

BOROUGH OF WHARTON
 WHARTON BOROUGH PLANNING BOARD
 10 Robert Street
 Wharton, New Jersey 07885
 Held on Wednesday, June 11, 2024
 Commencing at 7:04 p.m.

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 IN RE:
 AMENDED APPLICATION: WHARTON 15
 DEVELOPERS, LLC; 320 ROUTE 15 (BLOCK 801, LOT
 7.01)

HUDSON COURT REPORTING & VIDEO (732) 906-2078

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1 B O A R D M E M B E R S:
 2 KEN LOURY, CHAIRMAN
 3 MAYOR WILLIAM CHEGWIDDEN (VIA TELEPHONE)
 4 COUNCILWOMAN PAOLA VASQUEZ
 5 PETER RATHJENS, MEMBER
 6 MARC HARRIS, MEMBER
 7 BRIAN BOSWORTH, MEMBER
 8 BARBARA CHIAPPA, MEMBER
 9 ROSHAN PATEL, MEMBER
 10 MICHELLE ANNE MOLDE, MEMBER
 11 LAURENCE BIEHLER, MEMBER

12
 13 A L S O P R E S E N T:
 14 ALAN ZAKIN, ESQUIRE, BOARD ATTORNEY
 15 CHRISTOPHER BORINSKI, BOARD ENGINEER
 16 JESSICA CALDWELL DYKSTRA, BOARD PLANNER
 17 DESI RUFFO, BOARD SECRETARY

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1 I N D E X
 2
 3 WITNESS PAGE
 4 For the Applicant
 5 COREY CHASE, PE 29
 6
 7 For NNN, REIT, LP
 8 ERIC NEGRI, ESQUIRE 84
 9
 10 Wharton Police Department
 11 CHIEF DAVID YOUNG 86
 12
 13 PETERSON ERICS [ph] 89
 14
 15 For Glass Gardens
 16 ROBERT ALLEN 98
 17

18
 19 E X H I B I T S
 20 EXHIBIT DESCRIPTION
 21 A-1 A Site Plan Rendering, 30
 Prepared by Dynamic
 22 Engineering, dated
 October 11, 2022
 23
 24
 25

1 CHAIRMAN LOURY: Moving onto new
2 business. First item under new business is
3 the Amended Application for Wharton 15
4 Developers, LLC, 329 Route 15, Block 801, Lot
5 7.01.

6 MS. COFFEY: Thank you. Good
7 evening. Can everyone hear me okay?

8 CHAIRMAN LOURY: Perfect. Yes.

9 MS. COFFEY: My husband typically
10 says that it is not my problem.

11 MR. ZAKIN: Ms. Coffey, as you
12 are aware, I don't want to interrupt your
13 introduction, but we do -- as you are aware,
14 we had a letter from one of the -- one of the
15 parties objecting or asking -- questioning our
16 jurisdiction.

17 And I think we should address that
18 and I will give an explanation for that first,
19 so we can address that first and then proceed.

20 CHAIRMAN LOURY: As well as the
21 other late notice that we got.

22 MR. ZAKIN: Yes. We will address
23 that as part of it too.

24 It was from Jameson Van Eck, who
25 represents one of the properties within 200

1 the Judge agreed to that.

2 And then there was also some other
3 parties involved, in addition to Wharton 15.
4 It was amended to add some other parties.
5 Wharton 15 is the contract purchaser of the
6 Townsquare Diner. And the Townsquare Diner
7 owners were also sued. And I don't know if
8 they are represented here. I believe that
9 their owner was going to be present.

10 Mr. Sedereas is here. So they were
11 sued in an action as well, as well as the
12 property commonly known as Bob's that is owned
13 by an entity NNN REIT, also known as National
14 Retail Properties. And it is their attorney
15 there. I see him there.

16 So the Judge bifurcated the suit.
17 It is still ongoing, as far as the private
18 parties, but the Board had been freed from it.
19 And there was a reconsideration notice in the
20 Superior Court.

21 And based on that, Mr. -- and I
22 will give him a minute to speak -- Mr. Van Eck
23 had written us a letter and -- to the Board
24 and copied all the parties, saying that he
25 believed we did not have jurisdiction, and he

1 feet, which is Glass Paramus, more commonly
2 known as ShopRite.

3 And I presume Mr. Vanack is here?

4 MR. VAN ECK: Yes.

5 MR. ZAKIN: Mr. Van Eck is here,
6 I see, so we will address this quickly.

7 And just to give background to the
8 Board and to the Public, this is an amended
9 application, which was duly noticed as such.
10 But this prior application for Wharton 15,
11 which is where the Townsquare Diner presently
12 is located, was approved. And then there
13 was, subsequently, a suit that was -- involved
14 the Planning Board, but was sued, alleging
15 that we improperly approved that, as well as
16 was Wharton 15, the Applicant here today.

17 And because of that, the ShopRite
18 that sued us, they have sent a letter on
19 Friday objecting, saying we don't have
20 jurisdiction because they have appealed a
21 decision that the Court made, based on that
22 suit, where we asked -- we believed that it
23 was an improper, frivolous suit and we asked
24 that we be -- we be dismissed and have a
25 summary judgment freeing us from the suit, and

1 mentioned several cases.

2 And just quickly, I will go over
3 them, and I did review those cases. And the
4 Applicant, Wharton 15, also responded with
5 their letter. I will let them speak to that.

6 And then Mr. Van Eck, representing
7 ShopRite, then responded with another letter
8 that we just received a couple of hours ago,
9 citing some other cases, which I, frankly,
10 haven't had a chance to research, but it is
11 along the same lines, and I am prepared to
12 comment on behalf of the Board on these.

13 And I have reviewed these cases and
14 I found that they are distinguished from the
15 current -- from the current case for our
16 Planning Board and Wharton 15 in several
17 important ways. These four cases all, in
18 summary, were found to have some wrongdoing in
19 the governing entity of some kind.

20 And in our case, the Court found no
21 wrongdoing and, in fact, has dismissed us from
22 the case. So we are no longer a party to the
23 case. And just specifically, each of these --
24 I think they distinguished -- the first case
25 he mentioned was titled Plainfield and --

1 which was not a planning board, but a state
2 agency and there was you due process violation
3 found.

4 In the Cramer case, there was a
5 right-to-know or Open Public Meeting Acts
6 violation found.

7 And then in the Morton case, there
8 was a reconsideration, a rescision by the same
9 board, which is not the case here. And then
10 there was a final case, based on an improper
11 condition. None of those were the cases here.

12 Plus, in this amended application,
13 it is a new fact pattern. They are asking for
14 something different than they did in the case
15 where the original suit was based on.

16 So for all those reasons, we
17 believe that we do have jurisdiction and we
18 are going to hear this today.

19 Further, on the additional letter
20 sent by Mr. Van Eck, he had referenced that it
21 is a related subject matter. Again, we think
22 it is a different subject matter.

23 And further, he claimed that there
24 was, again, not proper notice. And -- because
25 ShopRite should be considered a part of the

1 remands it back to that court.

2 That principal, which is in our
3 court rules and governs litigations and court
4 proceedings, has been extended to actions of
5 governing bodies, which would include land use
6 boards.

7 We have a -- the only new case I
8 cited in the letter I sent today was a Jucane
9 [ph] case. In the Jucane case, it was about a
10 land use board. And the Court basically said
11 that when you are on appeal, you can't change
12 or modify what is the subject of that appeal.

13 So pending testimony from the
14 Applicant about precisely what is that change,
15 it is our belief that by changing an
16 application here to have the same four uses,
17 to have the same building, to have the same
18 parking layout, to have the same circulation
19 pattern, to have the same lack of loading
20 zones, to have the same garbage dumpsters, all
21 of that is the same. So we believe it is the
22 same application.

23 MR. ZAKIN: Here specifically,
24 they are -- they have a new traffic pattern,
25 and that is what they are here to amend. So

1 Applicant, because they are included in this
2 application. And we, as we found before, do
3 not find that to be the case.

4 But I would certainly give Mr. Van
5 Eck an opportunity to speak and then obviously
6 we will let Ms. Coffey speak.

7 MR. VAN ECK: Thank you.

8 Good evening, Mr. Chairman, Members
9 of the Board, Jameson Van Eck from Wells,
10 Jaworski & Liebman on behalf of Glass Paramus.
11 That is the neighboring property owner and the
12 owner and operator of the ShopRite center next
13 door.

