties that
7 are within the B-1 and B-3 Zones. And I've sorted
8 them by size.

9 So at the top of the list is the
10 largest B-1 or B-3 property within the borough. I've
11 listed the property address, the block, the lot, the
12 acreage, the zone of the lot, as well as notes as
13 it's relevant to, I think, this application.

14 I've highlighted in yellow our site,
15 which is 80 Godwin Avenue, Block 6, Lot 17.02. And
16 again, we are located in the B-3 Zone. And we are
17 3.55 acres. That's where the proposed Taco Bell is
18 being proposed.

19 If you look down the list, I've also
20 indicated the Wendy's property, which is at .95
21 acres, maybe about a quarter of the way down the
22 list.

23 Two down from there is the Burger King
24 property at .88 acres. And then basically halfway
25 through the first sheet you have the Starbucks and

1 Dunkin' properties weighing in at just over a
2 half-an-acre themselves.

3 So one thing that's pretty apparent by
4 this list of properties is our size as it relates to
5 many of the other block and lots that were affected
6 by the ordinance.

7 We're looking at what is making this
8 property unique is our size as it relates to the
9 other lots within the borough within these two zones,
10 the B-1 and B-3 Zones.

11 In fact, on the last page, which is the
12 third page, I've summarized some of the findings as
13 it relates to the size of the lots. There were 109
14 lots. The average lot size is .5288 acres. The
15 median lot size is actually 2.51 acres, which means
16 that there are a lot -- there's a few very, very
17 large lots that's pulling up the average.

18 But, you know, if you took the median
19 lot, if you lined all the 109 lots up in a row by
20 acres, the one that would be right in the middle is
21 .25 acres, so clearly much smaller than our size lot.

22 When you look at the average lot size
23 for existing drive-throughs in the borough, they're
24 at .716 acres, again significantly smaller than the
25 point -- than the 3.55 acres of our property.

1 So when I look at really, you know,
2 some unique aspects of this project, I look at the
3 overall size of the lot, which is again massive
4 compared to many of the other properties in the B-1
5 and B-3 Zone. I see this property if it does -- if a
6 drive-through is approved here, is clearly unique,
7 has certain characteristics that is unlike many,
8 many, many of the other lots within the borough that
9 are also under the same zoning ordinance.

10 In addition, the site, itself, does
11 have -- where our property is proposed, does have
12 this kind of finger, the second frontage, along
13 Godwin Avenue that is, I would say, also unique. It
14 does create a little bit of a challenge in terms of
15 developing that piece, which is somewhat separated
16 from the main access of the shopping center.

17 But we do get the benefit of the
18 parking in the rear of the site to help support this
19 application. Again, we are not seeking a parking
20 variance as it relates to the project.

21 So when it comes to again this site,
22 clearly from a positive perspective, from the fact
23 that it's particularly well-suited, I believe the
24 site lays out well. It is a large site so it can
25 support our application. It can support our use,

1 which is the drive-through use.

2 It has a drive-through queue that is
3 sufficient per the traffic engineer that previously
4 testified. The drive-through itself does not create
5 backups or does not empty out or back up onto public
6 roads. It would back up onto the private drive
7 aisles of the shopping center as opposed to the other
8 drive-throughs. All the other drive-throughs within
9 the borough basically all have somewhat of a
10 horseshoe shape where the entrance of the
11 drive-through is on a public street, whether it's Van
12 Blarcom for the Starbucks, the Dunkin', the Wendy's
13 and the Burger King, all of them are basically a
14 horseshoe shape.

15 You enter from a public street from the
16 back of the drive-through queue as opposed to this
17 site where you enter the site, enter the drive aisle,
18 and then enter the back -- the back of the queue.

19 So again, I do see that being a
20 benefit. It makes this site well-suited and viable
21 for this type of use.

22 In addition, this application does
23 reduce the impervious coverage that is on the site.
24 It is eliminating a driveway cut which is a
25 nonconforming condition along Godwin Avenue.

1 And again, I believe that it fits
2 appropriately with all -- within all setbacks in
3 terms of where the building is being located. It
4 does not infringe any closer into any buffers as it
5 relates to the residential developments in the rear
6 compared to what is out there today.

7 So overall I do think that this
8 proposed Taco Bell is an improvement from a visual
9 environment perspective compared to the existing
10 bank. Banks themselves, that use is one that we're
11 constantly seeing either being converted or removed
12 in downtowns and really all over the place with
13 obviously mobile banking becoming more prevalent.

14 And again, this is a development for a
15 quick-service restaurant. You've heard from the --
16 from the operator of the site, or the witness who
17 represented the operator, that quick-service
18 restaurants, specifically this one, they do not build
19 in these type of areas without drive-throughs.

20 Maybe I think he said New York City
21 they wouldn't have a drive-through. But with 70 to
22 75 percent of their business being drive-through,
23 it's not reasonable or it's not economically feasible
24 to construct or have this type of use on the site
25 without a drive-through use.

1 So overall I believe that we do meet
2 the positive criteria as it relates to a D-1 variance
3 following the Medici standards. I do think this site
4 is unique. It is viable. It's well-suited to be on
5 this property.

6 Then we look at the negative criteria.
7 And from the negative criteria there are two prongs.
8 One is we need to make sure that it's not -- it
9 doesn't create negative impacts from the public good.
10 And the second one is to ensure that it does not
11 substantially impair the zone plan and master plan.

12 Obviously we are seeking a variance, so
13 we are going to violate the zone plan. There
14 obviously is words in the zone plan that we cannot
15 comply with, which is we are proposing a
16 drive-through. But we need to show there's not
17 substantial impairment to the zone plan or master
18 plan.

19 So first I'll take the negative
20 criteria as it relates to the public good. And I
21 look at -- typically when I look at negative
22 criteria, I look at a couple of threshold issues. I
23 look at whether this site creates a -- is it creating
24 a negative impact as it relates to parking? Do we
25 have enough parking to support this type of

1 development? Is parking going to spill onto nearby
2 streets where it may create a negative impact to the
3 public?

4 In this case, we meet the parking
5 requirements. I do not see there being a negative
6 impact from a parking perspective.

7 Noise, I don't believe -- again, with
8 this type of application, I do not believe there is
9 any substantial impact or negative impact from this
10 application as it relates to noise.

11 I don't see a negative impact as it
12 relates to height. You know, again there are times
13 where buildings may block views or may create
14 shadows. Not an issue here from the public good
15 perspective with the height of this building.

16 Lighting, again the site lighting is
17 appropriately screened from the residential
18 properties in the rear. The lighting for this
19 development will not create any variances as it
20 relates to offsite spillover.

21 So again, I do not see any negative
22 impacts from a lighting perspective.

23 As it relates to intensity in traffic,
24 you heard previous witnesses about traffic
25 engineering that even if this was a non-drive-through

1 quick-service restaurant, it would generate similar
2 or maybe even greater traffic than what is proposed
3 here as part of this project.

4 And again, one of the benefits from a
5 traffic perspective with this use is your morning
6 rush hour is a very, very low use for this particular
7 user. They are open for breakfast, I think, 8 a.m.,
8 but clearly that's not -- you know, there's not a
9 conflict or peaking time in the morning for this
10 proposed Taco Bell.

11 So from a traffic intensity, parking,
12 noise, lighting, height, I don't see there being a
13 substantial negative to the public good for this
14 development as it relates to the drive-through use.

15 Again, the building itself, if we did
16 not have a drive-through, we would not need to be
17 here, we would not need to meet that threshold.

18 Last comes into the second prong, which
19 is ensuring this does not substantially impair the
20 zone plan or the zoning ordinance. And so as part of
21 this project, I reviewed two sets of documents. One
22 was things related to the zoning ordinance.

23 And again, that is a fairly recent
24 ordinance put in place back in 2021. I went through
25 the process of the Council introducing it

1 September 23rd, 2021. It went to the Planning Board
2 October 8, 2021, and then back to the Council
3 October 28, 2021. I've read the minutes to get an
4 understanding of the background as I could from the
5 minutes of the various work sessions and Planning
6 Board and Council meetings that related
7 to that ordinance, itself.

8 And I'm looking back in terms of --
9 because there is no preamble to the ordinance that
10 explains we established this ordinance because and
11 gave a list of reasons why the movement went from
12 drive-throughs being permitted as long as you met
13 certain queuing criteria versus no drive-throughs
14 permitted. There is no preamble to it. I've read
15 the minutes. There is no direct discussions in the
16 minutes about, you know, what was specifically
17 discussed about the positives or negatives of that
18 ordinance.

19 But what I can look at is the timing.
20 I can see that the Dunkin' itself, I believe, had
21 their application -- in May or June of 2021 was being
22 heard. Again, this ordinance was put in place in
23 September.

