

1. FLAG SALUTE & CERTIFICATION OF COMPLIANCE

Acting Chairman Bruce Stern 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 *The Star Ledger* 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. Garfield, Mr. Stern, Mr. Sabel, Mr. Flancbaum, Mr. Meyer, Mr. Raitzik were present.

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

3. PUBLIC HEARING

1. **SP 2374 Congregation Toldos Yaakov Yosef**
670 Squankum Road Block 104, Lots 13 & 59.01
Preliminary and Final Major Site Plan for a school

Mr. Jackson said Mr. Stern is chairing this meeting.

Mr. Gasiorowski said Ally is going to call me at 8:30 to let me know whether we are starting the second application. I will get off for now.

Mrs. Morris confirmed she has Mr. Gasiorowski's cell phone number.

Mr. Gasiorowski said thank you for the courtesy.

Mr. Jackson said there is a preliminary matter we should address before Mr. Vogt's testimony. We received a letter from an objector's attorney, Mr. Liston, indicating a series of objections to the format of the meeting and the notice, etc. In this Covid environment, the Planning Board, in order to move the wheels of progress forward and fulfill its responsibility to consider land use matters in a timely manner, has done its best to purport a process and procedure where we can hear applications. We have been doing this for some months now and we've heard numerous applications. I note there are many nearby municipalities which I will not list that have similarly adopted a virtual format. In our format, we provide interested persons with the opportunity to submit written comments prior to the meeting and during the meeting. And also to ask questions of the applicants' professionals and the Board professionals. This has worked very well and we've had many instances where people will email in questions during the meeting of the experts and a series of questions even, after the answers have been provided. In our view we believe this protects the interests of those who are concerned, gives people a opportunity to be heard, and allows the Board to consider whatever objections. In this particular instance, Mr. Liston raises an objection about whether interested parties can cross examine. We believe, I believe, that while this might be a concern of some third party if they raise it, Mr. Liston has been given the opportunity to have an open microphone and participate in the same manner and in the same quality that the applicant's attorney can participate, where he would have an opportunity to cross examine witnesses and make whatever statements he wants. In fact, he provided an 11 page letter that gives very specific details regarding his objections. My recommendation to the Board is that we proceed, in this Covid

environment in order to protect the safety of the public and everyone in the State. We can't congregate in person at this time due to the world-wide emergency, and under the circumstances we believe that this is the best that we could do. My recommendation to the Board is that we proceed. I think since the objection has been raised the Board should consider that at this time, whether you want to go forward as a threshold matter, and if Mr. Doyle has anything he'd like to add, I would invite him to comment on the letter or the procedure now.

Mr. Stern said Mr. Doyle, if you could quickly comment on the letter, I'm going to rule, and then we'll move on.

Mr. John Doyle, Esquire, appeared on behalf of the applicant. He said thank you. I would agree with Mr. Jackson's belief and ruling, and hope that the Board would support that. I've spoken to Mr. Liston several times. I made it clear that it was my understanding that he had the opportunity as much as I did to call witnesses, to cross examine my witnesses, to be fully participating and able to do so in this setting. With respect to this setting, I note that the Board has tried diligently to move all non-controversial matters first, so we were set back. This application was deemed complete and able to be heard on May 6th, and we have patiently waited and in fact adjourned the meeting for an additional week so as to see if we couldn't resolve certain matters raised by objectors. Not having done that and wanting to express our ability to go forward on an application that we believe is much needed, educational, and suits the site and the municipality, we would like to go forward and I would hope the Board would allow us to do that tonight.

Mr. Stern said I'm hearing you not objecting at all to the objector's counsel cross examining your witness. Am I hearing correctly?

Mr. Doyle said I would not object if he was on the call and wished to do that, subject to the relevance and nature of the cross examination, but it is a right under the Municipal Land Use Law and I think that the procedure being used tonight is consistent with that.

Mr. Stern said so to me, the essence of due process is the right to cross examine. It appears to me we are giving the objectors and their counsel the right, subject to rules of relevance and whatnot, but the full right to cross examine the applicant's witnesses. And that's the most important thing, and we are providing for that, so we are going to move on and if the objectors disagree then they can go to the courts and let the courts decide whether we are right or wrong. But we are moving forward tonight.

Mr. Doyle said thank you.

Mr. Vogt said per our letter dated August 10th, submission waivers include topo, contours, manmade features within 200', as well as an EIS. We support all these waivers for hearing purposes for reasons stated in the letter.

Mr. Stern said I got a letter dated May 5th. Is there an updated letter?

Mr. Vogt said yes there is. There's actually two, the most recent is August 10th.

Mr. Sabel said are we sure we got that letter? I have two of May 6th.

Mr. Stern said I have August 11th for Somerset Walk, and May 6th for Congregation Toldos Yaakov.

Mrs. Morris said I'm going to assume that the plans were mailed to the Board members before this August 10th letter was completed, so that letter may not have been included. However the August 10th letter is available in the online drive available to the public and the Board.

Mr. Sabel said can I ask for a few minutes to review the updated letter?

Mr. Stern said Ally, can you email the letter so we can review it?

Mrs. Morris said of course. I will note for the Board that Mr. Liston has joined the meeting. I don't know if Mr. Jackson wants to let Mr. Liston know that we did already discuss and agree to hear the application tonight under this format.

Mr. Jackson said Mr. Liston has joined us, the applicant's portion of the case, the meeting, is under way. So we should proceed.

Mr. Stern said are there a lot of changes from the May 6th letter?

Mr. Vogt said the applicant's professionals have made efforts to basically address a lot of our original technical comments, and get the plans far enough along that the Board would be comfortable hearing them. In terms of concept, I don't think there is anything drastic. It's more fine-tuning the preliminary submission.

The Board took five minutes to read the latest review letter.

A motion was made and seconded to support the submission waiver requests in accordance with the engineer's recommendations. All were in favor.

Mr. Vogt said continuing under zoning, variances that are required include minimum front yard setback, buffer variance relief from the adjoining residential properties, parking setback variance. That's it under variance relief. Under design waivers, a partial design waiver is required from providing curb and sidewalk along the entire frontage of the site. It appears that the portion of the site where it's not proposed are because of existing wetlands. Finally, partial design waiver is required from providing street trees, as well as shade tree and utility easement across the entire frontage of the site. We recommend the easement, and the waiver for the trees for the undeveloped portion.

Mr. Doyle said thank you for the opportunity to be before the Board on what we believe is adequate and compliant notice. I'm please and privileged to represent Toldos Yaakov Yosef of Lakewood. While it is of Lakewood, it is an international network of schools. Since they entered in Lakewood, they have grown 15 times the original amount and are looking to further growth, which hopefully this school will accommodate once it's approved. It is a boys' elementary school. It is located on a site that has been previously approved for schools in 2010 and 2012. As you see on the map, it is an irregular, triangular shaped property on Squankum Road. IT has 5 neighbors, all residential, adjacent to it and to which we would seek what we think are minimal variances, reduced by the trees and fencing we would propose and have suggested before in discussions. The piece is 9.61 acres but as you can see the northerly rectangle is all wetlands and delineated as such by a Letter of Interpretation that has been received from the DEP. While we can use that for passive recreation, consistent with the purposes of the school and for the benefit of the young boys that will be going there, we cannot build any structures. So we are compressed to the triangular piece, with the feature you will note mostly are the parking spaces. While 49 spaces are required by the number of classrooms and teachers, we in fact provide 82 spaces. Part of this application, you will note in the reports we have presented to you, 12 separate reports, environmental, traffic, drainage, operations maintenance, and so forth. These 12 reports in totality have been reviewed 3 separate occasions by your engineer, the latest of which you freshly reviewed. Each of those reports were occasioned by changes the applicant has made to bring this site into greater conformity and more consistent with the engineering concerns laid out by Terry. We are now at the point where I believe the concerns are of limited nature. Our engineer witness, Brian Flannery, will present with respect to that. As I said earlier, we were deemed complete on May 16th, so we come to you with what we

think is a well-balanced application. We would balance the variances we seek with the insulation of trees, an 8' high fence if the Board would grant the variance for that, we would accommodate the neighbor's concerns by having no windows on the side that would be fronting on the neighbors. And so with all of that said, we ask you to balance it against the proposal. There are no two greater institutions in Lakewood or the world than family and education. We are a part of both, and we are a part of the family of schools in Lakewood and in our own institution across the world. We are seeking to provide education to young boys, consistent with the values that their families have taught them and is inherent in this neighborhood. With that said, I'm prepared to proceed.

Mr. Brian Flannery, professional engineer and professional planner, appeared and was affirmed. He said I've been licensed and practicing planner for more than 30 years, appeared at thousands of Board meetings throughout the state. I know the Board is very familiar with me and I'm assuming they're going to accept my qualifications.

Mr. Jackson said Mr. Stern, do you recognize Mr. Flannery as an expert in the fields of engineering and planning?

Mr. Stern said Brian before you proceed, I was trying to get a question in. What is the difference between uplands and wetlands, as far as what you... John, what is the difference between the wetlands and the uplands as noted on your plans as far as what can and cannot be done.

Mr. Flannery said the NJ Department of Environmental Protection has established 3 criteria for determination of freshwater wetlands. It's presence of wetlands vegetation, presence of groundwater, and modeling of the soil. The NJDEP, upon submission of an application for a Letter of Interpretation, will go out and verify a line that's been established by an environmental consultant. In this case, Dubois Environmental went out and located a line that they felt complied with those three standards. The DEP came out, verified it, and we have a Letter of Interpretation saying this is what the wetlands is, and as part of that Letter of Interpretation they say there is a 50' wetland buffer. We are not allowed to disturb any vegetation without getting DEP approval and a permit, within either the buffer or the freshwater wetland area.

Mr. Stern said so what's designated on the map, where it says uplands, is that your 50' buffer?

Mr. Flannery said you can see on the map, there's a 50' dimension in between the two lines that run pretty much parallel to the rear of the building.

Mr. Stern said ok. What can you do in that 50' buffer, and what can you not do.

Mr. Flannery said you can walk in the 50' buffer, you can't disturb vegetation, you can't dig or fill.

Mr. Stern said can you put a playground there.

Mr. Flannery said you can put a temporary structure that doesn't disturb the ground or vegetation.

Mr. Stern said so you can't put concrete footings and put up a playground.

Mr. Flannery said correct.

Mr. Jackson said Mr. Stern, I had asked whether you recognize Mr. Flannery as an expert in the field of engineering and planning, and before I go to that question I would ask Mr. Liston whether he has any objection to Mr. Flannery being accepted and qualified as an expert in the field of engineering and planning.

Mr. Liston said I have an objection to Mr. Flannery, I have an objection to this entire proceeding, based on the fact that it doesn't comply with the Municipal Land Use Law.

Mr. Jackson said we received your letter in that regard, you weren't on the meeting when it started and we addressed all that. Can you please limit your comments to Mr. Flannery's qualifications and specifically what your objections are.

Mr. Liston said I don't accept his qualifications, I think if they're going to be placed on the record, let him place them on the record.

Mr. Jackson said Chairman, you have the opportunity to recognize him unless Mr. Liston has a specific objection. I know Mr. Liston has been involved with him on numerous occasions in front of this Board and is familiar with him. I don't know if it's necessary...

Mr. Stern said we are accepting Mr. Flannery's qualifications and we are moving on. Mr. Flannery, please proceed.

Mr. Liston said is he testifying as an architect or an engineer?

Mr. Flannery said I am a licensed architect. I have no architectural testimony that needed to be provided here. If there's questions with respect to the architectural, I am certainly qualified to do that. The testimony that I'm prepared to present tonight is with respect to engineering and planning, and justification for the relief that is requested.

Mr. Liston said are you doing that on behalf of a firm.

Mr. Flannery said no I'm not.

Mr. Liston said so you're just doing that as the engineer...

Mr. Flannery said Brian Flannery, licensed professional engineer and planner, that's been licensed since the 80's, and since the 90's in architecture.

Mr. Liston said ok but you didn't prepare these plans, these plans were prepared by Glenn Lines.

Mr. Flannery said correct.

Mr. Liston said does he work for you?

Mr. Flannery said Glenn Lines does not work for me.

Mr. Jackson said Mr. Liston, respectfully, I think these questions might go to cross examination, if that's allowed in this area. But I don't believe these go to the qualifications of Mr. Flannery, which the Board has already accepted.

Mr. Stern said Mr. Liston, before you came on we heard about your letter objecting to the format. It was the opinion of this Board that the essence of due process is the ability to cross examine the witnesses. You will have adequate time to cross examine Mr. Flannery and any other witnesses that the applicant puts forth. For right now, I would like to move on and maybe reserve the questions about the particular application and who prepared what, to your time for cross examination. Does that sound fair?

Mr. Liston said no it doesn't. Particularly because I'm just going to question whether Mr. Lines, who drew those plans, is going to testify about them.

Mr. Doyle said we don't intend to call Mr. Lines, we have Mr. Flannery who knows the site, who knows the plans, and can testify expertly and factually.

Mr. Liston said but he did not prepare the plans, is that correct?

Mr. Jackson said excuse me, Mr. Stern, I believe you made a ruling on this matter and it's my recommendation we move on with the testimony. You asked Mr. Liston if he could cover this during cross examination.

Mr. Liston said I don't believe cross examination is the proper place to cover that.

Mr. Stern said Mr. Liston, why don't you go ahead and... I'm not trying to silence anybody. Tell us your objections and we'll keep going.

Mr. Liston said my objection is that the witness called to testify on these plans is not the engineer that prepare the plans. And that is normally the way it's done. If there's a reason why Mr. Lines is not available tonight, I'd like to know it.

Mr. Doyle said there is no statutory or case law requirement that would prevent Mr. Flannery from testifying a long as he is, as said, familiar with the site and the plans. And there's no requirement that we produce Mr. Lines. We are making the application and we will determine how to proceed. Presenting it the way we are, is not inconsistent with the law or the MLUL.

Mr. Stern said pause. Mr. Liston, do you disagree with that legal point that Mr. Doyle is making?

