

1. FLAG SALUTE & CERTIFICATION OF COMPLIANCE

Chairman Yechiel Herzl called the meeting to order at 6:00 p.m. with the Pledge of Allegiance and Ally Morris read the Certification of Compliance with the NJ Open Public Meetings Act:

“The time, date and location of this meeting was published in the *Asbury Park Press* and posted on the bulletin board in the office of the Township of Lakewood at least 48 hours in advance. The public has the right to attend this meeting, and reasonable, comprehensive minutes of this meeting will be available for public inspection. This meeting meets the criteria of the Open Public Meetings Act.”

2. ROLL CALL & SWEARING IN OF PROFESSIONALS

Mr. Stern, Mr. Sabel, Mr. Flanbaum, Mr. Herzl, Mr. Rennert, Mr. Isaacson, Mr. Meyer, Mr. Raitzik were present.

Mr. Terence Vogt, P.E., P.P., C.M.E. was sworn.

3. MEMORIALIZATION OF RESOLUTIONS

- 1. SP 2310 The Parke at Lakewood, LLC**
752 & 688 Cross Street Block 524; 524.23, Lots 2.03 & 77.02; 1
General Development Plan for a Planned Unit Development

Mr. Gonzalez attended in order to make a quorum for this resolution. Members who did not sit on the application removed themselves from the dais. Remaining at the dais for this resolution were Mr. Gonzalez, Mr. Stern, Mr. Flanbaum, Mr. Isaacson, and Mr. Meyer.

Mr. Jackson said I've prepared two resolutions here, one is my first draft. The second was revised per comments from Mr. Meyer, who is the one who made the motion to approve. He said his motion was that the approval would be after the last CO, in other words the improvements had to be done after the last CO for each phase. So I had written a version one that was that you have to get your improvements, then you get your first CO. Mr. Meyer asked me to correct that. The Board can adopt whichever one they feel is accurate.

Mr. Meyer confirmed that's what his motion was.

Mr. Stern said Mr. Meyer made the motion, and it now reflects his intent, I would ask for a motion to adopt that version.

Mr. Flanbaum made a motion to approve the resolution and Mr. Gonzalez seconded. All were in favor.

Mr. Jackson thanked Mr. Gonzalez for sitting on the application.

- 2. SP 2344 Mesivta Ahavas Hatorah**
355 & 363 Chestnut Street Block 1096, Lots 1 & 2
Preliminary & Final Major Site Plan for a school with dormitories

Mrs. Morris said I received a request from the applicant's attorney late today to carry this again for another two weeks.

Mr. Herzl said why.

Mrs. Morris said they're working with the neighbors on how to get the road improved...

Mr. Jackson said if you recall I cited Judge Pressler opinion cited in Cox that the Board has jurisdiction to request only onsite or on-tract... an applicant can only be required by the Board to make an improvement out to the middle of the roadway. The other side is offsite and off-tract. The Judge said you can't make an applicant do full roadway. We had a discussion and I wrote a memo on whether our ordinances had a provision that required a waiver of the Board to do a full width roadway, which is a municipal ordinance. In the ordinance the Township Engineer relies on the Board to give a waiver of the provision. The applicant forcefully gave comment that the Ordinance doesn't require a waiver, but the Board ultimately reconsidered and said you do have to grant the waiver. And they did not grant that waiver of the roadway and the Board specifically said nope we want the roadway improved to the full width. The difficulty is that Lakewood doesn't have half width improvements, it's just not practical.

Mrs. Morris said I spoke with the Engineer to get more information, but he said realistically if only half a road was built the Town would keep that closed off until the second half of the roadway is built. A half a road would not allow for full traffic movement on the roadway in accordance with Township standards. In this case, keeping the road closed would be problematic.

Mr. Herzl said what about keeping money in escrow to do the road.

Mr. Jackson said they've agreed to do that, the question is how much should that be. I've thought about this and said the Board didn't really listen to me, but the Board voted the way they voted. That was the way the vote came down. That's why she wants to put it off. In discussing with Mr. Herzl, if they want to come back and ask for a reconsideration they should do that under correspondence and I think right now the Board's vote was what it was and you should adopt the resolution. But if you want to adjourn it for two weeks so Ms. Weinstein can address it in person, I think that would be fair too.

Mr. Flancbaum said I wasn't given a clear answer on the fair share contribution. That option makes a lot of sense to me.

Mr. Jackson said my understanding is most of the time the Municipality will build a road and won't ask for the neighboring properties to pay for it. But they have the authority to do an assessment against the property owners. In theory they could put in the road and assess the owners on either side. But I've never seen that actually done. As a political matter, I think it's rare to see.

Mr. Flancbaum said it's not an assessment. This owner borders 4 right-of-ways, and to put the onus on one owner to improve three unimproved right-of-ways is not fair. But they could have a fair share contribution. When adjacent road owners need that roadway, they'll have funds to do it.

Mrs. Morris said the problem is that the ordinance for pro-rata share specifies it is for off-tract improvements. The first half of the roadway is on-tract so it wouldn't apply to that. They would have to build or bond the portion against their property.

Mr. Jackson said the logical disconnect is the Planning Board has the authority to do improvements only that are necessitated by the development. So if you're saying we'll do it later when it's needed, then it's not needed for this approval. There's no authority to say you have to do this now.

Mrs. Morris said so the Board needs to decide if they're going adopt the resolution now, or wait for two weeks.

Mr. Herzl said if we table it for two weeks, can we change it without having a correspondence?

Mr. Jackson said that's an issue, there were neighbors that relied on the Board's decision and then all of a sudden they get a resolution that says something different.

Mr. Herzl said so even if we push it off for two weeks, they still have to provide notice and reappear.

Mr. Jackson said yes. And I think the Board always has the authority to correct a mistake or reconsider something. But I could see why you want them to come back on notice. In fairness to Mrs. Weinstein, I indicated she would be able to address the Board and I don't want to change that. It's not fair to her.

Mr. Flancbaum said so you wouldn't want to change the resolution?

Mr. Jackson said I don't think it's fair that the Board made them improve the whole road and it's not supported by case law. But it's not up to me to decide that.

Mr. Rennert said we could pass the resolution today. Or we could wait for two weeks, notice, have the neighbors come out...?

Mr. Jackson said yes we could discuss it. We discussed it for an hour last time.

Mr. Rennert said but we can't change the vote.

Mr. Herzl said but if it's not legal...

Mr. Jackson said that's why you have appeals.

Mr. Herzl said I think the straightest thing is to approve this resolution and have them come back under correspondence.

Mr. Flancbaum said a reconsideration.

Mr. Isaacson made a motion to approve the resolution and Mr. Meyer seconded. Mr. Sable abstained. The rest were in favor.

3. **SP 2358 Spruce Care, LLC**
1491 & 1499 East Spruce Street Block 855.01, Lots 22 & 30
Preliminary & Final Major Site Plan for a daycare

A motion was made and seconded to approve. All were in favor.

4. **SP 2340 Ave of the States Office Urban Renewal LLC**
Avenue of the States Block 961, Lots 2.02, 2.03, 2.07, & 2.12
Preliminary & Final Major Site Plan for an office building

A motion was made and seconded to approve. All were in favor.

5. **SP 2356 1215 Paco Way, LLC**
1215 Paco Way Block 1160.04, Lot 47.03
Preliminary & Final Major Site Plan for a warehouse

A motion was made and seconded to approve. All were in favor.

6. **SD 2427 David Kahan**
12 Omni Court & 15 Sylvan Court Block 411, Lots 3.21 & 69
Minor Subdivision to create three lots

A motion was made and seconded to approve. All were in favor.

7. **SD 2383 Zissel Scheinerman**
Ocean Avenue Block 189, Lot 173
Vacation of a Minor Subdivision

Mrs. Morris said this is being prepared at the request of an applicant. There is a later approval on this site for a Site Plan, which essentially overrides the subdivision. As a condition of resolution compliance, the Board Engineer has asked that this previous approval be formally vacated.

A motion was made and seconded to approve. All were in favor.

4. COMMITTEE DOCUMENTS REVIEW

- **Resolution 2020-137:** Plan Amendment to the Cedarbridge Redevelopment Plan

Mrs. Morris said the Board considered this two weeks ago, and asked to carry it in order to have more time to consider the proposal. It's to change the Cedarbridge Redevelopment area to exclude that lot on the corner of Vine and Cedarbridge and at the same time to rezone it to R-7.5.

Mr. Isaacson said I wasn't here last time, can I get a quick synopsis?

Mr. Jackson said this was T&M made a recommendation to rezone a parcel, Block 931, to make it compatible with the zone across the street because the zone that it's in, it's separated by wetlands and it's too small. T&M felt that the zoning that's applicable didn't work and it would be better to have it zoned as across the street.

Mr. Vogt said the genesis of this is that the property owner made the request to consider rezoning.

Mr. Jackson said yes and the Committee thought it was appropriate.

Mr. Stern said wasn't our question of why a change of zoning was being brought to the Planning Board?

Mr. Jackson said yes, well when they proposed a zone change it has to come to the Planning Board for review and conformance to the Master Plan.

Mrs. Morris said it's a misnomer, the Zoning Board doesn't hear zoning changes. The Zoning Board hears applications that fall under their jurisdiction.

Mr. Jacksons said the Planning Board adopts the Master Plan. It's up to the governing body to adopt the zoning ordinances. If someone wants to have a particular use that's not permitted in a zone, they go to the Zoning Board for a use variance. That's for a specific piece of property with a specific design plan. And that doesn't change the zone, that just grants a variance to deviate from the permitted uses in the zone.

Mr. Vogt said there is a site-specific concept that is put in front of them.

Mr. Stern said so the Zoning Board grants relief from pre-existing ordinances.

Mr. Vogt said for Zoning Board, you have a use variance if it's not a permitted use. They allow a different use based on a concept if they feel the concept is merited for that property.

Mr. Herzl directed the Board to the zone map for reference.

Mr. Flancbaum said this piece isn't even big enough to be built on in the zone that it's in right now. T&M is recommending to put it in a different zone as opposed to leaving it in a zone where they can't do anything.

Mr. Vogt said the other thing that came up, someone said there's R-40 across the street. This is a 1.9-acre property, you could only get one or two properties out of it.

Mr. Isaacson said why is this here instead of in front of the Zoning Board?