14 We do take the position this
15 evening that the Board does not have
16 jurisdiction that has been divested by the
17 pending appeal.

18 There is caselaw. Some of them do
19 vary and deal with different government
20 agencies, but there is the general
21 proposition, which applies to courts of law,
22 that when a lower court makes a decision and
23 it goes on appeal, that lower court or
24 tribunal is divested of jurisdiction until
25 the higher level court acts on the matter or

1 that would be --

2 MR. VAN ECK: Okay. So we will
3 -- I think it is still close enough to the
4 original application that it is up to the
5 Court do decide that issue. So that is our
6 position.

7 One thing I will add, you had
8 indicated that the Board had been dismissed
9 from the case, which appears to be the case.
10 We have filed a reconsideration motion. That
11 reconsideration motion is still pending, so
12 the matter is still technically within the
13 jurisdiction.

14 CHAIRMAN LOURY: Just for the
15 clarity, that is the case. It is not
16 "appears". Currently, right now, we have been
17 released from the case.

18 MR. VAN ECK: The wording of the
19 order is very confusing. I don't mean to
20 say --

21 CHAIRMAN LOURY: We know what the
22 intent is.

23 MR. ZAKIN: I believe that it was
24 clear that we were dismissed from the case.
25 The prerogative writ was dismissed, and now it

1 was transferred to the Chancery Division. We
2 are not a party to that transfer, so we are
3 clear of the case. And as you know, it is in
4 the Judge's discretion, in terms of
5 reconsideration, what he does.

6 And I will add, just at this point,
7 that you did copy the Judge on your initial
8 letter. I didn't see that you copied him on
9 the second letter. But at least, so the Judge
10 is aware of this, so it is on the record, we
11 will make sure that we put it on the record
12 here, out of respect to your position. But --
13 and obviously I will Ms. Coffey jump in, we
14 are going to go ahead today. And certainly,
15 you can be heard.

16 And I assume, as you indicated, you
17 would want to be heard as an objector in this,
18 and you certainly have a right to do that,
19 specific to the topic of the amendment only,
20 because that is what we are here to hear
21 today.

22 MR. VAN ECK: Correct. I am not
23 here to litigate the first case.

24 MR. ZAKIN: I would just ask for
25 logistics, just for our Board Chair, and the

1 I will note that the Applicant's
2 attorney, Mr. DeSimone, when I first wrote the
3 Court, actually wrote a letter agreeing that,
4 in fact, it wasn't dismissed and he wanted a
5 briefing schedule set.

6 But during the reconsideration
7 motion itself, I will represent that he has
8 not taken that position. He has taken a
9 different position in the reconsideration.

10 I will note, under the Court rules,
11 the time period by which I can appeal that
12 decision is told pending the outcome of the
13 reconsideration motion.

14 So that is why it is my view that
15 the Court still has jurisdiction over the
16 Planning Board and over the prerogative writ
17 action, until that decision is actually
18 rendered. So that is our primary position.
19 The Board obviously will take whatever
20 approach it deems is appropriate, but I wanted
21 to put that on the record.

22 The second minor point is just a
23 reiteration of one of the counts that was in
24 my complaint, that it is our belief that
25 notice should have been given from the

1 edification of the Board, so you would speak
2 on behalf of your client.

3 Do you have any witnesses?

4 MR. VAN ECK: I do not.

5 MR. ZAKIN: So you don't. You
6 don't have, for example -- this is what they
7 are talking about here today in this amendment
8 concerns a traffic report to amend
9 circulation. So you don't have a traffic
10 report on your own or a traffic expert?

11 MR. VAN ECK: Correct, I do not
12 have a witness this evening.

13 MR. ZAKIN: As you will recall,
14 when we originally spoke before you sued, I
15 was just curious, you did say that you would
16 produce a traffic report, because that seems
17 to be one of your primary concerns. So I
18 thought you might have one, but you don't.
19 You did not produce one.

20 MR. VAN ECK: I do not. I did
21 have a final. Yes. I appreciate your input.
22 I wasn't finished with my sentence.

23 So to get back to the Chairman's
24 point, yes, it was an oddly-worded order, the
25 way the Judge had written the decision.

1 ShopRite property, included reference to the
2 ShopRite property, and notice to people within
3 200 feet. So we are reserving that same
4 position we took in the initial litigation.

5 Thank you for your time.

6 MR. ZAKIN: Okay. So noted.

7 Ms. Coffey, just on this matter of
8 the jurisdiction, if you would like to say
9 anything before you begin your application,
10 your formal application, the amended
11 application.

12 MS. COFFEY: I am happy to. Thank
13 you.

14 So Kate Coffey from Day Pitney. I
15 think there is kind of two prongs that we
16 should talk about.

17 So the first is the general, does
18 the Board have jurisdiction to hear the
19 Application, while ShopRite's litigation
20 remains pending. And I think Mr. Zakin, you
21 hit the nail on the head in terms of what is
22 maybe different about what is happening this
23 evening or proposed to happen this evening, as
24 compared to what is in the cases that were
25 provided by ShopRite.

1 So here the key distinctions, I
2 think, are, number one, this is an amended
3 application. And a lot of the cases that were
4 cited, they -- well, some of them didn't have
5 to do with land use at all, but the cases that
6 did have to do with land use, many of them
7 were instances where the Board went back and
8 reopened an application that it had considered
9 before. There was not an amended application
10 that had been submitted to the Board.

11 Here, we are not asking the Board
12 to reopen our prior application. We've
13 submitted a brand-new appli -- a new amended
14 application for amended site plan approval.
15 We renoticed. We paid a new fee. We
16 submitted a new application form, et cetera.

17 So this is truly an amended
18 application, rather than the Board reopening
19 the prior proceeding that was before you. I
20 think that is one important distinction.

21 And I would also note, that in many
22 of those cases, it was the Board acting, sort
23 of, sua sponte, on its own, where it was
24 trying to, like, fix what it had to before.
25 So it kept, kind of like, going back to the

1 prior thing. And that is not what is
2 happening here. Right? In this case, it is
3 the Applicant who has made a fresh amended
4 application to you.

5 And then secondarily, I think that
6 your point about, in this case, the Board is
7 currently dismissed from the litigation is
8 also a really important one. So there is some
9 law that talks about, for the sake of avoiding
10 confusion, when a Court is considering the
11 actions of a Board, the Board shouldn't keep
12 doing things, because then the record gets
13 confusing, and instead it should wait until
14 the Court remands the matter back to the
15 Board.

16 There is some caselaw that says
17 that, but here, the Board is not a party to
18 the Court. So even if the Court were to want
19 to remand something back to you, it currently
20 is not exercising authority over you. You are
21 dismissed from the litigation.

22 Now, as Mr. Van Eck said, there is
23 this pending motion for reconsideration, which
24 we are waiting for the Court to weigh in on
25 and whether it wants to reverse what it said

1 before -- and I suppose suck you back in, but
2 that hasn't happened yet.

3 So at present, the Court is not in
4 a position to remand anything to you, because
5 you are not currently a party. And so to the
6 extent that we want the Board to consider our
7 amended proposal, it is proper for us to make
8 application to you and for you to exercise
9 your ordinary jurisdiction over pending
10 applications and to decide them in accordance
11 with the Municipal Land Use Law. That is one
12 issue.

13 The other issue, I will just touch
14 on briefly, which is the notice question,
15 about whether notice should have been provided
16 from the ShopRite property.

