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MINUTES OF THE  
EAST BRUNSWICK TOWNSHIP  
BOARD OF ADJUSTMENT

July 2, 2020

STATEMENT - Open Public Meetings Act

FLAG SALUTE

ROLL CALL -

PRESENT: ABSENT:

- Steve Philips, Chairman
- Christine Rampolla
- Victor Santamarina
- Julie Clarke
- Rob Zuckerman
- Dinesh Behal
- Deepak Arora
- Amy Papi - Recused from Ferris Farms application
- Wesam Berjaoui - Recused from Ferris Farms application
- Anthony Riccobono - Recused from Ferris Farms application

ALSO PRESENT:

- Jay Weiner, Esquire
- Loren Morace, Secretary
- Aaron Blessing, Zoning Assistant
- Jason Cline, Engineer
- Keith Kipp, Director of Planning/Engineering

DISCUSSION

Application #Z-19-15 - CT 645RT18, LLC & DT 645RT18,  
LLC - discussion of voluntary abandonment of use  
variance by applicant.

RESOLUTIONS

Resolution amending the start time of future zoning  
board meetings. Motion to adopt new start time of  
7:30 p.m. by Mr. Santamarina, second by Mr.  
Riccobono. Resolution adopted.

1 Application #Z-19-15 - CT 645RT18, LLC & DT 645RT18,  
2 LLC - Resolution to declare use variance abandoned.  
3 Motion to approve by Mr. Riccobono, second by Ms.  
4 Rampolla. Resolution adopted.

4 OLD BUSINESS

5 Application #Z-18-32 - Ferris Farms of East  
6 Brunswick, LLC - Proposed 30 townhome units at 690  
7 Cranbury Road, block 321, lot 6.03, in the R-1 zone.  
8 Mandatory date December 31, 2020. Motion to deny by  
9 Ms. Clarke, second by Mr. Wynter. Application  
10 denied.

9 ADJOURNMENT

10 Motion to adjourn by Mr. Wynter, second by Ms.  
11 Rampolla.

12  
13 THE CHAIRMAN: Welcome to the July 2 meeting of the  
14 East Brunswick Zoning Board. Notice of the Township  
15 of East Brunswick electronic meetings of the Zoning  
16 Board of East Brunswick -- please be advised that  
17 the -- hello -- please be advised that the zoning  
18 board will hold its regular meeting on June -- on  
19 July 2, 2020, at 8 p.m., via online video  
20 conference. Pursuant to the provisions of the New  
21 Jersey Public Meetings Acts, N.J.S.A. 10:4-8B, this  
22 meeting will be held by means of the use of  
23 electronic communications equipment. Due to the  
24 COVID-19 pandemic, no members of the public shall be  
25 permitted to physically attend the meeting. The  
public, however, is invited to attend the meeting  
electronically via phone. The zoning board will be  
broadcast live on EBTV for the public to listen and  
view exhibits or documents presented. The public  
can attend the zoning board meeting and view all  
exhibits with the following link. Is this link  
EBTV?

MR. BLESSING: Yes.

MR. KIPP: Yes, it is.

THE CHAIRMAN: Okay. Confirm that it's  
<https://www.eastbrunswick.org/358/Zoning-Board>. The  
zoning board will take formal action at this  
meeting. The township is using this format in an  
effort to mitigate the chance of exposure to

1 COVID-19 as part of the township's ongoing efforts  
2 to slow the rate of transmission and avoid  
3 overwhelming our treatment centers. This action  
4 will be enforced for all meetings until otherwise  
5 notified by public notice.

6 Okay. And at some point, there will be  
7 a phone number that will appear for the public, but  
8 then again we're not going to have a public portion  
9 tonight. So --

10 MR. KIPP: And we are broadcasting that  
11 on EBTV, the phone number, as well, Steve.

12 THE CHAIRMAN: Okay. Thank you very  
13 much. Now the opening statement that everybody is  
14 more familiar with. This is the July 2, 2020, East  
15 Brunswick Township Zoning Board of Adjustment  
16 meeting. In accordance with the Open Public Meeting  
17 Law, on November 27, 2019, notice of this meeting  
18 stating the time, date, and location was sent to the  
19 Home News Tribune, filed with the township clerk,  
20 and posted on the bulletin board in the lobby of the  
21 municipal building. A copy of this notice will be  
22 incorporated in the minutes of this meeting.

23 The zoning board will not hear any case  
24 beyond 10:30 p.m. with the exception of any hearing  
25 in progress at that time, and will terminate all  
26 testimony at 11 p.m. The Chair reserves the right  
27 to call any application in an order different from  
28 that appearing on the agenda.

29 If I can get everybody to rise for the  
30 pledge of allegiance.

31 (Flag salute)

32 THE CHAIRMAN: Thank you. And thanks  
33 for getting that on queue, Keith. All right. Let's  
34 have the roll call, Aaron.

35 MR. BLESSING: Mr. Berjaoui.

MR. BERJAOUI: Here.

MR. BLESSING: Mr. Arora.

MR. ARORA: Yes, I'm there.

MR. BLESSING: Miss Papi.

MS. PAPI: Here.

MR. BLESSING: Mr. Wynter.

MR. WYNTER: Here.

MR. BLESSING: Mr. Riccobono.

MR. RICCOBONO: Here.

MR. BLESSING: Mr. Zuckerman.

MR. ZUCKERMAN: Here.

MR. BLESSING: Miss Clarke.

MS. MORACE: Julie, unmute yourself.

MS. CLARKE: Here.

MR. BLESSING: Mr. Santamarina.

1 MR. SANTAMARINA: Here.  
MR. BLESSING: Mr. Behal.  
2 MR. BEHAL: Here.  
MR. BLESSING: Miss Rampolla.  
3 MS. RAMPOLLA: Here.  
MR. BLESSING: Chairman Philips.  
4 THE CHAIRMAN: Here. We have a full  
house. Just think about that on July 2.  
5 Interesting.

If I can, I'm going to turn the next  
6 piece, this discussion, over to our attorney, who's  
going to review item number 1, application Z-19-15,  
7 discussion of voluntary abandonment of the use  
variance by the applicant. Jay.

8 MR. WEINER: Thank you, Mr. Chairman.  
To bring everyone up to speed, I know previously at  
9 one of our earlier meeting this year, we touched on  
a matter that had been going into litigation, and if  
10 you recall, we went into executive session at that  
time to discuss the sensitive and confidential  
11 matters pending litigation.

What I can say is that lawsuit has  
12 essentially been resolved, and by being resolved,  
there was no settlement per se that has occurred,  
13 but ultimately, the matter has become moot, and  
therefore, in light of that, the plaintiff's  
14 attorney, the petitioner who brought the lawsuit, is  
agreeing to ultimately dismiss the lawsuit. The  
15 reason for that has come about is, if everyone will  
recall, that was regarding application Z-19-15,  
16 which the applicants were kind of strange names, but  
it was CT 645RT18, LLC, and DT 645RT18, LLC. They  
17 were the applicants, and it was in what we commonly  
refer to as the old Kmart property, and if you  
18 recall, prior to this application that we're talking  
about now, they had sometime prior to that received  
19 a use variance for recreational purposes and so  
forth, and then last fall, in 2019 in the fall, they  
20 came back to the board, and I believe it was on  
September 19 of 2019, there was a hearing where they  
21 applied for a second use variance where basically  
what they were looking for was allowing a  
22 conditional use of having a bar conditional to the  
prior use of the recreational facility that had been  
23 a -- I believe it was a trampoline park, if I'm not  
mistaken. So -- and that was approved by the board.

24 Thereafter, an objector to the case  
filed a lawsuit seeking a judicial remedy to set  
25 aside the board's approval. As part of that  
lawsuit, they sue both the board as well as the

1 applicants who received the variance. That is the  
2 standard.

3 After the litigation commenced, what  
4 ultimately happened is, rather than defend the case,  
5 the applicants decided they no longer wanted to have  
6 this second use variance allowing them to have the  
7 bar that was granted under application Z-19-15. So  
8 what they ultimately agreed to do is put it in  
9 writing, which everyone should have received a copy  
10 in their packet, and for the record, I will read it.  
11 It's a notice of voluntary abandonment of use  
12 variance with prejudice, and before I read it into  
13 the record, what that means essentially is from a  
14 legal standpoint, if a use variance is granted by a  
15 board and thereafter the use is abandoned, which has  
16 a legal term of art meaning to it, it doesn't  
17 necessarily equate to the common definition meaning,  
18 but under the law, abandonment has certain legal  
19 definitions to it, and what it means is that they  
20 basically forego, gave up, and are surrendering  
21 their rights to have that variance.

22 So what this applicant did is, rather  
23 than defend the lawsuit for whatever their reasons  
24 were, business reasons or otherwise -- we're not  
25 privy to that, nor do we need to be -- they decided  
to just forgo their variance. So what the notice  
says is:

"Whereas, CT 645RT18, LLC, and DT  
645RT18, LLC, hereinafter collectively referred to  
as the applicant, applied to the East Brunswick  
Township Zoning Board of Adjustment, hereinafter  
referred to as the board, for use variance to permit  
a proposed bar serving alcoholic beverages within  
one of a prior approved recreational use at the  
subject site at block 89, lot 4.29 C0001, 645 New  
Jersey State Highway 18, in the HC-3 zone in the  
East Brunswick Township tax map; and

"Whereas, the application was identified  
by the Township of East Brunswick as application  
number Z-19-15; and

"Whereas, the board acknowledged  
jurisdiction over this application on September 19,  
2019, and public hearings were held on said  
applications by the board of adjustment on  
September 19, 2019, and the public was given the  
opportunity to be heard; and

"Whereas, the applicant provided proof  
that it published a proper newspaper hearing notice  
of the hearing and notified the property owners  
within 200 feet of the subject property of the board

1 of adjustment's scheduled hearing pursuant to New  
Jersey statute annotated N.J.S.A. 40:55D-12; and

2 "Whereas, on September 19, 2019, the  
board granted the requested use variance subject to  
3 certain conditions; and

4 "Whereas, a resolution adopting the  
aforesaid approval with certain conditions of the  
subject use variance was approved by the board on  
5 November 21, 2019; and

6 "Whereas, notwithstanding the aforesaid  
approval of the use variance and resolution  
memorializing same, the applicant now desires to  
7 voluntarily abandon said use variance.

8 "Now, therefore, please take notice that  
the applicant, CT 645RT18, LLC, and DT 645RT18, LLC,  
hereby knowingly and voluntarily abandons the  
9 subject use variance previously granted for  
application number Z-19-15 permanently and with  
10 prejudice, and applicant has abandoned this use  
variance after having consulted with applicant's own  
11 legal counsel, and applicant fully and completely  
understands that upon execution of this notice of  
12 voluntary abandonment of use variance with prejudice  
that said use variance will be abandoned, void, not  
13 effective, and vacated permanently and with  
prejudice, and applicant requests that upon  
14 execution of this notice of voluntary abandonment of  
use variance with prejudice that the board take  
15 action to adopt a resolution formalizing this  
abandonment of the subject use variance with  
16 prejudice; and

17 "I hereby execute this notice of  
voluntary abandonment of use variance with prejudice  
on behalf of applicant."