Mr. Flancbaum said the Township Committee is recommending rezoning. It always comes to the Planning Board for review as to consistency with the Master Plan. It does not go to the Zoning Board. It's at the proper Board.

Mr. Isaacson said why is the Committee asking us this and not the applicant.

Mr. Vogt said the owner of the property made a request to the Committee, which they are authorized to do. The Committee could have said yes or no. They had their planner do an assessment. T&M was hired, they did the study, they agreed the requested rezoning, from a planning perspective, makes sense. As part of the process, it comes back to the Planning Board simply for input and recommendations back to the Committee. The Committee will make the final decision.

Mr. Jackson spoke away from the microphone.

Mr. Sable said if this is R-7.5, how many houses can they build.

Mr. Vogt said I'm guesstimating maybe 10.

Mr. Sable said can we make a different recommendation, maybe R-12.

Mr. Jackson said the only question before this Board is, is this consistent with the Master Plan. You could also say no, with the following recommendation, or yes, with the following recommendation.

Mr. Sable said can we make a condition that the road be finished?

Mr. Herzl said we aren't approving it?

Mr. Jackson said the only issue before this Board is whether that proposed zoning change is consistent with the Master Plan that this Board adopted.

Mr. Stern said the only thing I note is the report, on paragraph 7 about the Master Plan, doesn't say anything about whether or not it's consistent.

Mr. Herzl said if you look at the map, there's a big section of R-7.5. That, the Master Plan made.

Mr. Vogt said they say it indirectly in section 10. In 7, it's a statement of fact. Keep in mind that when you're looking at an entire Township, versus dialing in later and looking at a 2-acre tract, it's not apples and oranges. I look at the recommendations in the report.

Mr. Stern said ok.

Mr. Flancbaum made a motion to go along with the recommendation to change it to R-7.5, and it was seconded. All were in favor. Mr. Sable abstained.

5. PUBLIC HEARING

7. **SD 2432 Yehuda Rotberg**
136 & 138 Gudz Road Block 11.10, Lots 70 & 71
Minor Subdivision to realign lot lines
Applicant failed to provide proper notice for this project. This application will not be heard and will be scheduled for a future meeting date.
8. **SP 2363AA Heshy Rawicki**
28 Drake Road Block 376, Lot 1
Change of Use/Site Plan Exemption to convert existing house to a school
Applicant failed to provide proper notice for this project. This application will not be heard and will be scheduled for a future meeting date.
6. **SP 2290 Yeshiva Chemdas Hatorah**
317 Cross Street Block 440, Lots 7.02, 56, & 60
Preliminary and Final Major Site Plan for a school campus

Mrs. Morris said I don't believe we are opening this application for public hearing. I received correspondence from the applicant's professionals late this afternoon, and have provided a copy of that to the Board. They are asking the Board to make a determination on whether or not the application was complete.

Mr. Herzl said I'm ok with hearing that first.

Mr. Jackson said Mr. Doyle, Mr. Flannery, and Mr. Pfeffer are here on that matter. There is a history to this. There was an application for approval as a Planned Educational Campus and it was brought to the attention of the Board that the applicant did not meet one of the criteria, basically that they did not have a master's program. The applicant was told to go get that criteria so that they qualify. While that was being considered, Mr. Doyle provided me with research that says they can meet the criteria later. The use is not dependent upon the applicant but rather the ultimate user. So if they get the qualifications at a later date, it's no different than for example a bar that gets a liquor license before they operate. You can't get a liquor license until you have a facility. A lot of times we approve things for people who don't have the licensure or qualifications that are required. For example a doctor's office, or a law

office. The developer does not have to show a medical license or a law license, as long as the people that ultimately use it have that license. That's what Mr. Doyle's argument was, that it's similar to an outside agency approval. He pointed out a number of cases where the Court says of course you can get an outside agency approval later. This Board has dealt with that on many occasions, like for DEP or DOT... a daycare center needs a daycare license. I found this Morris County case to support the proposition that the Board can look at an outside approval and say no, you're not going to get it. And that is a case where the Court said it's in the discretion of the Board to determine that no they're not going to get that approval and therefore we're not going to hear your application.

Mr. Stern said getting outside agency approval is a box you have to check. But here, there's a standing issue. They can't even get into the gate to make the application until they satisfy this requirement, correct?

Mr. Jackson said that's the issue. It says the user has to have this, it doesn't say the applicant has to or the owner of the land. It says whoever goes there and operates.

Mr. Stern said I mean they can build the whole thing and wait for a school to show up?

Mr. Herzl said you can't get a CO until you have an accredited user.

Mr. Jackson said that's what his argument is.

Mr. Pfeffer said I want to clarify, we came before the Board and the Board said you don't have it. We disagree with that premise when it came up originally, but we carried so that we could go back and discuss it as opposed to arguing it without having all this stuff in front of us. Our position has always been that we are an accredited higher education institution. If we didn't have a State license, then maybe you could argue that we can't get into the gate. Our argument, we have it, we just need another program that we could offer. We've applied for everything and it's pending. We've done all that stuff. As far as can we proceed with our application, we've met all that criteria.

Mr. Sable said do you or don't you have the credentials today on March 3rd. Yes or no?

Mr. Pfeffer said which credentials?

Mr. Sable said the credentials for higher education. A master's degree, whatever.

Mr. Pfeffer said we are a higher education that has applied for the graduate degree status.

Mr. Sable said let me ask again. Do you have the masters degree credentials today?

Mr. Pfeffer said we have applied for it.

Mr. Doyle said there's an earlier question to answer, and John pointed it out. What is a Planned Educational Campus. The Township Committee said that this would be a Planned Development. A Planned Development is something different under the State and zoning laws. It is a prescription that on larger tracts, whether industrial or educational, those are treated differently under section 45 and 65 of the Municipal Land Use Law. Both of those sections recited in the Ordinance that says Planned Education Campuses. The State law mandates that any application for a Planned campus such as this must go to the Planning Board. Case law further says that if there is a difference between the overall ordinance and what the applicant is seeking to do, they can apply but only to the Planning Board for that difference. We are not proposing that. They further say you can't go to the Zoning Board on a Planned campus. So we are before the only Board we can be by law. The question becomes, if we have to be here, is it not an issue, and that's the question. That you don't have the second degree.

Mr. Sable said what is Planned campus defined as?

Mr. Doyle said Lakewood has determined that higher education is an important aspect of Lakewood and that there should be Planned campuses. They have found, as stated in your ordinance, that having a homogenous group of a residential and recreational component should all be in one area. And they've set minimums of acreage, distance, setbacks, parking, unit count, density, all of which we meet. So we are properly before the only Board that can hear our application.

Mr. Sable said is there anything in the Township Ordinance that reference the credentials for a Planned Campus.

Mr. Doyle said there's a lot of standards and we meet those.

Mr. Sable said what about credentials, not standards and buffers.

Mr. Doyle said it says it must be an accredited institution of higher education able to grant undergraduate and graduate degrees. Higher education is defined as more than a bachelor's degree.

Mr. Sable said so you need to have a master's.

Mr. Doyle said you need to have that in order to be approved, but in order to apply, we are before the only Board we can be before.

Mr. Sable said in order to apply, anyone can apply if they have the acreage and whatever.

Mr. Doyle said you have to have the acreage, you have to have the engineering plan, you have to show the residents, the recreational, you have to show all of those elements.

Mr. Sable said you can apply for the approval, but what can you not...?

Mr. Doyle said we can't not build, or what you can't not do for us, is allow us to be approved and comply with. Three stages. There's an approval, subject to conditions just like any other application. We have to meet those conditions. The Engineer provides that there is compliance. Second stage, he issues a letter that it complies. Third stage is the actual building and get a CO, which doesn't get issued unless you have fully complied.

Mr. Herzl said and it doesn't have to necessarily be this applicant, this school. The end user needs to be an accredited school.

Mr. Doyle said that's correct. And this particular applicant has received approvals form the State Department of Education and the American Institute of Jewish Studies.

Mr. Sable said it doesn't have a master's.

Mr. Stern asked for a copy of the ordinance (the definition for Planned Educational Campus).

Mrs. Morris said I know Mr. Stern can't see from there, but it's up on the screens and is available on the Township website.

Mr. Herzl said Mr. Doyle, you feel comfortable that the applicant is going to get the master's?

Mr. Doyle said the process generally takes 3 to 6 months and is a process we've been through before to get the associate's degree, yes I feel very confident we will get it.

Mr. Sable said maybe we shouldn't reference any credentials besides the master's. Higher and lesser, it's getting confusing.

Mr. Herzl said their case is they don't need it right now, for time of application, and they can't build the campus or R-7.5 without it.

Mr. Jackson said what I'm hearing from the Board is they want to hear why they can hear this application now, when this applicant does not have this credential.

Mr. Herzl said he explained that already.

Mr. Stern said you don't even get into the box (the ordinance definition for Planned Educational Campus).

Mr. Flancbaum said I don't think that's what the ordinance says though.

Mr. Doyle said you have to look at the State statute. This is a Planned Use Development. This can only be before the Planning Board. If you were to determine that you don't need it, so you're not right until you get approved before whatever State agency is going to approve it, then we have nowhere to go. You might say we could get all of that in advance, but there's any number, for instance recently in December this Board used the daycare center approval mechanism within the ordinance that says they are a permitted use. A daycare application was approved. One of the provisions in the ordinance is that they are a licensed daycare user. They were not at the time of the application. You approved them subject to getting a State license similar to what we need. It was appropriate there.

Mr. Sable said that application, I don't remember conditioning it.

Mr. Herzl said I could build a daycare, but only the end user needs to have the license.

Mr. Sable said is the question that they can apply at all? This is different than a daycare?

Mr. Flancbaum said is that what you're asking, to be heard? Is that all you're asking?

Mr. Doyle said yes.