17 So the -- part of the reason why we
18 are before --

19 MR. ZAKIN: Just to clarify for
20 everyone about what they are asking about
21 that, and I believe what Mr. Van Eck is
22 saying, is that they believe that this --
23 their ShopRite is integral to your site plan,
24 including in this amendment, so you shouldn't
25 have just noticed within 200 feet from the

1 Diner property, your site plan property
2 itself, but also within 200 feet of the
3 ShopRite property, correct?

4 MS. COFFEY: Right. So, Mr.
5 Zakin, you are correct, that that is what
6 ShopRite asserted in the --

7 CHAIRMAN LOURY: Can't every
8 applicant, like the next door neighbor say the
9 -- have that same --

10 MR. ZAKIN: It could, but --

11 CHAIRMAN LOURY: That is just --
12 logically, that is not --

13 MR. ZAKIN: But it is not --

14 MS. COFFEY: Mr. Chairman --

15 MR. ZAKIN: They would have to
16 legal recourse.

17 CHAIRMAN LOURY: Yes. I mean, it
18 is just --

19 MR. ZAKIN: That is why no one
20 else has --

21 CHAIRMAN LOURY: Right. Right.
22 That is my point.

23 MS. COFFEY: So the Municipal Land
24 Use Law talks about -- as you all know from
25 doing this all the time -- you are supposed to

1 provide notice to affected property owners
 2 within 200 feet of the subject property. As
 3 was the case in our original application and
 4 now before you tonight, we have provided
 5 notice for property owners within 200 feet of
 6 the Townsquare Diner property, which is the
 7 property that we are proposing to make
 8 improvements on, as well as the Bob's
 9 Furniture property, because there is an
 10 easement that exists between the Diner
 11 property and the Bob's Furniture property.
 12 And that easement is important to
 13 the functioning of the Townsquare Diner
 14 property, as we are proposing to modify it,
 15 because we are utilizing the Bob's Furniture
 16 property for parking.
 17 And so under the Municipal Land Use
 18 Law, we would be required to notice from both
 19 the Townsquare Diner property and the Bob's
 20 property, because both properties are being
 21 involved or are necessary to the improvements
 22 that we are providing.
 23 The reason why we wanted to come
 24 before you this evening with our amended
 25 application is because when we were before you

1 it didn't impact the functionality of the
 2 site.
 3 So what we have amended our
 4 application to do, is to look and say, okay,
 5 if that access didn't exist and all the cars
 6 coming to and from the Townsquare Diner could
 7 only use our access, which is on Route 15, is
 8 our site still functioning appropriately, so
 9 you are not having terrible traffic backups,
 10 and is it still safe. And that is what we are
 11 here to talk about this evening.
 12 And because the whole purpose of
 13 this amended application is to take the
 14 ShopRite property completely out of the
 15 equation, we are not assuming any access from
 16 us to them or them to us.
 17 It is purely meant to say, does
 18 this site work, if ShopRite is not involved,
 19 because we don't have an easement with
 20 ShopRite, we are not requesting an easement
 21 from ShopRite.
 22 And for that -- so that is what we
 23 are talking about tonight. And because we are
 24 talking about our existence, independent of
 25 the ShopRite property, notice from the

1 before, one of the things that came up was
 2 talking about -- there is another easement
 3 between Bob's Furniture and ShopRite. The
 4 Townsquare Diner property is not a party to
 5 the easement.
 6 So what that means is the
 7 Townsquare Diner property does not have access
 8 rights to cut through Bob's and into ShopRite
 9 and ShopRite does not have access rights to
 10 cut through Bob's and go into Townsquare Diner
 11 in writing.
 12 The reason why we are amending our
 13 application is because we went back and we
 14 looked at our circulation patterns. And we
 15 wanted to make sure that our site functions
 16 safely and appropriately without utilizing any
 17 access to the ShopRite property. And so that
 18 is what our traffic engineer is here to talk
 19 about this evening and what the updated report
 20 that we submitted, which is the purpose of our
 21 amended application is.
 22 Because before, when we were
 23 previously before the Board, there was talk
 24 about motorists may cut through, going in
 25 either direction, and that that was fine, and

1 ShopRite property is not necessary, because we
 2 are not proposing to burden them with any kind
 3 of easement, we are not requesting an easement
 4 from them, and we don't need an easement from
 5 them, which is what we are going to be talking
 6 about from our traffic engineer.
 7 CHAIRMAN LOURY: Thank you both
 8 for appearing before us tonight for your
 9 application.
 10 MR. ZAKIN: Proceed.
 11 MS. COFFEY: I feel like I sort of
 12 previewed what I am here to do. So some of
 13 this is going to be a little duplicative.
 14 MR. ZAKIN: Perhaps I am getting
 15 ahead of myself, but just to clarify for the
 16 Board, I want to be clear, though.
 17 In your prior application, are you
 18 saying that you intended for, as part of your
 19 site plan, that people would use the ShopRite
 20 site or just that that might happen
 21 incidentally and you addressed for the times
 22 that that might incidentally happen or it
 23 might occasionally be an alternative
 24 ingress/egress?
 25 MS. COFFEY: Mr. Zakin, because

1 there is no easement that exists between the
 2 properties, we certainly couldn't rely on the
 3 ShopRite property in our prior application as,
 4 you know, "Don't worry. If our Route 15
 5 access is too backed up, we can always go
 6 through ShopRite." Right?
 7 It was never meant to be an access
 8 that was part of the Application, shall we
 9 say. But I think that when we were previously
 10 before the Board, we recognized that motorists
 11 may go through the ShopRite property. And we
 12 talked about how that would impact the overall
 13 circulation onsite, because of that access.
 14 And so what we want to talk about
 15 this evening is can the property function
 16 independently without having any cars relying
 17 on that ShopRite, Bob's/ShopRite easement for
 18 access.
 19 Because I think that when we were
 20 previously before the Board, yes, this
 21 easement exists and some cars may go through
 22 there and that, you know, is part of the
 23 likely circulation for the project.
 24 And so we wanted to now look at,
 25 okay, if it wasn't here at all, it is off the

1 the, kind of, reverse cut-through?
 2 MR. BOSWORTH: Yes.
 3 MS. COFFEY: Well --
 4 MR. BOSWORTH: I go there about --
 5 MS. COFFEY: I was going to say,
 6 what I do is probably not really relevant to
 7 this application at all, but it is not the
 8 path that I would choose either, I agree. And
 9 you would typically, as Cosco goes --
 10 MR. BOSWORTH: Our chief of police
 11 is standing right behind you. He know more
 12 than anybody what that traffic entails.
 13 CHAIRMAN LOURY: Let's save that
 14 stuff for the traffic testimony.
 15 MR. BOSWORTH: I was just
 16 wondering if we were all aware of what we are
 17 talking about, and we have been there, we have
 18 driven through those locations.
 19 MS. COFFEY: Let me have our
 20 traffic expert actually talk about it, because
 21 nobody really cares about my route, but I take
 22 your point.
 23 MR. ZAKIN: Just to clarify for
 24 the Board, that is your only witness?
 25 MS. COFFEY: That is our only

1 table, can it function properly. And I will
 2 let Mr. Chase talk about if it can, but we
 3 believe it can.
 4 MR. BOSWORTH: Have you been to
 5 this location?
 6 MS. COFFEY: Which location? The
 7 Town Hall or at the Townsquare Diner?
 8 MR. BOSWORTH: Have you driven
 9 what you are talking about? Have you been to
 10 these easements and driven around them?
 11 MS. COFFEY: I have. I have not
 12 cut through -- I have not done the Townsquare
 13 Diner-Bob's-ShopRite loop, knowing what I know
 14 about the easements, but I am familiar with
 15 the area, because your Cosco is my Cosco. So
 16 I have been in the area and I am familiar with
 17 the roads.
 18 MR. BOSWORTH: Okay. So you
 19 understand what that entails of using that
 20 easement and going around ShopRite and coming
 21 out back around the other side?
 22 MS. COFFEY: We do.
 23 MR. BOSWORTH: You would have to
 24 be pretty lost to go that way.
 25 MS. COFFEY: You mean to be doing

1 witness.
 2 MR. ZAKIN: The traffic expert is
 3 going to testify to the new traffic report
 4 that you provided?
 5 MS. COFFEY: Yes, that is correct.
 6 I just wanted to, kind of, do two
 7 seconds of housekeeping before we get Mr.
 8 Chase up, because we kind of just went over
 9 the jurisdictional stuff.
 10 I am Kate Coffey from Day Pitney.
 11 The Applicant is Wharton 15 Developers, LLC.
 12 I think we all have a mental image of the
 13 property that we are talking about. But just
 14 for the record, this is the property that is
 15 located at 320 Route 15. It is Block 801, Lot
 16 7.01, which is in the B-2 Regional Business
 17 District.
 18 What the Applicant had proposed and
 19 continues to propose is demolishing the
 20 existing Townsquare Diner and building a new
 21 building, which would be a combination of four
 22 tenants.
 23 The tenants that were proposed were
 24 an Aspen Dental and a City M.D., Jersey Mike's
 25 and a Panda Express. And then, as we also

