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Florence, New Jersey 08518-2323  
July 18, 2005

The regular meeting of the Florence Township Planning Board was held on the above date at the Municipal Complex, 711 Broad Street, Florence, NJ. Chairperson Hamilton-Wood called the meeting to order at 7:30 P.M. followed by a salute to the flag.

Chairperson Hamilton-Wood then read the following statement: "I would like to announce that this meeting is being held in accordance with the provisions of the Open Public Meetings Act. Adequate notice has been provided to the official newspapers and posted in the main hall of the Municipal Complex."

Upon roll call the following members were found to be present:

Councilman John Fratinardo	Mildred J. Hamilton-Wood
Mayor Michael J. Muchowski	Gene DeAngelis
Thomas Napolitan	
John T. Smith	

ABSENT: Philip F. Stockhaus  
Robert R. Semptimphelter

ALSO PRESENT: Nancy T. Abbott, Board Solicitor  
Frank Morris, Board Engineer  
Carl Hintz, Board Planner

## RESOLUTIONS

### **PB#2005-23**

**Continuing the application of TSMC, LLC for Preliminary and Final Major Site Plan approval with bulk variances for construction of a retail center on Block 166.12, Lot 2 located in an HC Highway Commercial District.**

Motion of Smith, seconded by DeAngelis to approve Resolution PB#2005-23.

Upon roll call the Board voted as follows:

YEAS: Fratinardo, Muchowski, Napolitan, Smith, Hamilton-Wood, DeAngelis  
NOES: None  
ABSENT: Stockhaus, Semptimphelter

## MINUTES

Motion of Smith, seconded by Napolitan to approve minutes as submitted.  
Motion unanimously approved by all members present.

#### CORRESPONDENCE

Motion of O'Hara, seconded by Fratinardo to hold correspondence a, b, c, & e, and to file d & e through j. Motion unanimously approved by all members present.

Chairperson Hamilton-Wood called for Application PB#2004-11 for Wawa, Inc. Applicant is requesting preliminary and final major site plan approval to construct a new parking lot at Rt. 130 and Cedar Lane. Block 163.02, Lots 13, 13.01 and 13.04.

Timothy Prime, attorney for Wawa, stated that Wawa had last appeared before the Board in November 2005. At that time testimony was offered by Irv Zeller, Wawa Real Estate representative concerning the proposed operations of the new parking lot at the existing Wawa at the corner of Route 130 and Cedar Lane. Extensive testimony was also offer by Ken Fears the traffic expert for Wawa. Testimony was deferred on the engineering testimony responding to the review letters and on the requested variances because there was a discussion about the number of oversized parking spaces on the plan. Since then Township Council has adopted ordinance 2005-11 prohibiting truck stops in Florence Township. This limits the oversized truck parking spaces to 6 (six). Attorney Prime stated that the plan had been revised to include only the six oversized spaces permitted by variance.

Attorney Prime stated that he felt the site plan conformed to all the bulk and use requirements of the ordinance. There is a variance requested for signs, which will be dealt with during testimony.

Attorney Prime spoke about the overall subdivision of the parcel. Wawa is purchasing one of the lots that was purchased by Cedar Lane and will merge and consolidate it with the existing lot to form one large lot for the small addition and the new parking lot. The small addition is to give the store a rear entrance since there will be a parking lot in the rear. The sign variance is for the WAWA and goose logo to be put on the back of the store. The Cedar Lane subdivision has been fully approved by the Township and the County, but has not been perfected. It is Cedar Lane Associates responsibility to have the subdivision perfected.

Attorney Prime stated that he would like to move on with the engineering testimony so they can provide the revised plans for next month. Mayor Muchowski stated that he did want to hear the engineering testimony, but with Wawa's cooperation would like the Board to hold off on any type of approval until next month when the Board receives the documentation and that residence are notified of the meeting.

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Chairperson Hamilton-Wood asked Attorney Prime if he was willing to allow the continuance and extend the time for Board action. Attorney Prime answered that he would grant any extension of time needed for the Board to hear the matter at the next meeting. He stated that they hope to have everything together to get Preliminary and final approval at the next meeting.

Eric Steinfeldt, licensed professional engineer and planner in the state of New Jersey, he stated that he had appeared before the Board for the original site plan for the Wawa and for the Alterra Sterling house. Mr. Steinfeldt was accepted as an expert and sworn in by Solicitor Abbott.

Mr. Steinfeldt referenced Engineer Morris' letter dated July 13, 2005. He stated that many of the items had been previously satisfied and he would give testimony for the open items. On page 5, item number 5 regarding the subdivision. Cedar Lane Associates would be perfecting the subdivision and Wawa will not ask for final approval until all the issues surrounding the subdivision are satisfied. They will provide the sign detail that is required per item number 11 on page 6. They will change the specific species of trees in the buffer. On Page 7, item 17 they will correct the inconsistency between the elevation and the architectural plans.

Page 17, item 18 states that lighting along Hunt Circus Drive should be proposed and detailed on the plans. Mr. Steinfeldt stated that they would provide adequate internal illumination within the existing and proposed parking areas. They are not proposing to provide lighting along Hunt Circus Drive.

Attorney Prime stated that apparently the lighting was not required when the Cedar Lane subdivision was done. He stated that Cedar Lane has two more lots to sell and maybe the Board could require the lighting at that time. Wawa has adequate lighting in the parking lot, however, if the Board's Engineer feels that additional lighting is necessary they will be happy to add it. Engineer Morris asked about the sidewalk that traverses Hunt Circus Drive. Mayor Muchowski asked whose responsibility it would be to provide the lighting. Attorney Prime stated that this issue had to be resolved. Cedar Lane Associates had to create a lot owners association and any lot owner on the site has to contribute to the overall maintenance of Hunt Circus Drive. Wawa is obligated as part of its site plan approval to relocate Hunt Circus Drive which will allow them to open their store. Then they will only be responsible for their share of the maintenance. This will be worked out with Cedar Lane Associates. Wawa will meet the Board's recommendation regarding additional streetlights. Chairperson Hamilton-Wood stated that she would have safety concerns for pedestrians walking along an unlit sidewalk. Attorney Prime stated that they would add lighting to illuminate the sidewalk on the Wawa property only. Member Smith stated that the Board needed to be considerate of the neighboring property owners when considering lighting.

Mr. Steinfeldt referred back to item 13 on the Engineer's report. The ordinance requires two loading spaces. The applicant is requesting a variance to allow only one loading space. Mr. Steinfeldt stated that this facility would only require one loading space. This is because the majority of the deliveries are made by Wawa delivery trucks. The product that is delivered by outside vendors is relatively minimal.

Mr. Steinfeldt stated that everything else in the review letter is acceptable and the plans will be revised.

Engineer Morris commented on the turning radii for vehicle circulation. Mr. Steinfeldt stated that they had opened up the radii. He stated that he would review this with Engineer Morris if it were necessary.

Member O'Hara asked how large the oversized parking spaces were. Mr. Steinfeldt stated that the large spots have 80' stalls. Attorney Prime stated that deliveries were made three times a week. These are dairy, and grocery deliveries and trash pick-up. The only other deliveries are from box truck vendors that come through the front door.

Mr. Steinfeldt referred to Planner Hintz' letter dated July 12, 2005. He stated that they were agreeable to meeting the ordinance about the number of shade tree, and will change the species of trees.