Mr. Jackson said there are two lines of cases. The one line is Morris County Fair Housing Counsel vs. Boonton Township. In that case, Judge Skillman, on the Superior Court level, ruled that since the Board was dissatisfied and not confident that the applicant could meet the DEP criteria for moving a dam or something like that, that the Board had the authority to reject the application because their outside agency approval seemed tenuous and speculative. In my view, the Board has the inherent authority to manage their own calendar. I think the Morris County case supports that proposition. It's an older case from 2014, there have been several cases since then where they've limited the holding in that case. If the applicant thinks they can get an outside agency approval, it is directly authorized in the MLUL to go out and get an outside agency approval. DEP later, DOT later, etc. I'm not sure that this is an outside agency approval, although Mr. Doyle would say it is. He says its from the State higher education department that issues this credential. So it's not exactly an outside agency approval, and when I first evaluated this I said it's not that easy to go out and get a master's degree or a doctorate, I think that's a pretty big deal. I think it takes years. So I think it's a discretionary call on the part of the Board to say this is so tenuous that we aren't going

to take our time, or really that it's really no different than getting an approval for a medical office when you're going to put doctors in there later, or getting approval for a daycare when you're going to get your license later, or for a bar when you're going to get your liquor license later, or getting an approval for a subdivision when the County or the DOT is going to approve your road opening permit.

Mr. Herzl said I have the right to build a bar even though I don't have an end user right now.

Mr. Jackson said that's what Mr. Doyle's argument is. With a bar I think that's an interesting example, because I think you can't get a liquor license until they can actually go and inspect the place. So you're really taking a big risk that the governing body is going to issue your liquor license. You have to have a physical location first. That's kind of what they're doing.

Mr. Sable said based on what John said, we have a tight schedule, they don't have a timeframe in which they're getting this approval. DOT we deal with on a daily basis, not this. We're going to waste a lot of time on this. Based on that Morris County case, let's put it off and see what happens.

Mr. Jackson said to finish, when we look at cases we look at how persuasive they are. First off that is a law decision case so it is not binding. I think it's authority for the approach that Mr. Sable is suggesting and it's the approach I originally suggested. However there are a number of cases afterwards that gave negative treatment to that case and if you look at Dell Associates vs. Harmony Land Use Law, it was distinguished by another case that I handled as well. NJ Water vs. Hillside was even more negative. These all distinguished this case and didn't really go in the direction of that case. If you look at it from a scholarly approach, the preponderance of the law, the direction of the law, the higher courts have held the Morris County case on a very short leash. They never reversed it, which is significant, but they constrained its holding.

Mr. Pfeffer said each case is its own fact. What John's saying is yes this was a case from 2014, but there were other cases that distinguished it however it is different based upon A, B, C, and D. The dam with DEP is different.

Mr. Stern said I get the point about the case law. But Brian was kind enough to just hand me two copies of the ordinance. We have version one, which you would clearly fall within today. And then we have version two of the ordinance, which tightened it up, which you don't comply with. So we have the governing body, the legislative intent is saying scrutinize these things intently. If they wanted it loosey-goosey, they would have left it this way. The fact that they went out and tightened it up...

Mr. Doyle said there are several points that have been made. With respect to the Morris County case, John mentioned law division case, which means it's not from the higher courts. Limited authority. It's been disagreed with, but remember what that case said. Most significantly the Township Engineer testified that there were concerns with the modifications to the dam and his office could not approve the stormwater plan. So there was an inherent engineering issue, right in the Board's jurisdiction about a drainage issue. That's why they said the Board was right, because a basic element of the Board's consideration was unknown. It is not in the Board's expertise on higher education licensure. It is on stormwater management and engineering issues. It isn't within the Board's jurisdiction to ask what courses we offer or how good our professors are.

Mr. Sable said the ordinance says...

Mr. Doyle said the ordinance says it's a Planned Campus. Section 45 says Planned Developments may only be heard by the Planning Board. The State law says that when a Board is given specific jurisdiction, no other Board may exercise that jurisdiction.

Mr. Isaacson said you keep saying that, but you're not an accredited institution. You can't appear before the Board.

Mrs. Morris said Chairman, I'm sorry but I don't think this is appropriate to continue. There are other applications here before this. This applicant pushed themselves onto this agenda and promised they would be heard last if they were reached at all. This has not been a quick discussion.

Mr. Isaacson said to compare this to a daycare center is ludicrous. A daycare center can be used as a daycare center. Worst comes to worst, you can raise the toilets up and use it as a regular school. There's a very finite amount of uses. Here you're talking about 128... Let's say they don't get the masters, what then? Then you're back in front of this Board asking if they can make it a regular development. Like Pine River that was supposed to be a senior development and ended up being a regular development. Let's let them get accredited, and let them apply in the future in front of the only Board they can apply to.

Mr. Sable said or they can go to court, in front of a Judge, and reverse it.

Mr. Flancbaum said you also have the option of not letting them do anything. Being heard, but then not even clearing a tree until they get the accreditation.

Mr. Isaacson said that's putting the cart before the horse.

Mr. Doyle said the law requires you to put the cart before the horse and gives you that ability. I will give you a case from an appellate division, courts favor the grant of preliminary approval of development applications conditioned upon the applicant securing necessary approvals. They favor that.

Mr. Stern said how long do you need? Have you applied?

Mr. Doyle said we started the discussions... (the Board reacted). There is an application...

Mr. Jackson said Mr. Chairman, I recommend you take control. A lot of people are talking at once.

Mr. Herzl said I'm going to poll the Board. Mr. Stern, what do you feel?

Mr. Stern said had you actually applied and given me a time frame, I would have been much more open. You haven't even applied. I say no.

Mr. Sable said I agree with Mr. Stern.

Mr. Flancbaum said I think they should be heard, subject to an accreditation.

Mr. Herzl said I agree with Mr. Flancbaum.

Mr. Isaacson said I agree with Mr. Stern and Mr. Sable.

Mr. Meyer said I agree with Mr. Flancbaum and Mr. Herzl.

Mr. Raitzik said I want to hear more. It's hard to determine based on what we have. There's a few issues on the definition of Planned Educational Campus. Have they presented a full plan?

Mr. Herzl said they have a full plan, I don't want to listen to it right now. I want to know...

Mr. Raitzik said part of the issue is to see what they're planning. Like you said before, if it ends up not getting the approvals what's going to be there?

Mr. Isaacson said what's the point of building and letting it sit there empty if they don't have an accreditation?

The Board all talked at once.

Mr. Jackson said this is very important. Please take everyone in order.

Mr. Raitzik said based on the definition, assuming this is the State statute, it says things about ownership of the dwellings. Based on this definition we might have an issue. I need to get clarity on what they have planned.

Mrs. Morris said the letter that was provided to the Board members from the applicant does at the end very clearly state that they are not going to build the campus, they intend to utilize an ordinance that permits them to develop as R-7.5 instead. That is not a secret, that's on the letter in front of you and that is in my file. It's not as if they're actually going to build a campus that will sit there empty.

Mr. Jackson said I started to say earlier, there's more to this.

Mr. Herzl said the question is are we letting them come back and show an R-7.5 application and convince the Board that's better than a campus.

Mr. Raitzik said not necessarily, they do need to show that they are... They can't get a CO without applying for that higher education.

Mr. Flancbaum said they can't start building.

Mr. Raitzik said ok, that's different.

Mr. Herzl said are you ok for them to come back and show the plans as R-7.5 instead?

Mr. Raitzik said they can absolutely show it, but I want it to be clear that they are presenting.

Mr. Herzl asked for a motion.

Mr. Isaacson made a motion that the application is incomplete. Mr. Sabel seconded. Mr. Stern affirmative, Mr. Sable affirmative. Mr. Flancbaum negative, Mr. Herzl negative. Mr. Isaacson affirmative. Mr. Meyer negative, Mr. Raitzik negative. The motion did not pass.

Mr. Flancbaum made a motion that they can come back and get heard however they want to present. Mr. Meyer seconded.

Mr. Stern asked what the motion was.

Mrs. Morris said the motion is that their application is complete and they can move forward with their presentation.

There was yelling from the public.

Mr. Jackson said Mr. Flancbaum should explain his motion.

Mr. Flancbaum said my motion is that they can come back with an application before the Board.

Mr. Jackson said your motion is that they can do this on a contingent basis, that they have an application pending for the accreditation, and you're satisfied that's enough and they don't need that right now to go forward.

Mr. Stern asked about putting a time restriction on it, a sunset provision.

Mr. Flancbaum said assuming they got an approval, there is a time by which it would expire anyway per the MLUL. My motion is to let them come back and present.

Mr. Jackson said what the consequence of that motion is, is that Mr. Flancbaum is satisfied that the applicant may make this application as someone who is not qualified at this time but may get that accreditation later.

Mr. Stern said I defer to the wisdom of Mr. Flancbaum. I vote yes.

Mr. Sable negative. Mr. Flancbaum affirmative. Mr. Herzl affirmative. Mr. Isaacson negative. Mr. Meyer affirmative. Mr. Raitzik affirmative.

Mr. Jackson said Mr. Isaacson, the Board has within its own authority to deem an application complete. That's a threshold matter. That does not preclude someone from objecting on that basis or from the Board changing its mind at a later date. But right now the Board has decided that the application is complete and can go forward. They have no approvals yet.

- 1. SD 2400 Alan Krupnick**
East Kennedy Boulevard
Minor Subdivision to create two lots
- Block 175, Lots 63-65

Mr. Vogt said it doesn't appear that any variances are required for this application. There are design waivers, as in our letter. Waivers are required from improving the surrounding paper streets, as well as associated curb and sidewalk.

Mrs. Morris said this is located out in the area of East Kennedy that is not developed, it's just past Brook Park on a portion of Kennedy that hasn't been built yet.

Mr. Herzl said there is a submission waiver, too.

Mr. Vogt said that is with respect to making application. We support the waiver with the understanding that they can't finalize the approval without the approval of the County.

A motion was made and seconded to approve the submission waiver request in accordance with the Engineer's recommendation. All were in favor.

Mrs. Morris said Mr. Rennert has returned for this application, and Mr. Isaacson stepped out.

Mr. Brian Flannery, P.E., appeared and was sworn. He said we have three lots in the woods and we want to change it to two.

Mr. Herzl said and there are not variances.

Mr. Flannery said no variances. The waivers are for improving the roads, you can see it's in the woods.

Mr. Herzl said sidewalks?

Mr. Flannery said when someone comes in to build it they will put in the roads and sidewalks. Today we have three lots in the woods, tomorrow we would like to have two lots in the woods.

Mr. Herzl said there are no surrounding residential units?

Mr. Flannery said the closest development is Schuster's.

Mr. Herzl said why are you subdividing it?

Mr. Flannery said there are two applicants, they are splitting it up so they each have two lots.