24 I know that the Starbucks was open by
25 the end of 2020, I think near the -- if not the

1 height of COVID but, you know, maybe one of the later
2 variants of COVID was when the Starbucks went into
3 place. Obviously to me it seems like the ordinance
4 somewhat of a reaction to those type of uses.

5 And so trying to balance and trying to
6 get an understanding of how this ordinance got put
7 into place and what makes our site different, it goes
8 into the fact that I believe that the Council
9 established -- again, this is me opining. There's no
10 minutes.

11 Again, it doesn't say at the beginning
12 of the ordinance we set this up because we didn't
13 like the traffic. We didn't like the noise from the
14 drive-through. We didn't like a number of these
15 other items.

16 But what I can say is that our site is
17 substantially larger and different than many of the
18 other sites that this ordinance was put into place
19 for. When the governing body puts in this ordinance
20 that says no drive-through, they're looking at 109
21 properties they're prohibiting that are substantially
22 -- most of them substantially smaller than ours.

23 So they're painting a broad brush.
24 They're basically saying, you want a B-3 Zone, no
25 drive-through. But I'm saying I believe if they

1 looked specifically at this property, the size of our
2 property, I believe that we could support a
3 drive-through type use on our property because we are
4 different than many other properties that are
5 affected by this ordinance.

6 So I do believe that, you know, in
7 trying to get an understanding of where that
8 ordinance came into place, I believe that our site
9 again is unique and different and does not
10 substantially impair the zone plan because we are
11 different than every one of the other lots in size
12 other than the Midland Park Shopping Center that's
13 across the street from us and the Acme Shopping
14 Center that's behind that. Those are the only two
15 sites that are even close to our size.

16 And again, I think when the Council put
17 this in place, they did not want those type of
18 Starbucks and Dunkin' type lots, which again if you
19 look back at the A-14 image, at .52 and .50 acres,
20 clearly substantially smaller than ours, again to
21 have that kind of loop drive-through design which
22 would potentially back up on the roadways if the
23 queuing does exceed the capacity.

24 So I believe again that this does not
25 substantially impact or impair the zone plan, because

1 I think that our site -- again the size is unique. I
2 think the ordinance put a broad-brush prohibition.

3 But, again, it really was meant to
4 affect a number of these smaller sites that have
5 issues with being able to support the queuing.
6 There is again no -- nothing in the minutes that says
7 one way or the other. It doesn't say specifically we
8 have an issue with traffic, we have an issue with
9 cars, we have an issue with noise, we have an issue
10 with lighting. It's just we will prohibit
11 drive-through restaurants in the B-1 and B-3 Zones.

12 The second part of the second prong is
13 making sure it does not impair the zone plan. And
14 this is when we look at the master plan and look for
15 evidence of if we would be substantially negatively
16 impacting basically the goals and recommendations
17 that are listed within the re-examination report.
18 The re-examination report was most recently done --
19 I've got the date -- in 2019. And it does include a
20 number of goals.

21 Actually, there are five
22 recommendations and 12 goals. Not one of those
23 recommendations or goals talks about a drive-through.
24 There are other places that they may in their goals
25 and recommendations say, you know, the goal of the

1 borough is to create a more walkable requirement
2 environment and we don't want to have drive-throughs
3 in our -- in the downtown zone. Or they may say we
4 don't want to have buildings over three stories and
5 be listed in the goals and recommendations so that
6 basically the governing body can go through and
7 potentially enact ordinances to help follow those
8 goals.

9 But those five recommendations and 12
10 goals, none of them relate to drive-through use.

11 What they do have -- and I'm going
12 through a couple of the goals within them -- is
13 actually what I believe is goals that we are not only
14 complying with but enhancing as part of this project.

15 One of them is Goal Number 6, which
16 talks about reducing conflicting traffic movement on
17 Godwin Avenue. We are removing a driveway on Godwin
18 Avenue. We are reducing the traffic movement on
19 Godwin Avenue as part of this application.

20 So I do believe we're advancing
21 actually Goal Number 6.

22 It also talks about in Goal Number 6
23 how commercial areas have a functional role in the
24 community, that commercial areas are important to the
25 borough.

1 And again, having a vacant bank, one
2 that clearly another bank is not coming into, that's
3 not the development pattern for banks, but being able
4 to take this corner and creating a new viable use
5 here is important. It helps advance creating
6 commercial areas that have a positive functional role
7 in the community.

8 Number 2 in Goals is development that
9 is responsibility to environmental factors and
10 existing infrastructure.

11 I believe that goal is based on the
12 fact they don't want substantial overdevelopment that
13 may have issues with aging infrastructure, such as
14 sewers or water supply, and also concerns about
15 environmental areas, you know, not new impervious
16 coverage in areas that may flood or may be -- you
17 know, may have wetlands related to it.

18 This is an in-fill development. This
19 is an area that has already been disturbed, already
20 been paved, already been built upon, already had
21 lighting, already had noise.

22 And our use here is not going to
23 substantially impact the local infrastructure in
24 terms of sewer and water.

25 So, again, I believe this development

1 is one of those developments that will be responsible
2 and responsive to environmental factors and existing
3 infrastructure.

4 And lastly, Goal Number 1, which is to
5 maintain and enhance existing areas of stability in
6 limiting nonresidential uses in residential areas.

7 Basically that is saying that they
8 believe that, you know, we need to have a separation
9 between residential and nonresidential uses,
10 basically build business uses in business areas and
11 keep those -- keep enhancing these important
12 corridors within the borough.

13 And, obviously, the Godwin Avenue
14 business corridor is an important corridor in the
15 borough. And we are basically creating a facelift to
16 this corner. As you enter from Ridgewood, you would
17 see this new investment at this corner as opposed to
18 a vacant bank.

19 So I do believe that we are following
20 at least three of the goals outlined within the
21 re-examination plan.

22 I don't believe we are substantially
23 impairing the re-examination plan.

24 And again, I'm highlighting the fact
25 that the no drive-through ordinance is not based

1 specifically on a goal or recommendation that
2 specifically says we do not want to have
3 drive-throughs in this Borough any longer.

4 If that said that in this
5 re-examination report, I don't believe we'd be able
6 to meet the threshold of not impairing this master
7 plan document.

8 But it does not mention that. And I
9 think we're actually helping to advance a number of
10 those goals and recommendations.

11 So overall, again looking at this
12 application from a D-1 perspective, from a positive
13 and negative criteria, I believe we meet the enhanced
14 burden of proof. I believe that we do meet the
15 special reasons and we do have a development that is
16 particularly suited for this property.

17 I believe that we are not impairing the
18 master plan. We're not impairing the zoning
19 ordinance. And from a public perspective, this is
20 not an application that will have a negative impact
21 from all those things I listed earlier as it relates
22 to traffic, from intensity, height, lighting.

23 All those items again, I believe, are
24 meeting or will be similar to other uses within with
25 B-3 Zone and even on our property itself.

1 Q. Mr. Seckler, just to go back to the
2 aspect of the property being unique is the word you
3 used, and you used the word that comes out of Medici
4 that it's particularly suited for the use that's
5 being proposed.

6 From a planning perspective, am I
7 correct to say that one of the things you look at is
8 to see if this type of use is compatible with other
9 uses within the immediate vicinity?

10 A. Yes.

11 One of the things that you can look at
12 is again are you changing the neighborhood character
13 with this development?

14 And, again, I'm pulling up A-12 again,
15 which is the aerial image.

16 And again, within this image, itself,
17 you see one, two, three drive-through uses on this
18 stretch as well.

19 So again, I don't believe we're
20 introducing a use that is not already within this
21 neighborhood area.

22 And again, I do reiterate, the size of
23 our use compared to other ones -- this doesn't show
24 the proposed layout, but our proposed layout is
25 unique compared to other ones.

1 We do have again that odd finger that
2 reaches the corner of Rea and Godwin Avenue.

3 Q. Was it also, in looking at a site like
4 this to see if a drive-through could be accommodated,
5 this site has a drive-through now, correct?

6 A. Correct, yes.

7 Q. In connection with that and what is
8 being proposed here, we're not seeking a variance for
9 any of the criteria that's in the Midland Park
10 ordinance pertaining to a drive-through; in other
11 words, we're meeting the criteria, are we not, for
12 the length of the drive-through, the queuing aspect?

13 In fact, you heard testimony we far
14 exceed the queuing aspect, right?

15 A. Yes.

16 The design standards for drive-throughs
17 are met, but the use of the drive-through is not.

18 Q. So the drive-through that's there now
19 meets all of that criteria, and what we're really
20 looking at is the product that's coming out through
21 the window?

22 A. Correct.

23 If this was not food that is ready for
24 consumption, we would not be before this board for
25 this type of accordance.