There is a variance required for signage. This will be a secondary entrance. Member O'Hara asked about the directional signs to bring the trucks into the site. Attorney Prime stated that they needed to establish directional signs for the trucks only at the far entrance on Cedar Lane, and probably a sign earlier that says "Wawa Trucks Only" with an arrow. This is why they need to revise the plans and re-submit. The Board had a brief discussion about the truck movement around the site.

Kenneth Fears, traffic expert for Wawa, stated that he had been previously sworn and remained under oath. He stated that there did exist truck movement controls at two entrances. He sees no need for them to change. These existing controls allow delivery vehicles to enter the site and make their deliveries. Large tractor-trailers are physically capable of making the turn from either Cedar Lane or Route 130. He does not see the need to change the signage. He does not feel that signage should be provided out on the state highway. If the truck customer does miss the jug handle he has the capability to enter the site via Hunt Circus Drive. He also stated that most of the activity on the site is repeat activity. Mr. Fears stated that they could put signs at the jug handle and at Hunt Circus Drive. Vice Chairman O'Hara said that he was concerned because of problems with trucks trying to enter the Roma Bank site and damaging the grounds in the process. Mr. Fears stated that prior to the parking restrictions for trucks and the opening of the Turnpike Interchange there were trucks on the site and they did satisfactorily circulate without problems until the opening of the Turnpike Interchange. The problems started to develop with the increased traffic due to the Turnpike.

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Mayor Muchowski suggested a meeting. Attorney Prime stated that they would submit a signage package and get recommendations from Engineer Morris and Planner Hintz.

Mr. Steinfeldt stated that the applicant did not want to have an interior landscaped island. They feel that these islands are difficult to maintain and are easily damaged. Mayor Muchowski stated the new lot is designed for 6 oversized spaces. The Board is concerned that if there is adequate space along the sides of the lot trucks will use this space for parking. These islands are a physical constraint to prevent illegal parking of trucks. Attorney Prime stated that in other sites where they have installed the islands the curbs are continually getting beat up. Mr. Steinfeldt stated that they are agreeable to provide additional landscaping and requested guidance from the Board.

Mr. Steinfeldt referenced Planner Hintz' Item 5.9 on page 4 of his report regarding addition buffer on the south side of the site. The buffer exists as a result of the subdivision plan that was prepared by others. The amount of room, approximately 10 feet doesn't allow them to do much more than what was proposed in the subdivision plan – a single row of evergreen trees. They don't have the ability to increase the buffer. Solicitor Abbott stated that a waiver had been granted at the time of subdivision approval for the buffer. The adjacent property owner submitted a letter agreeing that a buffer was not necessary. Mayor Muchowski asked if fencing would be appropriate to eliminate light glare. Planner Hintz stated that he was satisfied with the discussion of his review letter.

Attorney Prime stated that they hoped to submit revised plans in time for the Board Professionals to prepare additional review letters before the August 15<sup>th</sup> meeting. Attorney Prime stated that he agreed to a continuance of the hearing and extends the time limit for action. He will give testimony for the two variances requesting (signage and loading dock).

Motion by O'Hara, seconded by Fratinardo to continue application PB#2004-11 until August.

Upon roll call the Board voted as follows:

YEAS:	Fratinardo, Muchowski, Napolitan, O'Hara, Smith, DeAngelis, Hamilton-Wood
NOES	None
ABSENT:	Stockhaus, Semptimphelter

The Board took a brief recess. The Board returned to the regular order of business.

Chairperson Hamilton-Wood called for application PB#2005-01 for TSMC, LLC. Applicant is requesting Preliminary and Final Major Site Plan approval for construction

of a 34,715 square foot shopping center located at Route 130 North and Fairbrook Drive, Block 166.12, Lot 2 located in a Highway Commercial District.

Solicitor Abbott stated for the record that Board Member O'Hara had recused himself from participating because of a conflict of interest and has removed himself from the dais.

Attorney Gary Backinoff representing the Shoppes at Mallard Creek, he stated that they were a continuing application, which had been revised and upgraded in response to comments they had received from the Board, the Board's professionals and members of the community. Chairperson Hamilton-Wood asked Attorney Backinoff to continue with his presentation where it had been left off at the last meeting.

Attorney Backinoff stated that he had three or four witnesses and they would focus on the upgrades to the plans regarding the buffers. He stated that a substantial berm and landscape buffer had been added to the rear of the property.

Attorney Backinoff gave a summary of the application and testimony up to this point. He stated that initially the design goals was to do something that was responsive and in accordance with the Master Plan goals for this site as well as substantial compliance with the zoning requirements. The applicant initially proposed approximately a 35,000 square foot L shaped retail center. The package that was presented at that time included a very nice architectural design. It was an upscale retail center meant to serve the community. Attorney Backinoff stated that he believed that they had received a fairly positive response from the Board members and the community members. When they met with the neighbors, they said they liked the ideas of the shops. The applicant thought they had some work to do with the buffers and to make it integrate well into the community.

After the initial meeting when they presented the architectural design and the general layout, they had a meeting with the neighbors and with the Board's professional consultants. As a result of these meetings the plans had been substantially revised. The L shaped building was changed to cut off the portion of the building, which was closest to the residential lot to the back (Vlahovic property). In addition there was landscaping added to the plan. There was a reduction in the size of the buildings by approximately 4,000 square feet, which helped to meet the parking counts in the ordinance. The applicant thought that this was a fairly strong response to the concerns they had, particularly since the encroachment into the rear property was minimized at that time. They came back before the Board in June and presented the revised plan. Once again they heard comments to further reduce the development to the rear of the site to increase the buffers and that is what brings them to the plans this evening.

Attorney Backinoff said that the latest revision of plans, to be reviewed at this meeting, had been revised to remove all the variances regarding the tree replacement, all the landscaping requirements will be met, the parking counts will be met in accordance with

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the zoning requirement. He said that in terms of the intensity of the development, this plan meets all of the bulk requirements. They are under the maximum percentages permitted in the zone.

He stated that the berm and landscaping does a substantial job in buffering the rear of the property. The berm will be approximately 4 feet high with trees planted on top of it. This is where the bulk of the tree replacement in the landscaping takes place. Attorney Backinoff stated that they believe that there are only 2 or 3 variances and maybe 1 interpretation that they need to talk to the Board about. The variances are for the tenant identification for the free standing sign, façade signage, buffer areas to the rear of the site and to the south side of the site.

Member Smith asked if waivers had been addressed. Chairperson Hamilton-Wood stated that no waivers had been granted yet. Attorney Backinoff stated that there was a design waiver request regarding parking stalls and for piping in one area.

Attorney Backinoff said that he wanted to add was that somewhere about  $\frac{3}{4}$  of the way through the last presentation things started to go a little bit awry. They thought they were going on the right track and proposing an application that fit within the zoning requirements and goals of the Township. He stated that some of the neighbors didn't see it that way and the applicant was surprised. He said that he felt that the applicant had been personally vilified. He requested that the discussion would be confined to the merits of the application. The application has been substantially revised to meet the concerns and the comments of the Board, the Board's professionals and the neighbors.

Attorney Backinoff said that he was going to call Fran Goeke to summarize the changes to the plans, Fred Schmitt to discuss the buffering from the rear of the site, and Creigh Rahenkamp to give testimony on how the plans fit in with the Master Plan and the Zoning Ordinance.