Mr. Liston said yes I do. On the basis that the engineer that prepared the plans should be the engineer to testify to the plans, as to how they were prepared. If Mr. Flannery supervised the presentation, that's different. But Mr. Flannery is just coming in, looking at someone else's plans, that he's going to testify to. That I don't think is the best testimony that can be presented with regard to these plans. I think that Mr. Lines should...

Mr. Stern said Mr. Liston, you used the word "should." You're saying that the person who prepared the plans *should* be the one to present. Mr. Doyle just said as a matter of law, that that is not a requirement. So I'm asking you, what is the nature of your "should." Are we doing something contrary to law, by allowing Mr. Flannery to move forward, and to testify regarding those plans. And if your answer is yes, please cite chapter and verse or a case.

Mr. Liston said I'm going to indicate that I think the best evidence would be the evidence prepared, from the engineer that prepared, the plans. Or, and engineer who was supervised by Mr. Flannery. Neither is the case. I don't think you're getting the best evidence.

Mr. Stern said ok, Mr. Doyle, I'm not sure that the legal best evidence is a term of ours. Please respond, I'm gonna rule, and then we're moving on.

Mr. Liston said you can go ahead and rule Mr. Stern, I've had my say on this. I think it's improper.

Mr. Stern said Mr. Doyle, what's your opinion?

Mr. Doyle said my opinion is Mr. Flannery is an expert, he's a regular with his appearances before Boards, and with respect to these plans he's familiarized himself with them. He knows the site, he knows the plans. As Mr. Liston says, that's not the way we should provide, but he did not answer your question directly, citing chapter and verse. He's able to testify and we would like to move on with our application.

Mr. Stern said so Mr. Liston, your objections are noted. We understand where the disagreement is. We are going to move forward. If you choose to object or appeal, that is within your rights but let's proceed going forward under these assumptions.

Mr. Sabel said to Mr. Liston, is Brian Flannery legally allowed to provide testimony on the architectural and planning? Legally, not what you think of him as a witness. Is he legally allowed to present his case?

Mr. Liston said I think you should ask your own attorney.

Mr. Jackson said Mr. Sabel, I heard your question and I do not know of any case, doctrine, rule, etc, that prohibits an engineer from testifying in a land use proceeding. We have to see what his testimony is. Also, the best evidence rule that Mr. Liston referenced has absolutely nothing to do with this. That rule is something that controls original writings. It's an ancient principle where original writings have to be produced as opposed to a facsimile. It has nothing to do with land use. My recommendation is we abide by the Chair's ruling and move forward at this time.

Mr. Stern said so the Chair's ruling is we are glad everyone had their say. We are moving on. Please continue.

Mr. Doyle said Mr. Flannery, take us through the site, the application, Mr. Vogt's letter, and the variances and/or waivers we seek and the justification for those.

Mr. Flannery said the first thing I'd like to do is mark exhibits. A-1 is Sheet 38 of the tax maps, where the subject property is colored in yellow. It shows the site at the northern end of the Township on Squankum Road. The northern boundary of the site is the Metedeconk River, which is the municipal boundary line. To the east of us is the Tilton junkyard site and the JCP&L site on Lots 9 and 7 respectively in Block 172. To the south and west of us is the Appolo Road development. There are 42 single-family lots, on 3 and a half cul-de-sacs coming off Squankum Road. A-2 would be the aerial that was submitted, which again shows the subject property. You can see on the bottom of the sheet, on the opposite side of Squankum, where the Tilton junkyard is. That's where the old, abandoned building and the gravel parking lot is. To the south of that is the driveway for the JCP&L facility. A-3 is sheet 3 of the plans, which is the Layout and Dimension Plan, and A-4 is the colored rendering showing the beautiful school building being proposed here. Part of the application that was submitted was a statement of operations from the school. As Mr. Doyle indicated, this is a school that is associated with a larger school network. There's a lot of demand for the school space that's available because the current facility turns children away every year. We all know in Lakewood, having enough space for the private school children is a high priority. As indicated in the Statement of Operations, the intent is to have a total of 825 students in 33 classrooms. Each classroom would have 25 students. They are currently at 250 students. Grades 6-8 start at 7:30, grades primary through 5 start at 8:45, and kindergarten and nursery starts at 9:45. The dismissals are also staggered. Kindergarten dismisses at 2:30, 1st grade at 3:45, 2-5th at 4:30, 6th and 7th at 5:15, 8th at 6:00. On Friday, all grades dismiss at 12:30. It goes through the dismissals on Sunday also. They go on to indicate that they currently have 4 buses. They do their own transportation, so that they eliminate the need for carpools. They can manage the staggering so that the traffic impact is minimized. Getting to the report, as indicated on page 2, we are proposing a 3-story school. A lower level and two above it, with a total of 82 parking spaces, where per the ordinance 49 are required. On page 3 it indicates the submission waivers which the Board approved. Those were because sufficient information was provided without going to the extent of providing the additional information for the Board to review the plans.

Then we get to zoning, under Item 2, the first one indicates that schools are a permitted use. Then the relief, which relates really to two items. One is this small triangular piece of the building which is over the front setback. Sheet 3 of the plan does show the 50' setback, and I'm assuming the Board is familiar with this. The setback was changed with the 2017 Master Plan for schools. Schools have a bigger setback than a residential structure in this zone. Residential would have a 30' setback, the school has a 50' setback. And the important thing in the discussions for the 2017 Master Plan is not having overpowering school buildings up close to the roadway. If you look at this particular case, this is 225 sf on a 20,000 sf footprint. So it's roughly 1% of the building over that front setback line. And the remainder of it is well behind it. It's also a triangular piece rather than a big piece of the building. So my testimony is that the relief relating to this is de minimus and I'll go through the justification for that later on. This is a very large piece of property, but because of the wetlands and buffer line, there is a small area that can be developed, and that area is not rectangular. That area has a lot of changes in geometry as well as topography. The site drops off to the wetlands and you'd expect, because the water currently runs in that water, downhill, and ultimately to the Metedeconk River. The second item that we need relief for is a 20' buffer, and along our side property line. Where currently there is a school and there is parking, in that area we've proposed a row of 20 parking spaces which are in the buffer. I've given testimony of this nature in the past with respect to the buffer, indicating that the applicant could eliminate those spaces and still comply with the amount of parking that is required by ordinance. The ordinance requires 49 spaces and we've provided 82, so if we take those 20 away we still have 62 which exceeds the ordinance. But parking in Lakewood is always in high demand, and due to the fact that we don't want anyone using this property to have to park off-site, we felt that we could comply with the intent of the ordinance with respect to buffering by proposing fencing and trees and at the same time provide the benefit of additional parking spaces. Typically when you would look at relief that is requested, a lot of times the initial assumption is that we're building something bigger than fits on the site. In this particular case, that's not the situation. The corner of the building is a hardship due to the geometry of the property, and in order to do that along the setback line without losing floor space for the school, which is an inherently beneficial use, we'd have to have a very unusual construction situation. The applicant feels that the relief requested here is something that's a huge benefit to them, with no adverse impact to the general public. With respect to the buffering and the parking, again the applicant's position is that the intent of the buffering can be provided with a fence and landscaping, and that will allow the benefit of 20 additional parking spaces. Additionally, it's the same kind of item on page 4, number 4, with respect to parking setback. Because the ordinance specifically says no parking within 5 feet of the adjoining lot. So these parking spaces are within the buffer and they clearly aren't allowed. I indicated I would speak to the justification for these variances. The corner of the building over the setback line, my opinion is that's a C1 hardship variance because of the geometry of the property as well as a C2 variance, where the benefits outweigh the detriments. With respect to the buffer, section 18-906, under buffer requirements, A3 says a required buffer shall be landscaped with trees, shrubs, other suitable plantings for beautification and screening, natural vegetation should be retained to the maximum degree possible. On those sites where no existing vegetation exists or existing vegetation is inadequate to provide screening, which is where we are because that vegetation was removed by a prior school approval that did get buffer relief, the applicant shall suitably grade and plant the required buffer area such that plantings shall provide an adequate screen of at least 6' in height, so as to continually restrict the view, a minimum on-center distance between plantings shall be such that at maturity the buffer will create a solid screen, and the buffer may be supplemented with solid fencing where necessary. The school is proposing fencing along the property line. The ordinance allows, once you pass the front setback, an 8' high fence. The applicant is willing to put an 8' high solid fence all the way around that property line. The applicant would put a taller fence toward the road if the Board felt that was necessary and would grant the variance for a fence exceeding 4' in the front setback. And the front setback would be a little questionable in this instance, because the front setback for a residence is 30' so my opinion would be that the fence, since it's not a school, you could go at 8' up to the 30' mark, and then forward of that at 4'. Again, the school wants to be a good neighbor. They've reached out to the neighbors. Unfortunately, no agreement has been reached at this time. But the applicant is willing to provide any buffering that's requested. The applicant is willing, if the Board thinks those 20 spaces should be eliminated, we will eliminate them and we'd be 20 spaces shorter. It's our opinion that the

benefit of them certainly outweigh any detriments. With respect to the concept of buffering, in the ordinance, section 18-803, E Buffering, buffering shall be required when topographic or other barriers do not provide reasonable screening and when the Board determines there is a need to shield the site from adjacent properties and to minimize adverse impacts such as incompatible land uses, noise, glaring, light, and traffic. We feel that the school can provide the intent of that buffering by providing fencing and landscaping. With respect to the 2017 Master Plan, on page 7, vision statement, A is encourage development and redevelopment based on smart growth planning principles such as a balanced mix of land uses, pedestrian-friendly transit, environment, with a sense of place. This is certainly a redevelopment of a piece of property that at one point had a house, that wasn't friendly towards residential. That was converted to a school, an inherently beneficial use. Now we're putting in a school for 825 students. It's certainly an inherently beneficial use, it's certainly a benefit. The vision statement on page 7 goes on in the sixth bullet, it says provide sufficient educational, recreational, and community facilities to meet future needs. That's what this school is doing. On the same Master Plan, page 10, community facilities strategy, continue to support the development of private schools in the Township of Lakewood. That's what we're doing here, with an application that is virtually relief-free. The corner that's proposed here, I don't think adversely impacts anybody. If anybody feels the parking in the buffer is inappropriate, we don't need that per the ordinance and that could be deleted. The Municipal Land Use Law, NJAC 40:55D2 under purposes of the act, A is to encourage municipal action to guide the appropriate use and development of all lands in the state, in a manner which will promote public health, safety, morals, and general welfare. And it's my testimony that this does this. This promotes the general welfare. This provides, on a County road, buffered on one side by a wooded area, almost out of Lakewood, an opportunity for an inherently beneficial educational facility. We do have five neighbors that are next to it, and those five neighbors we recognize our requirement to provide adequate buffering for them and we are committed to do that to whatever extent the Board feels because section 18-803 says the Board should determine. The C1 variance for this 225 sf that's over the setback line, it's my testimony that is a hardship generated by a school building. You're going to have a building that follows one of the lines, whatever line on this property we follow, you end up with an unusual geometric feature in the building that's going to adversely affect the size of the building related to setback line. The C2 variances, and it's my testimony this is also a C2 variance for the front yard setback which is 14.9 feet over the setback line and the buffer relief, a C2 variance we have to show it relates to a specific piece of property. I think this property as I've already discussed certainly is a specific piece of property. It's a unique piece of property. The school is uniquely suited to be developed on this property, and it's my opinion that the design of this school... and I was involved from early on. There were initial sketches that were done by a different company that I reviewed on behalf of the school. As the plans were being developed by New Lines, I reviewed them on behalf of the school. And it's a unique property that provided the school with parking exceeding the ordinance requirement. So it's my testimony it meets that prong of the requirements that we need to show for a C2 variance. The purposes of the Municipal Land Use Law would be advanced, and specifically it enhances the general welfare as I testified. The variance can be granted without substantial detriment to the public good. And it's my testimony that neither this 225 sf or the parking, which can be eliminated, are substantial detriments to the public good. The variance will not impair the intent and purpose of the zone plan and zoning ordinance. As I've indicated by the Master Plan, it advances the purposes of the Master Plan and it's consistent with the zoning ordinance with the exception of two de minimus features, one of which can be eliminated very easily, will have no impact on anything other than providing a difficult building situation for the school. The other one can be made to comply very easily as well, but then 20 parking spaces which are a benefit to the town would be eliminated. The show of proof is that the benefits substantially outweigh the detriments. My testimony is there are virtually no detriments from the relief we are requesting, and the benefits I've already indicated. And it certainly relates to an inherently beneficial use. And it's a two prong thing that the variances can be granted without substantial detriment to the public good, which is adversely impacting someone. This 225 sf and the additional parking spaces, if they're buffered properly, do not or are not substantially detrimental to the public good. And it will not substantially impair the intent and purpose of the zone plan and zoning ordinance. I think that's clear to this Board at face value. That's with respect to the variance relief that is needed. The design waivers, continuing on page 4 item 3, the waiver is for not providing curb and sidewalk into Monmouth County

along Squankum Road. It should be noted this is a County road, we need County approval. If the County says we should go to the DEP and ask them for a permit, which, it's my opinion, the DEP's not going to be inclined to grant, the curb that's out there now provides for safety and it's been a safe access point all these years, the development of this school isn't going to change that. The development of this school is going to provide sidewalk along here, so that any of the pedestrian access to the school has a sidewalk to walk on. The second design waiver is with respect to shade tree and utility easement. The applicant will happily add the easement. In the RVE report, they don't even recommend putting in the shade trees because to plant trees in the woods along wetlands would make no sense. Under the review comments, the parking calculations, as they indicate there are 82 parking spaces proposed, 20 of which are in the buffer area. If the Board feels they should be eliminated to provide a better buffer, the applicant has no objection to that and we would amend our application accordingly. That would still leave us with 62 where 49 are required.

Mr. Stern said wait, so there really aren't 82? Are you agreeing with Terry's comment here?

Mr. Flannery said well Terry's comment is the plan as submitted showed 21 along this line. If you count them, there's only 20. What I think must have happened is at one point there were more. But there are 20 here rather than 21 as noted, and if the Board acts favorably that 21 will be changed to a 20. That makes 82 parking spaces. The plan as submitted said we had 83, Terry said it's 82.