1 Q. But this drive-through ordinance right
2 now does permit banks to have a drive-through?

3 A. Correct.

4 Q. Permits a drugstore to have a
5 drive-through?

6 A. Correct.

7 Q. Would permit the butcher shop, a fish
8 shop, a retail store to have a drive-through?

9 A. Yeah.

10 If you were having the -- if you were
11 getting an uncooked taco from the Taco Bell, then I
12 believe this would be a permitted use.

13 Q. In fact, a drive-through could even be
14 there for an office use within the zone?

15 A. Correct.

16 Q. With that said, you've done an analysis
17 of the ordinance and the passage of the ordinance,
18 and as a planner, you've worked for various
19 municipalities and have been a planner for
20 municipalities and offered planning advice, correct?

21 A. Correct.

22 Q. In your experience, is it typical that
23 when an ordinance is promulgated, proposed, and
24 before you and adopted through the adoption process
25 -- that you used the word "preamble" -- that there's

1 purposes given as to why the ordinance is being
2 proposed?

3 A. Yeah.

4 I would say it's sometimes provided and
5 sometimes not. This one does not include any
6 preamble or any discussion about the purpose of this
7 ordinance.

8 Q. So no reasons were given when the
9 ordinance was adopted?

10 A. Correct.

11 Q. And I'm not criticizing the Mayor &
12 Council for doing that. But just from your research,
13 there was nothing put on the record as it pertains to
14 that?

15 A. Correct.

16 As part of this application, I read the
17 meeting minutes that were listed on the website and I
18 looked at the ordinance passage. That's what I
19 utilized to try to get my understanding of what the
20 mind was of the governing body.

21 But without that, it was obviously
22 limited in getting a true written documented
23 understanding of what their thoughts were.

24 Q. Do the minutes reflect that the Mayor
25 and Council looked at any professional reports, like

1 planning reports, in connection with the adoption of
2 this ordinance?

3 A. It does not indicate that in the
4 meeting minutes.

5 Again, I can't -- I can only -- I can't
6 say if they did or didn't. It's just not listed in
7 the minutes.

8 Q. As a planner, and recognizing the type
9 of what we call a quick-service restaurant, the QSR,
10 as it's referred to, in today's world from a planning
11 perspective, what are the expectations of the public
12 with a quick-service restaurant?

13 A. Quick-service restaurants typically
14 have some form of drive-through or mobile pickup.

15 Some, like Chipotle, you don't order at
16 the window or order at the site; you order mobile and
17 you pick up at the window.

18 Other ones again like, you know, Burger
19 King, Wendy's, you would place your order and then
20 pick up when you get to the site, itself.

21 Q. So from the perspective of having a
22 quick-service restaurant in the municipality, in
23 today's world, the drive-through is an integral part
24 of such a restaurant?

25 A. That's my understanding from a planner.

1 But again, there was also testimony put on the record
2 from the operator and basically said that their sites
3 that they build, again I think he mentioned except in
4 New York City, they would all have drive-throughs
5 use.

6 Q. So from the standpoint of the
7 expectations of residents in Midland Park as well as
8 other municipalities, if they're expecting to go to a
9 Burger King, a Taco Bell, or any other type of
10 quick-service restaurant, the expectation is that
11 they can stay in their car to get the product?

12 A. Correct.

13 And, again, I believe there was
14 testimony previously provided in terms of some of the
15 benefits of having people stay in their car.

16 The fact that if you have young
17 children, if you're handicapped, elderly, having
18 difficulties getting in and out of cars, poor
19 weather.

20 And, you know, it also helps having
21 people not have to back up out of parking spaces and
22 keep them moving forward around the queue. There's
23 obviously a number of benefits not just from the
24 business perspective but from the customer
25 perspective from having a drive-through.

1 Q. And you recognized and reviewed the
2 transcript where the Taco Bell representative
3 testified as to the increase in the expectation of a
4 drive-through when COVID came along and post-COVID?

5 A. Correct.

6 I think his numbers originally were
7 about 60 percent before the pandemic, and now it's
8 between 70 and 75 percent, I think, was their
9 business.

10 And again, that doesn't include the
11 DoorDash, GrubHub-style people that are parking and
12 walking in, which makes up a large portion of another
13 20, 25 percent that would be walking into the store.

14 Q. Now, besides the use variance being
15 requested, there are certain variances being
16 requested as it pertains to waivers and variances
17 from a bulk standpoint.

18 Is that correct?

19 A. Correct.

20 Q. You did an analysis of that?

21 A. I did.

22 And I'm going to, kind of, work off
23 what I believe is the most recent planner's review
24 letter, May 9th, 2023, just because I think it has
25 those very easily listed, starting at the bottom of

1 page 4.

2 So it includes improved lot coverage.
3 We are at an existing nonconforming condition as it
4 relates to the development of this overall property.

5 We're at 83.6 percent impervious
6 coverage. And we're reducing that to, I believe,
7 82.6

8 . So we're actually -- although we are
9 -- we are still in violation of the ordinance
10 requirement, we are improving the lot coverage, the
11 impervious lot coverage, by 1 percent. It's an
12 existing nonconformity we're actually making better.

13 Q. From a planning perspective, is it a
14 positive to have a nonconformity reduced?

15 A. Yes, it is.

16 Q. What else are we seeking?

17 A. We're seeking a buffer zone relief
18 where 15 feet is required and 5 feet is being
19 provided.

20 Again, this is a deviation that exists
21 on the site today. And we are keeping a buffer area
22 variance. And it will be 5 feet for this
23 application.

24 Q. So that's basically what exists there
25 now?

1 A. Correct.

2 Q. So it's not being basically
3 exacerbated?

4 A. Yes.

5 Q. What else are we seeking?

6 A. This also shows accessory structures
7 setback, the drive-through clearance bar.

8 The drive-through clearance bar is in
9 the front yard because of the way the site is
10 situated.

11 Again, the clearance bar, itself, is
12 somewhat of a safety mechanism so that a large
13 vehicle does not damage the building itself and
14 potentially not only impair the structure but
15 potentially people inside it, it is a structural
16 damaging hit.

17 So that is again, I think, a very, you
18 know, non-substantial variance that we're seeking as
19 it relates to the structure, the drive-through
20 clearance bar, which again is pretty typical of what
21 you see at most drive-through locations.

22 Q. When you say drive-through locations,
23 typically a clearance bar or some type of designation
24 with a bar and height is shown no matter whether the
25 drive-through is serving a taco or is handing money

1 out through the window.

2 Isn't that correct?

3 A. Correct, yes.

4 There is a clearance bar or clearance
5 indication when you're going to a bank or any other
6 type of drive-through.

7 I think even the CVS would have a
8 drive-through clearance bar. So if this happened to
9 be an express CVS and they wanted to have a little
10 outpost, they we would have a clearance bar in the
11 same location we're proposing.

12 Q. And a clearance bar basically, as you
13 stated, constitutes a safety aspect?

14 A. Correct.

15 Q. And the Municipal Land Use Law under
16 Purposes, one of the purposes is to encourage things
17 to be done in a safe and proper manner, correct?

18 A. Correct.

19 Q. What else is being sought?

20 A. Then it comes to the signage.

21 And this is relating to the sign that's
22 on the westerly frontage. This is what we -- I think
23 you heard from the last witness, relates to the sign
24 that is as you're approaching the site in the
25 eastbound direction on Godwin Avenue, that will allow

1 you to see this is a Taco Bell from about 250 feet
2 away, which I think is necessary so that any vehicles
3 would have the ability to turn into Rea Avenue and
4 then into the site driveway via Rea Avenue.

5 We do have two buildings that are
6 basically at 0.0 setback to our west. Not the
7 immediate property next to us. That's the cleaners.
8 That's a little further back.

9 But we do have -- I believe one of
10 them, I think, is a financial building. And I'm
11 trying to remember what the other small building
12 there is.

13 But those two buildings would impair
14 the ability to see the site from any further away on
15 Godwin Avenue.

16 But at 250 feet away, you'd be able to
17 see the sign on our building without being blocked by
18 those two structures and be able to make the left
19 turn into Rea Avenue.

20 The sign that we are permitted to have
21 is the Taco Bell sign that faces Godwin Avenue. But
22 if you were a driver, you would not see that sign
23 until you clearly would not have the ability to slow
24 down and turn into Rea Avenue. So we believe again
25 having a sign that faces Godwin Avenue at least gives

1 the ability for the traveling public to see this is a
2 Taco Bell and slow down and make their turn into Rea
3 Avenue versus only being able to see a sign that is
4 parallel to Godwin Avenue, where you basically have
5 to be almost immediately next to the building, look
6 over to your left and then see the sign.

7 We believe that the sign we're
8 proposing is appropriate based on this unique
9 condition.

10 Q. So the unique condition being the
11 location of this building and the other buildings.
12 The sign would be permitted if we had any type of a
13 parking lot there, but instead we have a drive aisle,
14 correct?