Creigh Rahenkamp, 801 Washington Avenue, Palmyra, NJ. Mr. Rahenkamp is a professional planner in the state of New Jersey for over 20 years. He has served as a court appointed master in Mt. Laurel cases, has been a consultant to the department of community affairs on the Residential Site Improvement Standards, has been accepted as a witness in the trial courts of New Jersey over 30 times and appears regularly before planning and zoning boards in the state of New Jersey. Mr. Rahenkamp was accepted as an expert.

Mayor Muchowski said that before they go on to the changes one of the concerns that was brought up during the last meeting's testimony was the placement on the site plan of the zoning line as opposed to the property line. He stated that they had looked at some other applications and it doesn't seem to be a complete match. The basin doesn't seem to be that much of an issue. Mayor Muchowski stated that he believes that the lot line is about 15' out on the edge or closer, or right at the edge of the property line of 110

Fairbrook Drive. He said that he would like this to be addressed especially as to how this affects the rear buffer line.

Attorney Backinoff said that they would provide testimony on this. He stated that they agreed that the district line runs through the detention basin lot. He said that based on the ordinance technically there is not a need for a variance for a buffer from a detention basin. With regards to the Vlahovic property it is a closer question. The zoning map clearly says that the district line should be 500' from Route 130. The applicants engineer took a look at where the right of way is measured 500' from that spot and put the line on the plan. The Township is questioning whether the right of way has changed. The applicant does not want to get caught up in this technicality. They feel that they are proposing sufficient buffers from a planning position.

Francis Goeke, from Lanning Engineering, marked exhibit A4 (a color rendering of the landscape plan) revised on 7-2-05, A5 ( a blow-up of the buffer area), A6 (the new site plan) revised on 7-11-05.

Mr. Goeke stated that the overall layout of the structures has not changed from the plan that was presented at the last meeting. There have been revisions to the parking along the southern property line adjacent to the detention basin. The 18 parking spaces in that area had been removed. Seven of the spaces have been relocated to the rear of the building where initially there was going to be banked parking. Seven more have been placed along the driveway adjacent to the Phase 2 building, and two have been placed in the main parking area. The plan ends up with 151 spaces, which was on the original plan.

A four-foot berm has been placed close to Fairbrook Drive. The berm is measured from the roadway looking at the rear of it. The elevation of the basin is approximately 2' lower than the roadway. There are actually 2 berms in this area. Trees have been placed at the top of the berm and added to the parking area.

Responding to a question from Attorney Backinoff, Mr. Goelke stated that it was the applicants intent to meet all the requirements of the ordinance regarding the tree replacement and the landscaping. Mr. Goeke stated that sheet 2 of the landscape plan had not yet been updated, but it would be revised and resubmitted. They will place trees along the southern property line if necessary.

Mr. Goeke stated that to the south of the site there is a tributary to Craft's Creek. Adjacent to the site there is woods and a slope down to the creek. This area is not buildable. Mayor Muchowski asked how large this area was. Mr. Goeke stated that there was a large ravine going down to the creek measuring over 140' in length.

Member Fratinardo asked where the 7 relocated parking spaces were on exhibit A5. Attorney Backinoff stated that they were banked spaces. Testimony from the traffic engineer indicated that they had sufficient parking without the addition of these spaces so

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they are banked against future need. Member Fratinardo asked if this banked parking area is where the existing tree line is. He asked if since this is banked parking that may not be necessary, could the existing trees be saved. Attorney Backinoff stated that the applicant would be receptive to this is the Board wanted to keep the trees. Greg Scozzari stated that as long as the contours remain the same, the trees if they are of value could be saved. Attorney Backinoff stated that the tree line where it is established is quite a bit into the site. The woodlands do not go up to the property line. This was cleared at the time the residential subdivision and the detention basin was built and the sewer utility authority easement was established. This plan will bring a substantial amount of additional landscaping into that area which has been essentially denuded by prior development.

Frederick Schmitt, architect, presented exhibit A6 (site sections a and b dated July 18-05). The drawing reflects a hypothetical view of a verticle cut from the Vlahovic residence deck and living room up to the structure. The exhibit shows the berm and has the line of site from the residence to the back of the building. Mr. Schmitt explained that they would be planting 7' to 8' white pine trees on top of the berm. A 6' tall person standing on the Vlahovics deck will see the vinyl sided mansard roof of the building. This area is the very end of the Phase 2.

Mayor Muchowski asked if the applicant agreed to put the landscaping and the berming be put in as part of the initial construction activity so if Phase 2 is 2-3 years down the road the buffer will mature. Mr. Scozzari stated that all of the site work and landscaping would be completed as part of the Phase 1 building. Mayor Muchowski was also concerned about the view of the rear of the building from Fairbrook Drive. Mr. Scozzari stated that you would not be able to see the back of the building from Fairbrook Drive. The home, the buffer and the way they have the mansard wrapping the building and the continuation of the front of the building coming down the side of the building with the windows and the mansard, you won't look into the back of the building as you drive down Fairbrook Drive.

Planner Hintz stated that it would be helpful for the proposed grading and landscaping plan to include those cross sections and testify as to what the height would be on the planting in 3 to 5 years so the professional staff can analyze them more thoroughly.

Attorney Backinoff called for testimony from Creigh Rahenkamp, planner for the applicant. Mr. Rahenkamp said that his role was to link the factual testimony given by the other experts (engineering, architecture, and traffic) and tie that back to the policy issues that relate to variances or interpretations that they are seeking.

Mr. Rahenkamp said that the Master Plan published in 1976 contained strong policy statements in favor of commercial development in the Township to balance the community's overall ratable base and balance between residential and non-residential uses. He referenced sections from the Master Plan regarding promoting of commercial

development through the Township. The Route 130 area is discussed as being promoted for high quality highway commercial uses. Mr. Rahenkamp said that the purpose of going through this in the Master Plan is to identify that there are purposes of Municipal Land Use Law relating to the amount and extent of commercial development that can occur both on this tract and in the Township on a whole the tie back to their variances.

He stated that it is very clear that the Township has a long expressed goal to balance uses and to facilitate revitalization and a redevelopment of new kinds of retail uses in the corridor.

This application is not the first time that this lot and the relationship between residential and retail have come before the Board. The original subdivision approvals for the housing development that occurs behind these frontage lots appear to go back to the 1980's. Mr. Rahenkamp referenced Resolution 1990-4 granted to Harding Hill Homes creating 85 of the residential lots and two future development lots. This resolution stated that a 50' buffer would be necessary and required in this particular location.

Mr. Rahenkamp stated that it is very clear to him that there is a history of the Board looking at this parcel and coming to a determination as to what would be appropriate. The resolution also talks about the easements for storm water management and the joint use of the detention basin. So it was already contemplated as part of that resolution that commercial development would be occurring on the future development parcels, and stormwater management would be shared at that basin.

Ordinance 2003-11 states that the minimum buffer of 100' along any common property line with a residential district. He stated that it was very important to note that as it was drawn on exhibit A4, the zoning line is several feet into the residential lot as it is shown and approximately 56' into the basin. There is a possibility as pointed out by the Mayor that the right of way from Route 130 had shifted. This might account for the small discrepancy with the residential lot, but doesn't explain the wide discrepancy for the basin lot. Mr. Rahenkamp suggested from a straight reading of the ordinance that they would not be required to do a 100' buffer from the property line that is shared with a commercial zoning use on the other side of the property line for the area of the basin itself. He stated that the 100' buffer should be measured from the side yard of the residential lot immediately below the plan on exhibit A4.