18 And it's signed by the respective  
managing members of each of the two applicants and  
19 notarized. That essentially is the written  
memorialization of the application saying we  
20 surrender, give up, and totally legally abandon this  
variance. That is what that meant. And by doing  
21 so, a lawsuit challenging the granting of that  
variance becomes legally moot. There's no more an  
22 issue. So once -- and they -- as we -- the last  
part of the notice that I read onto the record just  
23 now was the applicant, themselves, requesting this  
board to take action in the form of a vote to  
24 memorialize a resolution formally abandoning the --  
declaring the use variance abandoned. Once this is  
25 done, I will be notifying the other attorneys  
involved in the litigation, and the attorney for the

1 plaintiff in the lawsuit will be filing with the  
2 court the appropriate paper to dismiss the lawsuit  
with prejudice, as well.

3 I'm going to quickly read the resolution  
now into the record, as well, resolution Township of  
4 East Brunswick Zoning Board of Adjustment.

5 "Whereas CT 645RT18, LLC and DT 645RT18,  
LLC, hereinafter collectively referred to as the  
6 applicant, applied to the East Brunswick Township  
Zoning Board of Adjustment, hereinafter referred to  
7 as the board, for a use variance to permit a  
proposed bar serving alcoholic beverages within one  
8 of a prior approved recreational use at the subject  
site at block 89, lot 4.29 C0001, 645 New Jersey  
State Highway 18, in the HC-3 zone on the East  
Brunswick Township tax map; and

9 "Whereas, said application was  
identified by the Township of East Brunswick as  
10 application number Z-19-15; and

11 "Whereas, the board acknowledged  
jurisdiction over this application on September 19,  
12 2019, and public hearings were held on said  
application by the board of adjustment on  
September 19, 2019, and the public was given the  
13 opportunity to be heard; and

14 "Whereas, the applicant provided proof  
that it published proper newspaper hearing notice of  
the hearing and notified property owners within  
15 200 feet of the subject property of the board of  
adjustment scheduled hearing pursuant to N.J.S.A.  
16 40:55B-12; and

17 "Whereas, on September 19, 2019, the  
board granted the requested use variance subject to  
certain conditions; and

18 "Whereas, a resolution adopting the  
aforesaid approval with certain conditions of the  
19 subject use variance was approved by the board on  
November 21, 2019; and

20 "Whereas, notwithstanding the aforesaid  
approval of the use variance and resolution  
21 memorializing same, the applicant now desires to  
voluntarily abandon said use; and

22 "Whereas, the applicant has memorialized  
their voluntary abandonment of said use variance  
23 with prejudice in writing and same has been  
presented to the board."

24 That is essentially the body of the  
proposed resolution, and now it would be  
25 appropriate, Mr. Chairman, I can turn this back to  
you for the purpose of asking the board what their

1 pleasure is as to a motion on this matter.

2 THE CHAIRMAN: Thank you very much, Jay.  
3 All right, so I will listen for a motion to adopt  
4 this resolution to vacate as described by our  
5 attorney.

6 MS. RAMPOLLA: Can I just -- may I ask a  
7 question before --

8 MR. WEINER: Certainly.

9 MS. RAMPOLLA: If you didn't vote in  
10 favor of that --

11 MR. WEINER: That, Christine, has no  
12 bearing on the -- this is a separate vote. It's  
13 considered a separate matter. So regardless of  
14 whether you voted one way or the other on the  
15 application or if you didn't vote on the application  
16 or weren't even a board member at that time doesn't  
17 matter. I believe we have -- we need -- we have  
18 more than seven people here so the seven people who  
19 can vote on the matter tonight are all eligible to  
20 vote, and I'll leave that to Loren once there is a  
21 motion on the table.

22 THE CHAIRMAN: First a motion. We have  
23 one from Tony.

24 MR. RICCOBONO: I'd like to make the  
25 motion. I, too, voted against it, and I'm happy to  
hear that they're abandoning the use of alcohol.

26 MS. RAMPOLLA: I'll second to accept it.

27 THE CHAIRMAN: We have Christine  
28 seconding, and for the roll call, if we only are  
29 allowed to have seven, then start -- I guess you can  
30 start with Rob because that's seven.

31 MR. BLESSING: Mr. Zuckerman.

32 MR. ZUCKERMAN: Yes.

33 MR. BLESSING: Miss Clarke.

34 MS. CLARKE: Yes.

35 MR. BLESSING: Mr. Santamarina.

36 MR. SANTAMARINA: Yes.

37 MR. BLESSING: Mr. Riccobono.

38 MR. RICCOBONO: Yes.

39 MR. BLESSING: Mr. Behal.

40 MR. BEHAL: Yes.

41 MR. BLESSING: Miss Rampolla.

42 MS. RAMPOLLA: Yes.

43 MR. BLESSING: Chairman Philips.

44 THE CHAIRMAN: Yes. Okay. That's  
45 one piece of business that we're done with. The  
next one should be a little easier. We talked about  
it two weeks ago regarding moving the time for our  
meeting to begin at 7:30 instead of 8 and ending,  
fingers crossed, hopefully no later than 10:30, and

1 the board seemed predisposed to go along with that,  
 2 and therefore, there is a resolution that should  
 3 have been in your packets. Does anybody have any  
 4 questions? If not, I'll read it into the record,  
 and then we can -- I guess we can look for a motion  
 and then take the vote. There's no questions, I'll  
 read it.

"Whereas, the Zoning Board in the  
 5 Township of East Brunswick as a duly constituted  
 6 body has authorized with responsibility of  
 7 supervising the concerns with the orderly  
 development and planning of the township as  
 authorized by statute; and

"Whereas, the board finds it in the best  
 8 interest of the public to amend the time of the  
 zoning board currently being 8 o'clock to now begin  
 9 at 7:30. Time shall take effect immediately at the  
 next zoning board meeting. Notify that the  
 10 foregoing is a true copy of the resolution adopted  
 by the Zoning Board of the Township of East  
 11 Brunswick at public meeting on July 2, 2020."

So do we have a motion?

12 MR. SANTAMARINA: So moved.

MR. RICCOBONO: Second.

13 THE CHAIRMAN: Victor moved; Tony  
 14 seconded. Could you call the roll again, please.  
 You can call all the members, please.

MR. BLESSING: Mr. Wynter.

15 MR. WYNTER: Yes.

MR. BLESSING: Miss Papi.

16 MS. PAPI: Yes.

MR. BLESSING: Mr. Arora.

17 MR. ARORA: Yes.

MR. BLESSING: Mr. Berjaoui.

18 MR. BERJAOUI: Yes.

MR. BLESSING: Mr. Zuckerman.

19 MR. ZUCKERMAN: Yes.

MR. BLESSING: Miss Clarke.

20 MS. CLARKE: Yes.

MR. BLESSING: Mr. Santamarina.

21 MR. SANTAMARINA: Yes.

MR. BLESSING: Mr. Riccobono.

22 MR. RICCOBONO: Yes.

MR. BLESSING: Mr. Behal.

23 MR. BEHAL: Yes.

MR. BLESSING: Miss Rampolla.

24 MS. RAMPOLLA: Yes.

MR. BLESSING: Chairman Philips.

25 THE CHAIRMAN: Yes. Okay. Well, thank  
 you for that piece of business.

1                   At this time, those who are going to  
2                   recuse themselves or do not have a reason to be  
3                   involved with the Ferris Farms application do not  
4                   need to stay on any longer. So I will --

5                   MR. WEINER: Mr. Chairman, if I just  
6                   may, for the record, previously was Miss Papi, Mr.  
7                   Berjaoui, and Mr. Riccobono who had all recused  
8                   themselves. I believe those are the only three  
9                   persons that we are aware of at this time.

10                  MS. MORACE: Correct.

11                  MS. PAPI: I wish everyone a very happy  
12                  and safe 4th of July. Good night.

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BOARD OF ADJUSTMENT  
TOWNSHIP OF EAST BRUNSWICK  
COUNTY OF MIDDLESEX  
STATE OF NEW JERSEY

In the Matter of )  
The Application of: ) Transcript of  
FERRIS FARMS OF ) proceedings  
EAST BRUNSWICK, LLC )  
#Z-18-32 )  
690 Cranbury Road )  
Block 321, Lot 6.03 )  
----- )

Thursday, July 2, 2020  
Remote Proceedings Via  
Zoom Videoconference

BOARD OF ADJUSTMENT

STEVE PHILIPS, Chairman  
VICTOR SANTAMARINA  
CHRISTINE RAMPOLLA  
JULIE CLARKE  
ROB ZUCKERMAN  
DINESH BEHAL  
IVAN WYNTER  
DEEPAK ARORA

LOREN MORACE, Secretary  
AARON BLESSING, Zoning Assistant  
JASON CLINE, Engineer  
KEITH KIPP, Director of Planning &  
Engineering

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1           A p p e a r a n c e s :

2                               WEINER & WEINER, P.C.,  
3                               Attorneys for the BOARD  
4                               By: JAY WEINER, ESQUIRE

5                               DAVID B. HIMELMAN, ESQUIRE,  
6                               Attorney for the APPLICANT

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I N D E X

WITNESS PAGE  
(None presented)

I N D E X T O E X H I B I T S

EXHIBIT NO. DESCRIPTION PAGE  
(None marked)

1 THE CHAIRMAN: All right. I guess,  
2 David, if you can reappear.

3 MR. HIMELMAN: I'm back.

4 THE CHAIRMAN: Okay. Where we left off  
5 back on December 19 was that we had finished with  
6 the public portion and you were prepared for going  
7 through recommendations and the summation at that  
8 point.

9 MR. HIMELMAN: Correct.

10 THE CHAIRMAN: Do you concur with that  
11 timeline as described?

12 MR. HIMELMAN: Yes.

13 THE CHAIRMAN: Okay, and I think we both  
14 know that it has been an unfortunate set of  
15 circumstances that have happened over the course of  
16 the last 6 months that have delayed our opportunity  
17 to put this to a vote and finish it.

18 MR. HIMELMAN: I agree, unfortunately.

19 THE CHAIRMAN: But at this point, David,  
20 it's now -- I'll leave it to you. I'll ask you to  
21 do what you want. This is your closing, and if you  
22 want, we can go through the recommendations or go  
23 through your statement, whichever you want.