1 indicated, there is this parking easement and
 2 cross access between Lot 7.01 and Lot 7.05.
 3 7.05 is the Bob's Discount
 4 Furniture location, just so we have the lots
 5 on the record when we are talking about this.
 6 I think it is probably easier, mentally, to
 7 talk about them as the Diner property and the
 8 Bob's property, rather than 7.01 and 7.05,
 9 just so we know what we are talking about.
 10 Okay. I think, now that I have,
 11 kind of, at least oriented myself, I will ask
 12 Mr. Chase to come and join me and be sworn,
 13 please.
 14 (COREY CHASE, PE, Dynamic Traffic,
 15 LLC, 245 Main Street, Chester, New Jersey, was
 16 sworn in.)
 17 EXAMINATION BY MS. COFFEY:
 18 Q. Mr. Chase, can you please introduce
 19 yourself to the Board and the Public and tell
 20 them about your experience and credentials?
 21 A. Certainly. Corey Chase, C-O-R-E-Y,
 22 last name C-H-A-S-E. Principal with Dynamic
 23 Traffic, located at 245 Main Street in
 24 Chester, New Jersey.
 25 Bachelor's of Science Degree in

1 Civil Engineering from the University of
 2 Massachusetts, licensed professional engineer
 3 in the State of New Jersey. License
 4 is currently --
 5 MR. ZAKIN: You have testified
 6 before our Board before?
 7 THE WITNESS: Numerous times.
 8 MR. ZAKIN: And your
 9 qualifications are up to date?
 10 THE WITNESS: They are, sir.
 11 License is still in good standing.
 12 MR. ZAKIN: Any questions?
 13 CHAIRMAN LOURY: Nope.
 14 MR. ZAKIN: You are certainly
 15 qualified. Please proceed.
 16 THE WITNESS: Mr. Chairman, I
 17 brought the old exhibits from the prior
 18 hearing. I don't know. I brought an easel,
 19 as well, if the Board visually wants to see
 20 the previously-approved site plan. We have it
 21 to put it up. If you don't feel it is
 22 necessary --
 23 CHAIRMAN LOURY: I would leave
 24 that up to you, whatever you think is better
 25 for your testimony.

1 MR. BOSWORTH: I would like to see
 2 it.
 3 (Discussion off the record.)
 4 MS. COFFEY: We are going to mark
 5 this as A-1.
 6 Does that work?
 7 MR. ZAKIN: With today's date?
 8 MS. COFFEY: Yep.
 9 (A Site Plan Rendering, prepared by
 10 Dynamic Engineering, dated October 11, 2022,
 11 was marked for identification as Exhibit A-1.)
 12 EXAMINATION CONTINUED BY MS. COFFEY:
 13 Q. Just tell us what we are calling
 14 it.
 15 A. I marked this as Exhibit A-1. It
 16 is entitled Site Plan Rendering. It is
 17 prepared by Dynamic Engineering and it was
 18 dated October 11, 2022.
 19 Again, this was the site plan
 20 rendering that was presented at the prior site
 21 plan application. Nothing has been amended.
 22 There are no revision dates associated with
 23 the plan.
 24 As Ms. Coffey mentioned, the
 25 subject property -- it's location is the

1 existing Townsquare Diner. It is located
 2 along New Jersey State Highway Route 15
 3 southbound.
 4 It currently has the existing
 5 ingress-only driveway located in the northern
 6 portion of the property and a right-turn
 7 egress-only driveway located in the southern
 8 portion of the property.
 9 Those access points are largely
 10 proposed to be maintained. We do have a
 11 pending application with the New Jersey
 12 Department of Transportation. As the Board
 13 can see, we are proposing to channelize the
 14 southern access point to provide a better
 15 restriction on that right-turn egress-only
 16 movement.
 17 Currently, it is essentially a
 18 perpendicular intersection with Route 15, with
 19 a sign saying "no left turns permitted".
 20 Basically, the feedback we received
 21 from The Department of Transportation, we are
 22 channelizing that further to really further
 23 restrict that movement to be a right-turn
 24 egress only.
 25 There is an existing northbound

1 dedicated left-turn lane along New Jersey
2 State Highway Route 15 that will be maintained
3 as part of the Application that provides a
4 dedicated left-turn lane for customers
5 entering the redeveloped subject property, as
6 well as access --

7 CHAIRMAN LOURY: That turn lane
8 goes into the Diner?

9 THE WITNESS: It does.

10 CHAIRMAN LOURY: It does? Not
11 just ShopRite.

12 THE WITNESS: No, you can
13 actually see, Mr. Chairman, there is actually
14 a channelized roadway just to the north of
15 that left-turn lane. It actually provides
16 separation between the two left-turn lanes.
17 So they are actually separated. They don't
18 run one into another.

19 And that is all proposed to be
20 maintained as part of the subject application.

21 As Ms. Coffey mentioned, we did
22 prepare an amended traffic impact study that
23 was previously submitted to the Borough, dated
24 March 15, 2024. The original study was dated
25 August 5, 2022. That was presented as part of

1 So we applied an additional
2 background growth factor, published by the New
3 Jersey Department of Transportation to, again,
4 grow those volumes to be current as of Year
5 2024. That is what we based on your analysis
6 off of.

7 Consistent with the prior
8 Application, we did break down the trip
9 generation of the proposed mixed-use building.
10 The City M.D. and the Aspen Dental, were
11 assumed to be medical/office component. The
12 Jersey Mike's was assumed to be a fast food
13 restaurant without drivethrough. And the
14 Panda Express was assumed to be a fast food
15 restaurant with a drivethrough.

16 That is consistent with what the
17 New Jersey Department of Transportation would
18 designate those land uses as, as far as the
19 trip-generation perspective.

20 The only differential between what
21 was presented previously in the 2022 report
22 and what is presented in the 2024 report, some
23 of those square footages changed just
24 slightly, as the building plan was further
25 refined. So we adjusted those square footages

1 the original site plan application before the
2 Borough.

3 The development proposal largely
4 remained the same. As Ms. Coffey mentioned,
5 we are proposing a mixed-use building,
6 consisting of an Aspen Dental, a City M.D., a
7 Jersey Mike's, and a Panda Express with a
8 drivethrough.

9 I would just mentioned the access
10 configuration will, again, largely be
11 maintained from what the current access is to
12 the Diner.

13 There is cross access to the Bob's
14 Furniture, to the rear of the facility. As
15 Ms. Coffey mentioned, we also do have an
16 access and a parking easement with the Bob's
17 Furniture. We are accommodating a portion of
18 our parking on the Bob's parcel. The parking
19 located immediately adjacent to Route 15.

20 As part of the amended traffic
21 study, given that the prior study was intended
22 to be reviewed in 2022, we did provide
23 additional background growth to the traffic
24 counts that were utilizing that study to grow
25 them to assume a 2024 base here.

1 to match what the current breakdown is between
2 the City M.D., the Aspen Dental, The Jersey
3 Mike's and The Panda Express.

4 CHAIRMAN LOURY: The square
5 footage of the units?

6 THE WITNESS: Yes, just the
7 square footage of the units, just slightly. I
8 am talking about a couple hundred square feet
9 in between the various uses.

10 CHAIRMAN LOURY: Jessica, we are
11 good with that?

12 MS. DYKSTRA: Yes.

13 THE WITNESS: Like, for instance,
14 the Jersey Mike's went from 1,248 to 1,245, so
15 three square feet. But just to be accurate as
16 to what the current plan reflects, we wanted
17 to match that.

18 CHAIRMAN LOURY: That is the first
19 I am hearing that. So -- and no issues with
20 no change in the parking requirements because
21 of that size?

22 THE WITNESS: No, sir.

23 CHAIRMAN LOURY: Okay.

24 MS. COFFEY: It is a pretty
25 minimal adjustment.

1 CHAIRMAN LOURY: It could be the
 2 trigger. It could be the trigger that pushes
 3 it over.
 4 MS. COFFEY: Yes, no -- I am saying
 5 yes, no, not helpful.
 6 You are correct, Mr. Chairman, that
 7 the parking requirements have not changed as a
 8 result of the square footage tweaking.
 9 A. Similar to the traffic testimony
 10 that was provided as part of the last
 11 application, we can certainly assume that all
 12 the traffic entering and exiting the subject
 13 property was going to do so through the Route
 14 15 ingress and egress points.
 15 Again, it presents the most
 16 conservative analysis, assuming that the site
 17 is completely self-sufficient and that all
 18 traffic enters and exits the subject property
 19 through those access points.
 20 We did prepare a level of service
 21 analysis of both the ingress driveway, as well
 22 as the right-turn egress-only driveway. Those
 23 results are presented on Table 5, which is
 24 located on Page 7 of our report.
 25 They provide a "no build", which is

1 will say the existing use generates X, the
 2 proposed use generates Y, we will look at that
 3 differential and that is how we look at the
 4 future condition.
 5 To be, again, extremely
 6 conservative, we didn't take any credit for
 7 the existing diner traffic. We just
 8 supplemented all the additional traffic, as
 9 summarized on Page 6 of our report, on top of
 10 that existing volume, again, to just really
 11 present a conservative analysis.
 12 If all the traffic is oriented to
 13 and from Route 15, don't take any credit for
 14 the operation of the existing diner, how those
 15 driveways operate, would they function safely
 16 and efficiently.
 17 You can see, again, those results,
 18 you know, were focusing on the critical peak
 19 hours. You have all heard this before. As
 20 traffic engineers, we really focus on that
 21 worst-case scenario, peak period. The weekday
 22 evening associated with peak commuter hour.
 23 And then given that Route 15 is really a
 24 commercial retail corridor, that Saturday
 25 midday peak period as well.