Mr. Herzl said they have to come back before they build anything?

Mr. Flannery said they can't build anything without coming back, and they can't build anything without roads and curbs and sidewalks, and the Township Engineer would require...

Mr. Herzl said which would be dealt with at a later date.

Mr. Herzl opened to the public and no one came forward.

A motion was made by Mr. Meyer and seconded by Mr. Flancbaum to approve. All were in favor.

2. SP 2359AA Yehuda Lench
2017 Lanes Mill Road Block 188, Lot 10
Change of Use/Site Plan Exemption to convert existing house to a shul

Mr. Vogt said as indicated in our letter, we note there are numerous waivers sought. I recommend hearing the application and then if the Board wants to approve those we can circle back. On zoning, side yard setback variance is required due to the existing garage. Perimeter buffer relief and for parking within 5' of the property line. Also relief for parking with regard to an existing gravel driveway.

Mr. Rennert said is this for a building, or a change of use?

Mr. Flannery said a change of use. A-1 is a copy of the plan. I added a north arrow. This is north of Route 88, the bowling alley is on the bottom of the map. The property behind is the Metedeconk River with a C-1 buffer. It's all Township owned back there. This is an existing house they want to convert to a shul. There's a big gravel area available for parking, well more than what is needed. The sanctuary is 676 sf which doesn't require any parking but we have more than ample. It's an inherently beneficial use.

Mr. Rennert said how much parking.

Mr. Flannery said a lot. We've numbered 7 of them and also have the gravel area in the back.

Mrs. Morris said the seven in the front are paved?

Mr. Flannery said yes.

Mr. Raitzik asked how many handicapped?

Mr. Flannery said we haven't provided, but when we go to the building department to get a CO we will have to provide one.

Mr. Herzl said I think you need 7 and you're giving 7.

Mr. Flannery said no we need none. We are less than 800 so we need zero.

Mr. Herzl said what's with all the waivers.

Mr. Flannery said the waivers are because it's an existing site. We wouldn't come in and ask to put a shul in with all these waivers, but it's already there. The driveway, the site... It's a house, we just want to use it for a shul.

Mr. Herzl said and any changes you have to come back to the Board.

Mr. Flannery said that is correct.

Mr. Rennert said you spoke to the neighbors?

Mr. Flannery said no.

Mr. Herzl said he was noticed.

Mr. Yehuda Lench appeared and was affirmed.

Mr. Jackson said Mr. Flannery I don't recall placing you under oath.

Mr. Flannery was affirmed for past and future testimony.

Mr. Lench said Horizon is down the block, they're not allowed to have a shul in there. People from Horizon will daven there.

Mr. Herzl said anything you do to the property, you understand you have to come back? If you knock it down and build a shul, you have to come back. You will need more parking.

Mr. Sabel said what does enclosed patio mean? Is it increasing the square footage of the school.

Mr. Lench said it's a lower level, 3.5 feet lower.

Mr. Sabel said it's a huge kitchenette. Is it open now, this kind of sanctuary?

Mr. Lench said yes.

Mr. Sabel said it's like it was built for a shul 150 years ago.

Mr. Flannery said it was built for a house.

Mr. Raitzik said the letter says there's not enough space for a fence and shrubbery on the side. What are we doing about that?

Mr. Flannery said it's an existing driveway and there's not enough room. The neighbor got notice, if he thought he needed something different he would be here. It's bordering the neighbor's property. There's a second exit.

Mr. Raitzik said how far is the neighbor's house from the driveway?

Mr. Lench said 40 feet.

Mr. Raitzik said and people use that driveway for walking also? Have there been any problems with it being so close? As far as you know the neighbor doesn't require anything else over there?

Mr. Lench said no, we've never had any problems.

Mr. Sabel said the garage in the back, can you move it? There's no place to park on the street.

Mr. Lench said no because the septic is over there. There's like 100x100 of gravel, there's plenty of space to turn around and park.

Mr. Sabel said that's important to know.

Mr. Herzl said the driveway is twenty feet or whatever, it's enough for a car to go back and forth.

Mr. Sabel asked to make sure it's level.

Mr. Lench said it is.

Mr. Vogt said in terms of waivers, they do require design waivers. They include curb, sidewalk, and shade tree utility easement.

Mr. Sabel said can we make that happen? People from Horizon are going to walk.

Mr. Flannery said he will put sidewalk in.

Mr. Sabel said and curb?

Mr. Flannery said it's a County road and they can be difficult. The easiest thing to do would be to put the sidewalk right on his property so anyone walking down the road would be far enough back in case the County ever widens, and in that case you don't need the curbing.

Mr. Vogt said we've seen this before. In the absence of curb, it's going to have to be a minimum of ten feet back.

Mr. Flannery said and that's why I'm saying put it on his property, because that will be 10 feet back.

Mr. Sabel said County won't want curbing on either side of the driveway entrances?

Mr. Flannery said the County won't do anything with changing an existing driveway.

Mr. Sabel said we're going to put curbing probably? Are they going to allow the cutouts?

Mr. Flannery said curbing is normally to allow the drainage and to protect the sidewalk. We will put the sidewalk more than 10 feet from the pavement in a sidewalk easement so that the public can walk there.

Mr. Shlomo Klein appeared and was affirmed. He said the applicant is not required to put in parking because it's less than 800 sf sanctuary. But he is providing a lot of parking and it's on gravel. I want it on the record straight.

Mr. Flannery said it's for overflow. There is asphalt in the front with seven spots.

Mr. Klein said so seven spots that he's not required to do, and then a whole back of gravel. IT's not a problem, I'm just clarifying. My only question is this existing shul now? Are there prayer services now?

Mr. Lench said yes.

Mr. Klein asked if he got a violation.

Mr. Lench said no.

Mr. Jackson said either way it's not relevant.

Mr. Klein said usually people come because of violations. This guy did not. He complained about people complaining about existing shuls in their houses and the Township issuing violations. Jews complaining against shuls and said they can't be called anti-Semites because they're Jews.

Mr. Jackson directed the Board to disregard any inappropriate comments.

Mr. Sabel asked who the Rabbi was and where the congregants were.

Mr. Herzl said Mr. Lench is the Rabbi.

Mr. Sabel said I'm concerned it's going to be a simcha hall because of the big kitchen, big room, big parking lot. I don't see a lot of people here.

Mr. Lench said put it in the approval, no simcha hall. It's not going to be a simcha hall.

Mr. Isaacson asked about how many minyanim. The Board doesn't want a minyan factory.

Mr. Lench said one a day.

Mr. Moshe Zeines appeared and was affirmed. He said Mr. Lench is a great guy, he's at every party in town so he won't be making a party hall in his place. If he says no party hall, there's no party hall.

Mr. Herzl asked for a motion.

Mr. Rennert made a motion to approve. Mr. Sabel seconded, with no simcha hall. All were in favor.

4. SD 2433 Abraham Chopp

406, 410, 414, 418 Dr M L King Drive Block 768, Lots 53, 54, 63, & 64
Minor Subdivision to create six lots

Mrs. Morris said I request to take this application ahead of the last two. This is another fully conforming minor subdivision.

Mr. Vogt said this is an easy one. It's permitted, no bulk variances or waivers.

Mr. Charles Surmonte appeared and was affirmed.

Mr. Abraham Chopp appeared and was affirmed.

Mr. Surmonte said this is to create six duplex lots from about 200 feet along Dr Martin Luther King Drive. We will replace curb and sidewalk as needed. There are no variances. He asked how many shade trees are needed.

Mr. Vogt said I can't tell you off the top of my head, but we can work that out during compliance.

Mr. Surmonte said we will comply with all the comments in the Board Engineer's review letter.

Mr. Isaacson made a motion to approve, and Mr. Meyer seconded. All were in favor.

3. SP 2361AA Avrohom Y Maierovits

23 Circle Place Block 12.04, Lot 67
Change of Use/Site Plan Exemption to convert existing house to a shul

Mr. Vogt said this is a change of use. Per the review there are a number of submission waivers. There are design waivers include shade tree and utility, landscaping and lighting, trash and recyclables, grading, and buffer screening. I recommend hearing the application and then deciding if you want to grant those.

Mr. Adam Pfeffer appeared on behalf of the applicant. He said this house of worship has been here for approximately 15 years. This applicant purchased the property as-is, he didn't know it didn't have the requisite approval for a house of worship. 3 or 4 years ago he received tax exemption, he met the criteria for that. When he purchased, there was already a house of worship there. It wasn't started as a new operation.

Mr. Herzl said you're going for a change of use and you're not showing us any site plans. What's with parking?

Mr. Pfeffer said the variance is an existing variance. He had Brian Flannery sworn in.

Mr. Flannery said A-1 is a copy of the map submitted. A-2 is sheet 96 of the tax maps showing where the property is. As indicated, it's a building that's currently a shul. It was originally a house. It has a main sanctuary of 1166 sf, which would require 12 parking spaces. We have a paved area in the back that would accommodate some parking and we have a gravel area.

Mr. Herzl said according to the architectural you have classrooms too. You're going to need more parking.

Mr. Pfeffer spoke away from the microphone. He said the only use we are asking for is a house of worship.

Mr. Herzl said can you show me where 12 parking spaces can go?

Mr. Flannery said as a condition of approval we'll show where they will fit. They will be on the gravel, not paved. We have some paved but not all. This is an existing congregation, it works for the people now. During compliance we will show that we can fit fifteen on that gravel.

Mr. Sabel asked if they are planning an addition or another floor.

Mr. Flannery said no. No changes.

Mr. Herzl said if they do any changes they must have a site plan.

Mr. Sabel asked what the classrooms are on the plan.

Mr. Pfeffer said there was learning in there. It's not a kollel now. He spoke away from the microphone about no basement and no kitchen.

Mr. Herzl said you are not renting out any part.

Mr. Pfeffer said no. No classrooms, no lunchroom.

Mr. Herzl asked about sidewalks.

Mr. Flannery spoke away from the microphone. There are existing concrete sidewalks.

Mr. Herzl said Terry, are you ok that they can fit fifteen parking spaces?

Mr. Vogt said it hasn't been depicted.

Mr. Stern said I know they're trying to make it right, but if this was someone saying I just bought a house, I want to turn it into a shul, you'd have a pretty picture showing where everything goes.