24 MR. WEINER: Mr. Himelman, before you  
25 begin, I apologize. There's a couple of what we

1 refer to -- first of all, for this meeting, the  
2 applicant was asked to renotece. That was done.  
3 I've reviewed the notices, and they were all  
4 acceptable, so the public has satisfactory notice of  
5 this meeting, and just to tap on the -- you  
6 commented previously about the public portion having  
7 been closed. The public portion for matters before  
8 the board runs with the application, and in each  
9 meeting, as testimony is presented and exhibits are  
10 presented and so on and so forth, there's an  
11 allowance by the Chair for the public to participate  
12 in the meeting; however, at the end of the last  
13 meeting where there was a public portion of a  
14 significant amount of time, at the end of that  
15 public portion, there was no one left who was not  
16 given the opportunity to be heard, and then the  
17 applicant rested, which means that the presentation  
18 of all items was complete so the public portion was  
19 the -- that had been given was an opportunity to  
20 basically speak to the entire application, and that  
21 was made clear at the last meeting that there was  
22 nothing further and the applicant had rested.  
23 Therefore, that is why there's no public portion  
24 tonight. The only thing left was what was cut off  
25 due to time at that meeting, which is the summation

1 of the applicant and then consideration and  
2 discussion by the board.

3 THE CHAIRMAN: Thank you.

4 MR. WEINER: And now I'll turn it over  
5 to Mr. Himelman for his summation.

6 THE CHAIRMAN: I'm going to just --  
7 David, we also have -- we do have seven members who  
8 are eligible to vote.

9 MR. HIMELMAN: Yes, that's my  
10 understanding, Mr. Chairman.

11 THE CHAIRMAN: Okay.

12 MR. HIMELMAN: Yes.

13 THE CHAIRMAN: So we are -- we are  
14 prepared to finalize this evening at your behest  
15 when we get there.

16 MR. HIMELMAN: Right. Thank you very  
17 much. Mr. Weiner, thank you for reviewing the legal  
18 notice and for that explanation.

19 So, Mr. Chairman, you're correct. So  
20 what I would like to suggest is I have a closing  
21 statement, which is going to summarize the  
22 applicant's position, but I want the board to be  
23 clear on this, that, you know, I am not in any way  
24 testifying. I am not -- that's not my role, and  
25 Mr. Weiner will I'm sure agree with me. My role is

1 to present the applicant through its witnesses. My  
2 role now is to simply summarize the testimony and  
3 make the points as to why we believe the board would  
4 be in its rights to approve the application and the  
5 relief sought. So with that said, I will begin my  
6 summation.

7 Good evening members of the board -- and  
8 by the way, before I get into that, I want to thank  
9 this board, I want to thank the staff and all those  
10 participating tonight because, as the chairman  
11 indicated, these are unusual and difficult times,  
12 and to put this type of meeting together is not  
13 easy, so I want to thank Keith and staff, and  
14 really, it means a lot to the applicant to be able  
15 to get to this point, and I think it's a testament  
16 to the staff, and I want to thank them for that.

17 As indicated, my name is David Himelman,  
18 and I represent the applicant, Ferris Farms of East  
19 Brunswick, LLC, and as you know from the testimony,  
20 the applicant is currently the contract purchaser of  
21 the property, and for the record, it's designated as  
22 block 321, lot 6.03, located at 690 Cranbury Road,  
23 of course in East Brunswick.

24 As discussed and outlined in prior  
25 testimony, the property consists of approximately

1 5 acres of land and is located in the R-1 zone in  
2 the Township of East Brunswick. The applicant is  
3 the entity established for this project, whose  
4 parent company is JMC Management, and as I indicated  
5 in my opening statement on this application. JMC  
6 has developed significant real estate projects,  
7 including residential housing consisting of a  
8 variety of type of different housing, including  
9 single-family, townhomes, and apartments, all along  
10 with retail and commercial, primarily in Ocean and  
11 Monmouth and Middlesex County, and as I indicated  
12 previously, they developed Heritage Village here in  
13 East Brunswick, which consists of 13 colonial style  
14 single-family homes. That community was sold out  
15 and was completed in 2004.

16 The applicant presented several  
17 witnesses during the course of the hearings, Marc  
18 Leber, our professional engineer; Scott Kennel, our  
19 traffic consultant; Tom Brennan, who is our  
20 architect; Amy Jones, who is our senior biologist,  
21 Creigh Rahenkamp, our planner; and Michael Matthews,  
22 who was presented as a real estate expert.

23 Hearings on this application were heard  
24 by this board on January 17, 2019; April 4, 2019;  
25 June 20, 2019; October 3, 2019; November 21, 2019;

1 December 19, 2019; and this evening.

2 As the board is aware, the applicant had  
3 originally proposed to construct 50 residential  
4 townhomes consisting of 40 market rate units and 10  
5 affordable units at a density of 10 units per acre.  
6 The applicant then revised a proposed plan several  
7 times to what is now the current plan before you  
8 consisting of 30 units or a density of six units per  
9 acre. All the units are now three-bedrooms. The  
10 proposed development consists of five buildings, two  
11 buildings with six units, one building with  
12 eight units, one building with seven units, and one  
13 building with three units.

14 While the applicant removed the  
15 construction of affordable units from this plan,  
16 pursuant to the Township of East Brunswick  
17 ordinance, if approved, the applicant would be  
18 obligated to pay an enhanced development fee of  
19 6 percent of the equalized assessed value for each  
20 additional unit approved above the residential  
21 density allowed. The permitted density is one unit  
22 per acre or a total of five units; thus, based upon  
23 the development fee ordinance, the 6 percent  
24 enhanced development fee would apply to the 25 units  
25 over the five units permitted by right. Based on

1 the applicant's preliminary calculations, the  
2 township would receive approximately \$800,000 in a  
3 development fee contribution to spend as the  
4 township determines best. Historically, the  
5 township has done an excellent job, the applicant  
6 contends, finding suitable sites in the township and  
7 utilizing the funds generated from these development  
8 fees for the construction and development of  
9 affordable housing.

10 The proposed plan, as you know, has been  
11 modified and includes many revisions, and I'll just  
12 briefly summarize what they are. The total number  
13 of proposed units has been reduced to 30. The total  
14 number of buildings has been reduced from six to  
15 five. Additional 11 off-street parking spaces  
16 provided for a total of 23, a new total of 23. The  
17 combined side yard variance has been eliminated.  
18 All driveways are depicted as 20 feet wide with a  
19 paver brick line down the center of driveways  
20 between neighbors. A stop sign and stop bar have  
21 been added at Cranbury Road. Curb ramps and a  
22 crosswalk have been added at Cranbury Road. Added  
23 No Parking signs throughout as per the fire official  
24 comments. We increased the curb radii to 5 minimum  
25 per township comment. The size of the stormwater

1 management basin has been increased to more than is  
2 required by the New Jersey Department of  
3 Environmental Protection standards. The existing  
4 trees will remain along the southerly border are  
5 proposed to be contained within a conservation  
6 easement. Locations have been depicted along the  
7 street where trash cans will be placed for weekly  
8 pickup per board comment. And finally, the  
9 cul-de-sac area is striped as a fire lane, and this  
10 was a result of comments from our fire official.

11 Many of the revisions that I just  
12 described are a direct result of comments and  
13 concerns expressed by this board, staff, and  
14 objectors, including our neighbor, the Giancolas,  
15 and the public in general. The applicant has made  
16 every effort to address and appropriately respond to  
17 all concerns raised.

18 Specifically, the applicant agreed to  
19 provide an additional 11 parking spaces for guest  
20 parking even though the applicant's traffic  
21 consultant testified that the prior plan complied  
22 with the Residential Site Improvement Standards.

23 As the board is aware, the applicant has  
24 sought to bifurcate the use variance from the  
25 subdivision application for the proposed project.

1 This request is permissible under the Municipal Land  
2 Use Law, which is codified at N.J.S.A. 40:55D-76b.  
3 Should this board approve the D use variance relief,  
4 the applicant, of course, will then seek approval  
5 for preliminary and major site plan approval. In a  
6 bifurcated application, the Municipal Land Use Law  
7 requires that the Applicant to show that the  
8 proposed site plan or subdivision approval can be  
9 granted without the detriment to the public good or  
10 impairment and intent and the purpose of the zone  
11 plan and zoning ordinance.

12 The applicant testified through expert  
13 testimony that the site can accommodate the proposed  
14 townhouse use. The applicant's civil engineer, Marc  
15 Leber, testified as to the proposed improvements for  
16 the project, including stormwater management  
17 facilities, off-site sewer capacity, parking spaces,  
18 lighting and landscaping, among other items.  
19 Mr. Leber testified that the current 30-unit plan,  
20 the overall lot coverage has been further reduced.  
21 Moreover, the new plan depicts sidewalks along the  
22 entire frontage of Cranbury Road, which the board  
23 and the staff requested. Moreover, the parking also  
24 has been revised per this board and staff input.  
25 The total parking, including on-street parking, and

1 each unit owner has its own garage and driveway.  
2 The current plan provides for 146 total parking  
3 spaces, which is above the required spaces based on  
4 the Residential Site Improvement Standards of 87  
5 spaces.

6 Each unit will now include a basement,  
7 which includes -- which addresses the concern about  
8 the garages being utilized for storage. In  
9 addition, as to the stormwater basin, there has been  
10 an increase in size in order to capture any and all  
11 additional water runoff.

12 As represented to this board and your  
13 professionals, should the board grant the use  
14 variance sought, the applicant will still have to  
15 comply with all requirements and regulations for  
16 stormwater management.

17 In addition, the applicant presented  
18 expert testimony from Scott Kennel, our traffic  
19 consultant, that the proposed townhomes on the  
20 subject property if approved would operate  
21 compatibility with existing and future traffic  
22 volumes in the area, and the Cranbury Road site  
23 access intersection will operate at acceptable  
24 levels of service during both a.m. and p.m. peak  
25 street hours.

1           The County of Middlesex has also granted  
2 conditional approval for the proposed project along  
3 with certain conditions relating to the required  
4 improvements along Cranbury Road, including a new  
5 southbound left-hand turning lane and striping.

6           Mr. Kennel, the applicant's traffic  
7 consultant, testified that the proposed cul-de-sac  
8 design complies with the requirements of the  
9 Residential Site Improvement Standards. Mr. Kennel  
10 also testified that it again observed the traffic  
11 conditions prior to the December 19, 2019, meeting.  
12 Mr. Kennel again noted that there was little change  
13 in the traffic conditions and that the impact from  
14 this proposed project will not have any adverse  
15 conditions on existing traffic patterns. Moreover,  
16 Mr. Kennel testified the number of trips generated  
17 from the proposed development will be slightly less,  
18 if not comparable, to the existing Ferris Farm  
19 operations, even considering the existing business  
20 does not operate all year round.

21           The applicant also presented Amy Jones,  
22 the senior biologist and project manager with DuBois  
23 Environmental Consultants, an environmental  
24 consultant for approximately 17 years. Miss Jones  
25 testified on the findings and conclusions of the

1 environmental impact report submitted as part of  
2 this use variance application. Miss Jones presented  
3 the report, which provided an inventory of existing  
4 environmental conditions at the site, an assessment  
5 of the probable or potential impact the development  
6 may have upon the environmental conditions at the  
7 project site and in the surrounding area, and  
8 provided an overview of measures taken to minimize  
9 any adverse environmental impacts that may be caused  
10 by the development.