15 A. Correct.

16 Q. In connection with that sign, your
17 opinion is that the sign location requires a
18 variance, but as far as the size of all the signs
19 being proposed, we are well below in most instances
20 the maximum that is permitted?

21 A. Correct.

22 On the planner's letter, Comments
23 Number 5 and 6, those have both -- those variance
24 requests have been removed. We are now compliant
25 with the total area of signs on both the east façade

1 and south façade.

2 In fact, we reduced them, I would say,
3 substantially below what the requirement is. We are
4 permitted to have 120 square feet on the east façade,
5 and we're at 108.

6 And on the south façade we're permitted
7 to have 37.5. We're at 16.6.

8 So we've scaled down the signs well --
9 well beyond what the maximum requirement is to what I
10 would say, you know, I'd say substantially less than
11 what is allowable.

12 Q. As a planner, it's my understanding one
13 of the considerations you have in looking at a
14 facility is how it fits within a commercial area and
15 something called streetscape.

16 Could you opine or render an opinion as
17 it pertains to what's being proposed here and the
18 overall streetscape aspect?

19 A. So I think in streetscape you look at
20 two different aspects of streetscape. One is the
21 building document pattern and uses. Which again,
22 looking at this proposed use, it is similar to the
23 other uses that are along Godwin Avenue.

24 And again, its building location is
25 consistent with the location of buildings along

1 Godwin Avenue.

2 The other piece of streetscape I would
3 look at is just in terms of the actual, you know, the
4 curbing, sidewalk, that type of aspect. And by
5 closing off the driveway along Godwin Avenue, we're
6 enhancing the streetscape from a pedestrian
7 perspective where they're not going to be crossing
8 vehicular movements when walking along Godwin Avenue
9 along our frontage.

10 Q. And the other thing is talked about
11 with the streetscape is massiveness. We're well below
12 the maximum height requirement for a building in this
13 zone, isn't that correct?

14 A. Yes. Well below.

15 And, again, we are actually less
16 building square footage than the bank that's on the
17 property today. We're just in a slightly different
18 shape.

19 MR. WHITAKER: This concludes our
20 direct presentation.

21 I would ask for a brief adjournment so
22 that our stenographer can take a break.

23 CHAIRMAN ANDERSON: Okay. I could use
24 the mens room myself. Motion to adjourn for five
25 minutes.

1 VICE CHAIRMAN PAPAPIETRO: Motion to
2 break.

3 MR. FORMICOLA: Second.

4 MS. HARMON: Mr. Zuidema?

5 MR. ZUIDEMA: Yes.

6 MS. HARMON: Mr. Formicola?

7 MR. FORMICOLA: Yes.

8 MS. HARMON: Mr. Papapietro?

9 VICE CHAIRMAN PAPAPIETRO: Yes.

10 MS. HARMON: Mr. Placier?

11 MR. PLACIER: Yes.

12 MS. HARMON: Mr. Eliya?

13 MR. ELIYA: Yes.

14 MS. HARMON: Mr. Capalbo?

15 MR. CAPALBO: Yes.

16 MS. HARMON: Mr. Anderson?

17 CHAIRMAN ANDERSON: Yes.

18 (Whereupon, a brief recess is taken.)

19 CHAIRMAN ANDERSON: We're going to go
20 back in session.

21 I need a motion to go back into public.

22 VICE CHAIRMAN PAPAPIETRO: Motion to go
23 back.

24 MR. FORMICOLA: Second.

25 MS. HARMON: Mr. Zuidema?

1 MR. ZUIDEMA: Yes.

2 MS. HARMON: Mr. Formicola?

3 MR. FORMICOLA: Yes.

4 MS. HARMON: Mr. Papapietro?

5 VICE CHAIRMAN PAPAPIETRO: Yes.

6 MS. HARMON: Mr. Placier?

7 MR. PLACIER: Yes.

8 MS. HARMON: Mr. Eliya?

9 MR. ELIYA: Yes.

10 MS. HARMON: Mr. Capalbo?

11 MR. CAPALBO: Yes.

12 MS. HARMON: Mr. Anderson?

13 CHAIRMAN ANDERSON: Yes.

14 Okay, Mr. Whitaker, you've --

15 MR. WHITAKER: We concluded our direct
16 presentation.

17 CHAIRMAN ANDERSON: All right.

18 I have some questions regarding special
19 reasons.

20 I may have missed it, but I didn't hear
21 anything in your testimony regarding whether approval
22 of this variance would somehow advance or promote any
23 of the purposes of zoning in 55D.

24 MR. SECKLER: Sure.

25 So I did mention it. I didn't call it

1 out by letter.

2 But it was Purpose I, which is visual
3 environment. Again, the existing bank, a vacant
4 bank, being able to replace that with this use.

5 I think also the murals, I think also
6 add to interesting visual environment for this
7 project, so I think it meets that.

8 I do think it also meets Purpose C,
9 which is light, air and open space.

10 Again, it is less building coverage
11 than what's out there now, so there is more area than
12 what's out there today, especially with the building
13 a little bit further from the corner. It's not right
14 on the hard corner on Rea and Godwin, as what's out
15 there currently.

16 And again, I would also put in in terms
17 of Purpose H in terms of free flow of traffic, not
18 necessarily, you know, on the roadways, itself, but
19 the fact that I do find that a drive-through use is
20 more efficient in processing customers than it is
21 having people get out, park, walk across drive aisles
22 and things like that.

23 So I do believe it meets those purposes
24 of planning.

25 MR. WHITAKER: It also meets the

1 purposes of safety as it pertains to the elimination
2 of the drive-through exit onto Godwin.

3 MR. SECKLER: Yes. That would also be
4 for free flow of traffic which is H or A, which is
5 general welfare.

6 So whether we look at the traffic
7 aspect, the traffic category, or general welfare,
8 eliminating the curb cut and the pedestrian vehicular
9 crossing at that location at the bank exit would be
10 another purpose.

11 CHAIRMAN ANDERSON: My understanding of
12 that requirement is that the purposes of zoning that
13 you're saying are being advanced are being advanced
14 or promoted because this use is in that location.

15 Let me give you an example of what I'm
16 talking about and maybe you can clarify it for me.

17 Assuming an ordinance that prohibits
18 grocery stores in a residential zone. Assume also in
19 the middle of the residential zone there is the
20 perfect spot for a grocery store and parking area,
21 everything can be delivered, everything is done. All
22 right?

23 The same situation, two different
24 circumstances. The first circumstance is, there are
25 no grocery stores within seven miles of that

1 location. All right?

2 In that situation, I can see how an
3 argument could be made that a grocery store -- let's
4 assume -- you may disagree.

5 But let's assume a grocery store is for
6 the general health, safety, welfare and morals for a
7 community, how a grocery store would advance the
8 purposes of zoning. All right?

9 The same assumptions, but now there are
10 four grocery stores, two directly across the street
11 almost and two more within a half-a-mile up the
12 street.

13 I am having a problem finding that
14 approval of this application in any way advances any
15 purpose of zoning given that situation.

16 MR. SECKLER: So I'll get to a couple
17 answers. Because I like the example.

18 I think it makes it very crystal-clear.

19 A couple things. One, we're not
20 necessarily saying that there is a -- we don't -- our
21 burden of proof is not there it has to be a need for
22 this use.

23 You know, that sometimes comes into the
24 fact when you have some inherently beneficial uses
25 and they're still seeking use variances when you want

1 to say that there's still a need for the community
2 for this use. That's not the threshold that is
3 required for this application.

4 In addition Price v. Himeji kind of
5 lays out this as well. And again, it doesn't -- you
6 know, in summary, it's again not necessarily -- you
7 could 50 of these uses here along this corridor, but
8 if it's suitable on this site is where it's going to
9 -- you know, this board is judging.

10 Not necessarily, you know, that there
11 is a QSR drive-through shortage in the area, but it's
12 the site suitability on this site that we're looking
13 at here.

14 MR. WHITAKER: The Himeji case
15 addresses the issue you've raised. I'm sure you're
16 familiar with that case. And there's a passage in
17 that case that says that for particularly suited,
18 it's not how many is there or is missing and there's
19 a need, but rather it says it's an inquiry into
20 whether, quote, the property is particularly suited
21 for the proposed purpose in the sense that it
22 especially suited for the use in spite of the fact
23 that the use may not be permitted in the zone.

24 It doesn't talk about how many. It
25 doesn't talk about uniqueness that we need one. The

1 other example you used, you said the grocery store,
2 would be a medical use, okay.

3 CHAIRMAN ANDERSON: Yes.

4 MR. WHITAKER: And it's not -- that
5 would run to an inherently beneficial.

6 But that was what a court in this case
7 originally thought there might be a reason to grant
8 it, because the use being proposed, there was none
9 like it around or something. The court said no.
10 They said it's got to be the character and nature of
11 the land and where it's located. That's the
12 particularly suited.