Mr. Stern said so we're talking 1 space.

Mr. Flannery said correct. The only time the 20 changes is if the Board says no, let's give those people a bigger buffer, then delete the 20 spaces and there are 62 left. The report indicates that the testimony should be about the number of students and it goes on to show the numbers from the traffic study. Again, 825 proposed students is what we're ultimately the build out would be. Item 10 says testimony should be provided with respect to the trash and recyclables, and we do have an area for them. We have a loading area to get in, and that will be subject to DPW review. This plan does add, as the Board likes to see, a sidewalk from the sidewalk along Squankum, through the parking lot, to a crosswalk, to the walk in front of the school. So that's something that the Board likes to see and has been asking for. New Lines, being aware of that, showed the crosswalk along Squankum, and then a sidewalk and a crosswalk to the building. So any pedestrian access to or from the building has a safe space to travel.

Mr. Sabel said thank you Brian, I'm glad New Lines got the concept.

Mr. Flannery said item 20 is with respect to the stormwater system. It will be maintained by the applicant.

Mr. Raitzik said the traffic study is showing 750 students, you said there's going to be 825.

Mr. Flannery said yes.

Mr. Raitzik said would that adversely affect the traffic study that was done?

Mr. Flannery said no, the difference in students is a couple extra kids in each bus.

Mr. Raitzik said you mentioned before there were 4 buses, correct?

Mr. Flannery said there are 4 buses currently, they will certainly need more buses when there's more students.

Mr. Raitzik said even know you said they're all dismissed on Friday at 12:30. How are they working that with 4 buses?

Mr. Flannery said I would assume what's gonna happen, and it's a good thing this is a very active and concerned school, so when they get to the point than more buses can fit along here, and this area in here, where 4 buses could currently park. When they get to a point where more than 4 buses is needed, they'll have to have a dismissal at 12:15 and 12:30. They'll have to stagger it.

Mr. Raitzik said you mentioned the school owns the buses. Where are they keeping them overnight?

Mr. Flannery said the buses will not be kept on site. They will... the drivers can take them home or they can find another storage location on another property where they can be stored. And if the Board acts favorably, we would expect a condition that school buses cannot be parked on the site overnight.

Mr. Raitzik said how about during the day?

Mr. Flannery said we could also say that the school buses should not be parked on site except when loading and unloading students.

Mr. Raitzik said ok.

Mr. Sabel said that would also help in case there's a hall there. The 82 spots will be available.

Mr. Flannery said correct. Item 24 indicates testimony should be provided with respect to the sanitary sewer. That is further south on Squankum Road. There will be an ejector station in the building and the sanitary sewer will be pumped to a manhole that's being extended northerly along Squankum Road. We will have public sewer connected to the New Jersey American system. Item 25 is the Shade Tree Commission, and I would give my standard answer that we will provide whatever is required by ordinance and whatever the Board Engineer thinks is appropriate. Or the Board if they want to give input, the applicant is happy to provide landscaping as recommended. I think that's a summation of all the comments that need to be addressed.

Mr. Raitzik said will any children be walking to school.

Mr. Flannery said I don't foresee any situation where that would happen. The school has the buses and intends to pick them up. The school does not intend to have any children walking.

Mr. Raitzik said you also mentioned that there is topography on the northern slope, sloping down a little bit. That's the area where you're not allowed to touch it?

Mr. Flannery said we're not allowed to touch it from the 50' buffer line north.

Mr. Raitzik said the building itself is going to be evened out?

Mr. Flannery said the building will be higher in the front than in the back.

Mr. Raitzik said will there be runoff from the parking lot into the wetlands?

Mr. Flannery said no, all of the runoff that occurs in the parking lot is picked up in a drainage system that's reviewed by the Board Engineer and directed to a stormwater management system in accordance with state stormwater standards.

Mr. Raitzik said as far as the hall events, what can you tell us about that?

Mr. Herzl said the intention of the dining room, and it's a 4,359 sf dining room, that's proposed to accommodate the students that are here. We're not building the dining room as a hall to rent out, we are building it so the students have a proper place to eat. A dining room of that size, the code standard is 15 sf per occupant, which would be 290 students. I haven't been in them, but I've been advised that in some private schools a few more students than that are there. So it may get close to 400 students at a time. With 825 students, that's the size that's appropriate. Again, this school is associated with a network of schools. They know what size dining room is needed. It was designed to accommodate the projected student population. To the extent the dining room isn't being used and there's an event available, similar to what's done in every school I know of...

Mr. Raitzik said so your testimony is there won't be any outside events at this hall.

Mr. Flannery said the testimony is that their dining room would be used in the same fashion that every other school dining room is used in Lakewood.

Mr. Raitzik said that's too vague a statement. Do they plan on renting it out to anyone else for outside purposes.

Mr. Flannery said they would not want a restriction on renting it out because if there was an appropriate event where they were able to get some income to help offset the cost of the school...

Mr. Raitzik said what about time restrictions, 11:00 everything would be closed down, or 10:30 or whatever. Is that something agreeable?

Mr. Flannery said I would have to reach out to the school to see what time...

Mr. Raitzik said the concern is for the neighbors, to not have noise late at night.

Mr. Flannery said yes.

Mr. Stern said you didn't really answer the first question Brian. Is the present intention to rent out their dining room on a regular basis to generate income? I'm not saying it's good or bad, but you need to answer the question.

Mr. Flannery said I don't think the intention is to rent it out on a regular basis, but the intention is to rent it out for events that are appropriate for the size of the room. And again, a 4,300 sf room isn't something you rent for weddings. It's for appropriate events, and it's not on a regular basis. So they intend to rent it to offset the costs, not on a regular basis.

Mr. Raitzik said and it's being designed to be a fancier hall, not a typical school dining room for a school.

Mr. Flannery said I think it's being designed like many of the other dining rooms that I see.

Mr. Raitzik said that's too vague. Are they putting in chandeliers, special lighting...

Mr. Flannery said we didn't get the plans that detailed at this point. I could reach out to the school and ask them if they're planning on chandeliers and special lighting.

Mr. Raitzik said another question, the parking in the buffer zone, can we limit that to head-in parking only? So that the fumes from the cars would not be affecting the neighbors as much?

Mr. Flannery said that is a very good idea and we would certainly agree to that.

Mr. Raitzik said there's no parking in the loading zone, is that correct?

Mr. Flannery said that is correct.

Mr. Raitzik said you mentioned before about above-ground playground area, they can't put in foundations. Can they put mulch in that area?

Mr. Flannery said yes.

Mr. Stern said so where are these 825 kids playing? In the buffer zone? Are there going to be any jungle gyms?

Mr. Flannery said I would expect that the school would put in temporary, not fixed in concrete, recreation items to that the children would have something to play.

Mr. Stern said that's a lot of kids without playground equipment.

Mr. Flannery said they're there to learn.

Mr. Stern said yes but they need to burn off a little steam. They're not going to have any impervious surface to play kickball or whatever. But you can't play hockey or anything, and you can't put in any jungle gyms of any permanent nature, so basically you've got a field. They can't play soccer, basketball... What can they play?

Mr. Flannery said they can certainly kick a soccer ball around, they can throw baseballs, they can throw frisbees... They can do any of those activities. Play chase. There's some trees in here, they can walk around and let off steam.

Mr. Sabel said my only concern about this site is the playground. Maybe perhaps we can take off the 4 most western spots in the parking lot. Maybe we remove those four and put a playground there with swing sets, or pavement for soccer. You'd still have 78 spaces which is still in excess. But they need to have a playground.

Mr. Flannery said I think that's a good idea and the applicant would be willing to do that.

Mr. Sabel said Mr. Chairman, do you think that's a good idea? Do you have a better suggestion?

Mr. Stern said I think it's something. It seems inadequate, but our biggest challenge is to make sure the impacts on the neighbors are de minimus or acceptable. It certainly seems there should be some element of recreation for 800 kids. But I'm not sure where you would put it so I think your suggestion is as good as any.

Mr. Sabel said I ask that the bottom part of that new playground area, that we put a sidewalk between the playground and the parking area. So you can stagger more buses there.

Mr. Flannery said I understand. The sidewalk would extend across and the playground would be behind it.

Mr. Sabel said correct.

Mr. Flannery said and the applicant has indicated that limiting the events to 11:00, they have no problem and that's what they intended anyway.

Mr. Raitzik said are there any plans for a pool.

Mr. Flannery said no.

Mr. Stern said you have the loading area, the employee parking, and then you've got this, a lot of, funky triangle that's not being utilized. But could you move the loading area somewhere else and make that big triangle a fenced playground area with swings and everything for the kindergarten kids and the first and second graders. Can you move all of that somewhere else, maybe where Mr. Sabel wants to put those things? I know you want to have loading near the kitchen, but I think you need to have a playground for the kids.

Mr. Flannery said if the loading was up in the area that Mr. Sabel was talking about before then we're mixing the buses with the trucks. But I think what we could do is instead of eliminating the four spaces up there, we eliminate the three employee spaces, and shorten up the loading dock, and then we could have a fenced in area that would be more sizeable than on the west side of the building.

Mr. Stern said why do you need a loading area, why don't you just double up the bus loading with the loading area and just make sure deliveries don't come during bus drop off and pick up?

Mr. Sabel said for garbage.

Mr. Stern said for garbage.

Mr. Flannery said again, this could be shortened up substantially to accomplish that.

Mr. Sabel said so we could bring the dumpsters closer to the point of the building, where the variance is requested, and leave the entire area behind it for playground.

Mr. Flannery said yes.

Mr. Stern said it sounds unsightly, but I'd rather have a little bit of a playground for the kids than worry about unsightly garbage.

Mr. Raitzik said would it smell for the kids?

Mr. Sabel said they'll screen it properly. Brian, you're going to have to extend the sidewalk going from the front of the building to that new area. That's going to encroach into the variance though.

Mr. Flannery said we have no problem with impervious coverage here, and measuring this loading area it's about 100 feet long but we could do something that's 50' long, and that pulls this back 50', it pulls out those employee parking spaces, and it makes a nice play area. That would probably be for the younger kids and the older kids would still have the area behind the building.

Mr. Stern said I'm not as worried about the older kids. It's the little kids need to have a safe space. You're right next to the swamp, right?

Mr. Flannery said yes.

Mr. Stern said you don't want a kid wandering into the swamp.

Mr. Flannery said I think we can make a nice area but shortening the loading area in half and eliminating those three parking spaces.

Mr. Stern said maybe put the employee parking where Chaim wanted to get rid of those four.

Mr. Flannery said the employees could park anywhere. They'll know they're doing the extra walking because the Board changed it but in the long run they'll be happy about it and will feel better for it.

Mr. Stern said let's make a nice big triangular parking area for the kids.

Mr. Flannery said yes, the applicant agrees to do that.

Mr. Sabel said do you think that area is enough for 800 kids?

Mr. Flannery said I think this area will be good for the smaller kids. In the back, if temporary fencing is done without posts... the school intends to accommodate that. We don't show the plans on here because there's no requirement in the ordinance for recreation.

Mr. Sabel said and as soon as we have one hurricane, that fence goes down, and putting it back up isn't going to happen. We'd like to avoid having the kids in the back. I still think we should have both. And the main reason I want to corner off that four is for bus loading. You can add at least another bus or two for Fridays or days it gets busy, and we can have a nice big area for the kids as well, with a paved surface for ball activity.

Mr. Flannery said the applicant has sufficient parking to eliminate in both areas if that's what the Board feels is appropriate.

Mr. Sabel said a nice beautiful fence. Kids will be able to learn Torah much better if they play.

Mr. Stern said John, I'm sure Mr. Liston has questions and wants to cross examine. Do we open to the public in general, or let Mr. Liston proceed?

Mr. Jackson said it's appropriate to let Mr. Liston cross examine at this time because his questions might cover what many members of the public might want to cover.

Mr. Stern said ok I'd like to take a 5 minute break.

Mr. Sabel said I have one question first. Brian, in the back where the dining room or simcha hall... There's a back entrance. There's steps going from the back. I think we need to provide a safe walkway for those people.

Mr. Flannery said our intention was everyone would come into that room from the main entrance.

Mr. Sabel said men and women are going to be separate.

Mr. Meyer said it's an emergency exit.

Mr. Sabel said it's kind of an emergency situation.

Mr. Stern said it's a good question. I don't know if it's our venue to point that out to them.

Mr. Flannery said the steps that were indicated there were done as an emergency exit.

Mr. Sabel said how can we get them a separate entrance?

Mr. Stern said it's not so much an ordinance issue, but could be a fatal flaw in your design. While we take a 5 minute break, you might want to talk to someone to make sure there is a separate men's and women's entrance that are safe and feasible.

Mr. Flannery said ok.

Mr. Stern said how many children per classroom do we expect.

Mr. Flannery said 25.

Mr. Stern said Terry, could I trouble you during our break to count the number of classrooms and multiply that by 25, and then by 30 as an abundance of caution. When we come back if you could have those numbers for me please.

Mr. Vogt said I'll do my best Chairman.

The Board took a 5 minute break.

Mrs. Morris took a roll call. Mr. Garfield, Mr. Stern, Mr. Sabel, Mr. Flancbaum, Mr. Meyer, Mr. Raitzik were present.

Mr. Stern said Terry, did you have a chance to do those calculations?

Mr. Vogt said yes I did. I reviewed the architectural plans dated February 26, 2020. Per me review you have 33 classrooms, that doesn't include 3 tutor rooms but I'm assuming that they will be auxiliary to the main classrooms. At 25 students per class that would be 825 students. At 30 students per class, that would be 990 students.

Mr. Stern said ok. John, unless there is something else I think we should let Mr. Liston proceed.

Mr. Jackson said I think that is appropriate.