1 predevelopment, and then a "build", which is
 2 the post-development with the redevelopment of
 3 the subject property in comparison to how
 4 those driveways are going to operate.
 5 It is important to note that in
 6 addition to assuming that all the traffic was
 7 going to be oriented through these access
 8 points, the existing Townsquare Diner
 9 obviously has traffic generation associated
 10 with it.
 11 Typically, what you will see
 12 traffic engineers do is they will say the
 13 existing use is generating X amount of traffic
 14 and the proposed use is generating Y and we
 15 will just look at the differential. To be
 16 conservative --
 17 CHAIRMAN LOURY: Just for clarify,
 18 no build means current state?
 19 THE WITNESS: That is correct,
 20 sir.
 21 A. So it has Bob's Discount Furniture
 22 traffic, as well as Townsquare Diner's traffic
 23 associated with those kind of movements.
 24 As I was just getting into, a lot
 25 of times, what traffic engineers will do is

1 Those are the two analysis points
 2 that we looked at. And you can see the
 3 driveway and the proposed condition and the
 4 build condition is going to operate at
 5 acceptable levels of service for both the
 6 left-turn ingress movement, as the right-turn
 7 egress movement.
 8 CHAIRMAN LOURY: Help us
 9 understand that, right? You do it for a
 10 living.
 11 You say "as you can see", it is
 12 probably there, but just help interpret that.
 13 THE WITNESS: Certainly. So
 14 under the build conditions, the left-turn
 15 ingress movements, so the northbound,
 16 left-turn movement from Route 15 into the
 17 subject property is going to operate at Level
 18 of Service C or better, during the peak
 19 conditions. So average vehicle delay, a
 20 maximum of 22 seconds.
 21 BY MS. COFFEY:
 22 Q. Mr. Chase, when you say "Level C",
 23 that is with that delay -- Level C equals a
 24 22-second delay, correct?
 25 A. That is correct. A lot of times

1 people will think of levels of service as the
 2 grades that you get school. They don't
 3 necessarily correspondence to that. The do --
 4 they are letters that correspond to an
 5 associated average vehicle delay.
 6 If you are curious, we do provide a
 7 breakdown of what those letters correspond to
 8 as to the range in average vehicle delay. It
 9 is at the bottom of Page 3 and Table 2. It
 10 provides a breakdown of the corresponding
 11 level of service and what that associated
 12 average vehicle delay is.
 13 CHAIRMAN LOURY: So in layman's
 14 terms, if I was on that -- if I was on the
 15 property and I am leaving, I would average --
 16 cars would wait 22 seconds before they could
 17 leave the property?
 18 THE WITNESS: So leaving is 27,
 19 but that is correct. Entering the subject
 20 property, so if you are making a left turn,
 21 northbound on Route 15 into the redeveloped
 22 parcel, you can expect to wait an average of
 23 22 seconds.
 24 And then conversely, exiting
 25 subject property, right turn on Route 15

1 southbound, you can expect to wait an average
 2 of 27 seconds.
 3 So in the New Jersey Department of
 4 Transportation standards, you know, that is
 5 certainly a safe and efficient level of
 6 service, especially along the Route 15
 7 corridor, you know, given the volume of
 8 traffic that you see along that corridor.
 9 Those are certainly acceptable levels of
 10 service.
 11 And again, as I mentioned, the
 12 analysis that we did was very conservative.
 13 We oriented all the traffic to and from those
 14 Route 15 driveways. And we didn't take any
 15 credit for the existing traffic generated by
 16 the Diner.
 17 So we could have been much more
 18 aggressive in the analysis, taking on these
 19 credits, you know, done some internal capture
 20 between our traffic and Bob's Discount
 21 Furniture traffic for people that may use both
 22 uses. But again, to present the most
 23 conservative analysis, assuming that the
 24 development is new on vacant land, and there
 25 is no interaction with the Bob's Discount

1 Furniture traffic, this provides you with a
 2 worst-case assessment of the operational
 3 condition of those driveways.
 4 BY MS. COFFEY:
 5 Q. And again, just for the
 6 nonprofessionals among us, that is again,
 7 assuming that every customer at the
 8 newly-developed Townsquare Diner property is
 9 going out onto 15 from the Townsquare Diner
 10 driveway, rather than any of them routing
 11 through Bob's and then trying to cut through
 12 ShopRite, correct?
 13 A. That is correct.
 14 Q. And then with the 27-second wait
 15 time, is there any concern about cars getting
 16 stuck queuing on --
 17 CHAIRMAN LOURY: I wasn't going to
 18 interrupt. That was one of my questions. How
 19 many cars in the parking lot?
 20 MS. COFFEY: We are on the same
 21 page.
 22 BY MS. COFFEY:
 23 Q. So the question, just to finish
 24 that, if folks are waiting there 27 seconds to
 25 turn out onto 15, do we have any concern about

1 a backup within the site to get out or are
 2 those 27 seconds not long enough to get a
 3 substantial backup?
 4 A. That is correct. In addition to
 5 providing average vehicle delay, the analysis
 6 algorithm that we use also provides a 95th
 7 percentile, which means 95 percent of the time
 8 it will be this many vehicles or less waiting
 9 to exit the property, and that is two
 10 vehicles. So 95 percent of the time, there
 11 will be two vehicles or less waiting to exit
 12 the site onto Route 15 southbound.
 13 Q. Got it. So we are not going to
 14 have situations where people are ten cars
 15 backed up and get frustrated and give up?
 16 A. That is correct.
 17 Q. Got it.
 18 MR. RATHJENS: Is this
 19 software-generated or is that actual
 20 observations?
 21 THE WITNESS: It is
 22 software-generated, based on -- there is a lot
 23 of inputs that go into it. So we do traffic
 24 counts, you know, that are existing on the
 25 roadway. We count all the actual turning

1 movements that are out there. We input the
2 amount of -- the percentage of trucks on the
3 adjacent roadway network and various other
4 things. So it models the existing operational
5 conditions, but it is derived from the
6 software.

7 CHAIRMAN LOURY: And it is all
8 like on average, right? Because if you are
9 there on Monday at 3 o'clock, there is
10 probably one car there trying to get out. If
11 you are there on a Saturday, it is probably --

12 THE WITNESS: That is why we
13 focus on the peak conditions, sir, because we
14 look at those worst-case scenario analytical
15 periods, because they are going to provide you
16 with -- as you mentioned, you could drive by
17 there at 2 o'clock on a Monday, and there are
18 no cars waiting to get out, and worst case, it
19 is one.

20 And on Saturday, when there is
21 Cosco -- you know, there is all the other
22 shopping centers in the area, obviously there
23 is a focus of activity there, which again, is
24 why -- it really corresponds to what the data
25 shows. You know, the evening is --

1 after, they are going to do that.

2 Q. And if for some -- let's say they
3 were shopping with my husband, who didn't know
4 he wanted a sandwich until after the Cosco --
5 or wanted a sandwich first and then he
6 realized he wanted to go to Cosco, how would
7 someone reorient themselves to get back up to
8 Cosco?

9 A. So just to the south, we have the
10 signal at Mount Pleasant Avenue. You know,
11 this is not uncommon for New Jersey. You
12 know, there are a lot of -- especially along
13 State highways, there are a lot of access
14 points that have a right-turn egress only
15 limitation on them.