13 MR. SECKLER: Then the flip side of it,
14 we also -- our burden is also not that this is the
15 only property that can --

16 CHAIRMAN ANDERSON: I'm not saying
17 that.

18 MR. SECKLER: Yeah, okay.

19 That's, I guess, the flip side of this.
20 But that's not what we're seeking.

21 CHAIRMAN ANDERSON: I don't want to get
22 into a debate over the case law, but there are other
23 cases that say that the purpose being proposed as
24 advancing has to be location based. That, I mean,
25 even as far as backward or Ward or Cole.

1 MR. WHITAKER: Yeah. But this is a
2 2012 case.

3 CHAIRMAN ANDERSON: I know that.

4 But I don't think that that -- I don't
5 think that that is overruling the basic concept of
6 special reasons. But anyway, I don't want to get
7 into that.

8 Again, I'm not speaking for the board.
9 I want to make it clear. I'm only speaking for
10 myself. And it's not uncommon for us to disagree,
11 and we have 4/3 and 5/2 decisions.

12 But personally I don't believe that the
13 special reasons criteria, the positive criteria, is
14 satisfied, for the reasons that I expressed. Okay.

15 Also, just -- and I know you gave a
16 lengthy explanation as far as the ordinance.

17 But just to expand on that legislative
18 history. What happened was, that Dunkin' application
19 originally came here because our zoning officer
20 determined that a drive-through required a use
21 variance.

22 Once it got here, our board attorney,
23 the Planning Board attorney, and the Borough attorney
24 conferred, and they agreed that it was not -- it
25 didn't require a use variance, that the drive-through

1 was an accessory or ancillary use.

2 And it went back to the Planning Board.
3 All right? The Planning Board then approved it, I
4 assume, because they had no choice. It's a permitted
5 use.

6 But within, I'm going to say, two or
7 three months of that application going back to the
8 Planning Board, the ordinance specifically
9 prohibiting drive-throughs for restaurants was
10 introduced.

11 So the governing body within the last
12 two to three years has made it crystal-clear that
13 they don't want more drive-through restaurants.

14 Now, knowing that, how much do you
15 think that consideration should go into our
16 deliberations when we're deciding whether or not to
17 approve this?

18 MR. SECKLER: Well, again, the Medici
19 case will say that that is one of the criteria that
20 you guys should be evaluating is the impact to the --
21 to the zoning ordinance.

22 Are we creating a substantially impact
23 to the zoning ordinance?

24 What I'm saying is that -- and I was
25 trying to make the case about this property -- is not

1 that not only from a positive criteria. It's a
2 unique site.

3 The site fits well. It works with the
4 site. But that this site, itself, because it is so
5 unique and so oversized and so different than the
6 vast majority of the -- of the properties that were
7 taken or removed the permitted use right of having a
8 drive-through use, is why that this site can be
9 approved for a drive-through without impacting the
10 zone plan.

11 It's not something that someone can say
12 no, there's no precedent when you're granting
13 variances, but this site is so unique that it's not
14 something that, you know, the property next to us
15 across the street can go for a drive-through. You
16 know, the martial arts --

17 CHAIRMAN ANDERSON: They're all
18 preexisting uses.

19 MR. SECKLER: What?

20 CHAIRMAN ANDERSON: They're all
21 preexisting.

22 MR. SECKLER: No.

23 I'm saying, this site is so unique, and
24 the fact that the way it lays out, the finger, the
25 size, in the zone, that our -- if a variance is

1 granted here, it is not a reason that other people
2 could look at it and say it's suitable for my
3 property too when they're looking at a quarter-acre
4 property or a half-acre property, which is the vast
5 majority.

6 CHAIRMAN ANDERSON: We always consider
7 each one.

8 MR. WHITAKER: So it's the broad-brush
9 issue that we talked about. This lot is so
10 particularly suited for it. It's so different from
11 the other 109.

12 CHAIRMAN ANDERSON: I understand what
13 he's saying.

14 And I may not agree, but I understand
15 what he's saying.

16 If the board...

17 VICE CHAIRMAN PAPAPIETRO: Yeah.

18 I just want to expand upon what Les
19 said about the Council. It's clear what they put in
20 place.

21 Restaurants provided, however that
22 drive-through restaurants are defined in the chapter,
23 are deemed to be prohibited.

24 Mr. Seckler, when you were talking
25 about looking for some backup documentation for this

1 as to the reasons why it was done and they just made
2 it a clear-cut presentation of this thing, you can
3 also make the case that had they wanted to exclude
4 certain areas, that they would have said, you know,
5 based upon certain lot sizes or acreage is that it
6 does not apply. They didn't. They just made it
7 blanket for all.

8 MR. WHITAKER: Without reason.

9 VICE CHAIRMAN PAPAPIETRO: That's what
10 they approved.

11 And that's what the governing body
12 approved, you know.

13 MR. SECKLER: One thing I would say is
14 that -- because you do make a good point. You know,
15 they could have said, let's make it a conditional
16 use, you have to be three acres or something like
17 that.

18 But what that would actually do is that
19 if someone wanted to go in on a smaller lot, they'd
20 be going for a D-3 variance, a conditional use
21 variance, where the threshold is less. Versus if
22 they made -- if they did not make a conditional use
23 variance and it's a D-1 use variance, then the
24 threshold is again, this Medici standard, this
25 highest level for anybody that wants to come in with

1 this use.

2 So while obviously, you know, we would
3 have liked, you know, some acreage to be put in there
4 for a conditional use. If, again, the governing body
5 didn't want -- again, this is me opining. If they
6 would have made it a conditional use, they would have
7 opened the door a crack for everybody's property,
8 because the threshold for a conditional use is less,
9 than basically, you know, creating this broad-brush
10 style and having applicants like us come to you and
11 basically make the case.

12 You know, again, the purposes of D-1,
13 you know, this board is to hear applications on use
14 like this.

15 So, you know, we're here asking and
16 saying: Look, aren't we unique? Aren't we
17 different? Look, aren't we, you know, suitable on
18 this property versus, you know, any other property in
19 the zone?

20 MR. WHITAKER: Because you have to look
21 and say, and you have not done the broad-brush to say
22 no drive-throughs in the town whatsoever. Okay?
23 It's only no drive-throughs for a restaurant.

24 So what they're really talking about is
25 what's going through the window, not that

1 drive-throughs per se are not permitted.

2 VICE CHAIRMAN PAPAPIETRO: But that's
3 what they put in place.

4 MR. WHITAKER: Without reason or cause.
5 No preamble or any discussion or any planner's report
6 to say here's the reasons why food going through the
7 window should be different than money or something
8 from a drugstore.

9 VICE CHAIRMAN PAPAPIETRO: We don't
10 know the reasoning.

11 MR. WHITAKER: Nor do we.
12 Nor do we.

13 VICE CHAIRMAN PAPAPIETRO: But we're
14 going by the guidance that we have.

15 MR. WHITAKER: Well, that's something
16 that you have to evaluate.

17 That's something you put into the
18 hopper, so to speak, when you evaluate our request.

19 That's all it is. No criticism of the
20 Mayor and Council. I'm just saying it's something
21 you put into the hopper in your decision-making.

22 CHAIRMAN ANDERSON: Question?
23 I'll get to you.

24 MR. ZUIDEMA: I have a question.

25 Do you think, as a planner, that this

1 property could support another drive-through?

2 And I'll give you an example. Those
3 two properties, the one we're talking about and the
4 one across the street, have swapped tenants. Bagels
5 and the CVS was the one that moved from one to the
6 other.

7 Now, there's a Subway across the
8 street. And Subways have drive-throughs.

9 So what if we -- what if that -- this
10 is a what if -- but that Dunkin' Donuts joint turns
11 into a Subway? Possibly a better rent. Possibly
12 just a better -- hey, it's a great location.

13 Plus now they can't get a drive-through
14 where they are. It's just not feasible.

15 Could it support them, or are we -- are
16 we opening a door, you as the planner say, yeah, we
17 could -- we could throw a bagel -- we could throw a
18 Subway in there?

19 MR. SECKLER: Again, I would go back to
20 the Chairman's statement that you judge everything on
21 its own.

22 Again, I do think one of the things
23 that makes this portion of the site unique versus if
24 the drive-through went elsewhere on the property for
25 a food use, let's say, if they were going into the

1 existing building with the Chinese restaurant and the
2 -- in the back, you know, you would have more
3 activity closer to the residential portion, so there
4 could be negative impacts to having that.