Mr. Edward Liston, Esquire, appeared on behalf of an objector. He said let me indicate that my participation in this meeting should not, in any way, shape, or form, be taken as my agreeing that the meeting is properly noticed or that the rules that were set out in the notice as further interpreted by your administrator, do not violate the civil rights of my client and the Municipal Land Use Law. I am participating under protest and I'm sorry I didn't get on in time. I'm assuming that you took my letter into consideration and made it part of the record. I stand by what I wrote in that letter and I intend to proceed in accordance with the manner which I indicated in that letter. That is, to immediately file a lawsuit if this matter is approved. I have a few questions for Brian.

Mr. Stern said who are your clients? I don't need to know names, but how many clients do you have, where do they live, kind of give us the flavor.

Mr. Liston said that was all in the letter.

Mr. Stern said I'm sorry, ok fine.

Mr. Jackson said Ms. Morris, have you provided that letter to all of the Board members?

Mrs. Morris said I did not. Would you like me to put it on the screen or the public drive?

Mr. Jackson said let's put that on the screen.

Mr. Sabel said as well as the Statement of Operations from Mr. Doyle.

Mr. Jackson said Mrs. Morris, if you could please forward that to the Board so they actually have a copy.

Mrs. Morris said just a moment.

Mr. Jackson said this letter is 11 pages, I think it's going to take everyone a few moments to read it. The record will reflect that the Board Secretary is scrolling through the letter, giving the Board members the opportunity to read same. If it's going to fast just speak up and she'll slow the scroll down.

Mr. Raitzik said Ally is it correct that the people who are directly next to this can't testify or can't ask questions about this property?

Mr. Jackson said I'll address that. The format announces that people, and this is the way all of our meetings and the Board of Adjustment has proceeded, and this is in consultation with the Township Attorney, that you can review and submit comments in advance. There is also the opportunity during the meeting to submit emailed questions. And we've done that, and we've received questions, and people have done follow up questions. And the experts and the applicants have responded to those questions. Now in terms of having a live dialogue back and forth, that is not available at this time.

Mr. Raitzik said right, so his claim is you don't have a full hearing based on that. In other words, you don't have Shloime Klein, you don't have Moshe Zeines making their input. Is that something that's a problem in this type of case?

Mr. Jackson said Mr. Zeines, if my recollection serves me, has submitted written comments on other applications. I don't recall seeing anything from Mr. Klein, but to answer your question directly, if someone wanted to listen directly and participate like a Board member or Mr. Liston, then they do not have the ability to have a live dialogue in the verbal format. You can do it in the written format.

Mr. Raitzik said and if it's submitted in the written format then it should be included.

Mr. Jackson said yes. What we've done is whenever we get an email, Mrs. Morris reads that into the record. Sometimes we put it on the screen, and then we respond to those written inquiries that happen in real time. They go in the queue, and then when we get to that point in the meeting we put them on.

Mr. Raitzik said ok.

Mr. Sabel said and Mr. Raitzik, this has been working the last few months. People were able to voice their opinions and their objections.

Mr. Jackson said it's been my observation, and the Board can make it's own assessment of that. That we have had people participating in that manner. In fact we have a lot of comments that we have to read tonight on this case.

Mr. Stern said having read your letter, Mr. Liston, one of the things we said was that having the right to cross exam, and especially in a contested manner, is paramount. So we agree with that section of your letter. And with that introduction, please proceed with your cross examination.

Mr. Liston said before I proceed, I want to indicate for the record that there is nothing in your notice that indicates that you may cross examine. Everything must be done in writing two days in advance. As Mr. Jackson knows, and as Mr. Doyle knows, cross examination is something which is a lot more spontaneous than that and should be allowed not only for attorneys, but also for people who are unrepresented. And the clear import of your notice and of the comments made by your administrator, indicates that if you're not represented by an attorney, you can't speak, period. And it also indicates that the only people that are allowed to speak, and as she said at one point testify, attorneys don't testify, are the attorneys, the applicant, and their professionals. Period. So the notice is absolutely violates every principle of fair play and of due process of law. And I stand by that, and I am confident that when we take this to court, the court, and one of the things I'm going to ask them to do, is to give the Lakewood Planning Board instructions as to how a virtual meeting can be conducted. But also point out that, and I'm sure you've done this, if you look at any other notice for a virtual meeting, for any other Board, in this County, or in Monmouth County, or for that matter, if you read the Star Ledger, in the State, none of those notices have anything close to these draconian restrictions on public comment and cross examination. So this is something which I'm surprised no one has brought it to your attention to this point. But I'll bring it to your attention, and as far as I'm concerned we're all wasting our time this evening listening to this. But I will move on. By no means should anybody think that is my approval of this procedure.

Mr. Jackson said Mr. Stern, if I might just add something. One of the cases that Mr. Liston mentioned was Morris County Housing versus Council of Boonton, for the proposition that you have to allow cross examination. That is a law division case by a Judge who went on to become an appellate division Judge. And one of the comments, they talk about the need for cross examination and the time required for completion may vary greatly depending on the content of the witness's testimony, the control of cross examination must be left to the sound discretion of the Board. Extrapolating from that, under the circumstances, in this Covid environment, and the fact that it literally creates a threat to health, safety, and welfare to bring them in, with the technology that's available, what we are able to do, this is a learning and evolving process. And in the light of other matters and issues that have confronted the Township, when Lakewood initially had its public forum in the Council setting, I understand that there were people who logged in to make very inappropriate comments that were disruptive to that meeting. And that is one of the reasons why the Mayor and the municipality thought it was appropriate to limit them to written comments. In my view, under the circumstances, it does allow people to voice their concerns, it does allow people to question witnesses. I note this is a land use proceeding, it's quasi-judicial, it's akin to an administrative proceeding. Cross examination means different things in different contexts, and Mr. Liston may or may not have the ability to make the objection on behalf of people who are not his clients. As it relates to his particular client, what his particular objection is, I note that he will have unfettered opportunity to cross-examine witnesses and it's my recommendation that the Board proceed at this time and if the Board directs us, we will certainly abide by whatever directive the Board gives us. But at this time, this is what we've come up with and is the best we can do under the circumstances. And my recommendation is that we proceed.

Mr. Stern said ok. I accept that recommendation. Mr. Liston, please proceed.

Mr. Liston said as long as Mr. Jackson isn't implying that I am giving my blessing to this proceeding by cross-examining, and there are other people who I don't represent who are being shut out of this all together. In addition to that, I have clients who have been told they can't speak at all. So are you telling me that I can't call my client as a witness? To put his objections on the record? That's what your administrator told my client.

Mr. Jackson said Mr. Liston, you're an attorney. There's nothing that would have prevented you from bringing clients to your office and putting them on on your equipment and having them testify like I've done on my applications. Let's proceed...

Mr. Liston said my office isn't big enough to hold 18 people, Mr. Jackson.

Mr. Jackson said please let me finish. I believe that your proceeding with cross examination has legal consequences, and I will assert those at the appropriate time if we need to. Maybe the Board will reject this application...

Mr. Liston said ok so what you're suggesting Mr. Jackson is...

Mr. Jackson said I'm just... Mrs. Morris, can you please mute him until I'm finished speaking? Sorry that we have to do that, but the process here is one person speaks and the we have to respond and you're continually interrupting so we have to do that. You'll be unmuted at the appropriate time. I respectfully submit that there's a process here. You have the opportunity to have people heard, your objections were voiced, and you haven't even really started. So let's see how this goes and the chips will fall where they will. And please, discontinue interrupting and speaking over people, it's even more difficult in this forum.

Mr. Stern said ok.

Mr. Jackson said Mrs. Morris if you could unmute him now and we will proceed. Thank you.

Mr. Liston said Mr. Jackson, I apologize for talking over you. Correct me if I'm wrong, you're indicating that by my cross examining this witness, I am in essence conceding that this is the proper proceeding. And you indicated that you may raise that in another forum. Is that what you're indicating?

Mr. Jackson said Mr. Liston, I told you that I believe you proceeding in this manner has consequences and by your availing yourself to cross examination, I will assert that you don't have the ability on your own behalf anyway, to assert that you haven't been able to cross examine witnesses. But we don't have to have a debate over the legal merits at this time. You've made it very clear you're not making any waivers or concessions. Please proceed at this time with the cross examination.

Mr. Liston said you didn't answer my question Mr. Jackson. Are you suggesting that you're going to raise my cross examination as a concession that this is a proper proceeding in a court proceeding? Yes or no?

Mr. Jackson said please proceed with your cross examination. I'm not going to repeat myself.

Mr. Liston said yes or no.

Mr. Stern said gentleman, please wait. Mr. Jackson is not making decisions about how he is going to respond to your testimony whether you are waiving rights or not. He has to ask us. We aren't deciding litigation strategy for something that's not being litigated. I think you Mr. Liston have very adequately laid the foundation that you

proceeding here, in your opinion, you are not waiving anything. And if you choose to go to the court, and they give us directions about the faults of our process, certainly we will listen to the court and abide.

Mr. Liston said it's a shame that I have to do that. You should know better, frankly. You're getting the advice you're getting, I just want to make sure that Mr. Jackson isn't trying to set me up for an argument that by cross examining any witnesses in this case, I am waiving my right to claim that your notice is improper, that your rules are draconian and violate due process cause of the constitution. Mr. Jackson if you want to retract what you said, we will proceed.

Mr. Doyle objected. He said to quote President Reagan, we paid for this microphone. This entire application. We have a right to have it heard. If Mr. Liston wants to ask questions, let him ask his questions. That's his time. Court is later. He's not going to set the ground rules for this Board, he's not going to dictate this Board's action, they are in charge of their own actions. This question about later on, that's something else. Tonight is the hearing. We have a witness in the box, he has a right to ask questions. If he's not going to ask questions, then he should be quiet and we should proceed with the next question.

Mr. Stern said Mr. Liston, I'm agreeing with Mr. Doyle from a procedural standpoint. He's put on a witness. If you choose to cross examine, please proceed. If you choose not to cross examine, please let us know.

Mr. Liston said I'd like Mr. Jackson to tell me whether he considers my cross examining any witnesses in this case to be a waiver of the contents of my letter.

Mr. Stern said Mr. Liston, I'm going to instruct Mr. Jackson not to answer. Not because I care what his answer is, but we are ... your assertion that this whole process is flawed, and you've made an excellent foundation that you're, by you proceeding, you do not believe that you are acquiescing to any faults in this process. You've done that. So now I'm going to give you the option. You can either cross examine, or you can not. But that is the two options.

Mr. Liston said I am doing this under protest based on Mr. Jackson's comments, but I will ask a few questions of Mr. Flannery. Mr. Flannery, when did you first get involved in this case?

Mr. Doyle objected and said irrelevant.

Mr. Liston said why is it irrelevant? What if he got involved a week ago?

Mr. Jackson said Mr. Liston, in light of Mr. Doyle's objection, what does when he got involved have to do with the merits of the application? How does that affect setbacks, coverages, etc, whether he was involved for 1 hour or 100 hours?

Mr. Liston said based on his testimony, he has indicated that he is not the preparer of these plans. And I want to know when and how much he actually worked with these plans before tonight. Maybe he's been involved for a year, I don't know.

Mr. Jackson said Mr. Stern, there's been an objection and you have to make a ruling on it.

Mr. Stern said Mr. Liston, I'm going to allow your question. Brian please answer it. But I'm also prefacing it saying that we are moving this along tonight. We are all in favor of due process, but we are moving this along. Please Brian answer the question.

Mr. Flannery said I don't know the exact date, but it was at least six months ago.

Mr. Liston said ok. And were you involved in any of the changes in the plan that were made in the last six months?

Mr. Flannery said I was consulted and reviewed the plans and worked with the applicant and the other professionals with respect to changes in the plans.

Mr. Liston said did you work with Glenn Lines in connection with changes to the plans?

Mr. Flannery said I worked with the engineers at New Lines including Glenn Lines.

Mr. Liston said what other engineers did you work with.

Mr. Doyle objected, this is a continuing line that is irrelevant.

Mr. Jackson said Mr. Stern, under this format I really don't understand the relevance of who worked on the plans. They have certain setbacks, certain statistics that govern the plans, the Board has to make the determination what's important, and who Mr. Flannery consulted with really should have no bearing on the Board one way or the other.

Mr. Stern said Mr. Liston, we're going to allow this for another 5 minutes on procedure and background, and then I'm going to ask you very firmly to get into the substance of your questions.

Mr. Sabel said Mr. Chairman, I feel very comfortable the way Brian presented the application. I think all my answers were addressed. Maybe we can as the other Board members if they feel comfortable, and then we can move on.

Mr. Stern said it was an earlier objection Mr. Liston made, and I overruled it. But I'm allowing him some leeway to explore the issue in case he wants to add that to any proceedings with the court. Mr. Liston, please proceed with the questions, please keep them short, and then please move on to the substance.

Mr. Liston said thank you. Mr. Flannery, the plan as it presently appears on the screen. Was that the plan that you first saw when you first got involved 6 months ago.

Mr. Flannery said when I first got involved there were several sketches. So now, that is not the plan that was available when I first got involved.

Mr. Liston said and with regard to the number of parking spaces, was the number of parking spaces on the sketches?

Mr. Flannery said I did not keep a list of the number of parking spaces and the variance iterations.

Mr. Liston said when was the plan on the screen dated?

Mr. Flannery said the date of the plan is 12/12/2019, and the copy I have on the Board here shows a revision date of 4/24/20.

Mr. Liston said ok. And it's your testimony that you were involved before the first date of this plan being created, is that correct?

Mr. Flannery said that is correct.

Mr. Liston said on a consultant basis.

Mr. Flannery said that is correct.

Mr. Liston said so you had input into the plan.

Mr. Flannery said that is correct.

Mr. Liston said moving on. Mr. Flannery, how many parking spaces are required by ordinance for this project and how many do you have.

Mr. Flannery said 49 are required and the plan as submitted is for 82.

Mr. Liston said ok. So, you have almost double the parking that's required.

Mr. Flannery say two times 49 is not 82, so it's not double.

Mr. Liston said I said almost.

Mr. Flannery said twice would be 98, 82 is...

Mr. Liston said a little less, that's what I said. Let's not split hairs over 8 or 9 parking spaces. What was the reason your client told you they wanted to overpark this project to the point where they are requiring two variances to go into a buffer next to a residential area? What was their purpose in doing that?