Responding to a question from Attorney Backinoff, Mr. Rahenkamp stated that the 500' measurement from the right of way of Route 130 is shown on the Zoning map originally dated July 1, 1999, last revised April 6, 2005.

Mayor Muchowski asked if the 500' measurement from the right of way, would this be the right of way at the time that the lot was created. If the right of way were shifted 15' to accommodate the development would the zoning map be updated? Attorney Backinoff stated that they did not know if the right of way had been shifted. Mr. Rahenkamp

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answered that it was clear that the basin lot was meant for joint use, so it is not surprising that this would be split zoned. He didn't know whether the 500' line was in place when the resolution was adopted in 1990. He said that it is quite likely that given the conversation at the hearing that the discrepancy on the distance on the residential lots that were created is a function of the changing right of way on Route 130. He stated that it was not unusual for the right of way to change as lots were created.

Mr. Rahenkamp said that for the purpose of his testimony, they are not measuring the 100' from the basin lot that is split zoned, but will measure from the property line of the residential lots. Mayor Muchowski said that there might be a small discrepancy with the measurement. He said that he does not disagree that the line does extend into the basin but he is reserving judgment to the area, as it gets closer to the lot line for complete accuracy.

Mr. Rahenkamp said that even if the applicant is not bound by the new zoning ordinance requirement for the length of the property relating to the zoning, they still are subject to condition 19 of the resolution creating the lot and the subdivision that created the lot, which established the 50' setback. They are not arguing that no setback applies because of a technicality in the ordinance.

Mayor Muchowski stated that the applicant did not have any preliminary approvals for this development so they should be held to the current ordinance. Mr. Rahenkamp stated that when the lot was subdivided a condition of the subdivision said that this lot will have a 50' setback. The applicant cannot encroach on that 50' setback without being in violation of the resolution. Chairperson Hamilton-Wood asked if they were talking about setback or buffer? Mr. Rahenkamp stated that he meant buffer. Attorney Backinoff stated that in addition to any ordinance requirements in place there is this 50' buffer. Solicitor Abbott stated that the 50' was a minimum requirement. If the ordinance had changed to require 100', they would have to comply with that.

Mr. Rahenkamp referenced the site plan and stated that the 100' buffer needs to be measured from the residential lot line. 100' from the property line is the opposite side of the existing right of way for the access road, as it exists today. This road will be improved and widened. The only encroachment within the 100', with this amendment moving the parking spaces on the southern side, is 1,370 square feet of pavement that serves strictly as employee parking and a loading area. The magnitude of the encroachment into that 100' buffer as measured from that lot is relatively small. Mayor Muchowski stated that it would be a 20' encroachment roughly 70' in length.

Mayor Muchowski asked where the end of the residential property line was in conjunction of the area in question. Mr. Rahenkamp pointed out on the plan that it was the shared rear lot line of the residential home.

Mr. Rahenkamp referenced sheet C7 of the submitted site plan. Along the property line there is a 4' high berm on a 3-1 slope from property line to top of berm and then back down to curve. 4' is as high as you can get with a 3-1 slope. The berm thickens out as the top due to the increase in elevation. The increase in elevation plus the extensive landscaping provide a very substantial screen. So while there is encroachment of the roadway, there is substantial berming and landscaping to mitigate this. This will screen the view from the adjacent residence and from the cars traveling down Fairbrook Drive.

Mr. Rahenkamp stated that the application does conform to impervious surface and coverage. The site is not being overbuilt. The issue has to do with the distance of these uses from the adjoining single-family residences and whether the buffer is substantial enough.

The same variance condition exists on the south side of the property. It is not likely that there would be any use in this area due to the wetlands and slope of the ground. There is no less intense use from this direction that the applicant would have to provide a buffer from.

Mr. Rahenkamp suggested to the Board the variances they are seeking related to the buffer area adjacent to the residential area and adjacent to the stream valley and wetland area could be granted under two mechanisms. The first would be C1-c. This deals with exceptional situations or hardships that affect a parcel of ground. Here is a subdivision that was created that had a parcel as a future home of retail to balance out the ratable cost of the housing that was going to occur. It was a package that the community was reviewing in the late 1980's and early 1990's as to how this tract was going to develop. It set how large this lot should be for future development anticipating it would be able to be used for an appropriate amount of commercial development on the site. He suggested to the Board that the resolution that created the lot, the finding by the Board that 50' would be appropriate when they looked at the subdivision is something that this Board should look at as a unique historic circumstance. The applicant is implementing the plan that this town put forth and forward through these resolutions in the past.

The second proof could be the C2 variance. This requires that the applicant identify the goals or purposes of the Municipal Land Use Law that they are advancing and that the benefits of the variance outweighs the detriments. In this application the applicant is strongly supporting the communities long stated goals for a balance of uses, getting more commercial development to balance out the housing development in this particular area. The Master Plan talks about encouraging modern shopping centers to occur.

Mr. Rahenkamp said that the detriments that are related to this application are not the detriments of development overall. This is a site zoned for commercial so the detriments aren't the fact that it will be built for commercial or have commercial traffic. These are the impacts that come from the sites commercial zoning. The detriments that are relevant to the variance they are requesting are the detriments that are created by the nature of the

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variance relief. What are the detriments of an under 1,400 square foot encroachment into the 100' buffer from the existing residence, when they have added berming and landscaping to mitigate any kind of view, sound attenuation, or any kind of physical impact that a planner would try to measure. He stated that he did not believe that there would be a measurable detriment occurring as a result of the encroachment. As opposed to whatever detriment people might see from the site being developed for its zoned for use, which he doesn't believe is relevant to the Board's findings relative to the variance.

There was one waiver for the parking stall size. The applicant has requested 9' x 18'. The Residential Site Improvement Standards recognize that 9' x 18' space works in typical parking lot situations. Mr. Rahenkamp stated that there are situations where he is recommending wider parking spaces. These all relate to retail uses that have people doing substantial loading into their vehicles. In a neighborhood center like this where there are no shopping carts or extensive loading there is no need for the larger spaces.

Mr. Rahenkamp stated that the last issue to discuss was one of interpretation. This relates to signage. He read from the Land Use Code (Section 91-224B of the Florence Code). He asked if this is based on a calculation per structure or per use. In a multi tenanted center like this every tenant is going to want to put a sign over their establishment.

The applicant is willing to live with the 5% limitation on the façade, but thinks that this calculation ought to apply for each individual tenant. They are either asking for an interpretation that it be done per use or if that is not how the Board had interpreted this in the past then they are asking for a variance. They will live by the 5% standard but want it to be per use.

Mayor Muchowski asked how large a sign would be using the 5% calculation. Mr. Rahnekamp stated that they did not have this information but would provide it to the Board's professionals.

Attorney Backinoff stated that they did not have any more direct testimony, but they would like to reserve the right to provide rebuttal testimony subject to testimony given by the community.

Mr. Schmitt located the information referring to the façade signs. In exhibit A3 it shows signs that are 16' long by 18" high. Attorney Backinoff revised the request to the lesser of that size or 5% of the frontage of the usage.

Chairperson Hamilton-Wood called for comments from the Board's Professional Staff. Planner Hintz stated that there was a need to revisit the site to look at the trees in the area of the banked parking spaces. He also stated that there needed to be better coordination between the landscaping plan that he got on 7-15-05 and the grading plan because they are showing grading in an area where there are existing trees to be saved. Also if there is a berm there, there needs to be additional plantings.