11 Miss Jones noted, as determined by the  
12 environmental impact report, the proposed project  
13 will have minimal impact on environmental resources,  
14 and the subject site is suitable for the proposed  
15 project and site design layout.

16 In terms of impact to air quality, Miss  
17 Jones stated the project is not anticipated to have  
18 an adverse impact on the local atmosphere or public  
19 health.

20 The applicant also presented Thomas  
21 Brennan, our architect. Mr. Brennan presented the  
22 architectural plans for the proposed residential  
23 units, depicting the floor plans and the fact that  
24 each unit will have garages and basements.  
25 Mr. Brennan also presented elevations to reflect the

1 stone and vinyl siding treatments each unit will  
2 have.

3 The applicant also presented its  
4 professional planner, Creigh Rahenkamp, who  
5 testified as to the justification for the use and  
6 bulk variance relief sought. As the board is aware,  
7 the applicant seeks D use variance relief from the  
8 township ordinance pursuant to section 228-8 of our  
9 ordinances related to permitted uses and buildings  
10 as only single-family dwelling units are permitted  
11 in the R-1 zone. Townhouse structures are not  
12 permitted in the R-1 zone, and therefore, a D-1 use  
13 variance relief is required under the Municipal Land  
14 Use Law pursuant to N.J.S.A. 40:55D-70(d)(1). Use  
15 variance relief is also required under the Municipal  
16 Land Use Law under section 70(d)(5) of the statute  
17 as the applicant proposes to develop the property  
18 based on six dwelling units per acre. The applicant  
19 seeks relief from the township ordinance relating to  
20 the maximum density, which states only one dwelling  
21 unit per acre is permitted under the R-1 standard.  
22 The applicant also seeks bulk variance relief from  
23 the township ordinance related to minimum rear yard  
24 setback, which is required by ordinance to be  
25 40 feet under the R-1 standards; however, the

1 applicant proposes the minimum rear yard setback to  
2 be 20.50 feet on the subject property.

3 Pursuant to the Municipal Land Use Law,  
4 the law conferred upon zoning boards the following  
5 powers: In particular cases and for special  
6 reasons, grant a variance to allow departure from  
7 regulations to permit, 1, a use or principal  
8 structure in a district restricted against such use  
9 or principal structure. The applicant as part of  
10 the D-1 use variance relief sought must provide  
11 sufficient proofs as to what is generally referred  
12 to as both the positive and negative criteria. The  
13 special reasons requirement of the Municipal Land  
14 Use Law is also referred to as the positive  
15 criteria. The special reasons which the courts have  
16 generally recognized to support a D-1 use variance  
17 include the following; that the use is inherently  
18 beneficial or that the site is particularly suited  
19 for the use and that the use advances one or more  
20 purposes of planning as stated under the Municipal  
21 Land Use Law.

22 As to the negative criteria, the  
23 applicant must provide sufficient proofs that the  
24 variance can be granted without substantial  
25 detriment to the public good and that there is no

1 impact to the surrounding properties and that the  
2 proposed development is consistent with the  
3 development of the surrounding area.

4 The applicant's planner testified that  
5 the proposed project would not substantially impair  
6 the zoning ordinance and zone plan for several  
7 reasons: 1, the project is consistent with the  
8 goals of the master plan; 2, the project provides  
9 for a variety of housing types; and 3, the use is  
10 consistent with those in the area; and 4, the use is  
11 consistent with the state plan.

12 As the applicant's planner noted from  
13 the outset of his testimony -- and I'm quoting --  
14 "Is there a good enough reason for you to set aside  
15 existing zoning policy that's in place. We call  
16 those special reasons. Can it be done without  
17 impacting the neighborhood in a bad way in terms of  
18 physical harm. We're looking at the physical impact  
19 of the improvements and what they do, and that's the  
20 substantial detriment language that we talk about,  
21 and can it be done without frustrating some other  
22 important policy objective that the municipality  
23 has."

24 As to the positive criteria, the special  
25 reasons, to support the D-1 use variance, the

1 applicant's planner testified that the proposed  
2 project carries out the purpose of zoning as set  
3 forth under the N.J.S.A. 40:55D-2 as follows: The  
4 project would advance three separate purposes of  
5 zoning, to provide sufficient space in appropriate  
6 locations for a variety of agricultural,  
7 residential, recreation, commercial, and industrial  
8 uses and open space, both public and private,  
9 according to their respective environmental  
10 requirements, in order to meet the needs of all New  
11 Jersey citizens; to encourage coordination of the  
12 various public and private procedures and activities  
13 shaping land development with a view of lessening  
14 the cost of such development and to the more  
15 efficient uses of land.

16           Moreover, as this board is aware, the  
17 current owner presently operates Ferris Farms Garden  
18 Center, which is a commercial use. This use has  
19 been existence for many years and is located within  
20 the residential zone. The applicant's planner  
21 testified this highly intense commercial use will be  
22 eliminated should this application be approved and  
23 therefore further supports -- and it's ultimately  
24 constructed -- and therefore further supports the  
25 special reasons and/or positive criteria.

1           Moreover, the proposed project would be  
2 consistent with several goals from the most recent  
3 master plans and reexamination reports of the  
4 township. As our planner noted, in the 2015 master  
5 plan reexamination, the township identified three  
6 goals that would be consistent with this project:  
7 number 7, to continue to meet the housing needs of  
8 wide ranges of income and age levels; number 8, to  
9 continue to provide varied housing types in meeting  
10 these needs; number 9, to utilize planning and  
11 development techniques, which consider social and  
12 environmental factors in meeting future housing  
13 needs; and number 28, to address the particular  
14 problems involved in establishing appropriate  
15 development standards for lots which adjoin high  
16 densely residential and commercial areas.

17           As to goal number 28, the applicant's  
18 planner testified: "What's important, though, is  
19 that the R-1 zoning in this area from your own  
20 planning documents doesn't have its own inherent  
21 intent. There was never an intent for a sewer, a  
22 lot with sewer service in this area to be developed  
23 for 1-acre lots. It was simply left over as other  
24 properties got changed out of the R -1 district."

25           Our planner further testified in his

1 testimony: "So in terms of this idea of what's in  
2 the master plan and intent and purpose, I would  
3 conclude that it was never the intent of the master  
4 plan that lots with sewer service should be  
5 developed with a standard that was designed for use  
6 back in the septic and wells days that this area  
7 along Cranbury Road has been identified for a very  
8 long time as inappropriately zoned and that  
9 something else should happen here, particularly on  
10 lots that are adjoining the planned developments  
11 that have occurred historically."

12 As to whether the site plan or  
13 subdivision plan can be granted without the  
14 detriment to the public good or impairment of the  
15 intent and purpose of the zone plan and zoning  
16 ordinance, the applicant's planner noted in his  
17 testimony, as was set forth in TWC v. Zoning Board  
18 of Adjustment, in determining whether to grant or  
19 deny a variance by the board, such should be on the  
20 basis of the negative criteria.

21 As to the negative criteria,  
22 Mr. Rahenkamp stated: "Here we're talking about an  
23 obviously a very small portion of what's left in the  
24 R-1 zone. We're not diminishing the supply of the  
25 R-1 zoned lands of the community through this

1 particular variance, and the second it does, it  
2 impacts the usefulness of adjoining lands to be used  
3 as zoned, and the answer there is no, as well. The  
4 lands around us are usually already developed.  
5 We're not negatively impacting their ability to be  
6 used as they were currently zoned. So it's not like  
7 we're putting a steel plant that's having some  
8 impact on the adjoining lands or their suitability  
9 for their current zoning."

10 As to the potential impact to the  
11 neighborhood with regard to the proposed density,  
12 Mr. Rahenkamp stated in his testimony that: "The  
13 density of a kind of housing relates to the kind of  
14 housing that it is. The shape of our parcel doesn't  
15 lend itself very well to say small lot  
16 single-family."

17 The applicant's planner also compared  
18 the proposed density of six units to the acre when  
19 he testified that the total number of units was then  
20 36 or 7.2 units per acre for the proposed townhouse  
21 project to those at Kingswood Station, which is  
22 immediately adjacent to the Ferris property.  
23 Mr. Rahenkamp noted that at a density of 7.2 for  
24 Ferris, we're compatible with the density of  
25 six units to the acre for the existing townhomes at

1 Kingswood. Clearly, now that the applicant has  
2 again reduced the number of units to 30 or six units  
3 to the acre, the proposed density mirrors the  
4 density for this type of housing at Kingswood.

5 In his concluding remarks, Mr. Rahenkamp  
6 stated: "So now we turn to the policy reasons.  
7 It's consistent with the intent. It doesn't impact  
8 anybody's ability in the neighborhood to live in an  
9 appropriate life in a residential environment, but  
10 is there a reason for you to do this at all. First,  
11 as I said, going from business to residential is  
12 towards greater zoning conformity. So that that's a  
13 purpose in and of itself. The second that I would  
14 point is to purpose G, and this is a variety of uses  
15 to meet the needs. It's reflected, as I stated, in  
16 the 2015 reexamination report. It's certainly an  
17 issue talked about in the housing element and fair  
18 share plan.

19 And I would also," he noted, "point to  
20 purpose M, which is the efficient use of land. If  
21 we're going to agree that this is not going to be  
22 1-acre lot in a sewer service area in Planning Area  
23 1, which would be a colossal waste of land resource,  
24 and the question is what do you do with it, as I  
25 outlined. Efficiently, that's what works on this

1 lot are townhomes, and this is the appropriate way  
2 to use this land, part of that last 3 percent here  
3 in East Brunswick, in an efficient way. And lastly,  
4 we would be paying an enhanced linkage fee, which  
5 goes to the benefit in terms of affordable housing.  
6 And lastly, we would be paying the enhanced linkage  
7 fee, which will be utilized by the township staff in  
8 a manner that they determine appropriate. So for  
9 these reasons, I think it's appropriate use variance  
10 to be granted, and I think the amendments to the  
11 site plan that we've undertaken as a result of this  
12 process have been beneficial, and I would urge the  
13 board to approve it."

14 In a recent case decided on November 21,  
15 2019, by the New Jersey Appellate Division, entitled  
16 Highview Homes v. Paramus, a case involving a use,  
17 density, and height variance for proposed  
18 multifamily housing, the court noted that one of the  
19 criteria to establish particular site suitability  
20 can be shown where it can be demonstrated that the  
21 use is one which would fill the need in the  
22 community. As the applicant's real estate expert,  
23 Michael Matthews testified, the proposed townhomes  
24 will serve the need for this type of housing in the  
25 township as there has not been a newly constructed

1 similar townhouse project built in East Brunswick  
2 for over 25 years. Moreover, the data compiled by  
3 the applicant expert comparing the sales of  
4 townhomes in Monroe and South Brunswick to East  
5 Brunswick clearly demonstrates that East Brunswick  
6 generated the fewest amount of sales of these type  
7 of homes since it simply does not have the inventory  
8 of new and constructed townhomes as in the case of  
9 our neighboring communities. As Mr. Matthews  
10 stated, buyers are looking for new construction as  
11 the more age units simply do not offer modern  
12 amenities. Mr. Matthews also stated, given the cost  
13 of single-family homes as compared to townhomes of  
14 these type of newly constructed housing product,  
15 offer a potential buyer, whether a young first-time  
16 home buyer or older individuals looking to downsize,  
17 a viable option that currently does not exist in  
18 East Brunswick.