5 But again, you're judging each one on
6 its own. I think this location on the site makes it
7 suitable.

8 MR. ZUIDEMA: Once you allow one in,
9 then I could see them coming over here and asking us
10 for that.

11 Yeah, we'd have to judge it on its own
12 merit, but I'm asking you as a planner, could it --
13 could it withstand another? Maybe you can't answer
14 that question?

15 MR. SECKLER: I can't totally answer.
16 I think I would need to know where --

17 MR. ZUIDEMA: The Dunkin' Donuts there,
18 could it withstand another drive-through? Because
19 we're allowing the one. And I know the reason -- I
20 know the reason why they made that ordinance for that
21 property, because I think they were envisioning more
22 than one drive-through on that property.

23 CHAIRMAN ANDERSON: We can all
24 speculate as to what the --

25 MR. ZUIDEMA: Well, I'm just saying,

1 you want a reason why that they were thinking that.

2 We're all asking that, hey, why did
3 they put it? Why did they do this?

4 MR. WHITAKER: Well, it's speculation
5 as to the reason why.

6 MR. ZUIDEMA: Okay.

7 Okay, speculation.

8 But you -- none of us -- none of us.
9 You know, we're making them look stupid that passed
10 the law. But I think they had a reason.

11 CHAIRMAN ANDERSON: Okay. Anybody else
12 have any?

13 MR. ELIYA: I would say the reason is
14 pretty clear in that they're prohibiting fast food
15 specifically, even without a preamble, rather than
16 all drive-through. That seems to be very specific,
17 so the reason is clear.

18 But going back to another point that
19 they were making about the character and nature of
20 this lot. You keep on pointing at the size of the
21 lot, which is 3-and-a-half acres, approximately. And
22 on the last page, the average lot size of the
23 existing drive-through -- I presume it means the
24 Columbia Bank -- it's about .7.

25 MR. SECKLER: Oh, no.

1 So I guess I should clarify. These are
2 existing drive-through restaurants that this is.

3 So this does not include -- you know,
4 again, if the CVS was on its own lot, or the banks in
5 town. This is the Wendy's, the Burger King, the
6 Starbucks and the Dunkin', that's the average.

7 MR. ELIYA: Okay.

8 So then do you happen to know the size
9 of the proposed Taco Bell, then, what the carve-out
10 of that piece of the lot would be?

11 MR. WHITAKER: It's all one lot.

12 MR. SECKLER: It's all one lot. Are
13 you asking the building size or the lot? Because the
14 lot is -- we're not subdividing the lot.

15 MR. ELIYA: Right.

16 I'm not talking about a subdivision,
17 but just a small portion.

18 Is it over, under, is that average
19 size? Would that potentially cause an issue?

20 MR. WHITAKER: Well, when we have a use
21 on a lot, we have to go by the tax lot that we're on,
22 so that's why it's 3.5 acres.

23 MR. SECKLER: And the other benefit
24 that we have is that, you know, we could a -- if they
25 decide to give out, you know, free tacos on Tuesday

1 for some reason because they get a trademark, you
2 know, they could have, you know, cars stacking within
3 the shopping center, you know. They get the benefit
4 of, you know, 3-and-a-half acres of -- you know, not
5 all of it is paved -- but 3-and-a-half acres of
6 onsite circulation that, you know, a .5 acre
7 Starbucks does not have or a .5 Dunkin' Donuts does
8 not have.

9 So while, yes, the building is located
10 in one portion of it, we get the benefit of the
11 parking, we get the benefit of the queuing that could
12 spill into that much larger parcel.

13 MR. CAPALBO: Yeah. But I think the
14 question Joe is talking about, what percentage of
15 that 3.5 is Taco Bell using.

16 MR. SECKLER: So, again, they could use
17 the whole -- they could use the whole thing.

18 MR. ELIYA: They could use the whole
19 lot.

20 MR. SECKLER: I mean, someone could
21 park in front of the CVS and walk over the queue.

22 MR. CAPALBO: CVS takes up part of the
23 3.5 acres.

24 MR. SECKLER: Yeah, yeah.

25 MR. WHITAKER: There's no lease

1 designations. There's no lease lines. There's no
2 lease lines.

3 MR. CAPALBO: The square footage that
4 you're building and the square footage of that
5 parking you're assigned to? You're taking advantage
6 of all the parking?

7 MR. SECKLER: There's no assigned
8 parking.

9 Everyone -- everyone has free rein.

10 MR. CAPALBO: Okay.

11 MR. ELIYA: That's good and fine.

12 But the point I'm trying to make is if
13 that piece of the property is significantly smaller
14 than the average lot of the drive-through, do you see
15 that posing a problem on the lot itself, on the
16 3-and-a-half acres.

17 MR. SECKLER: If we were not -- if we
18 were not permitted to use anything beyond, let's say
19 -- I'm just going to say a rectangle. You know, if
20 you took a finger and went back to the rear property
21 line, if we were restricted to just that area, then I
22 would say, you know, possibly, you know -- again, I
23 don't know what that area is -- but that may be very
24 constricted for this site.

25 I think the benefit of the site -- one

1 of the unique aspects of this application is we are
2 not restricted to, you know, our side property line
3 back to the rear. The fact that we can have queueing
4 go beyond is a benefit to that, have parking beyond
5 is a benefit to that.

6 So, again, that's part of the unique
7 reason why I think this property works. I don't know
8 because I didn't run the analysis of what it would
9 look like, but it would be much -- it would be a
10 negative aspect if we were limited to that rectangle
11 in the rear of our site.

12 CHAIRMAN ANDERSON: Anybody else have
13 questions?

14 Mr. Novak?

15 MR. NOVAK: Just a couple questions. I
16 know the hour is getting late.

17 CHAIRMAN ANDERSON: You have been
18 sworn.

19 MR. NOVAK: I've been sworn.

20 I can get sworn again, though.

21 MR. WHITAKER: He's asking questions.

22 MS. SISS: I know.

23 CHAIRMAN ANDERSON: Because I'm going
24 to ask him questions. He's going testify.

25 MS. SISS: Mr. Whitaker, do you have

1 any problem with Mr. Novak's qualifications.

2 MR. WHITAKER: No, not at all. Never
3 have.

4 D A V I D N O V A K, PP

5 25 Westwood Avenue, Westwood, New Jersey, having
6 been previously duly sworn, continues to
7 testify as follows:

8 MR. NOVAK: Just to back up to the
9 ordinance that was adopted by the Council, and full
10 disclosure, we were not involved in that ordinance as
11 well, so I can't provide any additional insight into
12 it either.

13 The two drive-through establishments
14 that you had referenced, the Dunkin' Donuts and the
15 Starbucks, are those located in the B-3 district or
16 the B-1?

17 MR. SECKLER: I know the Dunkin' is in
18 the B-1. It looks like the Starbucks is in the B-1
19 as well.

20 MR. NOVAK: Okay.

21 So that -- and I understand that it was
22 just a proffer or a guess on your part as the
23 rationale for this ordinance, figuring out the
24 timeline of things.

25 But the ordinance specifically includes

1 the B-3, and those two properties are located in the
2 B-1?

3 MR. SECKLER: Correct.

4 MR. NOVAK: Okay.

5 MR. SECKLER: I would say the only --
6 again, very limited meeting minutes.

7 One of the meeting minutes was Planning
8 Board meeting minutes from October 18, 2021.

9 It looks like there was discussion
10 about I-2 Zone and should they be prohibiting
11 drive-through restaurants. Should it be, you know,
12 borough-wide?

13 So, again, it seems like the discussion
14 of, you know, which zones may have occurred then.

15 But there's nothing that speaks to, you
16 know, why B-1 and B-3 were both picked to start.

17 MR. NOVAK: Understood.

18 The analysis that you have provided --
19 and I believe that this is Exhibit A-14 -- provides
20 the total lots in both the B-1 and B-3 districts as
21 well as the average lot size and the median lot size.

22 Did you do that analysis or a similar
23 analysis specifically for the B-3 district?

24 MR. SECKLER: I did not, no.

25 MR. NOVAK: Okay.

1 So if we were to look at the B-3
2 district, could you describe generally where that's
3 located, especially in relationship to the B-1
4 District?

5 MR. SECKLER: Sure.

6 And I'll use Exhibit A-13.

7 Again, B-3 is located in the southeast
8 portion of the borough.

9 B-1 begins basically at the
10 intersection of Goffle going north generally to right
11 around this property.

12 And then there is another B-1 section
13 up near Central Avenue on Myrtle.

14 And then there's a little pocket on
15 Prospect Street between Garrett, where I think
16 there's a card store, a baseball card store, that
17 type of thing, a very small pocket of B-1 there.

18 In terms of the B-3, I think you were
19 getting into, like, characteristics of the B-3.

20 Again, and you can look at the
21 Exhibit A-4, you know, they do have the three largest
22 business properties, which is the Acme, the shopping
23 center across the street from us, and then our
24 property.