Mr. Herzl said and we'd want all the parking paved.

Mr. Stern said I would think.

Mr. Sabel said where the lights are going to be...

Mr. Jackson said I'm hearing you're not comfortable with the plans.

Mr. Herzl said my question is why is this different if they would come in as a new applicant.

Mr. Jackson said I think that's a good point.

Mr. Herzl said I'm asking what does the Board think.

Mr. Rennert said I'd like to hear more from the neighbors.

Mr. Pfeffer said Andrew Green who lives on Woodland, the property behind it. This applicant also owns a lot on Woodland behind it (scribe's note: Lot 98). We agreed we would put trees... He's concerned it's going to be used as a parking lot. We're putting trees so that you could not use it. It's illegal to use it, but we'd agree to put the trees up.

Mrs. Morris said can we specify what kind of trees and where?

Mr. Flannery said those trees are on the other lot behind this that isn't part of this application. So that's a private agreement between the two owners.

Mr. Herzl opened to the public.

Mr. Rennert said the trees on the neighbor's lot...

Mr. Lou Williams appeared and was sworn. He said he lives on Woodland Drive. One of my concerns is when they start doing the parking back there, the lighting and it's noisy. I'd like to see a barrier fence or something. I know there's some trees, but they just get high and hang over my fence which I'm responsible for cutting down.

Mr. Rennert said so if you get a fence, you're ok with the application.

Mr. Williams said yeah, if it's a barrier-type fence.

Mr. Herzl said and you said trimming the trees.

Mr. Pfeffer said we can't go on his property but we can trim on ours and we have no problem with the fence. The lighting will also be shielded from neighboring properties.

Mr. Herzl said if you use it as a parking lot you have to come back?

Mr. Pfeffer said no, you're mixing it up. That's the neighboring property behind (that we can't park on). This neighbor is talking about parking on the existing asphalt on this property.

Mr. Herzl said ok.

Mrs. Morris asked them to clarify where the fence is going and how tall it's going to be.

Mr. Pfeffer said it's along the back along Mr. William's property.

Mrs. Morris said so you're fencing only his property or along the whole rear?

Mr. Pfeffer said well the next property in the back is ours, so it's just along his.
(scribe's note: per tax records, Williams owns lot 96, Mooney owns the next Lot 97, applicant owns the next Lot 98.
Mr. Pfeffer should clarify the location of the proposed fence for future reference.)

Mr. Williams said thank you.

Mr. Sabel asked, the noise is not concerning to you? The parking in and out?

Mr. Williams said it is, I'm hoping the barrier fence will block some of that.

Mr. Sabel said the gravel parking lot?

Mr. Williams said the gravel is in the front, so I don't hear that. The back is the asphalt.

Mr. Herzl said they said it's been existing for 13 years.

Mr. Sabel asked if there was a school with young students.

Mr. Williams said once there was a lot of kids playing basketball, it was noisy at times. I'm just trying to see if we can improve that. Thank you for your time.

Mr. James Mooney appeared and was sworn. He said I live at 890 Woodland Drive. I'm the lot between Mr. Green. They did use the house as a school for like two years. There were students in there up until recently. They just tore out all the trees on the lot in between my house and Mr. Green (scribe's note: per tax records, Mr. Green owns Lot 99), and that's why I was worried about whether or not they were going to make that a parking lot. That's what I was more afraid of.

Mr. Herzl said they cannot make it a parking lot unless they come back.

Mr. Mooney said they'd be able to down the road, if they go for a variance.

Mr. Herzl said they'd have to come back to the Board and you'd be noticed.

Mr. Pfeffer said we'd have to go to the Zoning Board, since a parking lot is not a permitted use.

Mr. Herzl said unless you attach it.

Mr. Jackson said unless you consolidate with this one.

Mr. Pfeffer said if we did a consolidation it would be a whole thing.

Mr. Jackson said to answer your question, yes they can apply.

Mr. Herzl said not without noticing you and appearing before a Board.

Mr. Sabel said I want to see how the sidewalk works inside the property, how do the cars park... I think it's important for us to see how the safety of the parking lot functions.

Mr. Herzl said Mr. Jackson, I need you to clarify for the Board if they applied for a Site Plan Exemption and they're entitled to it, can the Board request that we need to see more information?

Mr. Jackson said I think that the Board can impose reasonable conditions that are calculated to safety, circulation, compatibility with the neighborhood.

Mrs. Morris said I point the Board to page two of Terry's letter. Even though this is a Site Plan Exemption, there's a whole list of items they are required to provide that they didn't.

Mr. Jackson said your question is can you require things, and my answer is yes.

Mr. Herzl said I'm hearing feedback from the Board that they're not comfortable.

Mrs. Morris said I think rather than the Board... I mean at this point they could just deny the waiver requests for those submission items.

Mr. Herzl said ok, back to the public.

Mr. Ovadi Malchi appeared and was affirmed. He said I've been going to this shul for approximately 15 years. It's always been there. We use it on Shabbos and during yomtiv. Now they just started a 9:00. Before, we did stick our neck out and try to help a yeshiva out, to have a place to stay when they didn't have anywhere else to go. They were there for two years but we have since moved them out and there is nobody there now. The neighbors can probably testify that before two years ago, it was very quiet and we never had a school there.

Mr. Herzl said you understand that should the Board approve it, it's strictly for the shul. You can't rent anything out.

Mr. Malchi said we aren't looking to go back to that. There's also plenty of parking.

Mr. Herzl said I think the Board is saying, we don't see it. Show us a picture.

Mr. Sabel said what are they gaining? A few dollars from putting up a plan? We don't need intensive architectural plans, just a basic plan.

Mr. Rennert said if they can show a plan showing a minimum of 15 spots, we don't have a problem.

Mr. Sabel said I personally would like to see more.

Mr. Herzl said my question is are we granting them a waiver for parking on gravel?

Mr. Rennert said to me this looks like a neighborhood shul. Even more than the last one.

Mr. Jackson said there's an issue with members coming up and testifying, that's like two bites of the apple. The congregation is represented by council.

Mr. Mayer Brull appeared and was affirmed. He said I pray in this synagogue. It's no longer used as a school, it's empty, the basement lights have not been turned on. We don't have a group that comes, we struggle just to get ten people for at night. It's primarily a Shabbos school with 5, 6 cars parked there on Shabbos. At night you have perhaps ten cars. We have asphalt in the back. It's just a neighborhood shul and it's been operating this way about 13 years.

Mr. Klein appeared and was affirmed. He talked about a November violation for the change of use to an assembly shul. He said there was a dispute as a complaint from the neighbors.

Mr. Jackson questioned the document he was reading from, since he wasn't provided a copy.

Mr. Klein ranted about lying and meeting adjournments. He talked about disputes between neighbors, non-gentiles making complaints about existing shuls. He said it's Jewish anti-Semitism.

Mr. Jackson directed the Board to disregard inappropriate comments.

Mr. Herzl closed to the public.

Mr. Pfeffer said with regard to the property in the rear, trees were removed and the neighbors were concerned the shul was expanding a parking lot back there. The Township was called, and then it was realized there was no change of use for this synagogue. That's why we are here. There was a violation issued, we resolved it.

Mr. Jackson said this is not a Board of enforcement or retribution. Past violations have no bearing on this matter.

Mr. Sabel said can we ask for site plan with circulation and parking? I'll make a motion to request the applicant to bring in a site plan for safety. I don't need grading or none of that stuff. Parking, sidewalk, how the internal process of the parking lot works. And a staircase to the building.

No one seconded, the motion failed.

Mr. Rennert made a motion to approve the application with submitted site plans to the engineering office depicting where the parking spaces are.

Mr. Flancbaum seconded.

Mr. Raitzik said and the wall to the satisfaction of the neighbors.

Mr. Rennert said oh right, and the trees and the wall as agreed to. And the fence, I meant the fence.

Mr. Herzl said John, do you have everything?

Mr. Jackson said I'll get them from the minutes. The fence, the trees.

Mr. Rennert said there are three neighbors.

Mr. Herzl said you agree to satisfy all neighbors?

Mr. Pfeffer said yes.

Mr. Herzl said and you agree to give a plan to Terry's satisfaction?

Mr. Pfeffer said yes.

Mr. Herzl asked if we had a second.

Mr. Raitzik and Mr. Meyer seconded. Mr. Sabel negative, the rest were in favor.

The Board took a recess.

5. SP 2357AA Cheder Bnei Torah

612 Madison Ave & 415 6th Street

Block 68, Lots 9 & 11

Change of Use/Site Plan Exemption to convert existing facilities into a school and dean residence

Mr. Meyer and Mr. Flancbaum recused themselves from this application.

Mr. Vogt said under zoning, we asked for information relative to architectural landing shown on the original architectural plans which are no longer on the change of use plans, I'm assuming they're not necessary. We'll hear testimony shortly. Revised plans indicated a side yard setback variance is required for the trailers to remain at 11.61 feet versus the 12 foot ordinance standards. Recommendation is to reaffirm that variance. Accessory side yard setback variance must be reaffirmed, 3 feet versus 7. Perimeter buffer relief is required. A 12.5-foot buffer is shown, the Board will have to act on that. Relief is also required for parking within the buffer. Design waivers are necessary including shade tree and utility easement, shade trees, lighting and landscaping. We got information relative to shade tree and utility easements and lighting, therefore the waivers technically are now only required for shade tree and landscaping. Finally, depending upon testimony, if required due to bus use here, a design waiver may be required from providing a bus loading and unloading area.

Mr. Herzl said Mr. Jackson, it's a lengthy report and there is opposition. They are going for a Site Plan Exemption?