Mr. Flannery said my client did not indicate, and I don't believe they have overparked the property. I have been familiar with schools in Lakewood for quite some time. As you heard in my testimony, this is a school that's associated with other schools. And they wanted to provide an appropriate number of parking spaces so that people coming to the school do not need to look other places to find parking opportunities.

Mr. Liston said what you're saying is the parking spaces numbers, in your view, provided by the ordinance, are inadequate, is that correct?

Mr. Flannery said that's not what I'm saying at all.

Mr. Liston said yes it is.

Mr. Flannery said that's what you're saying.

Mr. Jackson said Mr. Liston, when you say yes it is, you're testifying. Mr. Flannery answered the question, please move on to the next question and don't interject your own testimony.

Mr. Liston said Mr. Flannery, isn't it true that if you were to only comply with the ordinance in terms of number of parking spaces, you could eliminate at least two variances. Yes or no?

Mr. Flannery said in my testimony I've already offered...

Mr. Liston said a yes or no question has been asked.

Mr. Flannery said it's not a yes or no question.

Mr. Liston said let me rephrase it. How many parking spaces do you have beyond what the ordinance requires.

Mr. Flannery said we have 33 more than the ordinance requires.

Mr. Liston said if you were to eliminate those parking spaces, you could do so in such a manner that it would eliminate two variances having to do with the buffer on the residential side of the property, isn't that correct?

Mr. Flannery said that is correct.

Mr. Liston said if you were to do that, you could also create a much larger playground area in an area other than the buffer where the playground is limited to passive recreation, isn't that correct? Yes or no.

Mr. Flannery said it's not a yes or no question.

Mr. Liston said why don't you try answering it yes or no.

Mr. Flannery said I'm not going to do that.

Mr. Stern said Mr. Liston, let him try to answer the best he can.

Mr. Liston said listen, I've cross examined Brian Flannery before. He doesn't...

Mr. Jackson said Mr. Liston, the Chair has determined that he's going to allow the witness to not answer in a yes or no manner. That's his ruling. Please proceed Mr. Flannery.

Mr. Flannery said please repeat the question.

Mr. Liston said if you were to eliminate the parking spaces that go beyond what the ordinance requires, you've already testified you could eliminate the two variances having to do with the intrusion into the buffer, isn't that correct?

Mr. Flannery said that is correct.

Mr. Liston said and could you also not redesign the parking so as to provide a larger playground area, other than the area in the wetland buffer which can only be passive?

Mr. Flannery said I think that would require a redesign of the site. It's not simply eliminating parking spaces and making a playground.

Mr. Liston said ok. And with regard to the other variance, there's a variance that deals with a buffer intrusion on a corner of the building, isn't that correct.

Mr. Flannery said I'm not aware of any variance for... you're talking about the front setback?

Mr. Liston said no, I'll get to that in a moment. Isn't there a corner of the building that if you eliminate that corner, you won't violate the 20 foot buffer. It's in the upper left-hand corner.

Mr. Stern said that's the front setback.

Mr. Liston said it is?

Mr. Stern said oh, no. Where it says loading area, that's the front setback. That corner is the problem.

Mr. Liston said right. And it intrudes into the buffer, is that correct? It looks like 20 foot...

Mrs. Morris said I may have confused the issue. I know Mr. Stern is referencing the front setback here, I believe Mr. Liston is talking about this back corner. Whether or not it requires relief, I don't believe we've heard testimony from Mr. Flannery on that.

Mr. Liston said ok. Mr. Flannery, that back part, does that violate the buffer?

Mr. Flannery said my testimony is no it does not. It's a handicapped access ramp, and the ordinance provides for handicapped ramps to project into required areas to the extent that at least 3' is provided between any portion of it and a neighboring property.

Mr. Liston said but if you reduce the building slightly, you could pull that handicapped ramp out of that area, correct?

Mr. Flannery said there are many options that we could do...

Mr. Liston said that's a yes or no. If you were to reduce the size of the building slightly, in that corner you could get that ramp out of the buffer, could you not?

Mr. Flannery said you would have to define what slightly is.

Mr. Liston said enough to get it out of the buffer. It looks like you'd have to take maybe 10 or 11 feet off it.

Mr. Flannery said my testimony is that that ramp is allowed in the buffer, there's nothing in the ordinance that prohibits it and there is in fact a provision in the ordinance that permits it.

Mr. Liston said so you're not asking for a variance for that?

Mr. Flannery said it's my testimony no variance is required for that.

Mr. Liston said what about the Board Engineer, did he call a variance out on that or not?

Mr. Jackson said I think that's a fair question for Mr. Vogt. Mr. Vogt, is that area an intrusion into the buffer? Does that require a variance or is that permitted?

Mr. Vogt said our review indicates that we deal with encroachments within the 20' buffer where the property abuts residential uses and zones.

Mr. Liston said so it needs a variances?

Mr. Jackson said so for a simple lawyer like I am, does that require a variance or not?

Mr. Vogt said if it's an encroachment within a 20' setback from a residential zone or use, our interpretation is yes.

Mr. Jackson said so Terry you agree with Mr. Liston's interpretation.

Mr. Vogt said I agree with the interpretation, I'm going to add a caveat. With numerous other applications, there is a remedy in the ordinance that talks about compensating with landscaping and vertical buffer where the horizontal buffer is not achieved. And that's something that's typically looked at by the Board.

Mr. Stern said Terry, where is that in your report.

Mr. Vogt said reading from under zoning, the very bottom of page 3, under zoning comment 3. A buffer variance is required from section 18-906A of the UDO. 20' wide buffer is required from residential uses and zones. Screening should be proposed to justify the required buffer relief.

Mr. Stern said so Brian, can you respond to that section of Terry's report.

Mr. Flannery said that section of Terry's report, when I read it, indicates the 20' buffer along the property line. It doesn't specifically say the handicapped ramp, so my testimony is with respect to the parking. Because if you look at 18-906, it says buffer requirements 20', and then it goes on to say what a buffer is. It never says that handicapped ramps can't be in there. It does specifically say in 18-906B, parking is not permitted in any required buffer. So clearly the intent is that parking is not required in any buffer. They felt that the ordinance didn't specify things that weren't allowed in a buffer, so they specifically said parking is not permitted, and I think if they felt the same way about handicapped ramps they would have indicated that because section 18-818 Projections into required yards, A2 says handicapped ramps may project into a required setback, however the portion of the ramp where the floor elevation exceeds 3' above finished grade may not be closer than 3' from the property line. So my opinion is a handicapped ramp doesn't require relief. To the extent the Board feels that it does, we would request that relief. The testimony that I gave with respect to the remainder of the buffer would be applicable to that, and as indicated in Terry's report and as he just indicated, it ends with screening should be proposed to justify the required buffer relief and screening has been proposed. And my testimony was that the applicant is willing to add any additional planting and fencing that is requested by the Board or any reasonable request from a neighbor.

Mr. Jackson said Mr. Flannery, Mr. Liston's question started with could you move that out of that buffer. I think his question is a fair one. How many feet does that corner project over the line?

Mr. Flannery said I think his original estimate of about 11 feet, so if we took 11 feet off the building, there would be no handicapped ramp in the buffer.

Mr. Jackson said and what kind of violence would that do to the application? And would you have to take it off the whole building or only where that corner goes over the edge?

Mr. Flannery said we would have to take it off the whole building, and it would lose two classrooms on each floor. And my opinion and testimony based on the ordinance is it's not a violation of the buffer. There's nothing in the UDO that says handicapped ramps cannot be...

Mr. Jackson said we've already gone over this, we don't have to repeat it. Mr. Liston, please proceed.

Mr. Stern said Mr. Liston before you jump in, so Brian, are structures allowed in that buffer? You tell me what's not... I don't accept the argument that just because one thing is specified, everything else is allowed. So are structures allowed in that buffer?

Mr. Flannery said clearly, it's not specified, but a building would certainly not be allowed. And if the ordinance didn't have a section which allows the projection of handicapped ramps... The ordinance and the intention of it is clear, that these handicapped ramps are inherently beneficial. And that they should be given special provisions. And the provision that's in the ordinance is that it's allowed to encroach into setbacks as long as, where it's 3 feet or higher, it's at least 3 feet from the property line.

Mr. Jackson said Mr. Stern, there's a big difference between a handicapped ramp and a fire escape. Does this go all the way up to the top of the building?

Mr. Flannery said the handicapped ramp comes in to level 2.

Mr. Stern said is there not an elevator in the building?

Mr. Flannery said there is.

Mr. Stern said why do you need a handicapped ramp?

Mr. Flannery said the elevator is all the way at the other side of the building. And as a safety precaution, the handicapped ramp is there.

Mr. Raitzik said is there any way to bring the handicapped ramp forward so that it's not encroaching on the 20 foot buffer?

Mr. Flannery said no there's not because...

Mr. Raitzik said or redesign it so that it's more in that open area there.

Mr. Flannery said when you say the open area there...

Mr. Raitzik said that triangle area behind the parking lot.

Mr. Flannery said that's the space where Mr. Sabel has indicated he wants to eliminate parking spaces and put a...

Mr. Raitzik said behind the parking spaces, closer to the building. If you bring the whole ramp forward and redesign it a little bit, is that possible?

Mr. Flannery said it's... there are other ways of doing it, but it's a Board decision. What I heard before from Mr. Sabel is that triangle area there that you're talking about he wants to expand where the parking is, slide them back, and make a play area in there. So...

Mr. Sabel said I think you should just ask for the waiver or the variance, it makes it easier.

Mr. Flannery said yes. I indicated to the extent that the Board feels buffer relief is needed, we are requesting that relief. My testimony is that the intent of the buffer is to provide, as indicated in section 803, to minimize impacts such as incompatible land uses and that can be done with fencing and landscaping, and as indicated in Terry's

report and his recommendation on zoning comment 3, screening should be proposed to justify the required buffer relief and the applicant has presented screening to do that.

Mr. Stern said let's put this issue on the shelf and we will come back to it. Mr. Liston, please proceed.

Mr. Liston said I didn't hear you, you were breaking up.

Mr. Stern said I'd like you to proceed. I don't want to spend the next 45 minutes on this issue, I want to come back to it.

Mr. Liston said that's what happens when you ask Brian a yes or no question, you get 45 minutes of blather.

Mr. Stern said Mr. Liston you'll find that I'm a very patient and fair man. But I'm not allowing that. No ad hominid attacks please.

Mr. Liston said the cafeteria or the room that's going to be used as a simcha hall, what is the elevation of the ceiling in that room.

Mr. Flannery said what room are you saying is going to be used as a simcha hall?

Mr. Liston said I think it's labeled as the cafeteria. The forty-nine hundred and some odds square foot room.

Mr. Flannery said the forty-three hundred and some odd square foot dining room?

Mr. Liston said yes, sorry.

Mr. Flannery said the elevation difference in the school from the first floor to the second floor is twelve feet, and that incorporates the structural elements between the floors.

Mr. Liston said and how high is the ceiling in that dining room?

Mr. Flannery said it would be in the vicinity of 11 feet.

Mr. Liston said and is there a reason why that is that high, if it's just a dining room? Or is it to make it more useable as a simcha hall, as a rental party space?

Mr. Flannery said it's an appropriate building height for a dining room.

Mr. Liston said Brian, if that dining room were to be restricted against renting it out as a simcha hall, would you need all the extra parking spaces that you're putting in this project? Or is that why they're being put in?

Mr. Flannery said you keep using the term simcha hall.

Mr. Liston said rental hall. Hall to rent out for private parties not associated with the school.

Mr. Flannery said the parking is put there for the benefit of the school. To the extent that parking is available after hours for the school for a different reason, was not the motivating factor for the design of the site.

Mr. Liston said I asked whether you were going to use that dining room as a rental space for outside parties, would be easier not to need the extra parking spaces you put in, isn't that correct? Because you just said it would be nice to have them there if it was a rental hall. If it's not a rental hall, they're not really needed, are they?

Mr. Flannery said I did not say it'd be nice to have them if there's a rental hall. I don't know where you heard that.

Mr. Liston said you implied that.

Mr. Flannery said I did not imply any such thing.

Mr. Stern said gentlemen, can I try to get to the core of the issue? Can I ask Brian one question? Brian, I think, my reading here is this facility is intended to have dual use. Mainly as a dining room for the kids, but as an accessory use is that it be rented out for simchas, public events. Is that accurate?

Mr. Flannery said the site was designed for the school and the students. To the extent that the dining room is available to be rented out after hours, similar to every other school, that's a benefit that helps the school meet its financial obligations and that was indicated in the Statement of Operations that was submitted so nobody's trying to hide anything. It was made perfectly clear, the same as other schools have the availability to rent out their dining room so that it helps with the financing of the school. And the applicant has indicated if the Board felt those 20 spaces would be better served as a buffer, they could be eliminated. So the fact that I'm getting questions of their only there for the simcha hall was not my testimony and it's different from my testimony that said if the Board feels they don't want the 20 spaces for the school, the school is agreeable to making that part of the buffer.

Mr. Liston said good. That's what I think would be the appropriate thing under the circumstances, but that's up to the Board.

Mr. Flannery said yes.

Mr. Liston said now as between parking spaces, extra parking spaces and a playground, which does not appear as a labeled area on your plan, it's a school. Wouldn't it be better to have less parking, or only the minimum amount of parking needed to satisfy the ordinance, and use some of the other grounds for a playground. Wouldn't that be a better use for a school?

Mr. Flannery said if we're complying with the minimum requirements of the ordinance, there is no requirement for a playground. And the administration of the school, which already has 250 students and knows their needs, they feel that the boys running around and expending that energy in the back is a better solution than eliminating parking spaces and shoving a play area in the front.

Mr. Liston said that doesn't address the area that was pointed to by one of the Board members with the younger kids, who need more space to, with some organized recreation of a permanent nature like swings, merry-go-round, jungle gyms, that kind of thing. Wouldn't it be better to have that than extra parking?