Planner Hintz stated that one way to increase the berm next to the residential area is if there was a retaining wall at the north side of the berm.

Engineer Morris was concerned with stabilization of a 2 to 1 slope

Chairperson Hamilton-Wood stated that if the road is the only encroachment, couldn't that be moved. Mayor Muchowski would it be better to shift the roadway by 20' and eliminate the banked parking. Mr. Scozzari stated that if the Board would allow them to reduce the number of parking spaces, they would move the road.

The Board and the applicant had a discussion regarding moving a rear loading area and the banked parking to allow the road to be moved, and increase the size of the berm.

Attorney Backinoff stated that the applicant doesn't have a concern about losing those parking spaces and if the Board thinks it is appropriate to move the road they will move the road.

Planner Hintz stated that he is concerned with the height of the berm. If the berm is too narrow the plants dry out and die. Mayor Muchowski said that on some high end commercial developments there are sprinklers on the berms. He suggested that maybe it would be wise to consider sprinklers to keep the plants alive.

Engineer Morris commented on the off street parking. There is a requested variance for four off street spots, where five are required. Mr. Goeke stated that they had added a fifth spot so there is no variance.

Mayor Muchowski stated that the Phase 2 building had been tagged as a restaurant. If the loading area was removed from this building would the applicant make a stipulation that tenancy should be restricted to use other than a restaurant. Mr. Scozzari agreed to this.

Chairperson Hamilton-Wood stated that the Board would take a five minute recess and return to business at 10:00 P.M.

The Board returned to the regular order of business.

Motion by Smith, seconded by Napolitan to open the hearing to public comment. Motion unanimously approved by all members present.

David Nash, 207 Yorkshire Court, Old Bridge, New Jersey, legal council on behalf of a number of the residents from Mallard Creek. Chairperson Hamilton-Wood stated that Attorney Nash had sent a representation letter dated July 14, 2005. Attorney Nash stated that the representation had not changed since that time. He stated that he would be making a statement and calling two witnesses.

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Attorney Nash stated that the residents that he represents are not against the idea of appropriate commercial development. He stated that there had been some attempts by the applicant to address the concerns of the residents, but there are serious concerns that continue among the residents. He said that he was very concerned that the traffic expert was not in attendance at the meeting. His clients have a number of concerns about the safety of the proposed development.

Attorney Nash stated that he thinks the law is clear that the Board and the Township has the right to increase buffer zones in the zoning ordinances. There is nothing that precludes the Board from doing this. An applicant who comes along after the buffer requirements have been revised does not have to be afforded the prior buffer requirements.

Attorney Nash stated that he would begin by addressing the legal standard for the granting of a variance. He stated that the statute is very clear as to what needs to be established before a variance can be granted. The burden is on the applicant to show either that there is an undue hardship because of a unique circumstance related to a piece of land, or that the benefits of the proposal substantially outweigh any detriment. He stated that although the ordinance does promote commercial development along the Route 130 corridor, it does not promote development that is not in line with the standards in the ordinance, unless the legal standard is established for granting variances.

Attorney Nash stated that the residents were concerned with the traffic study. The study only looked at two days in October. He asked the applicant to explain why only two days were studied. He stated that some of the estimates used in the report were based on research at hundreds of existing shopping facilities. He would like to know where these facilities are and if they are comparable to the Fairbrook Drive area.

Attorney Nash stated that the applicant did not indicate who the tenants would be. They referenced "high end retail" use. He questioned how you can estimate traffic when you don't know the users. The study referenced peak hours based on a normal week, what would happen on a busy week? The data in the studies indicated that this development would almost double the amount of traffic turning left onto Fairbrook Drive from southbound Route 130. Doubling the traffic may cause the traffic to back up past the left hand turn lane onto the fast lane of Route 130 south.

The study measures the level of service of an intersection with a letter designation. This is a grading system from A to F. The study gives this intersection an "A". With the development built the grade drops to a "B". The study stated that there would be an 815% increase in the number of cars turning into Fairbrook Drive from the northbound lane of Route 130, from 13 cars to 119 cars on a weekend. There would be a 300% increase turning from Route 130 to Fairbrook Drive on a typical weekday. Route 130 has a difficult site line. The applicant in their argument for variances states that Route 130

slopes in a manner which will make it difficult to identify the shops and efficiently access the site.

Attorney Nash stated that the traffic and safety expert looked at the signage and stated that you have to have at least between 900' and 1,150' of visibility for a motorist to safely see the signs for the development and change lanes to access the site. The application states that the letters on the signs must be 20" high in order to be seen by passing motorists. One of the requested variances calls for a number of smaller individual store signs below the large sign. In the traffic study, it states that you need the large letters for safety, why then would you add smaller signs that will be more difficult for drivers to read and may create a safety hazard.

Attorney Nash stated that case law is clear, and he would be happy as a follow-up to the meeting, some case law for the Board to consider. It is not the obligation of the Board to provide the most profitable use for a particular site. The burden of the developer is to prove that no effective use can be made of the site given the existing zoning standards in place. Attorney Nash stated that he had heard no testimony that would explain why no effective use could be made of this site without the granting of particular variances. He has heard no testimony as to why the entire development couldn't be made slightly smaller so that there was no encroachment at all in the buffer area, or so there would not need to be a variance for the size of the parking spaces. The record has not been established to show undue hardship on the applicant if the size of the development was reduced. Why couldn't the stores closest to the residents on Fairbrook Drive be moved up closer to Route 130?

Attorney Nash called Chris Vlahovic to testify. Chris Vlahovic, 110 Fairbrook Drive was sworn in by Solicitor Abbott. Mr. Vlahovic has lived on Fairbrook Drive for approximately 6 years. Mr. Vlahovic testified that he had seen situations where traffic had backed up on Rt. 130 south. He stated that the deceleration lane on the northbound side of Route 130 comes up very quickly. There is a huge issue when people want to make a U-turn to go back south on Route 130. The driver has to quickly cross 2 lanes of traffic to make the U-turn from the left at the Hornberger light.

Attorney Nash asked if the exhibit displaying the sight lines from Mr. Vlahovic's residence could be put up again. There are 2 different site lines depicted. One from the pool deck and one from the first floor of the residence. Mr. Vlahovic invited that Board and professionals to his house to see the view. He stated that they would be able to see even more of the backside of the shopping center from his second floor windows. Mr. Vlahovic does not think a 4' berm is high enough to provide sufficient screening. He stated that a 6'-7' berm with 7' high trees would be sufficient. Mr. Vlahovic stated that he would like to see the building pushed up closer to Route 130.

Attorney Nash called Neil Gilchrist, 118 Fairbrook Drive, was sworn in by Solicitor Abbott. Mr. Gilchrist has lived at Mallard Creek for over 7 years. Mr. Gilchrist stated

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that he had witnessed back-ups on Rt. 130 in the morning between 7:00 A.M. and 8:00 A.M. If there are more than two vehicles in the turn lane then cars back up onto Route 130.

Mr. Gilchrist stated that he lives in the fifth house down Fairbrook Drive. Mr. Gilchrist presented exhibit O2. This exhibit shows 4 pictures of the view from his house of the tree line that the applicant is talking about removing to install the berm. The existing trees are approximately 25' high. He stated that in order to screen his view from the back of the shopping center the berm would need to be very high. Mr. Gilchrist stated that he did not think that the applicant had any regard for the existing landscape that will be disturbed.