25 There are also some, I would say, small

1 slivers. If you look at the third page, there was a
2 Block 6, Lot 19.02, which is 64 Godwin Avenue;
3 12 Godwin Avenue, which is Block 4, Lot 1.

4 There's a few -- 62 Godwin is Block 6,
5 19.01, that's a .102-acre lot; 66 Godwin Avenue, it
6 looks like it's also a .12-acre lot.

7 So, again, we certainly have the
8 largest business zone in the B-3, but there are also,
9 you know, a number of, you know, smaller sliver lots
10 as well, including our neighboring properties, the
11 two that kind of sit between us and the remainder of
12 our shopping center.

13 MR. NOVAK: I would tend to agree with
14 that characterization that within the B-3 district,
15 which is, we'll say, relatively concentrated in that
16 southerly tip, right, you have this lot as being a
17 large significant lot. You have the property to the
18 south, which is shopping center.

19 And then further south of that there is
20 a supermarket, I believe.

21 MR. SECKLER: Yeah.

22 MR. NOVAK: Would you say that those
23 are the three big lots in the B-3 district.

24 MR. SECKLER: Correct, yes.

25 MR. NOVAK: So based on that then, if

1 this board were to grant the D-1 use variance for
2 this site, with the understanding that this is one of
3 the larger lots in the B-3 district, does that raise
4 any concerns about substantial impact to the intent
5 of the zone plan because a D-1 use variance is being
6 granted for such a large lot in that district?

7 MR. SECKLER: I think that actually
8 shows that it does not because we are not -- you
9 know, we are not, I would say, the average lot within
10 our zone. You know, there's all the smaller lots.

11 All the lots that are smaller than
12 those, those tiny little lots, clearly we're not
13 impairing the zone plan because those I don't think
14 would be able to safely have a drive-through,
15 wouldn't be able to come here and put on the proofs
16 they could stack within a 3-acre property, they could
17 park the sufficient amount of parking.

18 So again, I think that, you know, we
19 are not impairing the zone plan, you know, because we
20 are unique in that large size.

21 All those -- you know, other lots other
22 than the three you mentioned, you know, I don't think
23 can come here and support a drive-through use.

24 Again, each one is judged on their own
25 accord, but I don't see a path forward for that.

1 MR. NOVAK: Okay. Sorry for the delay.
2 I'm just looking through some of my notes.

3 The board had asked some of my
4 questions already, so I think that's all I have for
5 now.

6 CHAIRMAN ANDERSON: Can you give us any
7 guidance as far as my line of reasoning about the
8 special reasons and that the purpose of zoning that's
9 being advanced has to be because a drive-through in
10 this location advanced some purpose of zoning.

11 MR. NOVAK: Typically when I look at
12 the criteria in regard to particular suitability, I
13 look at it two different ways. I look at it as
14 outward looking in and inward looking out.

15 When we look at outward looking in, we
16 look at the surrounding area and how that relates to
17 the particular suitability of the site.

18 When we look inward looking out, we
19 look at the specific site itself, where it's going on
20 the site, the parameters of the design and the use
21 within the site, itself.

22 So to answer your question, you would
23 be looking at whether the site can accommodate -- you
24 would be looking at the suitability of the site as it
25 pertains to accommodating a drive-through.

1 I don't necessarily think you'd be
2 looking at whether or not the site is in need of a
3 drive-through, if that was relating to your question.

4 CHAIRMAN ANDERSON: No.

5 MR. NOVAK: No.

6 CHAIRMAN ANDERSON: This is my
7 understanding. I think there's a distinction between
8 particular suitability for positive criteria purposes
9 and particular suitability for negative criteria
10 purposes.

11 So in this case, there has been all
12 kinds of testimony as to how this site can
13 particularly accommodate this proposed use, the
14 drive-through. Okay? So it's particularly suitable
15 in that it can accommodate the use.

16 MR. NOVAK: Yes.

17 CHAIRMAN ANDERSON: My understanding
18 is, there is a distinction between that particular
19 suitability and the concept of particular suitability
20 for the positive criteria or special reasons.

21 And my understanding is that particular
22 suitability as it relates to the positive criteria is
23 that the proposed use on that site is particularly
24 suitable because it advances some purpose of zoning
25 stated in the statute.

1 I may not be expressing this very
2 articulately, but I do think there's a difference.

3 And I do think that in order to grant
4 the D-1 variance there has to be a finding that the
5 use advances a purpose of zoning because it's in this
6 location. And I don't want to beat this death, but
7 there's the example I gave before.

8 MR. NOVAK: We can certainly do a
9 little bit more research on that. I'm not --

10 CHAIRMAN ANDERSON: No, we're not going
11 to do that.

12 MR. NOVAK: I don't think we'll be
13 finishing tonight.

14 CHAIRMAN ANDERSON: No. We're not
15 going to do any research.

16 MR. NOVAK: No.

17 CHAIRMAN ANDERSON: All right. I just
18 wanted to know if you had an opinion as to --

19 MR. NOVAK: Not necessarily.

20 I would -- I would -- I'm more familiar
21 with the analysis in terms of whether -- the site
22 being particular suited from the use is not due to a
23 specific location.

24 Obviously you can factor in those
25 aspects of the location to the negative criteria.

1 So, for example, if the introduction of
2 this use to this site was generating negative impacts
3 in terms of traffic, lighting, so forth, so you can
4 say it's to the negative criteria.

5 CHAIRMAN ANDERSON: Does anybody have
6 any questions of this witness?

7 (No response.)

8 CHAIRMAN ANDERSON: No?
9 Do we have a motion to open to the
10 public?

11 VICE CHAIRMAN PAPAPIETRO: Motion.

12 MR. FORMICOLA: Second.

13 MS. HARMON: Mr. Zuidema?

14 MR. ZUIDEMA: Yes.

15 MS. HARMON: Mr. Formicola?

16 MR. FORMICOLA: Yes.

17 MS. HARMON: Mr. Papapietro?

18 VICE CHAIRMAN PAPAPIETRO: Yes.

19 MS. HARMON: Mr. Placier?

20 MR. PLACIER: Yes.

21 MS. HARMON: Mr. Eliya?

22 MR. ELIYA: Yes.

23 MS. HARMON: Mr. Capalbo?

24 MR. CAPALBO: Yes.

25 MS. HARMON: Mr. Anderson?

1 CHAIRMAN ANDERSON: Yes.

2 MR. GILSON: Mr. Chairman, at this late
3 hour, I'll be very brief with my cross-examination,
4 but I do have a few questions for Mr. Seckler.

5 CROSS-EXAMINATION

6 BY MR. GILSON:

7 Q. Mr. Seckler, you testified as to when
8 the bank has been no longer operational.

9 And what was that date?

10 A. I saw it was in 2020 the sign was no
11 longer on Google images.

12 It's possible that it was, you know,
13 vacant before that.

14 Q. But we can agree that as of 2020 it was
15 vacant?

16 A. Correct, yes.

17 Q. And the ordinance was introduced in
18 2021?

19 A. Correct, yes.

20 Q. So when the Council considered the
21 ordinance, the conditions of the site were
22 substantially similar to what they are today?

23 A. Let me just check the date of the CVS.
24 This portion of the site would be similar. Let me
25 check the date.

1 Q. So this portion would be similar?

2 A. Yes.

3 Q. The bank was not operational?

4 A. The CVS came in in 2021.

5 I don't know if that portion of the
6 site was constructed or not when the ordinance was
7 put in place.

8 Q. And as part of the ordinance, you noted
9 that the Planning Board found that this ordinance was
10 consistent with the Master Plan?

11 A. The Planning Board had made that
12 finding, correct.

13 Q. And so by adopting the ordinance, the
14 Council -- I'm not disagreeing with that -- the
15 Council also agreed that this was consistent with the
16 Master Plan?

17 A. That's my assumption.

18 Again, the Planning Board minutes
19 illustrate that. I don't have anything from Council
20 about that.

21 Q. So you have no transcripts to suggest
22 anything that occurred at the Council meeting?

23 A. Correct, I don't have any transcripts.

24 Q. If there was any communication stating
25 something like the objective of the ordinance was to

1 eliminate drive-throughs for a restaurant, would that
2 change your testimony?

3 A. It may.

4 I mean, I have to read what it's in
5 reference to.

6 MR. GILSON: Mr. Chairman, at this time
7 I'd like to introduce an e-mail from Wendy Martin,
8 the Borough Administrator and Clerk, to Ms. Harmon
9 that we obtained from an Open Public Records request.