16 And what that forces the driver to
17 do is use the existing roadway network to
18 maneuver themselves back to where they need to
19 go. So whether it is using Mount Pleasant
20 Avenue and, you know, the roads through the
21 Rockaway Mall to execute a U-turn, whether it
22 is taking 15 down to 46 to get back over to
23 Dewey or Main Street, things of that nature,
24 people are going to be familiar with the area,
25 familiar with the existing road patterns and

1 experiences less delay than a Saturday. And
2 we would expect that, just given the amount of
3 traffic in the area. So same with the retail
4 offered there, just adjacent to the site.

5 BY MS. COFFEY:

6 Q. Mr. Chase, you just mentioned the
7 Saturday midday traffic and the people who,
8 like me, might be making their Cosco run and
9 maybe now they also want to stop at this
10 property.

11 So if they were -- what route might
12 they take to accomplish that, assuming they
13 are only using our driveway in and the
14 driveway out.

15 A. Certainly, obviously, people that
16 go to Cosco, they are going to be repeat
17 customers. They are familiar with the area.
18 Fortunately, we are not changing the patterns
19 from how the Diner currently operates today.

20 You know, we still have the full
21 access ingress driveway on Route 15 and the
22 right-turn egress only driveway. So depending
23 on where they are destined to or from, they
24 are going to stage their trip accordingly. If
25 they need to go to Cosco first and this site

1 what they need to do.

2 And they are going to, you know,
3 like I mentioned previously, they are going to
4 stage their trips accordingly as to what makes
5 the most sense to have a fluid route of
6 travel.

7 Q. And if folks are doing that, going
8 down 15 and then turning around to go back up,
9 the roads are able to take that traffic,
10 correct?

11 A. Correct.

12 Q. And still function?

13 A. Correct.

14 Q. Just before we make you available
15 for more questions --

16 MS. COFFEY: I just wanted to
17 note, we did receive memoranda from your
18 professionals. We received memoranda from
19 your planner, as well as from your engineer.

20 The Planner had asked about whether
21 the Applicant was going to be complying with
22 the standards in your ordinance. The
23 standards are 165-65(d)3 is where they are
24 found. Those standards primarily have to do
25 with the internal specifications related to

1 parking spaces and also aisle widths and
 2 circulation.
 3 BY MS. COFFEY:
 4 Q. And the Applicant is going to
 5 continue to comply with those, correct?
 6 A. That is correct.
 7 MS. COFFEY: And also, I would
 8 note, that a condition of our original
 9 approval was that all deliveries for our
 10 tenants would occur on our property before
 11 business hours. And the Applicant is
 12 continuing to propose to adhere to those
 13 requirements as well.
 14 BY MS. COFFEY:
 15 Q. So Mr. Chase, we would not have a
 16 situation where we have delivery trucks
 17 backing up onto Route 15 or somehow block 15
 18 to do their deliveries, correct?
 19 A. That is correct.
 20 CHAIRMAN LOURY: That is a
 21 condition in the first application?
 22 MS. COFFEY: Yes, sir.
 23 CHAIRMAN LOURY: They could not
 24 unload on 15. I remember putting that one in
 25 there.

1 MS. COFFEY: Yes, sir. So both
 2 that they -- they are not permitted to unload
 3 on 15 and also that they must do their
 4 deliveries not during business hours. So we
 5 wanted to make sure that we would avoid any
 6 conflict between the deliveries happening and
 7 patrons coming to the site and trying to park
 8 and, you know, go in and out while the
 9 deliveries are happening. And the Applicant
 10 intends to continue to comply with both of
 11 those conditions.
 12 MR. RATHJENS: The condition was
 13 the earliest time, because you have different
 14 times for the businesses.
 15 MS. COFFEY: I think that is
 16 [crosstalk] Right. Yes, sir. So it doesn't
 17 do us any good if --
 18 MR. RATHJENS: Right. One isn't
 19 open and --
 20 MS. COFFEY: Right. Mike's isn't
 21 open yet, so they get to do their deliveries,
 22 while City MD is already open. That defeats
 23 the purpose.
 24 So, yes, sir. Your point is all
 25 the deliveries must occur prior to any of the

1 tenants being open. Better said, thank you.
 2 And that continues to be the proposal.
 3 BY MS. COFFEY:
 4 Q. And again, Mr. Chase, those
 5 conditions can be applied with the site
 6 continuing to function from a circulation
 7 perspective, correct?
 8 A. That is correct.
 9 Q. Even without having any spillover
 10 traffic trying to route through the
 11 Bob's/ShopRite easement, correct?
 12 A. That is correct.
 13 Q. Thank you.
 14 MR. HARRIS: Question. So to make
 15 sure, it is your testimony then -- in your
 16 traffic impact study and your plan -- this is
 17 the question, that it only impacts the Diner
 18 property, the Bob's property and, of course,
 19 the easement -- not the easement, sorry -- the
 20 right-of-way for State Route 15, because
 21 obviously to make that new modification. Is
 22 that -- this is the only thing that encumbers,
 23 is that correct?
 24 THE WITNESS: That is correct.
 25 MR. HARRIS: So it does not

1 encumber the ShopRite property in any way, as
 2 far as this plan is concerned?
 3 MS. COFFEY: This plan does not
 4 need to encumber the ShopRite property in any
 5 way. It can function -- I was going to say
 6 self-sufficiently, but with the kind of caveat
 7 that we do need the Bob's property for parking
 8 and, of course, we need to access the Bob's
 9 property for parking.
 10 But other than the Bob's parking
 11 and access to that parking, the proposed plan
 12 is self-sufficient, and it can utilize its own
 13 driveways for ingress and egress.
 14 MR. HARRIS: Are there any other
 15 reasons that you would need to use any other
 16 property besides the Diner property, Bob's, or
 17 the right-of-way for Route 15 --
 18 MS. COFFEY: No, sir.
 19 MR. HARRIS: -- to accomplish
 20 what you are doing here right now?
 21 MS. COFFEY: No, sir.
 22 MR. HARRIS: I guess I don't see
 23 the issue.
 24 MS. COFFEY: This is precisely
 25 what we wanted to demonstrate to the Board

1 this evening. That we don't require them.
 2 MR. HARRIS: It just boggles my
 3 mind why ShopRite -- just for a second, it
 4 surprises me that ShopRite would send someone
 5 to be at this hearing, to be at this zoning
 6 hearing when we are looking at a solution to
 7 not encumber them with anything.
 8 CHAIRMAN LOURY: We haven't heard
 9 any testimony or anything from ShopRite.
 10 MR. HARRIS: Just off the top of
 11 my head, it is, sort of, an odd feeling.
 12 MR. BOSWORTH: Marc, the option is
 13 still there. The option is there. They could
 14 go all the way around ShopRite and come back
 15 out.
 16 MR. HARRIS: They could. I don't
 17 know why they would.
 18 MR. BOSWORTH: I can go to
 19 Denville that way too, but that is not the
 20 route I am going to take for the Diner. I
 21 could go to Walmart too for that matter. Are
 22 we going to bring them in? So I just don't
 23 see it. Okay. That is just -- I just wanted
 24 to make sure I clarified that key point.
 25 MS. COFFEY: Thank you. We are

1 happy to have Mr. Chase answer any other
 2 questions.
 3 CHAIRMAN LOURY: I have one easy
 4 question.
 5 The parking on Bob's, I know we
 6 have that easement. I remember it well. Is
 7 that signed to tell your customers to go there
 8 for extra parking or -- I don't know -- I
 9 probably should know, but I don't know.
 10 MS. COFFEY: Bear with me one
 11 second.
 12 CHAIRMAN LOURY: Sure.
 13 MR. ZAKIN: That -- I believe it
 14 was in one of the prior resolutions for --
 15 CHAIRMAN LOURY: That the signage
 16 that says go over here --
 17 MS. COFFEY: I believe signage --
 18 well, let me look before I say anything one
 19 way or the other. My recollection is that
 20 signage exists today, because spillover
 21 parking for the Diner is also at Bob's. I am
 22 looking to see if we have a detail of that
 23 signage.
 24 Yes. So if you look at the updated
 25 plans that were submitted on Page 14, there is