19 To summarize the applicant's points, I  
20 would offer the following: 1, the applicant  
21 believes there's a need for the proposed use.  
22 There's nothing available like this currently in the  
23 township. There's an existing use which is  
24 nonconforming. Any concerns with our direct  
25 neighbor, the Giancolas, have been resolved. As

1 indicated, the drainage will be improved. The  
2 applicant will comply with the township's COAH  
3 ordinance in terms of development fee contribution.  
4 Any perceived traffic and impacts will be minimal as  
5 the vehicles will be entering and exiting directly  
6 from the county owned road and the access is  
7 approved and no traffic is passing through adjacent  
8 neighborhoods or streets. As a reminder to this  
9 board, the applicant reduced the unit count from 50  
10 to 30.

11 In summary, the applicant contends the  
12 proposed use serves the purposes of the Municipal  
13 Land Use Law. We believe the proposed use is  
14 consistent with the recommendations of the 2015  
15 master plan reexamination report, and the applicant  
16 also believes that there is no substantial detriment  
17 to the public good, and the variances sought, both  
18 as to the use and density, will not impair the  
19 intent and purpose of the zone plan or zoning  
20 ordinance. For all those reasons, the applicant  
21 respectfully requests the board approve the use  
22 variance and other relief sought. And I thank you  
23 for your patience in listening to my summary. Thank  
24 you.

25 THE CHAIRMAN: Mr. Himelman, I guess in

1 the process of going through that, we did -- never  
2 went over the recommendations. Was that something  
3 that you wanted to put on the record or --

4 MR. HIMELMAN: I do, Mr. Chairman. I  
5 just -- we are prepared to go through the  
6 recommendations, and I have Mr. Leber, who is on  
7 with us, to assist in that regard, and if, Mr.  
8 Chairman, if you're prepared, we can certainly go  
9 through those.

10 THE CHAIRMAN: Well, yeah, at this  
11 point, it might have actually been better to do it  
12 the other way around and have him go through it  
13 first.

14 MR. HIMELMAN: Fair enough.

15 THE CHAIRMAN: I didn't want you to be  
16 interrupted with your report.

17 MR. WEINER: If I just may add that the  
18 recommendations are there as a recommendation by the  
19 professional staff for the purpose for the board to  
20 consider if the board were to consider favorably on  
21 the application. It is not in any way -- it's  
22 neutral. It's not in any way the staff telling the  
23 board that they need to consider it in one direction  
24 or the other. It's simply saying these are  
25 recommendations should the board take an affirmative

1       action and consider this in a positive manner, then  
2       they would recommend that any such consideration be  
3       subject to these recommendations, and once we go  
4       through this list of recommendations, I have some  
5       additional conditions that were addressed in the  
6       various meetings previously that I will tag on as  
7       additional recommendations at the tail end. But  
8       I'll let Mr. Himelman begin.

9                   THE CHAIRMAN: We need to go through it  
10       just so it's on the record, all of it.

11                   MR. HIMELMAN: Mr. Weiner, thank you for  
12       that, and I totally concur. As you know, I think  
13       that the -- this board has typically operated where  
14       they want the applicant to at least go through the  
15       recommendations and to make a determination whether  
16       they agree with those recommendations as well as  
17       other conditions potentially that would be part of  
18       the record, and then the board would deliberate and  
19       vote, and I respect that.

20                   MR. WEINER: Exactly, because  
21       ultimately, by the recommendations being listed,  
22       anything that you concur, these are recommendations  
23       that may have not been specifically set forth in  
24       your application that you're agreeing to add on  
25       should the board vote favorably to it, so.

1 MR. HIMELMAN: I would concur. Mr.  
2 Chairman, with that, I would like to go through  
3 those recommendations, and just for the board and  
4 the public's I guess purpose, I guess the  
5 recommendations that I'm referring to the staff  
6 report that was generated I guess in -- I guess it  
7 was updated several times, but I'm looking at --

8 THE CHAIRMAN: I would say it's updated  
9 7-2.

10 MR. WEINER: Yeah, that's the most  
11 recent updated July 2, 2020.

12 MR. HIMELMAN: Right.

13 THE CHAIRMAN: It wasn't probably done  
14 today, David, but --

15 MR. HIMELMAN: Yeah, I understand that.

16 THE CHAIRMAN: -- in this meeting.

17 MR. HIMELMAN: So I'm referring to I  
18 guess section 4 under the recommendations.

19 THE CHAIRMAN: Page 10.

20 MR. HIMELMAN: Correct?

21 THE CHAIRMAN: Yes, page 10.

22 MR. HIMELMAN: Right. So the first one,  
23 should the zoning board act favorably, the site plan  
24 would require -- then he starts and we start with  
25 our list. Okay. So in running through these

1 recommendations, it's the applicant's position -- so  
2 1 A through C is acceptable -- I'm sorry, A through  
3 E, Mr. Weiner.

4 MR. WEINER: Yes. Why don't we quickly  
5 go over. A has already previously been addressed.  
6 B, a barrier free curb ramps and crossings at all  
7 intersections of the parking areas, the pedestrian  
8 access. Curb ramps are proposed at the intersection  
9 of the private road and Cranbury Road but not for  
10 ADA parking spaces. Ordinance section 192-43.F  
11 requires 4-inch-wide hairpin striping for all  
12 parking stalls containing a minimum width of  
13 12 inches from the center line of each stripe.  
14 Hairpin striping was not previously proposed. B,  
15 lighting plan and D, a landscaping plan, and all of  
16 those are acceptable.

17 MR. HIMELMAN: Correct. And I  
18 apologize. As I go through these, I'm happy to read  
19 through them.

20 MR. WEINER: Yeah, I would say it's more  
21 important now than -- also because of the remote  
22 nature and everything so --

23 MR. HIMELMAN: Fair enough.

24 MR. WEINER: -- they are on the record.

25 MR. HIMELMAN: That's fine.

1 THE CHAIRMAN: And because of the length  
2 of time, David, that has been not before the public.

3 MR. HIMELMAN: I would concur. Item 2,  
4 which is the applicant shall provide proof of  
5 adequate water and sewerage capacity. If approved,  
6 all proposed utility mains and services shall be  
7 provided along with associated details and profiles  
8 at the time of site plan review. All utilities are  
9 to be installed underground as per township design  
10 standards, and that is acceptable, and I believe the  
11 applicant did testify with regard to the water and  
12 sewer capacity. We did meet with the sewerage  
13 authority and have preliminary undertaken that  
14 analysis, and also, the applicant has been working  
15 with the association, the adjacent association to be  
16 able to effectuate a sewer easement -- easement to  
17 allow for ultimate connection to the pump station.  
18 So that comment and recommendation, Mr. Weiner, is  
19 acceptable by the applicant.

20 MR. WEINER: Thank you.

21 MR. HIMELMAN: Okay. Item 3, turning  
22 templates shall be provided for refuse, delivery,  
23 and emergency vehicles. That's acceptable, and I  
24 believe that that was also addressed at our hearing.

25 Recommendation 4, the project disturbs

1 more than 1 acre; therefore it's considered a major  
2 development as defined under N.J.A.C. 7:8 and is  
3 subject to the NJDEP stormwater management  
4 requirements. Additionally, the applicant must  
5 submit attachment D, stormwater development summary,  
6 in editable electronic and hard format in compliance  
7 with township's tier A municipal storm water general  
8 permit, which took effect on 1-1-18, and we're aware  
9 that that has to be complied with, and the applicant  
10 will agree with that recommendation, as well.

11 MR. WEINER: Thank you.

12 MR. HIMELMAN: All right.

13 Recommendation 5, the applicant must provide a  
14 drainage report for the proposed stormwater  
15 management measure. That is also agreed to and  
16 accepted.

17 MR. WEINER: Thank you.

18 MR. HIMELMAN: The applicant -- number  
19 -- recommendation number 6, the applicant shall  
20 provide an operations and maintenance manual, O&M,  
21 as required by N.J.A.C. 7:A5.8 for the proposed  
22 stormwater management plan and shall include  
23 preventative and corrective maintenance task  
24 schedules, estimated cost of sediment, debris, or  
25 trash removal, and a name contact information for

1 the persons responsible for the preventative and  
2 corrective maintenance task and schedules, and that  
3 requirement for operation maintenance manual is also  
4 accepted and will be complied with by the applicant.

5 MR. WEINER: Thank you.

6 MR. HIMELMAN: Recommendation number 7,  
7 spot elevations shall be provided for all barrier  
8 free parking areas, ramps, along the sidewalks and  
9 other public areas to demonstrate compliance with  
10 ADA regulations. I believe that was also addressed,  
11 and that is acceptable and will be adhered to by the  
12 applicant.

13 Recommendation number 8, the applicant  
14 shall indicate the placement of all regulatory  
15 traffic signs and pavement markings. No Parking  
16 signs have been proposed throughout the site along  
17 the private driveway. That is acceptable, and the  
18 applicant will again concur with that  
19 recommendation.

20 Number 9, recommendation number 9,  
21 details shall be provided for all construction  
22 elements. That is acceptable.

23 Recommendation number 10, all  
24 recommendations included in both phase 1 and phase 2  
25 reports shall be included as conditions of any

1       approvals for use variance or subsequent site plan  
2       approval. That is acceptable, and I believe they're  
3       referring to the environmental reports that the  
4       applicant undertook, and the applicant agrees and  
5       will accept that as a condition, as well.

6               Item -- recommendation 11, a licensed  
7       site remediation professional, LSRP, shall provide  
8       appropriate certifications regarding adequacy and  
9       safety of environmental conditions at the site,  
10      including hold harmless agreements as may be  
11      appropriate, as a condition of any future  
12      subdivision or site plan approval resulting from the  
13      requested use variance prior to the issuance of a  
14      certificate of occupancy, and that recommendation is  
15      agreed to and accepted, as well.

16              Recommendation 12, existing septic shall  
17      be decommissioned in accordance with all applicable  
18      regulations. The applicant agrees to that  
19      recommendation.

20              Item 13, the traffic -- recommendation  
21      13, the traffic impact assessment shall be revised  
22      to demonstrate the proposed townhouse design will  
23      comply with the requirements for multifamily  
24      residential cul-de-sac as listed in the RSIS.  
25      Application agrees and will concur with that

1 recommendation.