10 This letter is also referenced in our
11 March 2023 letter to Mr. Whitaker. I would like to
12 introduce this.

13 CHAIRMAN ANDERSON: Show it to
14 Mr. Whitaker.

15 MR. WHITAKER: No objection.

16 Just so it's noted, an unsigned letter.
17 I guess it's an e-mail. Okay.

18 MR. GILSON: Yes.

19 BY MR. GILSON:

20 Q. Mr. Seckler, could you please read this
21 e-mail?

22 A. You're going to have to let me see it.
23 I'll skip the From, To, Subject stuff?

24 Q. Yes.

25 A. "Good afternoon, Jessica.

1 "Attached you will find a copy of
2 Ordinance Number 1921 that was introduced at
3 the September 23rd, 2011 Mayor and Council
4 meeting of the Borough of Midland Park.
5 Please ask the Board to review and forward any
6 comments or concerns to me. I'm aware there's
7 a 35-day review period for the Board. The
8 Council would like to finalize this ordinance
9 at the October 28, 2021 meeting. This would
10 require a response from the Board no later
11 than October 20th, 2021.

12 "The objective of this ordinance is to
13 eliminate drive-throughs" -- in bold -- "for
14 restaurants in general, not other businesses.

15 "If there are no comments or concerns,
16 we would move forward with the adoption at the
17 October 28, 2021 meeting. Should the Board
18 have any comments or concerns, the Council
19 will discuss and make any necessary changes
20 and reintroduce at a later meeting. Please
21 feel free to reach out to me with any
22 questions.

23 "Thank you. Regards."

24 And it has Wendy Martin's information.

25 Q. Would you say it's fair to agree from

1 that letter that the intent of the Council was to ban
2 drive-through restaurants in the Borough of Midland
3 Park?

4 A. It says here the objective of the
5 ordinance is to eliminate drive-throughs for
6 restaurants in general, not other businesses.

7 The thing I don't know is the reason
8 why the Borough wished to prohibit drive-throughs,
9 whether it was traffic, noise, you know, they were on
10 too small lots, you know, they wanted better a
11 pedestrian atmosphere. That's the piece that I think
12 is missing from this analysis.

13 You know, clearly the Borough
14 prohibited drive-throughs. They wanted to -- in
15 these zones and they enacted it. I think that's
16 clear. It's what the negative impacts they were
17 trying to resolve through that ordinance is the thing
18 that I think is open and out there.

19 Q. So let me ask you this question.

20 Do you have any evidence in your review
21 to suggest that the Council didn't intend for a
22 blanket ban on drive-through restaurants in the
23 Borough of Midland Park?

24 A. I don't have any correspondence or
25 records speaking one way or the other.

1 MR. GILSON: Thank you, Mr. Seckler.

2 No further questions.

3 MS. SISS: Paul, can I have that?

4 We'll mark it O-1.

5 Just for the record, it's an e-mail
6 from Wendy Harmon -- Wendy Martin to Jessica Harmon,
7 dated Tuesday, September 28, 2021.

8 (Whereupon, E-mail from Wendy Martin to
9 Jessica Harmon, Dated September 28, 2021 is
10 marked as Exhibit O-1 for identification.)

11 MR. WHITAKER: Just have a copy of that
12 sent to me.

13 MR. GILSON: Yeah, I can provide that.

14 MR. WHITAKER: He'll do it.

15 CHAIRMAN ANDERSON: Does anyone else in
16 the public have any questions.

17 MR. NOVAK: Mr. Chairman, can I go back
18 to your question.

19 CHAIRMAN ANDERSON: Sure, as long as
20 you're not disagree with me.

21 MR. NOVAK: No, I would never.

22 I just want to go back and drill down
23 to it a little bit more. Are you -- when we look at
24 site suitability, we look at, you know, why the
25 location of the site within a municipality is suited

1 for that use despite the zoning and if there's any
2 unique characteristics of the site which make it
3 accommodating to that use. I don't know if the
4 answers your question.

5 CHAIRMAN ANDERSON: I don't know
6 either.

7 MR. NOVAK: Okay.

8 MS. SISS: I forget the question.

9 CHAIRMAN ANDERSON: Anyway, seeing no
10 one, no questions, can I have a motion to close.

11 MR. CAPALBO: So moved.

12 MR. PLACIER: Second.

13 MS. HARMON: Mr. Zuidema?

14 MR. ZUIDEMA: Yes.

15 MS. HARMON: Mr. Formicola?

16 MR. FORMICOLA: Yes.

17 MS. HARMON: Mr. Papapietro?

18 VICE CHAIRMAN PAPAPIETRO: Yes.

19 MS. HARMON: Mr. Placier?

20 MR. PLACIER: Yes.

21 MS. HARMON: Mr. Eliya?

22 MR. ELIYA: Yes.

23 MS. HARMON: Mr. Capalbo?

24 MR. CAPALBO: Yes.

25 MS. HARMON: Mr. Anderson?

1 CHAIRMAN ANDERSON: Yes.

2 MR. WHITAKER: This concludes our
3 presentation at this time.

4 We reserve the right to rebut anything
5 else that is said during the course of testimony,
6 which I assume is not going to occur this evening.

7 CHAIRMAN ANDERSON: No.

8 There's no more -- you have no more
9 witnesses, right.

10 MR. WHITAKER: That's correct.

11 CHAIRMAN ANDERSON: So we're ready to
12 deliberate?

13 MR. WHITAKER: No, I don't think so.

14 MR. SISS: Do you have a...

15 MR. GILSON: I have a planner here to
16 testify.

17 I'm assuming you don't want to do that
18 tonight.

19 MR. WHITAKER: And I have a summation.

20 Well, I have a summation, but I don't
21 -- I learned a long time ago, I don't do a summation
22 until the case is over.

23 CHAIRMAN ANDERSON: Do you have a
24 planner?

25 MR. GILSON: I do have a planner.

1 CHAIRMAN ANDERSON: We generally knock
2 off at 10 o'clock.

3 I assume your -- I really wanted to get
4 this done tonight.

5 But I'm anticipating that after your
6 planner's testimony, there's going to be some cross
7 from Mr. Whitaker.

8 I expect members of the board may have
9 questions of the planner.

10 So I don't think --

11 MS. SISS: Public.

12 CHAIRMAN ANDERSON: We have to open it
13 to the public.

14 So I don't think it's realistic to do
15 that tonight. So I think we're going to have to
16 carry it.

17 MS. SISS: Do you have any objection?

18 MR. WHITAKER: No.

19 It was my expectation. That's why I
20 didn't do this tonight.

21 CHAIRMAN ANDERSON: How do the rest of
22 you feel?

23 VICE CHAIRMAN PAPAPIETRO: I agree.

24 CHAIRMAN ANDERSON: All right. So we
25 need a motion to carry it to September.

1 VICE CHAIRMAN PAPAPIETRO: Motion.

2 MS. HARMON: The 13th.

3 MS. SISS: Without further notice.

4 CHAIRMAN ANDERSON: Without further
5 notice.

6 MR. WHITAKER: Put the date on the
7 record.

8 MS. HARMON: It's the 13th.

9 MR. WHITAKER: I didn't hear it.

10 Thank you.

11 At 7:30 p.m.

12 MS. HARMON: Yes.

13 MR. WHITAKER: Without further notice.

14 CHAIRMAN ANDERSON: Rich made the
15 motion.

16 MR. CAPALBO: Second.

17 MS. HARMON: Mr. Zuidema?

18 MR. ZUIDEMA: Yes.

19 MS. HARMON: Mr. Formicola?

20 MR. FORMICOLA: Yes.

21 MS. HARMON: Mr. Papapietro?

22 VICE CHAIRMAN PAPAPIETRO: Yes.

23 MS. HARMON: Mr. Placier?

24 MS. PLACIER: Yes.

25 MS. HARMON: Mr. Eliya?

1 MR. ELIYA: Yes.

2 MS. HARMON: Mr. Capalbo?

3 MR. CAPALBO: Yes.

4 MS. HARMON: Mr. Anderson?

5 CHAIRMAN ANDERSON: Yes. Okay.

6 We have several other things.

7 VICE CHAIRMAN PAPAPIETRO: Les, just a
8 question.

9 Since this has been going on for seven
10 months approximately, is anybody on the board not
11 going to be here, that they know of, on that meeting
12 date?

13 CHAIRMAN ANDERSON: I'll be here.

14 VICE CHAIRMAN PAPAPIETRO: Vacations.

15 CHAIRMAN ANDERSON: David may be back,
16 too. I don't know what's going on. Let's talk about
17 that later.

18 Yeah, we'll have enough.

19 (Whereupon, this mater will be
20 continuing at a future date. Time noted:
21 10:00 p.m.)
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C E R T I F I C A T E

I, RONDA L. REINSTEIN, a Certified Court Reporter of the State of New Jersey, authorized to administer oaths pursuant to R.S.41:2-2, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date herein before set forth, to the best of my ability.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

Ronda L. Reinstein

RONDA L. REINSTEIN, CCR No. 30X100217800