Mr. Jackson said yes. I note that I have correspondence from Mr. Hirsch who is in the audience. I've also discussed the matter at length with Mr. Shea and with yourself, Mr. Chairman. I think one of the issues is whether this can proceed as an exemption. The applicant's original approval had its origins in a zoning approval by the Zoning Officer to allow temporary trailers. Which my understanding, the ordinance only allows those in conjunction with an existing school whereas this is a vacant site but is across the street from a possibly affiliated school. That said, there's no actual site plan that was previously approved. The Exemption ordinance allows you to get an exemption for an expansion or a change of use from a previously-approved site plan. One of the threshold questions is whether this can proceed as an exempt site plan or whether they are required to get a site plan as if it were a blank canvas. I think the Board has to determine that on a threshold basis. That question does not necessarily change ultimately that this Board has the authority to review some kind of an application and grant or deny it. Whether it's a site plan or an exempt site plan the Board still gets the ability to scrutinize it. The second question is the sufficiency in what has been provided to the Board and been on file 10 days beforehand. Mr. Vogt indicated that he has a number of items that waivers are sought for, and I understand through the Chair that there is a concern, as there is in every school, no matter the grades, about pick up, drop off, its impact on the neighborhood and traffic, etc. Whether traffic study or circulation plans are required, the Board likes to scrutinize stacking, turning radius, where the stop lines are, intersections, etc. In addition to the threshold question is a substantive question about whether the Board has sufficient information beforehand in order to review this application. With that is whether the objectors have been able to review the file in a meaningful way in order to respond to it. I will note that there is a provision in the MLUL that enables an application to supplement information at the hearing, but then it becomes a question of discretion whether you need it in advance for your engineer to study or whether it's the type of thing that can be produced at the hearing. I would ask... I note also that this matter is in court. And I've had discussions with the attorneys, I don't think that case deprives this Board of jurisdiction. As I understand it, Judge Ford has said she wants this to go to the Board before she makes a ruling on one of the issues in that litigation.

Mr. Herzl said we should hear from both attorneys and then see what the Board feels, whether we should listen to it tonight.

Mr. Jackson said Mr. Hirsch, Mr. Shea, enter your appearances.

Mr. Robert Shea, Esquire, appeared on behalf of the applicant.

Mr. Thomas J Hirsch, Esquire, appeared on behalf of Congregation Sons of Israel, an objector.

Mr. Jackson asked Mr. Hirsch if he agrees with the threshold issue as he explained.

Mr. Hirsch said I absolutely agree.

Mr. Jackson said I recommend the Chair lets Mr. Shea address his comments, and then Mr. Hirsch can respond.

Mr. Shea said Mr. Jackson laid out some of the issues. Just so the Board is aware, the applicant has been working on this project since 2017. It had its genesis initially in a request for a zoning permit for temporary trailers on the site. She did not make a random decision in issuing the permit. She issued it around 10/17 of 2017, I have the permit here. I can provide it to your counsel. It came not only from her but at the recommendation from Mr. Hensel. The Township attorney indicated that as far as he was concerned, the applicant at that point satisfied the requirements of your ordinance 906G which is the placement of temporary trailers for a school. One of the rationales Mr. Hensel used was he didn't look at this parcel independently, he looked at the campus across the street which is a school. All this property is owned by the same owner. His opinion and he testified under oath was as far as he is concerned, the mere fact that the street exists separating those two parcels, doesn't matter. He testified that the school exists, these temporary trailers were needed, and as a result granted the ability at that time for the applicant to place the trailers on that particular site. It was not just a random submittal. As part of that 906G, there are specific requirements that need to be followed. Plot plan, survey, architectural plans, locations of any buffers, general parking scheme, etc. I think its worthy of reading into the record that the applicant has to be limited to education purposes and it should be noted that they have a State license, it has been in place and operating for two years. It has been reviewed and analyzed by the State for the past two years otherwise they wouldn't be operating.

Mr. Stern said as a what, as a daycare?

Mr. Shea said as a preschool.

Mr. Stern said so they're a licensed preschool?

Mr. Shea said licensed preschool, yes sir.

Mr. Herzl said what age is that?

Mr. Shea said approximately two to four or five.

Mr. Stern said it's a DYFS licensed preschool?

Mr. Shea said it's a State licensed preschool, that's correct. It's under the DEO.

Mr. Herzl said Terry, what's the difference between a daycare and a preschool.

Mr. Vogt said that's a good question, I don't know the definition legally.

Mr. Shea said section 900 of your ordinance recites daycare facilities, which are permitted in all zones. What Mr. Hirsch and I have been arguing for two years is whether this site is a daycare or a school. Both are permitted uses in the zone, daycares are permitted in all zones. The school application that we made originally for the trailer is permitted in the ROP zone. So there's no question that this use is permitted in the zone unquestionably. We didn't apply for a daycare, our license isn't for a daycare, it is a preschool license. And the State of NJ has come down and analyzed it and are satisfied that 5 classrooms exist on this facility. It is a school that we've made application for under section 906 of the ordinance.

Mr. Jackson said is it customary for a preschool to have an associated parsonage with it? There's a home on this site. And someone lives in that home. Is that a typical accessory use for a preschool?

Mr. Shea said it's an accessory use as far as the campus of the school. The dean or the Rabbi lives there.

Mr. Jackson said I've just never seen that configuration. I think one of the criteria for whether something is an accessory use or an additional use is whether that is a common and widespread practice.

Mr. Shea said the building is the home of Rabbi Burnstein. The first floor is nothing more than conference workshops, perhaps PTO meetings and all that. Those two lots will be consolidated. The concept from the beginning is that it's all part of the overall campus, and that's what Mr. Hensel's opinion was based upon. The zoning permit was issued in 2017. This is not a situation where someone was trying to do this under the cover of night. Application was made to the Township, the appropriate officials at that time made a determination, whether right or wrong they made the decision that we were entitled to proceed under 906G.

Mr. Herzl said you consolidated two lots, the trailers are on the same lot as the house?

Mr. Shea said the trailers... there was no condition for the zoning permit to consolidate. As part of this application we will consolidate. The reason we didn't before is there was a question as to tax exemption but that has been resolved.

Mr. Raitzik said why was it set up as temporary originally? Why wasn't it requested at that time to be part of the campus?

Mr. Shea said that's the rationale under 906G allows for you to make application for temporary classroom facilities.

Mr. Raitzik said I understand, but was the intention at that point to make it a long-term facility?

Mr. Shea said it gives the applicant the ability under the section of your ordinance for temporary facilities. It says the zoning officer may approve the installation of temporary portable facilities at the site of the school for a period not to exceed two years.

Mr. Herzl said it says the site of the school.

Mr. Shea said and that was the rationale that Mr. Hensel had to advise Ms. Siegel, that the site of the school is not just one lot but also the Hebrew school directly across the street, all owned by the same owner and all licensed under the same school ownership. It's all the same entity.

Mr. Jackson said is that permitted for it to jump across the street though? That's on a separate lot and block.

Mr. Shea said you'd have to ask Mr. Hensel, he used Georgian Court College as an example.

Mr. Jackson said I'm asking you to support under the law that that ordinance can be used to authorize a school on the other side of the street. I think it can be done, we have planned educational campuses that jump streets. I don't know if that's permitted in this zone or if that's allowed for this type of use.

Mr. Shea said the applicant went through the process of going through the zoning officer who makes that call, then it went to the Township attorney who had to make a determination based upon that. His determination was based upon course of conduct and the history of how other applications have been approved over the course of the last 20 or 30 years in Lakewood, that this is not unusual. As far as the applicant is concerned, we attempted to go through the process. We ultimately got building permits issued, permits were issued, the trailers were constructed, went

through a rigorous inspection period, they were completed, the State came in, they were satisfied the way in which the operation was made, and a TCO was issued. Evidently there were letters being filed by Mr. Hirsch back and forth to the Township counsel. Upon us opening the facility, a complaint was filed by Mr. Hirsch on behalf of Rabbi Teller, and they attempted to shut down the facility and they were unsuccessful. And we have been in court for the last two years with respect to this operation. It has operated since May of 2018 when they got the CO. They've been operating for close to two years now with no issues, no violations, no tickets, nothing except a complain by Rabbi Hendler. We are prepared tonight, for the application to formalize these particular trailers in to school. The application was filed in August of 2019. The application was originally submitted to the Board of Adjustment. The Board of Adjustment shifted it to the Planning Board for review, recommended as a Site Plan Exemption and also a Change of Use.

Mr. Jackson said what was submitted to the Board of Adjustment?

Mr. Shea said this original application.

Mr. Jackson said and that was rejected? This is news to me. Mrs. Morris is also unfamiliar. Mr. Hirsch, is that your recollection of it?

Mr. Hirsch said I have no idea, first I've ever heard.

Mr. Herzl said why was it rejected?

Mr. Jackson said I don't know.

Mr. Shea said they made a conclusion that it was a permitted use and therefore should be used by the Planning Board.

Mr. Jackson said I don't think anyone disputes that this use is permitted. The question is whether a site plan exemption can be built upon a zoning officer issuance of temporary trailers. That's the question.

Mr. Shea said our position is the applicant proceeded to file pursuant to 906G. Installed the portable facilities. The ordinance also provides that we can obtain extensions to that approval as long as we have applications pending before the applicable Board.

Mr. Jackson said there's an ordinance that permits temporary trailers without a school on the site pending an application? That sounds vaguely familiar.

Mr. Vogt said the zoning officer does issue temporary permits.

Mr. Shea said we are under the temporary approval right now, from both Mr. Hensel and Ms. Siegel. Judge Ford's litigation staid Mr. Hirsch's litigation at least 90 days pending the outcome of this matter being heard by any Board. The fact is the applicant has not shied away from any particular direction except to try to comply with the ordinances since 2017.

Mr. Jackson said that doesn't go to the basis of whether this is a site plan exemption or not that can be built on the issuance of a permit by the zoning officer. Is there anything else that you have in support of that argument?

Mr. Shea said under Ordinance section 601, it was submitted in August. A letter came back from Mrs. Morris around November of 2019 indicating certain deficiencies. Those deficiencies were complied with and as a result of that we

were listed on a plan review in January, there was no mention of an issue as to whether or not we were exempted from site plan at that time. We were proceeding accordingly until Mr. Hirsch submitted his opposition.

Mr. Herzl said I think it's up to the Board to decide ultimately.

Mr. Jackson said I agree with that, whether it was accepted or deemed complete this Board still has a continuing responsibility to the determine whether you can grant an exemption on a zoning officer permit of temporary trailers.

Mr. Shea said yes the ordinance indicates that. It should be noted we received Mr. Vogt's letter outlining a variety of different items he requested. If it was exempt it probably wouldn't have been required to produce some of those items. We have provided those items and are here tonight to proceed with our engineer and planner who is going to testify as to the variances and also a traffic engineer who can testify as to the unloading of students. There are no buses so no need for a zone for that.

Mr. Jackson asked Mr. Hirsch to address the Board.