2 Recommendation 14, parking calculations  
3 and design shall be resized to comply with the RSIS  
4 requirements. That is acceptable, and the applicant  
5 will comply with that recommendation.

6 Recommendation 15, floor plan shall be  
7 provided for all proposed units. That  
8 recommendation is acceptable and will be complied by  
9 the applicant.

10 Recommendation 16, if approved, a  
11 demolition plan shall be provided at the time of  
12 site plan review. That is acceptable, and the  
13 applicant will comply with that recommendation.

14 Recommendation 17, all setbacks should  
15 be depicted throughout the tract and the zoning  
16 table updated to reflect the current design. That  
17 recommendation is acceptable to the applicant, and  
18 the applicant will comply.

19 The last recommendation is referring to  
20 -- before we get into the outside -- the reports,  
21 this refers to the provide -- the applicant shall  
22 provide approvals or letters of no interest from the  
23 following: The New Jersey NJDEP, obtained; Freehold  
24 Soil District; Middlesex County Planning Board,  
25 which we have preliminary; East Brunswick Sewer and

1 Water Utility; local police; local fire; all other  
2 agencies having jurisdiction. And the applicant  
3 will, of course, agree to that recommendation and  
4 comply with all outside agencies approvals.

5 THE CHAIRMAN: David, moving through the  
6 memorandums --

7 MR. HIMELMAN: Yes.

8 THE CHAIRMAN: -- we have one from Keith  
9 Kipp, September 24.

10 MR. HIMELMAN: Correct.

11 THE CHAIRMAN: Fire hydrant between  
12 building number 2 and building number 3 at the end  
13 of the court.

14 MR. HIMELMAN: Yes.

15 THE CHAIRMAN: Provide handicapped  
16 parking. I think you've stated you agree with that.

17 MR. HIMELMAN: Yes, we agree with that,  
18 Mr. Chairman.

19 There was a -- Mr. Chairman, there was  
20 an update -- there was an updated letter I believe  
21 from the Bureau of Fire Safety, and I think we have  
22 a memo from Mr. Talbot that we have addressed all of  
23 his comments.

24 THE CHAIRMAN: Okay.

25 MR. HIMELMAN: And that was dated

1 November 18, 2019, and Loren got that letter. I  
2 don't -- that wasn't in the --

3 THE CHAIRMAN: It wasn't. This package  
4 ends on September 24.

5 MR. HIMELMAN: Right.

6 MS. MORACE: I e-mailed that particular  
7 memo yesterday.

8 MR. HIMELMAN: Mr. Chairman, I can read  
9 that memo into the record if you would like.

10 MR. CLINE: That memo that's referred to  
11 Loren sent out in the staff report as to what's the  
12 most comments from all.

13 MR. WEINER: The 7-2 revision has that  
14 included in there.

15 MR. HIMELMAN: Correct.

16 THE CHAIRMAN: Okay.

17 MR. HIMELMAN: I can read that memo, Mr.  
18 Chairman, if you'd like.

19 MR. WEINER: Why don't we, Mr. Himelman,  
20 just to --

21 MR. HIMELMAN: I think that's a good  
22 idea. All right. This was addressed to Loren dated  
23 November 18, 2019, from the Bureau of Fire Safety  
24 from John Talbot, fire marshal. "Loren, I received  
25 the updated plans via e-mail for the above project.

1 The new plans show the proposed water line  
2 continuing to Cypress Lane alongside the proposed  
3 sewer line. I was advised by the architect that the  
4 homes will be two-story townhomes built under the  
5 international residential code. There are no  
6 requirements for sprinklers so my comments related  
7 to the sprinklered building no longer applies. Fire  
8 lane signage will be installed and the cul-de-sac  
9 will be striped as per township ordinance. I have  
10 no further comments for this project as all my  
11 previous comments have been addressed. Please  
12 contact me if you need any further comments." And  
13 that and was signed from John Talbot, and we will,  
14 of course, agree with that -- those comments.

15 Mr. Chairman, then if you want, I can  
16 continue where you left off so that after the Bureau  
17 of Fire Safety we have the --

18 MR. WEINER: I apologize. I just want  
19 to clarify. Prior to the Bureau of Fire Safety  
20 memorandum, there was a reference to a memorandum  
21 from Mr. Kipp.

22 MR. HIMELMAN: Yes, correct.

23 MR. WEINER: However, according to the  
24 most recent packet, the memorandum from Mr. Kipp  
25 dated November 19, 2019, indicates no comments.

1 MR. HIMELMAN: Fair enough.

2 MR. CLINE: That is to Keith Kipp from  
3 the construction official.

4 MR. WEINER: Yes.

5 MR. HIMELMAN: Right. Fair enough.

6 MR. WEINER: I just want to make sure  
7 that there was no miscommunication earlier. That  
8 was to Mr. Kipp from Mr. Vigliotti.

9 MR. HIMELMAN: That's correct. Thank  
10 you Mr. Weiner. And I guess after that it was --  
11 in the packet was the County of Middlesex approval  
12 dated September 18, 2018. As I indicated earlier,  
13 we have conditional approval from Middlesex County,  
14 and, of course, we will -- the applicant will comply  
15 with all of the conditions set forth in that  
16 approval.

17 THE CHAIRMAN: I'm going to ask you not  
18 to read that into the record.

19 MR. HIMELMAN: No, I am not going to  
20 read it. Thank you. Mr. Chairman, the next  
21 memorandum was from Dan Losik to Loren, and that was  
22 dated June 4, and that's from, of course, the public  
23 works water and sewer utility, and all of those --  
24 Mr. Losik goes through his preliminary review of the  
25 application, and the applicant will comply with all

1 the recommendations and all the comments with regard  
2 to those items.

3 THE CHAIRMAN: Okay.

4 MR. HIMELMAN: Then we had a copy of the  
5 -- from the New Jersey Department of Environmental  
6 Protection, the letter of interpretation absence or  
7 presence determination, and there it says that the  
8 DEP determined that the fresh water wetlands and  
9 waters are not present on the above referenced  
10 property, and it also said that the department has  
11 determined that no part of the above property occurs  
12 within a transition area or buffer. So obviously,  
13 there's no further action by the applicant on the  
14 that, and the applicant agrees with that  
15 determination.

16 MR. WEINER: Mr. Himelman, I think we  
17 skipped over the East Brunswick Police Department  
18 memorandum.

19 MR. HIMELMAN: I think you're right.  
20 Let me see.

21 MR. CLINE: After Middlesex County and  
22 before the utilities.

23 MR. HIMELMAN: Yeah, and that plan --  
24 I'm sorry -- that memo was actually updated, and I'm  
25 looking for a copy of that. I think, Mr. Leber, you

1 did speak to the police department with regard to  
2 that memo, correct?

3 MR. LEBER: Yes, I did.

4 MR. HIMELMAN: All right, and you want  
5 to just summarize where we are on that.

6 MR. LEBER: I can put the memo on the  
7 screen if you want.

8 MR. HIMELMAN: Or you could just -- you  
9 could read it.

10 MR. WEINER: November 21, 2019, memo.

11 MR. HIMELMAN: Correct.

12 MR. LEBER: That's correct.

13 MR. WEINER: Everyone should have a copy  
14 of that in the most recent packet.

15 MR. LEBER: So I had spoken to Sgt.  
16 DeSantis this week just to kind of refresh him where  
17 we left off on the project, and the first comment  
18 about the ingress/egress onto Cranbury Road, I  
19 explained that as part of the Middlesex County  
20 approval, we had already agreed to create a  
21 left-turn lane in so that there would, in fact, be a  
22 break in the lines, and he was satisfied with that.

23 The sight lines, that's something that  
24 is a site plan detail. Because we're only asking  
25 for a use variance at this time, I explained that if

1 a use variance was granted that we would provide a  
2 detailed landscaping plan with the sight lines drawn  
3 for his close review.

4 MR. HIMELMAN: Right.

5 MR. LEBER: Okay with that, also. And  
6 then the last one about the dead-end, Scott Kennel  
7 had talked about that at the prior hearing about the  
8 24-foot-wide pavement extension, and I think what  
9 wound up is the board was saying maybe we can  
10 delineate a specific area for those trash cans for  
11 those last two or three units so that there's no  
12 need for a trash truck to go down that aisle, and we  
13 had added that to the third plan sheet showing that,  
14 you know, there was a specific location where the  
15 trash would have to be left for the pickup.

16 MR. HIMELMAN: So we will comply with  
17 all of his recommendations, correct, Mr. Leber?

18 MR. LEBER: Yes.

19 MR. WEINER: Thank you.

20 MR. HIMELMAN: Okay. So, Mr. Chairman,  
21 I think that takes us through all the  
22 recommendations, the --

23 THE CHAIRMAN: Except what Mr. Weiner  
24 may have added.

25 MR. HIMELMAN: Hold on. I was just

1 going to say all the recommendations in the staff  
2 report and the memorandum, but Mr. Weiner, of  
3 course, had additional conditions that he was going  
4 to review.

5 MR. WEINER: Yes, and I'll go through  
6 them. First, all parking spaces to be 18 feet wide.

7 MR. LEBER: How wide?

8 MR. WEINER: Eighteen, one eight.

9 MR. LEBER: You mean the depth?

10 MR. WEINER: Wide I have.

11 THE CHAIRMAN: It's got to be length,  
12 Jay.

13 MR. WEINER: My misstatement.

14 MR. HIMELMAN: Yeah. So that's 18 feet  
15 in depth. That's fine.

16 MR. WEINER: Okay. Next, the applicant  
17 to comply with the tree ordinance and if requested  
18 the tree preservation fund.

19 MR. HIMELMAN: That's acceptable.

20 MR. WEINER: The applicant to comply  
21 with ordinance 228-218.1(E)(2) pertaining to EVCS  
22 subject to further state requirements.

23 MR. HIMELMAN: Yes, that's acceptable.  
24 I think that was also in the staff report.

25 MR. CLINE: It's in the report, and the

1 summary of that paragraph is our professional's  
2 opinion is that each larger bank of public parking  
3 should be provided with a charge station for a total  
4 of two stations.

5 MR. WEINER: So, Jason, are we satisfied  
6 with the language of the staff report to cover that?

7 MR. CLINE: Yes. If the applicant were  
8 to agree to that, because it was discussion about  
9 the number of stations is based upon the number of  
10 parking spaces, but counting people's garage parking  
11 spaces for that wasn't fair. It didn't make sense.  
12 So we recommended the number of charging stations  
13 based upon the public parking, and that's where the  
14 two spots came from. And, yeah, I think the wording  
15 that's on page 7 of the staff report just go from  
16 recommends to agrees to or something to that effect.

17 MR. HIMELMAN: Mr. Weiner, the applicant --

18 MR. WEINER: What was that?

19 MR. HIMELMAN: The applicant -- we've  
20 reviewed that with the electric charging stations,  
21 and we agree with Jason's recommendation.