Mr. Flannery said the school administration feels differently. But if the Board feels that a fenced area for the smaller children is a benefit, the school is agreeable to any reasonable requests and the school is agreeable to that request. But if you ask the school administration, who this is their business, they feel the area behind the building is sufficient.

Mr. Liston said does this school have to be licensed by the State of NJ?

Mr. Flannery said I don't know.

Mr. Liston said I would suggest that if it does, there may be a requirement for some physical education area outside. That might be something you might want to ask your client about.

Mr. Stern said I very much want you to get through all of your questions, but I also very much want to be in a position to hear all of the testimony, have the cross examination, have the Board deliberate, and have the Board vote tonight.

Mr. Liston said how late do you propose to go?

Mr. Stern said I want to ask you how much longer you think your cross examination is going to take?

Mr. Liston said another 5 or 10 minutes.

Mr. Stern said please proceed.

Mrs. Morris said Mr. Stern, I'm sorry to interrupt but I texted Mr. Gasiorowski that we aren't going to reach the second application on tonight's agenda and I recommend we make the announcement to carry that item to a future meeting date.

Mr. Gasiorowski re-entered the meeting.

Mr. Penzer said he requests August 25th.

**2. SP 2180A Congregation Somerset Walk
Canary Drive Block 830.04, Lot 30.02
Amended Preliminary and Final Major Site Plan for a synagogue**

Mr. Jackson made an announcement carrying this application to the August 25th public hearing.

Mr. Stern said Mr. Liston, please continue.

Mr. Raitzik said is this the most up to date map that we are looking at here?

Mrs. Morris said yes, this is the most current that I have. It's revised through July 29th.

Mr. Liston said ok. There was one other variance, Mr. Flannery, having to do with the front setback variance. Where is that? Is that by the loading area?

Mr. Flannery said yes.

Mr. Liston said do you want to point that out please?

Mrs. Morris pointed on the map.

Mr. Liston said what is the requirement and what is being provided?

Mr. Flannery said 50 feet is required, and in that one particular triangle, a maximum of 14.9 feet over that, for a setback of 35.11.

Mr. Liston said is there any way that the building can be adjusted to eliminate that?

Mr. Flannery said as I indicated in my testimony, we could put an angle on that corner of the building and eliminate that. And what that would do is take 225 square feet out of a classroom on one floor, a stock room on another floor, and the prayer room on the third floor. So it would be minimal impact on the function of the school, it would also be minimum impact on the desirability of the aesthetics of the building as you drive down the road. It's not going to look very different. But it would create additional costs for the construction of the building.

Mr. Liston said so it's an economic matter really.

Mr. Flannery said it's a hardship because of the geometry of the property, where we have all of the property lines and the wetlands and buffer line at different angles. So to do a typical, rectangular school you either need deminimus relief for a small area, or you need to make the building smaller and accommodate less students in this inherently beneficial use.

Mr. Liston said you keep using the term inherently beneficial use. It's a permitted use in this zone, isn't it?

Mr. Flannery said it's permitted, it's still inherently beneficial.

Mr. Liston said well the inherently beneficial use is a use that is not permitted and is permitted because it is that inherently beneficial use. That's a variance term in terms of meeting the positive criteria. I understand that, but it's permitted in this zone. So that really doesn't apply here.

Mr. Jackson said is that a question or is this a statement.

Mr. Liston said that's a question. Isn't that right, question mark.

Mr. Flannery said I don't think there's anything wrong with calling it an inherently beneficial use. Which indicates that it's a use that provides service to the general public.

Mr. Liston said but it's unnecessary since it's a permitted use, isn't that correct? So you're just gilding the lily, aren't you?

Mr. Flannery said is that a question?

Mr. Liston said absolutely.

Mr. Jackson said it is, and I think it calls for a yes or no answer.

Mr. Flannery said I'm not gilding the lily.

Mr. Liston said oh, ok. But with a rather simple redesign, and I'm talking about all the variance relief you're seeking, with minimal loss of square footage and with minimal redesign, you can become an as-of-right application, can't you?

Mr. Flannery said it could be designed with very little loss of the building to become an as-of-right application, correct.

Mr. Liston said I'm surprised you're not doing that. Why?

Mr. Flannery said because the relief that's being requested meets the criteria for variance relief in the MLUL and it provides a better functioning building for this school, which provides a benefit to the general public.

Mr. Liston said well ok. But it could be redesigned and eliminate all the variances.

Mr. Jackson said he's already answered that.

Mr. Liston said 2 of the 3 variances directly impact the residential area, isn't that correct?

Mr. Flannery said when you say 2 of the three variances, which are you referring to?

Mr. Liston said I'm referring to the buffer intrusion, the parking in the buffer, and the handicapped ramp.

Mr. Doyle said it should be known that the handicapped ramp has been changed, there's an elevator in the middle of the building. So that variance is no longer sought.

Mr. Liston said so the handicapped ramp is going to come out of that buffer.

Mr. Flannery said the applicant can change the plan to eliminate that handicapped ramp.

Mr. Liston said ok. And if the applicant were to change the plan to eliminate the parking spaces and provide the full residential buffer, you could do that as well, right?

Mr. Flannery said the applicant has offered to do that, that's up to the Board.

Mr. Liston said but it could be up to the applicant if the applicant said so. And pull those parking spaces out. And then there's no intrusion into the residential buffer at all, is there?

Mr. Flannery said if those 20 spaces are eliminated, there's no intrusion into the buffer.

Mr. Liston said because you're already going to eliminate the handicapped ramp, is that correct?

Mr. Flannery said we are already going to change that so it doesn't impact the 20 foot buffer.

Mr. Liston said ok. That's all I have. Thank you.

Mr. Stern said Mr. Doyle, do you want to do any redirect?

Mr. Doyle said I would save my redirect for the end of any and all further cross examination.

Mr. Stern said do we have any questions from the public.

Mrs. Morris said I have 12. And some are very long.

Mrs. Morris said Mr. Jackson, we have a comment from Mr. Alan Streicher, who is represented by Mr. Liston, and who is also present in this meeting. I'm not sure if he intends to speak or if I should read his comment. Mr. Streicher?

Mr. Streicher was noted as present in the call by his name on the screen, however there was no verbal response.

Mrs. Morris read the public comments into the record.

Public Comment 1

To the board members

As a neighbor 604 Apollo rd and (2nd house from the corner) I would like to voice my opposition to the proposed application that includes a **Simcha hall or a rentable hall or non-school related events as indicated on the letter of "statement of operation by the school"**.

This building is being built in a residential neighborhood attached to a R12 zone neighborhood. R12 is designed to have peaceful quiet living and for that we pay a premium price. The applicant proposes a 4200Sq foot room in the basement/ first floor. A 4200 sq foot room that can be used for a Simcha hall ! as in the past board meeting the board would require a 140 parking spots (based on the SQ foot per person being used 15sq feet per person) this project proposes only 83 parking spots. Way too little for such a big crowd

The over flow parking will land on Apollo road making the nice quiet R12 zone area extremely congested. Just so the board understand over flow parking can't park on Squankum RD as there is a no parking sign there so the only place to park would be Apollo rd and that would make a residential block very congested. Coming home at night and needing to squeeze through all the parked cars on both sides of the rd is not what we expected when we bought houses in a R12 zone.

In addition where will the busses park? This school has their own busses and currently park on their own site. Parking busses on site will eliminate some more parking spots that will = more cars on Apollo RD. more congesting

I'm requesting that should this building be approved it should include an exclusion and be put in to the resolution to exclude any Simcha room/hall/ party / non-school event or anything that will create a big crowd.

Making limits of how many people can attend has no way of enforcing it. an approval with limits should not be granted as it gives the right to make a Simcha but in no way dose it protected the neighbors.

As in the past the board has not been giving approvals to a hall in a residential area without enough parking, we hope the board respect the residential neighborhood and will do the same this time.

Thank you

And thanks for reading

PS we have a professional engineer to testify on line the we hope the board will give Dave from Horner and canter the opportunity to voice his testimony.

I would also hope that I can voice my opposition as An email doesn't justify but I guess I'm not given the chance

THANKS

ALAN STREICHER



Public Comment 2

I have been asked to represent Hermann and Malky Vorhand, owners of properties on Appolo Road and Mars Avenue, adjacent to or near the proposed development.

I object to the manner in which the Board is conducting the hearing, which does not permit live questioning of the applicant or the applicant's witnesses. My submission of comments by email, in accordance with the Board's meeting notice, is not a waiver of our right to challenge the meeting format.

My clients object to the proposed development because it fails to provide adequate buffering between their properties and the project. During the last several months, the property owner has removed numerous trees, possibly in violation of the Township's ordinances and DEP regulations. My clients have requested, but have not received, adequate assurances that the trees will be replaced. In addition, they have requested that a fence be installed around the subject property.

Additional objections may be made after the applicant's presentation. Thank you.

LARRY S. LOIGMAN, Esq.

Mrs. Morris said Mr. Loigman was also given the opportunity to join the meeting, he is here, muted at the moment.

Mr. Sabel said I think it's important to know who he represents, where do they live?

Mr. Loigman appeared and said I represent Mr. and Mrs. Vorhand, and owners on Apollo Road and Mars Avenue, behind the development.

Mr. Stern said I think we need to keep moving.

Mr. Sabel said I need to know if he represents any of the properties directly adjacent to this application.

Mr. Loigman said I don't have the exact addresses, but I believe that they do back up to this property, yes.

Mrs. Morris continued.

Public Comment 4

I strongly feel that it is imperative for this school to build a new building so that the children have enough space to be able to learn properly.

It is important for this school to be in this location because this is in town, close to where many students live. I don't think it is beneficial for the kids to have to sit on a bus for an hr , to and from school. They spend enough time in school, when schools over they should be able to get home right away.

The school does a substantial amount of extra curricular activities, plus different programs all to boost the kids learning, self esteem and all of this costs money. This school does whatever is necessary to benefit their students but this comes at a heavy cost that tuition alone can not cover.

Moshe oestreicher
38 Baila Blvd.
Lakewood N.J. 08701
732-861-3706

Public Comment 5

Dear Planning board,

Congregation Toldos Yaakov Yosef is a great school and they definitely need a new state of the art building so the children get a proper education. Schools belong in town so kids don't have to travel an hour on long bus rides to get there.

A simcha hall is great way for extra funding for the scholl and all its extra activities.

Thank you
Allen Spielman
21 Baila blvd
Lakewood NJ 08701

Public Comment 6

Yisroel M. Waldman

36 Airport Rd. Suite 303
Lakewood, NJ 08701

Dear members of the Lakewood Planning Board:

Your service to our town is very much appreciated, it is an honor to write an email to special people like yourselves.

As a parent at the subject School I hereby ask the members of the Board to do everything in your ability to make this beautiful project a reality. The kids are looking forward to move into their new building and your approval today will make a positive impact on thousands of familes in Lakewood for the years to come.

The School purchased this parcel of land in 2013 with a vision; to be within walking distance for the Chassidic population that it serves. In the same time it is not on a quiet residential block, so it will be able to operate and grow without altering a neighborhood's dynamics.

The administrator of the School Rabbi Shimanowitz is already sitting with architects and engineers to prepare nice plans for five years. His goal was to satisfy the neighbors, conform with code and avoid asking for variances. His hard work is truly noticeable if you focus on every detail of the site plan and floor plans. The façade is also breathtaking.

It is self-understood that if the Planning Board members were not in power to grant certain types of variances, we could've avoided lengthy board meetings and simply deny all applications unless they comply with every ordinance in the code.

It is with this in mind that government bodies carefully select individuals that have proper judgement to approve variances that are needed. These responsibilities also include to be able to detect when opposition from neighbors should be discredited due to personal or emotional issues, etc.

Public Comment 7

I am writing as a neighbor and friend of the school. I strongly believe the school needs and should be entitled to a new school building to best suite the needs of the children to learn in a comfortable environment. These are basics that everyone understands.

It is imperative that the school be built on Skaunkum road in its current location as to ensure less traffic and easy traffic flow during dismissal and drop off.

Needless to say, as every other school in town as well as my synagogues, income from social halls and banquet halls are crucial to their survival. That counts on it to simply cover the bills. As with every other event hall in town, there are ways to assure that parking in the surrounding area be it residential or commercial are kept to a minimum. I strongly support the school and hope they get approvals they need.

Samuel Neiger

Public Comment 8

As a neighbor living in Whispering Woods, 38 Baila Drive. I would love to see the approval of the new building, which will beautify our neighborhood and enhance the entrance of our town. We will all benefit from this project, as there is no other Simcha Hall in our neighborhood. With the consent of many neighbors who support this project.
Simcha Ginzberg

Public Comment 9

Dear Honorable Board Members;

Thank you for the time you serve, to benefit our town and community.

Fair disclosure; I am a neighbor and parent of the above mentioned school. Regardless of the application I must emphasize, that the school staff is professional, caring, and most important; makes a huge difference in our children's lives. They define the word "Education", in the highest levels that exist.

However, with that said, they are limited and confined within their current space. Their current space is small, but also at time dangerous with the amount of people/children that are spending their days in that confined space. It is long overdue, that a long lasting solution should be made possible. That way, they can further flourish and reach even higher and greater educational heights.

As parents who live a block away, as well as most of the parent body who live on this side of town, having the kids nearby isn't about a convenience, but rather safety, and sanity for the us parents and children. We understand and recognize the challenge posed on neighboring property owners, but know the school administration. The school administration are whole heartily, ready, willing, and able to make arrangements to minimize those challenges. While understanding that no one is going away, and neither can have it "Their way", the mid way compromise to mitigate any neighboring concerns is the way to handle the challenges imposed by this project. The school facing Squankum Road, is one solution that avoids neighboring properties having a school on their front lawn. The school being located on Squankum Road, helps parents with its centrally located location, while not impacting any residential areas.

As you are well aware, the community is growing, while school slot availability isn't meeting the demands. A school must be financially sound, in order to carry itself. Having the ability to produce income from all angles, is viable for the sustainability and longevity of the institution. Limiting that ability, is a possible financial death sentence, for this wonderful and amazing educational institution.

We hope and ask, for you consideration, mercy, and mostly for your kind wisdom to approve said application.