Mr. Hirsch said this is a question of whether or not it is site plan exempt. I want to address Mr. Shea's comments. Everything he said about Mr. Hensel is not so. Mr. Hensel didn't review anything. He got a call from Fran Siegel saying I'm concerned about granting this application for temporary classrooms in portable facilities under 18-906G because it's not under the site of the school. That's why when she signed the application she put "per Harold Hensel." She didn't want to take responsibility for it. They had an extremely brief discussion, I asked did you discuss all the terms of the ordinance about buffering and parking, and no I didn't discuss any of that. So none of that happened. He said she said that this is part of a campus and he said, I asked him, do you know what was going on on the other building on the site?

Mr. Jackson said I'm going to cut you off. My direction to the Board is that you have a continuing authority to determine whether an application for exemption can be built upon something issued by the zoning officer. Whether she was right, wrong, or indifferent, I don't think it matters. The threshold issues is can a permit for temporary trailers serve as the basis for a site plan exemption. I don't mean to cut you off but I don't think it matters.

Mr. Hirsch said I agree with that but there were statements made in the record I felt I had to address.

Mr. Jackson said we'll leave it as you dispute those facts.

Mr. Hirsch said so let's get down to the issue.

Mr. Sabel asked about site plan paperwork.

Mr. Jackson said a site plan exemption builds from a previously approved site plan.

Mr. Sabel said site plan means...?

Mr. Herzl said you can only have an exemption when you have an approved site plan.

Mrs. Morris said the submission items for a site plan are much more numerous than those required for an exemption. They have different submission checklists. So they are using the lesser requirements, and they've asked for relief from a number of them. If the Board were to require a regular site plan instead of an exemption, there's much more information they would be required to provide.

Mr. Sable said and what would be the reason not to provide that, because of money?

Mr. Jackson said no, because if they have an exemption there's a lot of stuff you don't have to submit. The threshold question is can an approval for temporary trailers by the zoning officer, is that a previous site plan approval? I think that's what I asked the attorneys to address. Are there variances associated with this for parking?

Mr. Stern said isn't this a purely legal issue? How are we, common ordinary citizens, supposed to... Is it your point that the Board should be making a legal determination?

Mr. Jackson said my philosophy is the Board makes findings of law and conclusions of fact. Yes. I gave the opportunity for the attorneys to address it and you'll have to decide. Are there any variances associated for parking associated with this? I thought under the MLUL you couldn't get an exemption when variances are implicated. Are there variances?

Mr. Shea said there is a side setback variance of about half a foot. It was noticed.

Mr. Jackson said it was noticed, that's not as bad. There are about 80 students here? And how many parking spaces?

Mr. Shea said five.

Mr. Jackson said so Mr. Vogt, is that enough for 80 students?

Mr. Shea said under 906 it's one space per classroom.

Mr. Sabel said it says 148 occupants. What is the rest?

Mr. Shea said the statement of operations included that information. He spoke away from the microphone.

Mr. Sabel said I'm reading the plan, it says total first floor equals 148 occupants.

Mr. Shea spoke away from the microphone.

Mr. Hirsch said this use of the site is licensed as a childcare center by the State of NJ. It's licensed under NJSA30:5B-1, which defines childcare centers. Your ordinance has a section specifically for childcare centers that are licenses pursuant to that statute. And it says they require site plan approval by the Planning Board. The argument we had in court is, its clear to us, that this is licensed as a childcare center under that statute. Your ordinance specifically says it needs site plan approval. What happened here is they applied for temporary classrooms for a school on the site of a school. And the zoning officer can administratively approve that. There are minimum things to check for even with that temporary approval. It was testified to that Ms. Siegel did not consider parking or buffering when she issued the permit. It's absolutely the testimony. So your ordinance on exceptions, which is the issue, 18-601.02, these are the basis to grant an exemption: single or two-family dwellings, including accessory uses, or structures permitted as of right under applicable zoning laws. Obviously not this. B, provided the change of use is not a change from a residential to a non-residential use, or the addition to a residential lot for a non-residential use. C, an addition of not more than 1500 sf to a previously approved site plan or use. Accessory buildings that are 400 sf or less. E, customary agricultural buildings. F, normal replacements or repairs such as siding. Temporary construction or sales trailers. All sukkahs. This clearly is not a use that falls within an exemption. This is a licensed childcare center. Our concern is not about a childcare center per se, it's about having an appropriate site plan. This is a license for 78 children. They can call it a preschool, in the license, preschool just defines the age group in the license from the State.

Mr. Jackson said do you recognize what Mrs. Morris put up on the screen?

Mr. Hirsch said that is the application they filed.

Mr. Jackson said what does it ask for?

Mr. Vogt said it's not asking for anything.

Mr. Hirsch said it's an exempt application calling this a school as the use. It's not a school. There are different sections for schools. The license says childcare center. The ordinance says it has to go to the Planning Board for site plan approval. They submitted two drawings to the zoning officer with hand-drawn sketches of two trailers. Four pages marked at Ms. Siegel's deposition. This is all the information that was before the zoning officer for 78 children, and she testified she did not consider buffering or parking. They can argue all they want, I have the transcripts from her deposition. Now what do we have, a request for exemption. This was temporary trailers for a school, which was across the street. This was a vacant lot. They stated in their litigation this is a multifamily structure for Mr. Burnstein. And other employees of the school live there. That's on a separate lot. They want to now consolidate it, fine. But that's not the situation as it was when this all happened. We have these trailers that are supposed to be temporary, and the way to get an extension on them is if you can show the zoning officer there is an application pending before the Board for the permanent classrooms. This is no mystical thing. You have a school, you need more classrooms. Put in a temporary trailer permit when you're getting ready to build your permanent classrooms. What do they do? After getting around it, so no site plan for a childcare center, no kind of any zoning review, grant you they got building permits, they get that and stick trailers on the site for 78 children, no parking plan, nothing. And now they want to be exempt.

Mr. Jackson said is there anything in concept that would prevent he applicant from seeking approval from two trailers for 78 student son this site, if they submit a site plan application before this Board. Could they submit it that way?

Mr. Hirsch said they can apply to this Board clearly for a site plan approval. The point is, it's important, it is not a school. It is a childcare center. The ordinance says parking will be determined by the number of students and the number of employees in the school. A school, the parking is determined on the number of classrooms etc. It's a totally different evaluation.

Mr. Raitzik said if they move the older children to the trailers and the younger children to the building, would that satisfy your concerns?

Mr. Hirsch said I don't follow that.

Mr. Raitzik said your complaint is the younger children are there. If they move them would that satisfy you?

Mr. Hirsch said no. The use, the trailers, if you even allow portable trailers as permanent, if that's going to be operated as a childcare center regardless of the age...

Mr. Raitzik said some of the children are already in the main building across the street, correct?

Mr. Hirsch said there is another licensed daycare across the street.

Mr. Raitzik said it's not part of the same school?

Mr. Hirsch said it's got its own childcare license ages 0-13. Two separate childcare centers and licenses.

Mr. Jackson said and that's across the street, it's a different block and lot. I don't know whether this zone allows the use to jump across the street like it does in a campus.

Mr. Herzl said they testified their administrative building is here.

Mr. Jackson said no their administrative building is on the same lot in the rabbi's house.

Mr. Herzl said and they're consolidating that with the trailers. I never saw trailers on a separate lot.

Mr. Shea spoke away from the microphone about the administrative offices.

Mrs. Morris said and that piece had a site plan approval for that non-residential use?

Mr. Shea said that's why we are here.

Mr. Jackson said the question is did that get a site plan approval?

Mr. Shea said I'm not aware of one.

Mr. Hirsch said that's a multi-family dwelling. They say they use it as administrative offices because the rabbi lives there. It simply comes down to, you have a licensed childcare center operating on this site for 78 children. You have no site plan prior approval, no review of a parking plan, ADA, or any of that. The building department did review this site and issue permits and a CO, we don't dispute that. Zoning you had no review as required by your ordinance. I've read you the items that qualify for exemption, it does not fall under any of that. If this was granted, you'd have a childcare center that's already been operating for two years, despite our attempt by the court to make them get a site plan approval, without any site plan approval, and only a partial site plan if they're exempt, for this use.

Mr. Herzl said Mr. Hirsch, you're not against the school, you just want a site plan?

Mr. Hirsch said yes, we want you to deny the exemption and require a full site plan.

Mr. Jackson said there's one thing Mr. Vogt pointed out to me, 18-00F childcare, 1.C., the development of a childcare facility in an existing structure or in a stand alone facility will require site plan review subject to the zoning district in which it is located. Parking requirements shall be based upon evaluating the following factors including number of children and employees. We've had other daycares. The question is factually is this an application for a school or a daycare.

Mr. Stern said you guys have been in litigation for two years. What's the issue? This is a lot of money and effort. What's the core complaint your client has?

Mr. Hirsch said his concern is there's no site plan approval, no parking plan, no pick up and drop off location, and that children would be killed crossing the street. That's the worst that could happen.

Mr. Raitzik said they've been there for two years.

Mr. Hirsch said it is safety related to... that's why we have Planning Board and appropriate approvals. None of that has occurred. That's why for three months we've tried to contact them.

Mr. Jackson asked a question away from the microphone regarding location and the applicant responded.

Mr. Rennert said what's the practical difference between an exemption and a site plan. What don't I know from looking at these plans in front of me?

Mr. Herzl said you don't have a circulation plan.

Mr. Rennert said that's something else. What else am I missing.

Mr. Hirsch said as your administrator indicated, there's a whole list of things that have to be on the plans if it's not site exempt. We want to see on the plan how the parking is working, how the pick up and drop off is working, how the entrances are working.

Mr. Rennert said the improvement plan shows that.

Mr. Hirsch said it shows some things but we don't believe it shows... It's showing five parking spaces, we're saying that's not the standard when you're dealing with a childcare center. I'm making a case that the Board does not have enough sufficient information to evaluate a childcare center for 78 children.

Mr. Jackson said Mr. Rennert that's the case I made at the beginning, whether its exempt, requires a site plan, we're going to get to the same issues. But I think you have to decide as a threshold matter whether this can proceed as a site plan exemption. If the Board says no this should be a site plan application, Mr. Shea can decide if he wants to appeal that or amend his application to a site plan.

Mr. Herzl said why isn't this considered a site plan.