22 MR. WEINER: Okay. That's fine. And I  
23 believe that were the only -- those were the only  
24 additional ones that I had.

25 MR. HIMELMAN: Okay. Very good. Thank

1       you, Mr. Weiner.

2                   MR. WEINER: Thank you.

3                   THE CHAIRMAN: So okay, Mr. Himelman,  
4 does that conclude where we are on this?

5                   MR. HIMELMAN: Yes, Mr. Chairman,  
6 subject to questions, you know, by the board, but  
7 yes, the applicant is done its closing, gone through  
8 the recommendations.

9                   THE CHAIRMAN: Okay. Well, at this  
10 point then, I guess we can then poll the members by  
11 asking if we get a motion to either -- motion to  
12 approve. So I'll ask the members, is there a motion  
13 to approve?

14                   MS. CLARKE: Mr. Philips, can I just ask  
15 a question to Mr. Himelman?

16                   THE CHAIRMAN: Sure.

17                   MS. CLARKE: I just wanted to know, Mr.  
18 Himelman, the one statement that you made regarding  
19 the last 3 percent in East Brunswick, what was --  
20 what was that referring to, the last 3 percent in  
21 East Brunswick, of land available for townhomes?

22                   MR. HIMELMAN: Yeah, that -- we were  
23 referring to the -- what's available in the R-1  
24 zone.

25                   MS. CLARKE: In the R-1 zone.

1 MR. HIMELMAN: Yes.

2 MS. CLARKE: Percent that's in the R-1  
3 zone as far as land in East Brunswick.

4 MR. HIMELMAN: Within the R-1 zone, not  
5 in the whole town.

6 MS. CLARKE: No, no, no, in the R-1  
7 zone. Thank you.

8 MR. WEINER: Mr. Chairman, if there are  
9 any other comments in addition to Miss Clarke,  
10 perhaps we can give the members of the board an  
11 opportunity.

12 THE CHAIRMAN: Does anybody from the  
13 board have any other questions? I thought I had  
14 asked that before. Hearing none, then we'll go  
15 back, and at this point, we would listen for a  
16 motion to approve.

17 MR. SANTAMARINA: I'll move to approve.

18 THE CHAIRMAN: We have a move. Do we  
19 have a second? We have a move, but we don't have a  
20 second. So then I will ask, in the contrary, do we  
21 have a motion to deny?

22 MS. CLARKE: I have a move to deny.

23 MR. WYNTER: I have a move to deny.

24 THE CHAIRMAN: Do we have a second?

25 MR. WYNTER: Second.

1 THE CHAIRMAN: So we have to record  
2 that. We have a move and a second.

3 Mr. Weiner, in light of what has just  
4 developed, could you please explain then to the  
5 board --

6 MR. WEINER: Yes.

7 THE CHAIRMAN: We have a move to deny  
8 and a second. We didn't get a second on the move to  
9 approve, so the vote will be a move to deny, so if  
10 you could briefly go over that for the board.

11 MR. WEINER: Ladies and gentlemen of the  
12 board, since the motion that has been passed is a  
13 motion to deny the application, it's kind of in the  
14 reverse of what you may be familiar to. A yes vote  
15 means that you are voting to deny the application.  
16 A no vote would mean that you want to approve the  
17 application. So the motion is asking you whether or  
18 not you want to deny. If you wish to deny, you vote  
19 yes. If you don't wish to deny, then you vote no.

20 THE CHAIRMAN: Is everybody, all the  
21 members clear about that? Please.

22 MS. CLARKE: Yes.

23 MR. WEINER: And, of course, you can  
24 always abstain.

25 THE CHAIRMAN: Okay. Loren, you and

1 Aaron have the order in which to proceed?

2 MS. MORACE: Yes.

3 THE CHAIRMAN: Okay. And again,  
4 Mr. Himelman, we do have seven members eligible to  
5 vote.

6 MR. WEINER: Before we cast a vote,  
7 Loren, if you can just quickly read down the list of  
8 the seven names, and then we'll start and call them.

9 MS. MORACE: I'll do it in the order  
10 that they should vote.

11 MR. WEINER: Yes.

12 MS. MORACE: Mr. Zuckerman, Miss Clarke,  
13 Mr. Santamarina, Mr. Wynter, Mr. Behal, Miss  
14 Rampolla, and Chairman Philips.

15 MR. HIMELMAN: Mr. Weiner.

16 MR. WEINER: Yes.

17 MR. HIMELMAN: I would -- if there's  
18 going to be a motion and a vote, discussion on a  
19 motion to deny, the only thing I would request that  
20 the board members when they're voting if they can  
21 express their reasons for the denial that they're  
22 voting, you know, to deny.

23 MR. WEINER: Yes, which I was going to  
24 address the same thing before the roll was called.  
25 Anyone who is going to be voting a yes vote, which

1 would be to deny the application, I would ask for  
2 the record that you state your feelings and reasons  
3 as to why you are voting that way and place that on  
4 the record.

5 MS. CLARKE: Okay.

6 MR. WEINER: I guess, Loren, if you want  
7 to begin calling the roll.

8 MS. MORACE: Mr. Zuckerman.

9 MR. ZUCKERMAN: All right. Nothing like  
10 being first. So, yes, I'm voting to deny, and I  
11 really spent the last months reviewing all the  
12 material and then again and again to really fully be  
13 familiar, really as familiar as possible with all  
14 the expert testimony over those so many months, and  
15 over that course of the testimony, there really has  
16 been substantial adaptations and changes to the  
17 original application. From the get-go, I think the  
18 application was a major shift from the township's  
19 original plan for this piece of East Brunswick, but  
20 quite a bit I think changed, and the plan as it  
21 stands, which is what is currently relevant, has  
22 been curtailed quite a bit.

23 For me outside of some practical  
24 concerns, my main concerns, though, from the  
25 beginning as they dug into testimony were certainly

1 the number of units, the related traffic, the likely  
2 issues in managing runoff, and really at the heart  
3 effectively whether such a substantial impairment to  
4 the master plan and our ordinances was balanced by  
5 advancing the general welfare of our community and  
6 somehow therefore warranted.

7           Throughout the course of the hearings,  
8 the applicant really responded with some real  
9 changes to the plan in an attempt to address many of  
10 those issues that the board originally found, and I  
11 agree with many of those issues, and again, I  
12 understand the application is right now is what  
13 we're voting on, but the concerns they presented  
14 with the initial plans and then throughout, question  
15 is really whether or not many of those issues still  
16 stand, and currently, the application as it stands,  
17 it's what, it's 6 times the density that the land is  
18 zoned for. The impervious coverage far exceeds the  
19 allowance it's zoned for. And then all this through  
20 a single driveway connecting to Cranbury Road.

21           This is not a slight deviation I think  
22 from the intended zoning. This property I think is  
23 -- it's important to recognize how it's zoned has  
24 been directly and indirectly reviewed time and time  
25 again, and every time the choice has been to retain

1 the current designation and not change it, and I  
2 don't think that we can ignore that fact, so to  
3 think about changing it -- as a question before, I  
4 do not agree that argument establishing some  
5 inherent benefit of the application was made for the  
6 surrounding neighbors or the community as a whole to  
7 really support changing the density allowed,  
8 specifically to this extent. So in regard to my  
9 other concerns, likewise, the effect that this would  
10 have on traffic in the area still continues to  
11 concern me. The extent that this development of  
12 five multifamily townhome buildings, particularly  
13 coupled with the single driveway in and out of  
14 Cranbury Road, I think it only negatively impact an  
15 already existing traffic situation, not to mention  
16 when other intended projects are completed in the  
17 area when they -- and/or when they install a traffic  
18 light just about at the same point of contact with  
19 Cranbury Road. So I don't think in relation to the  
20 traffic concerns that we can come away from this  
21 application with a positive impact or even the  
22 status quo.

23 In addition to the traffic and the  
24 density concerns, the other concern I had, as I  
25 mentioned, is the implications of allowing such

1 increased change in impervious coverage on the  
2 runoff and drainage, and not just from really  
3 increasing number of intense storms that we all see,  
4 but just currently how bad it is. So I cannot see  
5 how permitting such deviation from what is allowed  
6 is beneficial. Moving further away from what's  
7 prescribed doesn't seem to make any of those  
8 concerns better. So I'm not satisfied drainage is  
9 not a problem and won't be a problem from what I see  
10 here.

11 So altogether, I do not see how this  
12 application advances the purpose of our master plan  
13 of our community. The impact of this strikes me as  
14 detrimental, and the site does not seem well suited  
15 for this type of use. So I vote yes to deny. I  
16 know it's long.

17 THE CHAIRMAN: Loren.

18 MS. MORACE: Julie Clark.

19 MS. CLARKE: I also vote yes to deny for  
20 a lot of same reasons that Mr. Zuckerman did, but my  
21 main one was the traffic and safety of the  
22 development relative to Cranbury Road. I don't  
23 think these townhomes are consistent to what we  
24 already have in East Brunswick. Most of our  
25 townhomes -- I don't see any open space here. I

1 don't see a clubhouse. I don't see tennis courts.  
2 I don't see walking trails. All I see is a tot lot.  
3 And to me, it just doesn't fit the town.

4 The other side of it for me is also I  
5 believe that the R-1 zone should remain the way it  
6 is to ensure that we have relatively low density in  
7 the community. So basically, that's my reasons. So  
8 I vote yes.

9 To Mr. Himelman, you did an amazing job  
10 as always in your presentation so I have to tell you  
11 that.

12 MR. HIMELMAN: Thank you.

13 MS. CLARKE: But I live here. I've  
14 lived here my whole life. I see it -- when you  
15 present it, it looks amazing, but when I really see  
16 it and look at it, I know it's just not right for  
17 Cranbury Road or that area, so I have to say yes to  
18 not having -- yes. I have to say yes.

19 MS. MORACE: Mr. Santamarina.

20 MR. SANTAMARINA: No.

21 MS. MORACE: Mr. Wynter.

22 MR. WYNTER: Yes. I agree with the  
23 comment of Mr. Zimmerman and Miss Clarke. Some of  
24 the issues that I have was I'm not -- I wasn't  
25 convinced that there would be any -- I think that

1 there would be a tremendous impact with traffic. I  
2 was also concerned with the difference between  
3 building five single-family homes on there plus 30  
4 different families, and at this time I don't think  
5 that's a suitable project for this area, and  
6 therefore, I am voting yes.