Attorney Nash asked the Board's permission to question the applicant. He asked if in preparing this application had there been any market analysis done to determine that this was the appropriate size and appropriate number of stores for this location?

Greg Scozzari stated that he had conversations with two brokers that cover commercial property in the state of New Jersey, Commercial Metro and R.J. Brunelli, both large retail representatives for the state of New Jersey. Both firms were strongly in favor and willing to market the project for them. They did the analysis on the size versus the income level and the rentability of the space. Attorney Nash asked if the analysis was based on the original proposal for 34,000 plus square feet? Mr. Scozarri stated that it was. Mr. Scozzari stated that the brokers are aware of the reduction in size of the proposal, but he will not receive an updated analysis until he finalizes the plans. Attorney Nash asked if the brokers are still favorable for the 30,000 square feet project? He asked if the brokers had indicated a minimum square footage for the project. Mr. Scozzari indicated that they had not. Attorney Nash stated that it was possible that the project could be reduced more in size and still be viable. Mr. Scozzari stated that his internal analysis based on cost versus income indicates that the project cannot get any smaller and still be viable. Attorney Nash asked what income levels were expected. Mr. Scozarri stated that this was proprietary information. Attorney Backinoff objected to the line of questioning. He stated that the testimony of this application had been based in the appropriateness of the size based on planning concept. Attorney Nash asked if Mr. Scozzari would provide to the Planning Board and the public the market analysis that was conducted.

Solicitor Abbott told Mr. Nash that when a Board looks at requests for variances, personal hardship or personal financial considerations don't enter into the decision. The Board is looking strictly at the physical aspects of the property. So the Board does not need the financial information, because the Board cannot consider that information in making their decision. Attorney Nash stated that his question was not aimed at any personal wealth or resources of the applicant. His question was the viability of this project and whether or not we would have a project approved that would become an empty strip mall. Chairperson Hamilton-Wood stated that the Board is prohibited from considering the economic aspects and the questions being asked could create a situation

where the Board is looking at information that they are restricted in considering. She stated that an appearance of impropriety could not occur. Attorney Nash stated that he could provide the Board with legal analysis that the Board has the right in looking at any variance that is being requested to a site to determine whether the benefits of the variance substantially outweigh the detriments. He stated that the case law has established the Board can decide to not grant a variance because there are other economically effective uses than the one that is proposed.

Solicitor Abbott stated that the legal criteria that Mr. Nash was referring to really goes to a request for a use variance. What is being requested here are bulk variances. They are "C" variances. She stated that Mr. Backinoff and Mr. Rahenkamp have adequately set out the legal criteria for the variances that the applicant is seeking. For the bulk variances what you look at is either hardship or an exceptional situation that affects the property (C1 variance) or the applicant has to show that the applicant has to show that variance will promote one of the purposes of the Land Use law and that the benefits of the variance will outweigh the detriments. (C2 or flexible C). The applicant must prove in either case that the variance will not substantially impair the intent and purpose of the zone plan and won't be substantially detrimental to the public good. This is the legal criteria that must be looked at. The highest and best economic use of the property is not a factor here.

Responding to a comment from Mayor Muchowski, Attorney Nash stated that the case law in New Jersey is clear that there is no duty to grant a variance to allow the most profitable use for a piece of land. Attorney Nash promised to provide a copy of that case law to the Board.

Attorney Nash said that in his opinion in regards to the proposal itself there are so many unanswered questions. He urged the Board not to take any action at this time.

Mayor Muchowski stated that the acceleration/deceleration and channelized lane on Route 130 would be subject to a review by New Jersey Department of Transportation (DOT). Chairperson Hamilton-Wood stated that the Board has no jurisdiction over this.

Dennis Zannoni, 125 Rosewood Drive was sworn in by Solicitor Abbott. Mr. Zannoni lives in the Mallard Creek development, but not within 200' of the site. Mr. Zannoni stated that he became aware of the project on July 8, 2005 when a flier was distributed by a neighbor. Mr. Zannoni stated that none of the residents he had spoken with had seen the public notice in the newspaper. He asked what the official newspaper of the Township was. He was advised that the Burlington County Times was the official paper. He stated that he had reviewed the application and stated that in his opinion the developer never intended to reach out to residents in the other 256 homes in the Mallard Creek development. He stated that the developer erred by not reaching out to the entire development. He compared this to the approach used by Roma Bank, where all residents were included.

Mr. Zannoni stated that he is worried that the need for commercial development in Florence Township as outlined in the previous two Florence Township Master Plan re-examinations combined with this proposed site plan and with a lack of political representation in the Mallard Creek development leaves the residents vulnerable. The residents of Mallard Creek will fight this project. He stated that he would provide names of residents planning to fight this project. He said that there were 57 residents who had signed a document opposing the project and believes that more will join in this opposition. He asked the Planning Board to schedule time for all applicants and their experts to be present at an upcoming Board meeting. The traffic expert was not available for questioning at this meeting. This would allow the residents to prepare an opposition case. He stated that the applicant needed to show more cooperation with the citizens. He said that the applicant could take a positive step by in this direction by allowing reasonable time for homeowners to organize and also to become a player in the table.

Mr. Zannoni addressed Solicitor Abbott regarding the minutes from the previous meeting. He stated that he didn't want the Board to go away with the perception that Mr. Nash's comments included all the residents of Mallard Creek. Mayor Muchowski answered by saying that this is why the Board had requested and received a list of the residents represented by Mr. Nash. The Board fully understands that Mr. Nash only represents the four families listed in the correspondence. Mr. Zannoni also said that he hoped the Board realized that when Mr. Backinoff stated that when he made comments regarding "the homeowners" this wasn't the entire community.

Mr. Zannoni recommended to the Mayor that he activate a temporary citizens committee for this proposed project. He stated that the Mayor had the power and the authority to do this. He stated that he believes that Florence Township and Mallard Creek residents are disconnected and this committee may help.

Mr. Zannoni asked if at the last meeting was there any approvals granted on the application. Mayor Muchowski stated that nothing had been approved, but the application had been deemed complete at the previous meeting. The Board is still in the process of hearing an active application.

Mr. Zannoni asked the applicant if they could provide a current copy of exhibit A the sketch of the façade of the three buildings. He would like a revised sketch. Attorney Backinoff stated that the sketch shown in exhibit A, even though it shows the original L-shaped building, is an accurate representation of the architectural features of the building.

Mr. Zannoni asked if he could have a full sized copy of the plans. Attorney Backinoff stated that he had provided a copy to Mr. Nash and they could provide another copy.

Mr Zannoni asked if besides the Roma Bank project, had V. J. Scozzarri and Sons built any other projects in Florence or Burlington Townships. Attorney Backinoff said not in recent years. V. J. Scozzarri and Sons had built retail shops of a similar size before. Mr.

Zannoni asked that since the applicants are primarily builders, what experience do they have concerning the management and operations of commercial retail shopping centers. Mr. Scozzari answered that they owned and operated four properties now and have bought and sold a number of shopping centers.