Mr. Jackson said it was submitted as an exemption.

Mr. Rennert said what is the improvement plan missing that a site plan would have.

Mr. Jackson said it goes to the definition. We have to properly characterize it. There are different standards that apply.

Mr. Herzl said Terry, does this plan have enough sufficient information to make a decision on it or not?

Mr. Vogt said I can't tell you that right now. We've heard an hour on this application from two fine attorneys. What I'd like to hear is a professional who prepared this plan. Part of the problem, my review comment number one is the same for virtually every change of use school application. Testimony should be provided summarizing number of students, students drive and park, do parents drive and park, how many buses are proposed, will the students be dropped off by car? We typically ask questions about how does the site function? Does everyone come in and out of that route? There appears to be an access in the rear of the property. Is that in use? What's on the other side? There's a lot of questions we haven't even gotten to because we've been discussing other issues. As an engineer, I like seeing more information than less. We don't have sufficient enough information at this time. We have not heard from the applicant's professionals, we haven't heard from the public who may have concerns about witnessing how this site operates. There's a lot we don't know.

Mr. Jackson said before we can address that, we have to know what this application is. Is it ok to have it as an exemption?

Mr. Stern said why not bring a site plan. The first question is, you made a fairly cogent argument that you characterize this as a daycare and you cited the ordinance that says if so you must have a site plan. So I want to hear the response to that.

Mr. Shea said we are applying for a school under section 906. There are different criteria.

Mr. Jackson said why do you have a license for a daycare. Can you tear that up?

Mr. Shea said no, the daycare facility license from the State includes preschools, kindergartens, daycares, nurseries, a variety of schools. There's a license that says daycare license but that does not in any way...

Mr. Jackson said that's what you're saying, but we have to verify that. Maybe you're right.

Mr. Shea said in addition the application to the State says preschool, not daycare. Everything indicates preschool. Francine Siegel and Harold Hensel characterized this under 906, which is a school.

Mr. Jackson said that doesn't take it away from being a daycare. I asked the Board, do two-year-olds go to school? At what point in your experience, what two and three-year-old goes to school instead of daycare?

Mr. Herzl said I don't know.

Mr. Jackson said the Board has to ask themselves that. This has a religious overlay so I go to your expertise.

Mr. Shea said one of the issues that has been litigated is what we are. Preschool is specifically designated by the State as a use, as well as kindergartens and daycare centers.

Mr. Stern said does that use have a definition of ages?

Mr. Shea said it does not. The State analyzes our application and they understand our application is for a preschool. The license itself says daycare center.

Mr. Stern said could you make an application to the State that says I'm a preschool and I have nothing but two and three-year-olds.

Mr. Shea said yes.

Mr. Stern said so then what is the qualitative difference between a day care for that age and a preschool for that age?

Mr. Shea said it's the manner in which the State and the application that goes in and defines it. It could be inspection differences, it could be requirements. We have five classrooms, those classrooms and the curriculum are also looked at by the State.

Mr. Stern asked for clarification. If you haven't told the State, what do they look at to make the determination between the two? Or do you choose?

Mr. Shea said you get to set forth in your application the type of use you're seeking. The reality is from a land use point of view, we've applied from day one as a school. Mr. Hirsch was fully aware. He could have come before the Board of Adjustment and objected to the use as a daycare. He chose not to do that.

Mr. Jackson said I think this Board can make a threshold determination on whether this is a school or a daycare and what the criteria are. They're both permitted. I don't know that Mr. Hirsch was required to appeal...

Mr. Shea said we spent two years arguing over that.

Mr. Stern said you guys probably spent a lot of money litigating. How much more money would it be if you had taken that money and prepared a site plan.

Mr. Shea said perhaps the biggest problem is exactly that. We've submitted everything, no one has indicated that we are not site plan exempt up until now. Mr. Hirsch only sent his letter a few days ago. As far as we are concerned we followed the requirements we had to follow. Ms. Siegel testified that there are 3 or 400 trailers that she's approved in this fashion over the last 15 to 20 years. This is nothing unusual.

Mr. Stern said what bad thing other than money and time is going to happen if you submit a site plan? Brian Flannery is cheaper than you guys are.

Mr. Herzl said I think we have to make a decision are we going further with this or do we want a site plan application.

Mr. Rennert said my only issue is I have an improvement plan that shows everything. I have whatever might be a circulation plan. Terry always wants more, but do I have enough.

Mr. Stern said we had this daycare on Clover and they didn't have their act together. Then the next daycare came back and they had their act together.

Mr. Vogt said they had an application rider that I would have loved to have for every other application.

Mr. Stern said right, this kind of classroom, this age, this many teachers, they had all the math because we ripped apart the first daycare.

Mr. Shea spoke away from the microphone about what was submitted.

Mr. Herzl said did the engineer see that? He's saying he doesn't have enough.

Mr. Jackson said Mr. Herzl, you asked a question of the Board and they were deliberating. Mr. Rennert said what he thought, I think Mr. Stern... I think you should keep it amongst the Board and make this threshold determination.

Mr. Stern said I think we need to flush it out more, if it's not a full site plan still give Terry everything he needs. This Board tries to take its obligation seriously to ensure the safety of children. We are bad drivers in Lakewood, Terry needs the tools to make sure we've dotted our i's and crossed our t's. What that means practically, I'm not sure.

Mr. Sabel said I agree with Mr. Stern.

Mr. Herzl said I'm ok with an exemption, but I think all Terry's questions need more information. Anything that he's questioning.

Mr. Rennert said I think I have enough.

Mr. Raitzik asked a question about what keeps the children from running into the street.

Mr. Jackson said that will be provided in the testimony.

Mr. Shea said we received Terry's report and intended to address every item tonight. Amended plans were submitted to the Board.

Mr. Jackson said Mr. Herzl, we're on the threshold and should still take a vote.

Mr. Isaacson said I looked at what's provided, to me it's enough. I know the property. I don't understand why they didn't provide a site plan, but if we could hear some testimony... He spoke away from the microphone.

Mr. Rennert said it seems like they didn't think they were required to provide a site plan.

Mr. Herzl said the way I understand it, the Board would grant site plan exemption but they want more information to satisfy Mr. Vogt's letter.

Mr. Vogt said I can't tell you what that is until I hear more on this application.

Mrs. Morris said I believe there were revised plans attempted to be submitted but it was less than 10 days before the meeting.

Mr. Herzl said we shouldn't listen to this until Terry reviews those plans. Those revised plans, Mr. Shea do you feel you've addressed all the issues?

Mr. Shea said yes, and anything else that comes up between now and the next meeting we will address.

Mr. Raitzik said what was in the revised plans?

Mr. Shea said we received a revised letter as a result of the revised plans, so I'm not sure what's being referred to.

Mrs. Morris said didn't you try to submit something last week?

Mr. Shea said it might have been the circulation plan.

Mr. Jackson said we need to resolve this threshold issue, set a new date, and then Mr. Vogt can tell them what they need to submit.

Mr. Herzl said I definitely need a circulation plan.

Mrs. Morris said that's what was attempted to be submitted last week. We have not received revised plans since this letter.

Mr. Herzl said I need Terry to review that.

Mr. Vogt said Glenn, what your group did on the recent Spruce daycare center with the application rider, do that again.

Mr. Jackson said one of the criteria for the daycare is there has to be sufficient parking based on the number of students. That's a wide gulf between what's required for a school. At some point during the hearing you're going to have to address the use.

Mr. Shea said this is not a daycare.

Mr. Jackson said hold on, that's going to be a factual issue during the case. I'm hearing a consensus maybe that this can be a site plan exemption.

Mr. Raitzik asked about verifying with the State if that license/paper is the same for preschool and daycare.

Mr. Jackson said I can look into that. Both attorneys, please submit something in writing as to why this is or is not a daycare. My guess is the State regulations are broader than Lakewood's. Are you satisfied this is a site plan exemption?

The Board discussed.

Mr. Jackson said I also don't know how you can grant the variance under site plan exemption, I thought that was a disqualifier. Under the MLUL you need a site plan whether it's six inches or sixteen feet.

The Board discussed exemption versus site plan.

Mr. Herzl asked for a motion on how to consider the application.

Mr. Rennert made a motion to consider it as a site plan exemption.

Mr. Herzl said do you need any more information?

Mr. Rennert said I want to hear the statement of operations but I'm ok with the plans.

Someone seconded.

Mr. Stern said I heard provide additional information consistent with a site plan.

Mr. Herzl said Mr. Shea, if you go ahead as a site plan exemption and you don't submit all of the information that Terry needs, you may be denied.

Mr. Shea said we will submit and address each and every item. Some of the items call for testimony. We can supply written answers to those ahead of time.

Mr. Vogt said that's what we're asking for so our next letter can incorporate that information.

Mr. Rennert said my vote is for whatever Terry just said.

Everyone discussed.

Mr. Raitzik said can we approve it based on Terry's approval?

Mrs. Morris said we haven't heard the application yet.

Mr. Herzl said the motion on the table is to grant the exemption, to let them proceed under an exemption...

Everyone talked at once.

Mr. Vogt said my recommendation is with the understanding that depending upon what we hear we may be asking for more information at a future time.

Mr. Rennert said yes I have a lot of questions. I want to hear the testimony.

Mr. Vogt said and testimony from the public.

Mr. Herzl said the motion was with giving more information.

Mr. Jackson said the applicant may proceed with their application under the site plan exemption criteria but that they will be required to provide additional information per Mr. Vogt's letter.

Mrs. Morris said does Mr. Vogt's letter ask for the things the Board wants to see?

Mr. Herzl said I don't know.

Mr. Rennert said yes, it asks for a statement of operations.

Mr. Stern said as if it were a normal site plan application.

Mr. Herzl said basically you will have a site plan without calling it a site plan.

Mr. Stern seconded the motion.

Mr. Stern affirmative. Mr. Sabel negative. Mr. Herzl affirmative, Mr. Rennert affirmative, Mr. Isaacson affirmative, Mr. Raitzik affirmative.

The Board continued the application to the May 5th Planning Board meeting. An announcement was made as to the same.

- 6. APPROVAL OF MINUTES**
- 7. APPROVAL OF BILLS**
- 8. ADJOURNMENT**

The meeting was hereby adjourned. All were in favor.

Respectfully submitted
Ally Morris
Planning Board Recording Secretary