Should you have any questions, comments, or would like me to appear in person, please don't hesitate to contact me via email or phone (732) 296-0698.

Respectfully yours,

Mordechai and Chana Schapira
63 Arosa Hill
Lakewood, NJ 08701

Public Comment 10

Dear Board Members,

My name is Simon Kaufman, I reside at 37 Arosa Hill, Lakewood NJ 08701, My Son Nochum Yoel Kaufman, 9 Years old is a student at Congregation Toldos Yaakov Yosef, I can truthfully and wholeheartedly say what a wonderful school this is, the dedicated staff, the professional administration, the devotion of the principals to the parents and children, the one on one personal treatment.

No wonder that in these few years that the school is operating they outgrew their current capacity by far, and every school year need to add on trailer after trailer – this current setup that school is in is clearly coming at a cost of jeopardizing the maximum potential growth of our children, without giving them the needed space that children require in this century.

As a proud Lakewood resident, home and business owner in the Historic town of Lakewood, I kindly ask you to grant Congregation Toldos Yaakov Yosef the permission to construct the building as requested in application

SP 2374 and grant them the variance they are requesting to be able to proceed without any delay to the beautiful Brick construction at the entrance of Lakewood when coming in from the North!

I would like to add, as an actively involved father with the school, , I'm very well aware of how accommodating the administration of the school was towards the surrounding neighbors, trying to reach a fair agreement that their concerns are properly addressed, I trust that any request that the board will find as a fair request will be respected and honored.

Your truly
Simon Kaufman

Public Comment 11

Dear Members of the Board;

First and foremost, I would like to express gratitude for the time and effort you are investing in servicing and bettering our town and community. It is truly appreciated.

I am writing this letter in regard to Application SP 2374 for Congregation Toldos Yaakov Yosef. I am a grateful parent of three sons that are students attending this wonderful school. My sons are being cared for by the most dedicated staff with devotion and personal approach. Each of my sons are growing exponentially in the warm and professional environment. Additionally, I am genuinely grateful and impressed with their level of Education in all areas.

The current situation the school is facing regarding its limited space is worrisome. They cannot continue to provide for each student, while struggling to deal with the past and expected growth. It is concerning to think that our younger children that will soon join the school, will be unable to have their needs met. They have outgrown their capacity for a while and have put in tremendous effort to stay afloat.

Statistically, location plays a major role. Their current location is not only ideal, but imperative for its success. Although we are of the minority of students living in the south side of town, we are benefiting of it's current location. There are many side roads that can be taken, thereby avoiding immense traffic during rush hour. This enables our children to get to school on time and excel in their studies.

It would be very appreciated to have this application approved. This will enable Congregation Toldos Yaakov to continue to provide for our children and improve its current physical conditions.

With much appreciation,

Joseph And Judy Kaufman

30 Turin Avenue, Lakewood NJ 08701

Public Comment 12

Dear Board Members,

My name is Leah Spiegel and I am a resident of Lakewood NJ; 49 Whispering Pines Lane. I live across the street of the said applicant, and am grateful to them for bringing life onto our side of town. The school is a well run institution with law abiding staff and students alike, and many of the students attending are relatives of mine.

I am told that they are proposing to build a building to accommodate the growing needs of what was once a budding elementary school, and has doubled and tripled in growth in the recent years. The children require and deserve space for recreation as well as for studying , and a large and comfortable building will surely benefit the students as well as their devoted staff.

Please grant them this application so that they may commence with their plans without any further delay.

I can be reached for comment at 732 267 4610 Sincerely, Leah Spiegel

49 Whispering Pines Lane

Lakewood, NJ 08701

Mrs. Morris said the applicant also emailed me directly with the revised architectural plans, showing the removal of the handicapped ramp on the left side of the building. I have another two emails that came in.

Public Comment 13

If the choice is me or my professional to testify i would request it be david from Horner and canter

Thanks

Alan Streicher

Public Comment 14

Please be advised that my clients own the following properties:

606 Mars, 601 Apollo, 610 Mars, 611 Mars, 609 Mars, 612 Mars

Thank you. Larry Loigman, Esq.

Mr. Stern said ok. Gentlemen, let me make a suggestion. It's 9:09. We could have a plenary hearing and hear from everybody, but I have a feeling a lot of the testimony is going to be restating what we've just heard. It seems to me the core issue is the impact of the dining hall, which will be used as a simcha hall, on the neighboring properties. What I'd like to hear from Mr. Liston and Mr. Doyle, tell us about the negotiations that were attempted. Where did you agree and where did the negotiations fall apart.

Mr. Jackson said Mr. Stern, I don't know if that's appropriate. The Board has to make a decision. I want to hear what Mr. Doyle and Mr. Liston think about that. Mr. Liston, you get to weigh in on who we hear from first.

Mr. Liston said I think it is inappropriate.

Mr. Jackson said ok. That's all we need to hear.

Mr. Stern said ok. I'm just trying to get to the bottom line.

Mr. Jackson said Mr. Liston, you've asked questions and intimated that if parking spaces were removed and the building was moved out of the buffer, would that satisfy your client if this application were made to be fully conforming?

Mr. Liston said it would solve the variance problem. I don't know if it would satisfy all my clients. But it would certainly make it a much cleaner application.

Mr. Jackson said Mr. Doyle, you've heard what the concerns are. Is a modification to this application feasible where you can eliminate some of the parking, move that facility that's in the buffer, and go on from there. Is that something your client could feasibly do?

Mr. Doyle said to do away with the variance, acknowledging that it loses 20 parking spaces to increase the buffer area. They've already taken care of the elevator ramp. With respect to the 35 feet versus the 50 feet, Mr. Liston makes the point it would be a cleaner application, would get rid of the variances. If you take a look at the map, where it shows the 50' line, instead of the building coming to a corner it would intersect that corner and all of a sudden have to veer and then veer again. Nobody is complaining about it. So I think that one's in a different category. What's interesting is Mr. Liston's response, that it would be a cleaner application. He didn't say...

Mr. Jackson said so Mr. Doyle was born at night but not last night.

Mr. Doyle said so there is nothing illegal or improper about a simcha hall. They are in most, if not all, schools. The members of the Board know that better than I do. That's what Brian testified to also. So what we're being held hostage to is some nominal variances that we said we would resolve, except for the 35 feet that hasn't really been harped on, but what we're being charged with is to get rid of a common place, sensible, accessory use that is not unpermitted. That is allowed, authorized, and generally done.

Mr. Jackson said I hear what you're saying and I was just trying to see if there was a middle ground here. I just learned something this weekend, when I was making a bid for a house. I was asked to make my highest and best offer. Is there a revision to your application that your client would be satisfied with but would allay some of the concerns. This is our breaking point, this is our best plan. Are there any modifications you would want to make at this time. If so, what is it?

Mr. Doyle said Mr. Flannery has already indicated that, with the buffer and the plantings and the fencing. The building, everybody says there's a need for schools. The school itself doesn't violate any ordinances. So what is being asked of us is to do something that's essential to the school. It has a cafeteria. That cafeteria is based upon a legitimate number of students times the number of square feet necessary per student. So the 4239 sf dining hall is appropriate for the expected size of this growing community that needs a school this size. To the degree that they want to use that necessary, permitted, typical use in the evening for limited parties, as it was generally conceded in earlier testimony that it's not big enough for a wedding. So it is by definition a smaller simcha hall for less populated attendance. When you look at it in that way, and you know that it could have been 82 parking spaces, probably spaces able to be put in the bus lanes, because the school buses are going to be parked at home where the drivers live, then it all works in harmony. We end the night at 10:30, a not-inappropriate time. And we have a lesser size but useable dining hall for evening use consistent with what other schools do and what some of the letters, particularly from the Whispering Pines neighborhood, which is relatively close.

Mr. Jackson said Mr. Doyle, if I read between the lines, some of the concerns, I think is 4200 sf room is a concern. You've indicated that it's not big enough to be used for large-scale weddings. Mr. Flannery, this dining hall, what

would the occupancy be on a room like that if it were to be set with tables. Not how many could stand in there if it were vacant, but if it were to be used for some kind of a party or event with tables and sitting down. To put it into perspective.

Mr. Flannery said its 4,369. At 1 per 15 square feet, 290 people.

Mr. Jackson said and what type of events for this religious school would hold that number of people? A large wedding, more come than that. What would it be capable of hosting?

Mr. Doyle said you're asking a Flannery and a Doyle this question.

Mr. Jackson said they've done enough applications here, I think Mr. Flannery knows.

Mr. Flannery said typical would be an engagement party.

Mr. Stern said we did a digression here. We need to listen to Mr. Horner.

Mrs. Morris said I also have one email that I missed and I apologize to that member of the public. Mrs. Morris read.

Public Comment 13, also Public Comment 3

Lakewood Planning Board

Honored Board Members,

With regard to the variance application by Toldos Yaakov Yosef for property located at Block 104, Lots 13 & 59.01. As the owner of the immediate neighboring property, located at 603 Apollo Road, I hereby submit the following in strong opposition to the above variance application.

The twenty-foot buffer required by law is specifically designed for such instances, to protect surrounding neighbors when a school or other non-residential entity intends to erect a behemoth three-story building that is totally not in sync with the quiet, residential R12 character of the surrounding properties. The request for a variance by the school defeats the entire purpose and intent of this law.

Board members should take into account that applicant illegally and deliberately cleared away the existing buffer of trees without obtaining necessary permits in order to create new facts on the ground to justify the application for this variance for a reduced buffer. Should the board approve this application it would essentially be rewarding the applicant for the illegal and deliberate removal of the long-existing buffer.

Applicant's "statement of operation" indicates the inclusion of a rentable hall for outside functions and events. As is well-known, such halls are used primarily in the evening with

events running well into the night. Without the required buffer as mandated by the zoning code, the light beams from vehicles parking within the buffer zone, as specifically noted in the application, would shine directly into my home disturbing our family's sleep. This buffer is an absolute necessity to protect the quality of life of my family as is the intent of the law.

The applicant's request for a setback variance to just 35 feet from Squankum Road should be considered in light of the fact that development of 96 new homes was just approved to be constructed directly across from the school property, adjacent to the JCP&L property. The board should bear in mind the steady, heavy flow of traffic exiting that proposed development directly onto Squankum Road right at that very same spot of the school property entrance with its own exit and entry traffic generated by a building with 33 classrooms and a 4200 square-foot event hall, with no designated turning lane. Reducing the property's setback at such a critical point would have a devastating impact on the visibility, safety and flow of traffic of this very critical traffic artery which has a speed limit of 50 MPH.

I trust that the board will consider these important factors when reviewing this application and the board will see fit to uphold the zoning requirements in light of these critical circumstances.

Sincerely,

Naftali Ausch

Mr. Doyle said Mr. Chairman, I might have a more specific answer to your question if you want me to say that now or wait until after the gentleman being called testifies.

Mr. Stern said let's do this. Mr. Horner, you're going to speak next and you're going to let everybody know who has retained you. But I want all of us here to start thinking about the point that you're almost forcing the Board to make a binary decision, either zero or one. Generally speaking, binary decisions aren't very good in the long term, for either party. What I think you're hearing from us, whether it's appropriate or not I'm going to say it, we need to have a position that allows the school to do what it's trying to do, including having perhaps what they can do which is having simchas, but without impacting adversely on the neighbors. I don't know what that is, but that's the goal. With that in mind, Mr. Horner please proceed.

Mr. Doyle said Mr. Chairman, if I may. Mr. Horner is an expert and is being called by someone. He indicated he is being called by Mr. Streicher. Mr. Streicher is already represented by Mr. Liston, so I don't know that Mr. Streicher gets to call an expert or if it's Mr. Liston's witness.

Mr. Stern said we're doing it anyway Mr. Doyle, so let's proceed. I don't mean to be rude but we need to move on. I apologize. Go ahead Mr. Horner.

Mr. David Horner, traffic engineer and licensed professional engineer, appeared and was affirmed. He said thank you Mr. Chairman for letting me speak. My client is Mr. Alan Streicher.

Mr. Jackson said ok. Mr. Doyle, do you have any objection or...

Mr. Doyle said I didn't hear where he went to school, how long he's been doing it, has he been recognized by other Boards...

Mr. Jackson said do you want to belabor the record with that?

Mr. Stern said have you testified in Lakewood before?

Mr. Horner said I have not, but I think it's worth putting my qualifications on the record and I'd be happy to do that.

Mr. Jackson said Mr. Stern, there's an awkwardness to this because people are supposed to have attorneys when they come before the Board. Mr. Horner, what are your credentials?

Mr. Horner said I have a bachelor in civil engineering from the University of Delaware. I'm a licensed professional engineer in the State of New Jersey. I am principle of the firm Horner and Canter Associates. I am a traffic engineer, I have been for 32 years. Have testified and been recognized as an expert before many municipalities in NJ, I have not testified in Lakewood Township previously.

Mr. Jackson said Mr. Stern are you satisfied with his qualifications to serve as an expert in the field of engineering with a specialty in traffic?

Mr. Stern said yes I am.

Mr. Jackson said go ahead and proceed Mr. Horner. Mr. Liston, is he part of your litigation team?

Mr. Liston said no he's not. I have never met him and I've never spoken to him.

Mr. Jackson said because he's retained apparently by your client, he's representing the same client that you're representing, and so there's an awkwardness to this if you're going to them cross-reference him, and when you're really representing the person who's calling him as a witness. It's just kind of a weird setting. So let's just see how it unfolds.

Mr. Horner said the purpose of my testimony is, we did not hear any traffic engineering testimony tonight from the applicant. There was a traffic impact study submitted. My client was concerned about traffic, retained me to take a look at the traffic study, and to review the traffic conditions, and provide testimony with regard to that. Basically, in general, the traffic impact study that was provided I find to be extremely inadequate for the purpose of informing and giving a comfort level to the Board about the traffic conditions in and around the site. I haven't heard any testimony today.

Mr. Jackson said Mr. Horner, my concern is now you're commenting like a lawyer would on what someone's proofs were. Just give your traffic testimony, give your analysis, and please refrain from commenting on the voracity or adequacy of another witness's testimony. Because you're not an attorney and I don't think that's appropriate. But if you have an analysis or data that you want to give the Board, I think that would be appropriate.