1 a sign detail that just says additional
 2 parking.
 3 MR. BOSWORTH: We were trying to
 4 find out where that was located, though.
 5 MS. COFFEY: Well --
 6 MR. BOSWORTH: I know what the
 7 sign looks like. It doesn't tell you where it
 8 is, though, without --
 9 MR. BIEHLER: I am trying to find
 10 the location on the map.
 11 MR. BOSWORTH: -- using a
 12 magnifying glass.
 13 MS. COFFEY: That is the
 14 challenge, especially as my eyes get older and
 15 older.
 16 If you look at the -- I am sorry.
 17 Go head, Mr. Chase.
 18 THE WITNESS: If you are looking
 19 at cross-access driveway from the Bob's parcel
 20 back to the Diner --
 21 MR. HARRIS: What page are you
 22 on? What sheet?
 23 THE WITNESS: I am looking at
 24 Sheet 5 of 22. If you looking just south of
 25 the right-turn egress-only driveway, that

1 driveway that connects to that additional
 2 overflow parking area, you will see a sign
 3 that is located just south of the crosswalk.
 4 And there is a leader to it. It says proposed
 5 additional parking sign.
 6 MR. RATHJENS: Directional sign.
 7 Proposed relocation of directional sign.
 8 THE WITNESS: Just below those
 9 directional -- relocated directional signs,
 10 you will see a leader. It is located just to
 11 the right of the actual crosswalk. It says
 12 proposed additional parking signs. And it is
 13 facing to the north, towards the parking area
 14 located adjacent to the eastern building
 15 facade.
 16 MR. BOSWORTH: So the logic is, as
 17 you come in, if you were in the front of the
 18 building, you would see that as you are going
 19 past, you could see these spots there?
 20 THE WITNESS: That is correct.
 21 MR. BOSWORTH: It points you to
 22 the back?
 23 THE WITNESS: Yes, sir.
 24 MR. BOSWORTH: But that doesn't
 25 necessarily point you into Bob's. That points

1 you back into the parking lot in the back.
 2 Do you share that or is that yours?
 3 MS. COFFEY: I am not --
 4 MR. BOSWORTH: The spots in the
 5 back that are still gray, are those all yours
 6 too?
 7 THE WITNESS: So those 15 parking
 8 spots that are located -- I would call them
 9 the eastern-most parking spots in that area.
 10 There are five in the aisle adjacent to the
 11 drivethrough, and then ten on the southern
 12 parking aisle. Those are our spots, those 15.
 13 CHAIRMAN LOURY: Right where you
 14 see the property line and lot line, there is
 15 like a median, for lack of a better word. So
 16 you can't get through there.
 17 MS. COFFEY: Right. So just to be
 18 super clear about it, those are the parking
 19 spaces that are subject to the easement
 20 between the Diner and Bob's. So they are on
 21 the Bob's parcel, but the subject property,
 22 meaning the Diner property, has the right to
 23 use those spaces.
 24 CHAIRMAN LOURY: All right. My
 25 next question. So it is good. We like

1 applications that are self-sufficient and
 2 everything is on that parcel and so forth. I
 3 get the plan.
 4 I am just going to ask point blank,
 5 is it the most optimal use, to have everyone
 6 directed down on south and not having any
 7 availability to go north?
 8 THE WITNESS: And again, Mr.
 9 Chairman, it was our position, it is the most
 10 conservative assessment. If we just assume
 11 that everyone is utilizing our existing access
 12 points. And again, the southerly drive will
 13 be amended to provide better channelization.
 14 It provides the most conservative
 15 assessment. If our driveways can function
 16 safely and efficiently with all of our traffic
 17 associated and oriented to them, then we know
 18 that this function -- this site can function,
 19 as Ms. Coffey mentioned, independent of any
 20 other access points that may or may not exist.
 21 CHAIRMAN LOURY: All right. That
 22 is all the questions I have. Does the Board
 23 have any other questions or comments?
 24 MR. ZAKIN: I just wanted to
 25 clarify that -- we mentioned some of the

1 conditions in the original resolution. You
 2 don't propose to change any of those
 3 conditions, correct?
 4 MS. COFFEY: No, sir.
 5 MR. ZAKIN: They will all
 6 remain --
 7 MS. COFFEY: Yes, sir.
 8 MR. ZAKIN: -- a part of the
 9 application.
 10 CHAIRMAN LOURY: The only other
 11 one, because, remember, we amended that
 12 application as well. We took out one of those
 13 conditions. So that would still have to
 14 remain, right? Didn't we take out the one?
 15 MS. COFFEY: I think, Mr.
 16 Chairman, you are referring to the, sort of,
 17 revision that the Court directed to the
 18 resolution. So we would, of course, comply
 19 with the Court's direction.
 20 CHAIRMAN LOURY: Yes.
 21 MS. COFFEY: But other -- I would
 22 say, subject to complying with the Court,
 23 which, of course, we would always do --
 24 MR. ZAKIN: I am not sure that
 25 was actually ever removed, because of the way

1 the Court progressed. But obviously, if it
 2 were, we would comply with that. I don't
 3 believe that it was, as things progressed,
 4 that that was one of the proposals in terms of
 5 the negotiation.
 6 MS. COFFEY: To put a finer point
 7 on it, Mr. Chairman, I think you are referring
 8 to there was language in the original
 9 resolution that talked about -- that, sort of,
 10 observed that there is this easement -- right,
 11 it observed that there is an easement between
 12 Bob's and ShopRite, which continues to be
 13 accurate. There is an easement between Bob's
 14 and ShopRite, but we would say we don't
 15 require use of it, nor do we have the right to
 16 use it.
 17 So to the extent that a new
 18 resolution is prepared, as a result of this
 19 application, we would not be looking for any
 20 kind of condition to permit us to use it. We
 21 don't need to use it.
 22 MR. ZAKIN: In fact, just to
 23 clarify -- and certainly someone can correct
 24 me. I believe that the Judge, in his ruling,
 25 in granting our summary judgement motion,

1 looked at that easement and was initially
2 concerned that we might have been imposing a
3 restriction, which we weren't allowed to do,
4 but he found that that was something that was
5 preexisting. And we just, as a condition,
6 asked to memorialize a preexisting condition
7 in the new deed. And that was one of his
8 reasoning -- points of reasoning for granting
9 our summary judgment.

10 MS. COFFEY: Mr. Zakin, I am just
11 going to clarify, because there is --
12 condition can be used two different ways in
13 our, kind of, land use vocabulary.

14 So when you are talking about that
15 you are memorializing a preexisting condition,
16 you mean the preexisting nature of the
17 properties and what they are subject to. Not
18 that -- we often talk about conditions that
19 are things that the Applicant must do in order
20 to perfect its approval.

21 So just for the sake of being super
22 clear, what we are talking about is, we all --
23 I think everybody agrees there currently
24 exists, as a condition of the title of the
25 properties, an easement between the Bob's

1 application does -- if it does or doesn't or
2 how it complies with the Master Plan.

3 MS. DYKSTRA: Thank you, Mr.
4 Chair.

5 I submitted a report, dated June 9,
6 2024, and reviewed the basics of the
7 Application from that standpoint in terms of
8 it being in a B-2 Regional Business District,
9 that the Applicant was presenting the proposed
10 project, which was previously approved, that
11 the uses are permitted uses; and therefore,
12 are consistent with the Master Plan.

13 So when we look at permitted uses,
14 even though this is an approved application,
15 it could have been approved for uses that
16 weren't permitted or something like that,
17 where it wouldn't be promoting, necessarily,
18 the Master Plan without some caveats.

19 But in this case, it is in the B-2
20 District. All the uses that were previously
21 proposed, continued to be proposed, which were
22 fast-casual and medical, office-type uses.
23 And those are permitted within the Zone and
24 promote and are consistent with the Master
25 Plan.

1 property and the ShopRite property. But there
2 is not a condition, meaning a requirement,
3 that the Applicant needs to satisfy, where the
4 Applicant would need to somehow gain rights to
5 access the ShopRite property or utilize the
6 ShopRite property for access, which I think --
7 we don't really need to get into what the
8 prior resolution had said, but I think what we
9 would say is we don't believe any condition
10 with any -- condition, meaning requirement
11 upon the Applicant, would be necessary for
12 access through the ShopRite property because
13 we don't require it in order to function
14 safely and efficiently.

15 CHAIRMAN LOURY: Good.

16 MS. COFFEY: Hopefully that was
17 clear.

18 CHAIRMAN LOURY: All right. I
19 will hand it over to our experts. And
20 Jessica, what I will ask you to do is -- as
21 you know from being with is for so long, I
22 hang my hat a lot on how an application
23 complies to the Master Plan.