Mr. Zannoni asked how many shops would be in the largest building. Mr. Scozzari stated that this would vary depending on the tenants. Mr. Zannoni asked for an idea of what types of businesses would be in the shopping center. Attorney Backinoff stated that the ordinance approves a certain type of business. The applicant intends to stay within the permitted uses that the Highway Commercial zone allows. Solicitor Abbott provided Mr. Zannoni with a copy of the ordinance outlining the permitted uses. She pointed out that this information is available to anyone through the Township Zoning office. Mr. Zannoni stated that he would not be appeased until he heard exactly what types of shops were being considered for this site. Solicitor Abbott stated that the Board does not have any control over what shops go into the site as long as they are on the list of permitted uses.

Mr. Zannoni said that since the residents are not at the table he is trying to press upon the Board the residents concerns. Mayor Muchowski stated that they were at the table and many residents in the community had been actively involved in the process and in prior applications. He stated that information is readily available at the office and the Municipal Code is available on line. He stated that he had an open door policy and said that Mr. Zannoni is welcome to reach out to him with concerns and ideas regarding Mallard Creek, Route 130, Florence Township and the goals and directives that the town is attempting to achieve. Mayor Muchowski stated that he had had a conversation with several of the residents about what is a permitted use within the Highway Commercial Zone and the standard and criteria that the Township can utilize within zoning and the power of zoning and planning to move forward the goals of the Municipality. He stated that there was nothing that precludes Mr. Zannoni from meeting with the Mayor or the Professionals. When the residents voice their concerns and ideas it makes government work better. Mayor Muchowski addressed Mr. Zannoni's comment on feeling disconnected from the town, he invited Mr. Zannoni to converse with him on any topic concerning him as a resident of Florence Township. Mayor Muchowski told Mr. Zannoni that he is more than welcome to participate in the process.

Mr. Vlahovic stated that he understood what the Mayor was saying, but he had called the Mayor to speak about this issue and never received a return call. Mayor Muchowski stated that he thought it was inappropriate to return Mr. Vlahovic's call because Mr. Vlahovic is represented by Mr. Nash. Mayor Muchowski stated that it was difficult for him not to return the call because they had had positive interactions, but he felt, and he thinks he was legally correct, that it was inappropriate for him to call Mr. Vlahovic back based on his legal representation. He had spoken to Mr. Vlahovic prior to the representation. Mr. Vlahovic asked if the Mayor had called his attorney to tell him this and Mayor Muchowski stated that he had not.

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Brian Baker said that he had also put in calls to Board members prior to the last meeting and prior to this meeting. Chairperson Hamilton-Wood stated that she had received a call from Mr. Baker. But being an attorney, she knew the attorney-client privilege, and knew that calling a resident who has legal representation is a violation. She stated that the residents have to choose – either you have your own voice or you have representation. Mr. Baker stated that he felt that someone should have called him back to let him know that all correspondence should go through the attorney.

Mayor Muchowski stated that at the prior meeting the Board had specifically asked Mr. Nash how the Board should communicate with his clients and Mr. Nash stated that all correspondence should go through him. Mr. Baker stated that he did not remember this. Attorney Nash stated that he remembered stating his representation, but did not remember specifically saying that all correspondence should go through him.

Mayor Muchowski asked Mr. Vlahovic and Mr. Baker if in any prior dealings with them he had not had an open door policy on any concerns they had brought to him regarding Mallard Creek. Mr. Baker stated that on most occasions the Mayor had been very receptive, but there was one occasion regarding a retention basin where the Mayor had not returned a phone call. Mayor Muchowski responded by stating that he had spent two years sorting out the problem of the basin and Mr. Baker agreed that the problem was solved and thanked the Mayor for his help in the matter.

Mr. Zannoni stated that the residents of Mallard Creek as a community would provide the numbers to make the Board consider reducing the size of the project.

Mr. Zannoni addressed the following questions to the applicant's planner, Mr. Rahenkamp. Mr. Zannoni asked how many Highway Commercial zoning parcels border residential zoning parcels in Florence Township. Mr. Rahenkamp answered that he didn't have a count of the properties, but virtually all of them. The nature of the district is that it is a linear district along the highway with residential behind it.

Mr. Zannoni asked what the difference was between Highway Commercial (HC) and Neighborhood Commercial (NC) district zoning. Mr. Rahenkamp stated that NC is directly oriented toward the immediate neighborhood and HC is oriented to serve the immediate neighborhood as well as broader areas.

Mr. Zannoni asked if Mr. Rahenkamp had read the two most recent Florence Township Re-examination reports and if so would he agree that the reports recommend a 100' buffer zone when a HC zone abuts a residential zone? Mr. Rahenkamp stated that without the documents in front of him, he did not know that the term recommend was appropriate, but he said that he would review the reports. Mr. Zannoni stated that one of the basic conclusions of the re-examination was to strongly recommend the 100' buffer.

Mr. Zannoni asked if Mallard Creek has any recreational sections within it. He stated that everyone told him that this parcel didn't have any recreational use. He stated that a lot of people use this space for walking. Mr. Rahenkamp agreed that on every visit he made to the site he observed people walking along the road. Mr. Zannoni asked if this was a residential activity. Mr. Rahenkamp answered that walking was a human activity and occurs in every zone.

Larry Martin, 32 Creekwood Drive was sworn in by Solicitor Abbott. Mr. Martin stated that he does not live within 200' of the site. He stated that he is a construction manager by trade. He said that a 35,000 square foot facility would take some construction activity and last approximately 12 – 18 months to complete. This will put undue hardship onto Fairbrook Drive. He is concerned that construction vehicles will have a negative impact on the traffic coming off of Rt. 130 onto Fairbrook Drive.

Keith Crowell, 74 Creekwood Drive, was sworn in by Solicitor Abbott. Mr. Crowell asked for a delineation of the wetlands on the site. Mr. Goeke stated that they have a letter from the Department of Environmental Protection stating that there are no wetlands on the entire site.

Mr. Crowell stated that he takes issue with the 9' x 18' parking spaces. This only increases the likelihood that personal property will get damaged. He strongly recommends that the Board does not grant this waiver. Mr. Crowell is concerned with runoff from the berm. Mr. Goeke stated that there are catch basins on the one side of the berm and the detention basin on the other side that would catch all runoff. He is also concerned with ingress and egress from Rt. 130, particular making a left onto Fairbrook Drive from the southbound lane. Any time there are more than 3 cars waiting to make the left it is very dangerous. He feels that if the project goes through without some revisions there will be an accident. Finally he is concerned with transient traffic. He feels that this may cause an increase in crime through the development. He stated that in his opinion the intersection at Route 130 and Fairbrook Drive was very poorly planned. If the decision is made to develop this site, Mr. Crowell thinks the Board should write a letter to the Department of Transportation asking them to evaluate the safety of the intersection.

Tom Kilyk, 140 Fairbrook Drive was sworn in by Solicitor Abbott. Mr. Kilyk asked Attorney Nash about the increase in northbound traffic turning into Fairbrook. Attorney Nash stated that according to the traffic study the increase would be 800% turning in northbound on a typical Saturday. He is concerned that when these people leave the site, they will have to make the u-turn at Hornberger Avenue. This is a very dangerous situation. He also think moving the structure closer to Route 130 might be a good idea.

Dewey Alexander, 2 Creekwood Drive was sworn in by Solicitor Abbott. He is concerned that Fairbrook Drive will become a thoroughfare. There are a lot of kids in the

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neighborhood playing basketball and riding bikes in the street. The town needs to maximize safety.