Mr. Horner said I do. The school is proposed to have a capacity of 825 students. The traffic study was based on 750 students. The analysis needs to be, has to show, the 96iunit development that's adjacent to the site. It did not. It has to analyze the driveway, the JCP&L driveway across the street. That wasn't included. I did an analysis of an 825 student school. And my results were extremely different from the traffic study. My results are that the driveway application for that size school would be an a level of service F, which is failure. Level of service term is an engineer's measure of how.

Mr. Doyle objected. He said has this report been filed with the Board at least 10 days before, as were all of the reports from the applicant?

Mr. Stern said Mr. Horner, that's a valid question. I'm sure you did a great job, have you submitted that to Mrs. Morris?

Mr. Horner said I submitted it to Mrs. Morris yesterday.

Mr. Jackson said what's the date on it?

Mr. Horner said August 17th.

Mr. Doyle said when were the traffic counts done?

Mr. Horner said I didn't do traffic counts, I relied on the traffic counts completed by the applicant's traffic consultant.

Mr. Doyle said Mr. Jackson, I think this is a very dangerous road to go down. We tried to keep both me and Mr. Liston in place, but I think this testimony is out of place.

Mr. Jackson said what my concern is, isn't so much that it's submitted late, it's really in the, it's like an advocate type of analysis. As Mr. Liston pointed out, Mr. Flannery referred to this as an inherently beneficial use. The type of testimony and the importance of a traffic study goes to when the use is not permitted, and the determination is whether the use is appropriate for the site. In this instance, the use is permitted. So the governing body has determined that this type of use belongs here and what goes with that is the type of traffic that would go with this type of use. So I don't know how relevant this is to the Board's analysis. Now if we need a different drive aisle, a different turning radius, we need more parking, or anything like that, that's a different story. But to talk about the level of service, etc, I just don't know that has any bearing on a case where the uses are permitted.

Mr. Vogt said I just wanted to segue from what John said, it's important to note that the road in question that services this development, if approved, as well as the 96 unit development across the street, is a County road. If the Board approves this application, this is going to be reviewed by the Ocean County Engineering department and they're going to be reviewing both developments. If they're not comfortable with the accesses, they're going to request changes.

Mr. Jackson said Mr. Horner referred to a level of service F as a failure, is that an accurate statement? Is there such a thing in traffic engineering or in the DOT or any kind of traffic studies that actually says a level of F equates with a failure?

Mr. Horner said yes.

Mr. Vogt said I'll defer to Mr. Horner on that since this is his area of expertise.

Mr. Horner said the answer to your question is yes. That's actually a technical term. Level of service F equates to failure, when you have delays over a certain level that is considered a failure and it's not an acceptable condition.

Mr. Jackson said ok.

Mr. Vogt said I'm not going to get into an argument over which traffic expert is correct. Again, Ocean County is going to be looking at this application if approved. If they share the same concerns, chances are they are going to request changes to the roadway at a minimum. And I don't know, this is your purview John, whether or not a level of service F is a basis for a denial, especially if it's a permitted use.

Mr. Jackson said I don't know. This is the expert, that's what his testimony is, the Board can accept it or not accept it.

Mr. Stern said so I want to wrap this up. Mr. Horner do you have anything else you would like to add to your testimony?

Mr. Horner said I have a lot I would like to add, but I would like to focus on the internal circulation of the site, which I think is very deficient and should be considered.

Mr. Stern said you have five minutes.

Mr. Horner said perhaps if Mrs. Morris could put up the Site Plan. With regard to the internal circulation, it all relates really to the number of students and the size and the buses. I understand there's a bus loading zone, it's on there, it has a designated area for three buses. I understand that there's four currently used by the school, and they have testified that there could be more. I know that for example on Friday when everyone is dismissed at once, that would require approximately 15 buses or more, and I'm assuming 55 students per bus. That could be an over-exaggeration, maybe it's 20 buses. The site does not accommodate 20 buses. I welcome Mr. Flannery to explain how 20 buses can fit on the site without encroaching onto Squankum Road. Additionally, you see the applicant has indicated there will be 75 pick up and drop off by parents. There's no drop off and pick up for those vehicles, or justification for where 75 came from as a number for 825 students. The site actually would fit about 15 cars if every aisle was utilized by either buses or vehicles. That's not 75, and that's not more than that, based on 825 students. There's a lot of concern that this will bleed out onto Squankum Road and there's been no testimony to indicate that it won't. Furthermore, if you look at the southern driveway, if someone goes in the southern driveway and finds no parking available and they get to the end by the four spaces, by what may end up being a playground, what do they do? What they do is they have to turn around because there is no exit. The bus loading zone is one way. So there's some internal circulation issues that have not been addressed. I thought it important for the Board to be aware because the County won't be able to address that. That's a site plan issue I thought would be important to raise. They also require a left turn lane, but I don't know if the applicant was aware of that because their traffic study didn't address that either way.

Mr. Doyle said Mr. Horner, did you read Mr. Vogt's report?

Mr. Horner said yes, I read the traffic comments in particular but I did read it, yes.

Mr. Doyle said which do you call the traffic impact comments in Terry's report?

Mr. Horner said there were two statements of fact pulling from the traffic engineer's report, which I would submit to you is inadequate for what was represented as an 825 student school.

Mr. Doyle said evidently it was satisfactory for the Board Engineer though, wasn't it?

Mr. Horner said I don't know because the traffic study says 750 students. I can't speak for the Board Engineer on what he reviewed and what he did not review.

Mr. Doyle said I'd let the Board make its own conclusions. Look at roman numeral four, paragraph two. But I'd like to move on, Mr. Chairman. You asked me a direct question about what could resolve this and I think we heard from the engineer, whoever he might have been hired by. If we could get to the conclusion I'm sure everyone would appreciate it.

Mr. Stern said Mr. Horner, are you wrapped up?

Mr. Horner said I could go into more detail about my report.

Mr. Stern said I'm not castigating you, but when we get something the day before it's hard to process it. We do have lives and we do try to read the documents that are given to us, and then we can think about it and ask intelligent questions. So I don't want to do that on the fly at 9:37 at night.

Mr. Vogt said I have not seen or reviewed this report.

Mr. Stern said more to my point. John, if you want to ask one or two questions on cross, I'll allow it. If you don't have anything so relevant, I'd appreciate you not asking the questions. Please proceed.

Mr. Doyle said no I'm fine to respond to your question which I think is properly put. And that is dealing with the simcha hall and the overall resolution on a binary basis or hopefully something in between.

Mr. Stern said it's not our place as the Board to suggest bridging proposals. I'm just telling you the way I'm seeing this is that each side is forcing us into a position that we're going to have to vote on something and candidly maybe neither of you will be happy with it.

Mr. Doyle said I would think the traffic expert is concluded.

Mr. Stern said yes. Thank you, Mr. Horner.

Mr. Doyle said I've heard a number of names for this room today. A lunchroom, a cafeteria, a dining room, a ball room, a wedding hall, a simcha hall. We received objections including one who said we don't want a room whatsoever, no difference big room, small room, weekday, or Shabbos. That's a tough position and that came from Mr. Ausch whose letter was read before and who is represented by Mr. Liston. The Board might say well what do you propose versus zero. We got into the decorating and the lights. If I understood Mr. Flannery right, the difference between the two floors are basically 11.5 feet and the question was why not 8 or 9 feet. Well if it's the whole floor, then the classrooms are going to be that high. That being said, we have the right that most any user of property would have, to decorate their room the way they want to and that would include in this case the dining room/simcha hall, such occupancy by agreement of the applicant would be no more than 200 people. We would leave by 10:30. The Board may want to consider that in light of Mr. Flannery's testimony with respect to the number of square feet that are needed and allowed, as well as in connection with the preservation or non-preservation of the 20 spaces. We will plant a single row of arborvitae, at 8-10 feet, the Board well knows those are Leyland Cyprus, meshed together to create a green fence. We would also, if chosen by the neighbors as reasonable or by the Board as mandated, an 8' fence around. So I think we've come a long way towards zero versus whatever. But I think that would be a fair conclusion.

Mr. Stern said thank you Mr. Doyle. Mr. Liston I'm going to give you an opportunity to do concluding remarks and then we are going to close this and have the Board deliberate and vote.

Mr. Liston said well first of all, as I indicated before, I don't think it's proper for the Board to get involved in trying to broker a negotiation between my clients and Mr. Doyle's clients. That's what I think is happening now and I don't think it's proper. But then there isn't much about this meeting that I do think is proper. The one thing that I did hear though, that made me really concerned, beyond my clients concerns, is what the traffic engineer had to say. Not about the traffic on Squankum, that's going to be a nightmare. But when he talked about the internal circulation and the problems that on a very cursory look, it's going to be a disaster. The buses, it's going to be a disaster with parents' cars, and I would point out that we have not heard from Mr. Doyle's traffic expert. I fully expected that he would testify and he didn't. So when you get to the internal traffic issue, I think you've got a terrible plan here that's going to be a danger to the children, the staff. It's just, I don't know why Mr. Doyle hasn't brought his traffic expert to testify, but I would think before the Board makes any decision other than to deny, Mr. Doyle might want the ability to bring him in so that he can testify about his report. Because it doesn't look good with him not testifying and a traffic engineer indicating on the internal problems, that there are very serious problems.

Mr. Doyle said I didn't realize that was going to be the closing, I wanted to respond to a question.

Mr. Stern said Mr. Doyle, why don't you briefly close.

Mr. Doyle said as to traffic, Mr. Vogt, not anybody's engineer but yours, the bus loading zone is proposed in front of the school. We recommend that the proposed spaces be designated, the adjoining aisle be restricted for one-way circulation in a counter-clockwise direction, and this manner any proposed traffic circulation...(static). Other than that, we come to you for a use that is venerated in Lakewood. Education. A use that is so central to the community it is permitted in every zone. A use that does not cover too much of the land and meets the requirements with the exception of the 20 feet on the parking, and we left that to the Board. The Board will make the wisest decision whether it's needed or not needed. The 35 feet I think speaks for itself. It didn't hurt anybody and I think the Board should take into account the importance of that school, the growth of that particular segment of the educational field, and this international network that wants to make more of a home in Lakewood, for those people who already live in Lakewood who want their children, as you heard in the letters, to go to this school in an enlarged fashion. We purposely responded on what seemed to be the underlying current from the objectors and the Board: how big is the hall going to be, is it going to have weddings, are they going to park on Appollo Road. The numbers limited to 200 allows the number of parking spaces that would be useable under the Board's discretion is enough parking and everyone should go home happy and the Board would have done everything I think legally, factually, the right thing.

Mr. Stern said thank you Mr. Doyle. John, is it appropriate to close the public comment and begin deliberations.

Mr. Jackson said yes. Just ask for a motion to end the public portion of the meeting and begin deliberations.

A motion was made and seconded to close the public portion. All were in favor.

Mr. Stern said gentlemen, would someone like to make a motion and bring this all together.

Mr. Sabel made a motion to approve with the following conditions which he emailed her:

1. 2 playgrounds, with proper fencing, bollards & sidewalk/curb in front of (between parking lot) & proper sidewalk leading from building to these areas (this will also help with bus loading on Friday's)
2. No parking in bus & Loading zones.
3. Head in parking in the buffer area,
4. No rentals after 10:30PM.

5. Max of 200 people in Hall.
6. No parking on any school buses on site (day & night).
7. Proper fencing around the entire property as required by ordinance.
8. Leave the handicap ramp & give the variance.
9. Proper separate men & women entrances to the hall with sidewalks.

Mr. Flancbaum seconded, and said I'd like to add a couple extra items to the motion if Mr. Sabel would agree. There should be an 8' vinyl fence along the entire perimeter of the property. I drove by the site today and there are some trees, small and larger, that are left on the perimeter. I'd like to see that the applicant keep as many of those trees as possible. Then also plant new trees around the perimeter in accordance with the Shade Tree Commission's recommendations. Then also I would like to recommend to the County, we can't really enforce this, but I'd like to recommend the northerly access to the site maybe be just a right-in and right-out, as opposed to having left and right. Those are the items I would like to add.

Mrs. Morris said Mr. Sabel, does your motion still stand with those amendments?

Mr. Sabel said the last item was right in and right out of the northern most entrance?

Mr. Flancbaum said yes the northerly access to the site.

Mr. Sabel said you want to make it right in? I agree with that.

Mr. Flancbaum said right in, right out. And that's our recommendation to the County.

Mr. Raitzik said how are the buses going to get in if they are coming from Lakewood?

Mr. Sabel said they will use the other one.

Mr. Raitzik said what's the other one, they can't go in.

Mr. Sabel said it is a recommendation to the County, we will leave it up to however they feel.

Mr. Flancbaum said if we can add those items I will second the motion. Do you want me to repeat that Ally?

Mrs. Morris said no it will be in the minutes.

Mr. Stern proposed additional amendments to the resolution, and after discussion with the Board and their professionals he withdrew his comments.

Mr. Sabel said if we can request to the County a crosswalk from Whispering Pines across Squankum. A lot of the public comments were in the positive from Whispering Pines.

Mr. Flancbaum said I would be careful about a crosswalk in the middle of Squankum Road without a traffic signal. I think that could be more dangerous.

Mr. Stern said yeah.

Mr. Vogt said and that's going to go back to Ocean County.

Mr. Flancbaum said I feel uncomfortable with a crosswalk in the middle of Squankum Road in that location.

Mr. Sabel said so we will put in the request to Ocean County, some sort of safer pedestrian crossway.

Mr. Flancbaum said we can make a recommendation that they look at something, and if they disagree...

Mr. Sabel said perfect.

The Board voted unanimously in favor of Mr. Sabel's original motion with Mr. Flancbaum's amendments.

4. APPROVAL OF MINUTES

5. APPROVAL OF BILLS

6. ADJOURNMENT

The meeting was hereby adjourned. All were in favor.

Respectfully submitted
Ally Morris
Planning Board Recording Secretary