7 MS. MORACE: Mr. Behal.

8 MR. BEHAL: I'm also voting yes to deny  
9 the application because I'm not convinced why a  
10 5-acre lot previously approved for single-family  
11 homes, five single-family homes, should be granted  
12 30 townhomes. I feel applicant have not met their  
13 burden of positive and negative criteria in  
14 accordance to the law for granting this variance.  
15 Applicant is seeking permission to build 30  
16 townhomes without offering any affordable units to  
17 satisfy township obligation. Thirty houses, 30  
18 families with more like -- more or other less like  
19 30 kids with no recreation facility for them. Child  
20 safety is an issue. There's only one-way single  
21 driveway in and out of -- in and out to Cranbury  
22 Road. There is not enough space for kids to go  
23 walk. So that's a concern. There is no mass public  
24 transit facility to this development. Applicant  
25 also mention neighboring community Kingswood, but

1 Kingswood offers a lot more recreational amenities  
2 to their residents, like pool club, you know, like  
3 tennis courts, you know, and in this application,  
4 those amenities are not provided.

5 So these are my reasons, and I believe  
6 that East Brunswick is going through some  
7 redevelopment, and they will, you know, there are  
8 more -- I think there are suitable places I'm sure  
9 designed in that redevelopment where development  
10 will be suitable. So my vote is also yes to deny.

11 MS. MORACE: Miss Rampolla.

12 MS. RAMPOLLA: I'm also going to vote  
13 yes to deny the application. We have a lot of  
14 information to look at, obviously, you know. We met  
15 many times, and the application changed a lot over  
16 the course of it. I think it's our responsibility  
17 to look at the positive criteria and the benefits of  
18 this application and weigh it against the  
19 detriments, and when looking at the benefits, we're  
20 mostly looking at the testimony that was given to us  
21 by the planner.

22 Two of the major points that were given  
23 to us as benefits I find troublesome. Early on and  
24 then throughout the application, there was a point  
25 of view taken by the planner that this parcel of

1 land that's designated as R-1 was done so by  
2 default, and we heard that repeatedly, but then we  
3 were actually -- there was actually testimony given  
4 to us by member of the public who came to oppose the  
5 application that pointed out that this R-1 zone had  
6 been specifically spoken to in our -- I believe it  
7 was the last two reexamination reports that the town  
8 had. So I don't find that argument -- I don't find  
9 that that's the case. I think that this was  
10 intentionally designated as R-1 and intentionally  
11 zoned where there would be one dwelling unit per  
12 acre in that zone. I think that was intentional and  
13 not by default.

14 And one of the -- another benefit that  
15 -- or one of the main benefits that the planner  
16 spoke to for the applicant was about offering  
17 various types of housing or meeting different needs  
18 of various types of housing and then also meeting  
19 the needs of different income -- housing needs for  
20 different incomes, and I find that really conflicts  
21 with taking away the affordable housing units that  
22 were initially part of the application. I recognize  
23 that in lieu of that, payments can be made instead  
24 of offering those units as part of this development,  
25 but I also think there is a conflict to say that

1 nothing like this is offered right now in the  
2 township, meaning there are no -- I think the real  
3 estate expert that was -- who testified to us said  
4 that there are no new townhomes being offered  
5 currently. So if it's -- if the purpose of bringing  
6 a variety of different housing types in the township  
7 is to accommodate all -- families of all -- buyers  
8 of all different income levels, then how do we say  
9 that this one-of-a-kind housing offering that we  
10 need, that none of them are going to be affordable  
11 housing units? That just doesn't work for me.

12 I also, you know, looking at the  
13 detriments I think from the -- the different  
14 testimonies that we heard about traffic, we had --  
15 we had I think some opposing -- I know that the  
16 applicant offered a traffic expert. The members of  
17 the public who came to speak and offer comment about  
18 traffic, while they may not have been traffic  
19 experts, I think that they offered their daily view  
20 of living next door to this parcel of land, and I  
21 think as a board member, I serve on the board, you  
22 know, because I am a member of the public. I do  
23 live here in town, and I think that the daily view  
24 of what the traffic situation on that road looks  
25 like is what I'm familiar with. It's -- I don't

1 know, it spoke to me more realistically than what  
2 was being offered as what this would look like if  
3 this parcel was used for a higher density housing  
4 there.

5           The last one of the last things that I  
6 wanted to mention was I'm uncomfortable with how the  
7 application changed over time. We had members of  
8 the public come to all of the meetings to offer  
9 their opinions to us, and there were neighbors that  
10 were on the -- sorry, I want to be accurate about  
11 this. The homeowners on the -- both the southern  
12 side of that -- of the land here and then the  
13 homeowners who were to the northeast of it both came  
14 to all of the meetings to speak to us -- but over  
15 time, all of the modifications that were made to  
16 this application were made to lessen the impacts on  
17 the one homeowner to the south of where the -- where  
18 the land in question here, and over -- so over  
19 time -- the houses originally were on both sides of  
20 the road. They were all moved to the one side to  
21 appease that homeowners, and then later on there was  
22 a -- I don't want to describe it incorrectly -- a  
23 soundproof barrier or a wall that was proposed, but  
24 that doesn't really lessen the impacts for the  
25 homeowners on the other side of this parcel of land,

1 on the northeast side of the land. I know that the  
2 homeowner on the south side of this parcel of land  
3 was, you know, was ready to present to -- or made  
4 clear to us that they were ready to present an  
5 opposition case that included experts, and then it  
6 very -- you know, a lot of changes were made. I  
7 know that the members of the public on the  
8 northeastern side of this parcel of land didn't -- I  
9 think they offered us their opinion of living next  
10 door here, but I think that the information that  
11 provided to us was accurate and useful and  
12 important, and I don't think that there were  
13 modifications made to lessen the impacts on those  
14 homeowners, also, or neighbors, rather.

15 So for all of those reasons, I'm voting  
16 yes to deny the application.

17 MS. MORACE: Chairman Philips.

18 THE CHAIRMAN: Well, let me start off by  
19 saying that we've had seven meetings, and the  
20 evolution of this application is problematic. It's  
21 problematic because if -- I feel like we were the  
22 ones that were pulling this application through. We  
23 were trying to do what we could to make it  
24 acceptable, and every time we would mention  
25 something, there would be a reaction from the

1 applicant that sort of half went towards what we  
2 wanted but never really got there, figuring that  
3 they could placate us that way.

4 The overreaching issue here and the  
5 black cloud over this is density. There's no doubt  
6 about it. When questioned the first time about why  
7 30 -- why 50 was no good but then 36 was good, there  
8 was no real full explanation as to why that number  
9 was good, but then we moved down to 38 or another  
10 number, 34, and then finally we got to 30, but that  
11 matches the overlay of the Kingswood Station  
12 development, but it misses all of the other pieces  
13 of that menu. They offer their people tennis  
14 courts. They offer their people a pool. They offer  
15 all of those items. And the site is huge. There's  
16 all sorts of areas there that are nature preserves  
17 and preserve -- there's not going to be a single  
18 tree that really exists here to be preserved. Oh,  
19 there might be some, but in view of what's there  
20 now, no. So they want all of the benefits of the  
21 Kingswood Station density without any of the  
22 responsibility of the Kingswood Station density, and  
23 that troubled me, and it troubled me from the very  
24 beginning, and we constantly gave the applicant an  
25 idea that they need to reduce their density, and

1 despite the best efforts of this board, they never  
2 quite went where we needed them to go, and I'm sorry  
3 because it took a lot of people's time and a lot of  
4 people's effort, and we wound up, you know, with  
5 something that might have been a good start, not a  
6 good ending. So that would be one issue.

7           The other thing is the word it's  
8 inherently beneficial, I can't see how putting 30  
9 houses here are inherently beneficial. There's  
10 nothing in the master plan that describes having 30  
11 homes in an area where -- and it's an isolated lot,  
12 too, so it isn't like there's seven other places  
13 that this is going to expand to. So it's one place,  
14 one effort at 30 homes without any other amenities  
15 to speak of.

16           As far as the negative criteria, they  
17 never showed why -- that there was someplace else  
18 that this wouldn't work. If this is an outside  
19 developer coming into town and wants to build 30  
20 homes, why this spot, what did you do to define this  
21 spot as being particularly suited for 30 townhomes.  
22 And that to my -- it was never told to me to my  
23 satisfaction with any of the testimony.

24           And then you look at the master plan,  
25 which I have, from April 15 of -- of April 2015, and

1 this lot is not even referenced for a change. It's  
2 in there as described, but they had an opportunity  
3 in April of 2015 to change the density to R-4,  
4 whatever. They didn't. So it's an isolated lot  
5 along a stretch, and to try to put this much  
6 activity into that, I think it's a very aggressive  
7 attempt on the part of the applicant, but I don't  
8 think that it meets the criteria of being for the  
9 public good.

10 And the last piece of this is the town,  
11 as we all know, are under the spotlight on COAH, and  
12 we've had numerous meetings, and at some point after  
13 the first meeting, COAH was dropped, and it was only  
14 after numerous times of being asked about it was  
15 there any reference to the fact, well, we'll pay  
16 what we have to. That also throws the whole  
17 situation back in the lap of the town. So now the  
18 town has to go ahead and figure out what to do with  
19 this in order to meet COAH because this applicant  
20 chose not to. He chose to provide -- to go the easy  
21 way out with giving us a monetary contribution.  
22 That doesn't sit well with the town. Now they have  
23 this new responsibility if this were approved.

24 I have a few more notes, but you know  
25 what, I think we've made it pretty clear why I'm

1 going to also vote yes to deny.

2 So that's it, Loren.

3 MS. MORACE: So that's six votes yes to  
4 deny and one vote no.

5 THE CHAIRMAN: Okay, so it passes for --

6 MR. WEINER: Denial.

7 THE CHAIRMAN: -- for denial. At this  
8 point, Jay, we are set to -- we have to come up with  
9 a resolution.

10 MR. WEINER: Yes.

11 THE CHAIRMAN: Okay.

12 MR. WEINER: That will be at a future  
13 meeting. We will have a formal resolution  
14 memorializing the denial of the board. The board  
15 will have an opportunity to vote on the resolution.

16 THE CHAIRMAN: Okay. Is there any other  
17 discussion from the board? Nothing from the  
18 applicant?

19 MR. HIMELMAN: No.

20 THE CHAIRMAN: Okay. Thank you. Then I  
21 will listen for a motion to adjourn.

22 MR. WYNTER: Motion to adjourn meeting.

23 MS. RAMPOLLA: Second.

24 THE CHAIRMAN: Second. All in favor.

25 Loren, record that the meeting is over.

1 MS. MORACE: Yes. It's 9:41.

2 THE CHAIRMAN: Okay. Thank you,  
3 everybody.

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BOARD OF ADJUSTMENT  
TOWNSHIP OF EAST BRUNSWICK  
COUNTY OF MIDDLESEX  
STATE OF NEW JERSEY

In the Matter of )  
The Application of: )  
FERRIS FARMS OF )  
EAST BRUNSWICK, LLC )  
#Z-18-32 )  
690 Cranbury Road )  
Block 321, Lot 6.03 )  
----- )

CERTIFICATE

I, DEBORAH A. MASTERTON, a Certified Court Reporter of the State of New Jersey, certify that the foregoing is a true and accurate transcript of the proceedings in the above entitled matter at the time and place aforesaid.

DATE: July 10, 2020

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