Rajah Palaniswamy, 64 Creekwood Drive, was sworn in by Solicitor Abbott. Mr. Palaniswamy asked what the Township had done to analyze the traffic that will result from the construction of this shopping center? He also asked what the architectural elevation for the pad site would look like. Mr. Schmitt stated that they did not prepare elevations for the pad site because they are expecting a nice restaurant to occupy this space. Most of the restaurants bring their own architects and design staff. Mayor Muchowski stated that the Board had said that they want continuity throughout the site. Any approval that the Board may give would have language that would allow the Board to have the ability to control the architectural design of the building so that it does not look out of place.

Mr. Palaniswamy asked again about what the Township was planning to do about the traffic on the site. Mayor Muchowski stated that the Planning Board Engineer looks at the traffic study. The Board is concerned with traffic safety. This project is on Route 130. When the project was initially planned it was designed to have two commercial fronts and a residential back. There are certain types of uses that are allowed on the site. The Planning Board needs to make the most informed decisions that they can. The Board is looking at the traffic study numbers. Mayor Muchowski stated that he would call DOT personally to relate his concerns. The applicant also has to apply to DOT for approval.

Elizabeth Abrams, 25 Creekwood Drive was sworn in by Solicitor Abbott. Ms. Abrams stated that she has only live in this development for 6 weeks. Previously she lived in Cherry Hill adjacent to Marlton where there are multiple strip malls. You can't go out of your neighborhood during the day. She stated that she is not 100% opposed to this proposal, but she feels that 17 stores is too many for the small parcel of land and the access from Fairbrook Drive. She is concerned that a fast food restaurant is a permitted use. Fast food restaurants generate a lot of fast in and out traffic. She encouraged the Board to require the applicant to leave the existing trees as much as is possible. She encouraged Mayor Muchowski not to be reluctant about imposing architectural design. Mayor Muchowski stated that the Board did require architectural designs for Buildings 1 and 2. There will be a condition at time of approval that will require the applicant to come back in with an architectural plan when the pad site is rented. Ms. Abrams stated that a lot of the residents are concerned with having a McDonalds in the pad site. Mayor Muchowski asked the applicant if a fast food restaurant was being considered. Mr. Scozzari stated that fast food was not being planned. Ms. Abrams is concerned that if the applicant has a hard time filling the buildings that less than acceptable tenants could be let in to fill the space. She is concerned with traffic. As a new resident it took her a while to get used to the u-turn. She stated that in a shopping center of this type box trucks would make deliveries. These trucks are still dangerous. She asked if there was any limitation in the zoning that limits the hours of operation. Solicitor Abbott stated that

was nothing in the zoning. Generally applicants work with the Board to come up with hours that acceptable.

David Walls, 10 Creekwood Drive, was sworn in by Solicitor Abbott. Mr. Walls stated that he is concerned with the traffic. He stated that in his opinion there would be a worst-case scenario accident. He feels that something must be done with the Fairbrook Drive entrance. He asked that the Board increase the size of the buffer and reduce the size of the buildings. Solicitor Abbott stated that the ordinance calls for a 100' buffer. The Board can't force the developer to increase the buffer.

Renee Wright, 121 Fairbrook Drive was sworn in by Solicitor Abbott. Ms. Wright stated that she thought the traffic study was dated. The trip generation was from March 2001, prior to 9-11 when people migrated from New York and north to this area. She said that the Board needed to look at more current statistical data.

Beth DeAngelo, 15 Creekwood Drive was sworn in by Solicitor Abbott. Ms. DeAngelo does not think that the applicant has demonstrated that they need the variances. She stated that the applicant had indicated that they might possibly be able to go smaller with the development and still be profitable. It is imperative for the Board makes the applicant prove that the variances are necessary. Ms. DeAngelo stated that she personally does business with NJDOT and with access permits. She asked the applicant if they are going before NJDOT? Mr. Scozzari stated that there was a pre-application meeting and NJDOT indicated that it was not their jurisdiction. Ms. DeAngelo cautioned the Mayor that the length of the left-hand turn slot was the Municipality's responsibility.

Motion of DeAngelis, seconded by Napolitan to close the public portion of the meeting. Motion unanimously approved by all members present.

Chairperson Hamilton-Wood asked Attorney Backinoff if he wanted to offer rebuttal to the public testimony. Attorney Backinoff thanked the Board for their patience asked that they not interpret the silence of the applicant as agreement. The neighbors had been courteous to them and they were returning the courtesy. He stated that he would like to provide rebuttal testimony and make a closing argument. He agreed to continue the hearing until August 15, 2005. He stated that the applicant agreed to waive the time requirement for Board action through August 16, 2005.

Planner Hintz said that he would expect to see a revised engineering landscaped architecture plan for the next meeting. Mayor Muchowski suggested that the Board hire a traffic engineer to review the traffic data. Solicitor Abbott stated that this would be paid for from the applicants escrow account.

Chairperson Hamilton-Wood asked if the purpose would be to review the existing study or to conduct a new study? Mayor Muchowski stated that at first you would have the expert review the existing data and if deemed necessary conduct another study.

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Chairperson Hamilton-Wood stated that she would like to get this application to a vote. The Board can't drag this application on forever. If the Board is going to hire a traffic consultant it should be done quickly.

Solicitor Abbott stated that first the Board must by motion and vote agree to hire a traffic consultant. She also cautioned the Board that the use is a permitted use. The issues the Board is dealing with are variances for buffer, signs and parking spaces. There is a site plan, but if the applicant did not request the variances they would have what is called an "as-of-right" site plan. This means that they meet all the ordinance requirements and are entitled to site plan approval. The only basis for denying site plan if they meet all the ordinance requirements is if there is an obvious impingement on public safety (on fire access, an inadequate stormwater management plan, or severe traffic and ingress/egress problems). The Board must be confident that what they are looking at is a severe traffic problem.

Motion of Muchowski, seconded by Fratinardo to secure a traffic consultant at the recommendation of the Board's engineer to review the data at hand and to determine what steps may be necessary to make a traffic analysis decision for this application.

Chairperson Hamilton-Wood asked if the motion could be modified to say for evaluating the seriousness of the traffic considerations to determine if a serious condition exists. Solicitor Abbott stated that she thought that this is what the consultant would do. She stated that there had to be someone to work with the consultant to give them guidance as to how in depth the study should be.

Attorney Backinoff requested that the traffic consultant look only at the impact on the area from the proposed development. He stated that the case law was clear that the applicant did not have any control over the existing conditions on Route 130, only on the impact of the proposal. Mayor Muchowski stated that he agreed with this statement.

Upon roll call the Board voted as follows:

YEAS:	Fratinardo, Muchowski, Napolitan, Smith, DeAngelis, Hamilton-Wood
NOES:	None
ABSENT:	Stockhaus, Semptimphelter

Motion of Muchowski, seconded by DeAngelis to continue the meeting until the August 15, 2005 meeting or until the applicant is prepared to come forward with the documentation on hand.

Upon roll call the Board voted as follows:

YEAS:                   Fratinardo, Muchowski, Napolitan, Smith, DeAngelis  
                              Hamilton-Wood  
NOES:                   None  
ABSENT:                Stockhaus, Semptimphelter

The Board appointed engineer Morris as the liaison to the traffic consultant.

CORRESPONDENCE

Motion by Napolitan, seconded by Fratinardo to hold the four items of correspondence for discussion at the August meeting.

Motion of Napolitan, seconded by Fratinardo to adjourn the meeting at 12:10 A.M.

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John T. Smith, Secretary

JTS/ne