24 So I would like to get your
25 thoughts and input on how this amended

1 In large part, the Application
2 meets the standards of the Zone. There was an
3 impervious coverage variance granted; but
4 otherwise, it met all the standards of the
5 Zone. They are not requesting any new
6 variances. So it is really about looking at
7 the circulation on the site.

8 I just requested, as the Applicant
9 noted, that they talk about if the traffic
10 circulation was adjusting anything with
11 respect to any of the design standards. And
12 they said, no, they are going to still meet
13 all those design standards as they did with
14 the prior application.

15 So in my opinion, it continues to
16 meet the Zoning Ordinance and continues to
17 meet the goals and the objectives of the
18 Master Plan for this zone.

19 CHAIRMAN LOURY: Thank you.
20 Anything else?

21 MS. DYKSTRA: I don't have
22 anything further now.

23 CHAIRMAN LOURY: Thank you.
24 Chris?

25 MR. BORINSKI: A question about

1 the permitting for the site. You submitted
 2 for a DOT access permit. And what is the
 3 status of that? I understand there were some
 4 plan revisions made, which were incorporated
 5 into the approved site plans.
 6 What were those revisions? Does
 7 DOT have any further comments or revisions on
 8 the site, the project?
 9 THE WITNESS: That is a great
 10 question. So nothing that is going to
 11 substantially change the layout of the site.
 12 We are still finalizing the DOT access
 13 permitting process, but they did conceptually
 14 approve the access points in their current
 15 configuration that is represented before you
 16 on the site plan.
 17 MR. BORINSKI: Is this typical
 18 for DOT review, I guess, the type of comments
 19 that they had and also the review time?
 20 THE WITNESS: The review time,
 21 unfortunately, yes, is typical. And the type
 22 of comments, it is certainly something
 23 consistent that we would see on a major access
 24 permit application.
 25 MR. BORINSKI: One other

1 taking credit, what it means is you didn't
 2 subtract out the trips that would be
 3 associated from the Diner, when you were
 4 figuring out the traffic impact.
 5 Instead, you are taking all the
 6 trips associated with our use, without netting
 7 out the trips that were associated with the
 8 Diner, and figuring out what our traffic
 9 impact would be. I just wanted to clarify
 10 what taking credit means.
 11 THE WITNESS: I apologize if that
 12 wasn't clear. But, yes, we didn't take a
 13 reduction in traffic for what is currently
 14 generated by the Diner or what could
 15 potentially be generated by the Diner.
 16 As Chris notes, we typically do on
 17 a lot of developments and a lot of traffic
 18 impact studies. We will usually provide a
 19 comparison and take credit wherever we can.
 20 But again, we wanted to present the worst-case
 21 scenario, and that is what we did.
 22 MR. BORINSKI: So the Diner peak
 23 trip, peak trips per hour is 75 to 80. What
 24 would be the peak hour then for the proposed?
 25 THE WITNESS: So comparatively

1 question. I guess you talked about, you did
 2 not take credit for the existing traffic trips
 3 for the Diner. Can you provide any
 4 information on how that -- how the Diner
 5 traffic would relate to the proposed site with
 6 the retail and medical?
 7 THE WITNESS: As far as a
 8 comparative trip generation?
 9 MR. BORINSKI: Correct.
 10 THE WITNESS: Yes, certainly. So
 11 -- and again, if we are just talking -- if --
 12 you want to compare apples to apples, trip
 13 generation to trip generation perspective --
 14 MR. BORINSKI: Yes.
 15 THE WITNESS: -- or -- the
 16 Diner, for instance, would generate anywhere
 17 between 75 and approximately 80 trips during
 18 the peak hour, based on data posted by the New
 19 Jersey Department of Transportation. So
 20 comparatively, again, you know, we didn't take
 21 any credit for that, but that should reduce
 22 our trip generation.
 23 MS. COFFEY: I am just going to
 24 pause. When we are saying, "taking credit", I
 25 just want to be clear. So when we say we are

1 speaking, the proposed is around 215 to 225.
 2 MR. BORINSKI: So then if you
 3 subtract the two, then that is really what the
 4 new traffic is?
 5 THE WITNESS: Correct.
 6 MS. COFFEY: Can you do that math
 7 quick?
 8 THE WITNESS: I can do that --
 9 MR. BOSWORTH: It is about 140.
 10 MS. COFFEY: I majored in history.
 11 So help us out.
 12 MR. BOSWORTH: 140 something.
 13 THE WITNESS: That is correct.
 14 MR. BORINSKI: Did the DOT have
 15 any comment on the number of trips?
 16 THE WITNESS: They did not. They
 17 concurred, as far as the proposed development.
 18 MR. BORINSKI: That is the
 19 questions that I have.
 20 CHAIRMAN LOURY: All right. Thank
 21 you.
 22 I am going put him on the spot and
 23 we are lucky enough to have the chief of
 24 police here with us. So I am going to ask
 25 Chief Young, to see if he has any comments or

1 questions for the Amended Application.
 2 MR. ZAKIN: For the traffic.
 3 CHIEF DAVID YOUNG: Thank you.
 4 Dave Young, Chief of Police.
 5 I reviewed the new Application, the
 6 modified Application, and, you know, back in
 7 1986, when the Diner opened, it was a similar
 8 egress as proposed by the new application.
 9 They had no other access until 2011,
 10 approximately, and it operated adequately at
 11 that time. They were very successful until
 12 they made some changes on the property. So I
 13 believe it will work. That is my comment.
 14 CHAIRMAN LOURY: Thank you.
 15 Does the Board have any other
 16 questions before I open it --
 17 MR. HARRIS: Since he just gave
 18 testimony, you have to swear him in, don't
 19 you?
 20 [Cross-talk]
 21 MR. ZAKIN: Certainly the -- this
 22 was a time for questions. There was some
 23 testimony there. So that is true.
 24 Did you have any questions, in
 25 particular, for the --

1 for Glass Paramus for all of their --
 2 MR. ROBERT ALLEN: Correct.
 3 MR. ZAKIN: -- or just for this.
 4 MR. ROBERT ALLEN: For Glass
 5 Paramus.
 6 MR. ZAKIN: Okay. Please proceed.
 7 MR. ROBERT ALLEN: So currently,
 8 when you leave the Diner, you can only make a
 9 right-hand turn, is that correct?
 10 MR. ZAKIN: Just pausing.
 11 Technically, because your -- Mr. Van Eck, you
 12 are the attorney here so -- and he works for
 13 your client, do you want him to -- do you want
 14 to introduce him as a witness? Do you want to
 15 speak on his behalf? How do you want to
 16 handle this, since you are here representing
 17 the --
 18 MR. VAN ECK: If you only have
 19 questions, it is up to the Board. I don't
 20 mind him asking questions.
 21 CHAIRMAN LOURY: If you don't mind
 22 then, it is only questions.
 23 MR. VAN ECK: It is up to the
 24 Board how you --
 25 MR. ROBERT ALLEN: Just questions.

1 CHIEF DAVID YOUNG: No, I don't
 2 have any questions.
 3 MR. ZAKIN: We will just reserve
 4 -- now is not the time for testimony.
 5 CHAIRMAN LOURY: All right. And
 6 then so -- I know there is a bunch of other
 7 folks here -- not public, but attorneys. Do
 8 any other attorneys --
 9 MR. ZAKIN: Well, if anyone --
 10 member of the Public have questions, they can
 11 ask -- be it an attorney or anyone else here.
 12 CHAIRMAN LOURY: I will open it up
 13 to the Public for any questions for any of the
 14 testimony that was provided already, earlier
 15 tonight.
 16 Yes, sir?
 17 MR. ROBERT ALLEN: Hi, Robert
 18 Allen. I am actually the property manager for
 19 ShopRite. So I have a little bit of
 20 familiarity with the traffic flow there.
 21 Quick question. So currently, when
 22 you are leaving the Diner --
 23 MR. ZAKIN: Just to be clear,
 24 just in terms of identifying yourself as the
 25 property manager, are you the property manager

1 MR. ZAKIN: So you have questions
 2 for --
 3 MR. ROBERT ALLEN: The traffic
 4 expert.
 5 MR. ZAKIN: Okay.
 6 MR. VAN ECK: As do I.
 7 MR. ZAKIN: Really, you should
 8 have coordinated. It should really be through
 9 you, since you are here representing them. If
 10 you want to -- if someone else wants to ask
 11 questions, do you want to take a moment to
 12 confer?
 13 MR. VAN ECK: Take a two-minute
 14 break?
 15 MR. ZAKIN: If you want to step
 16 out in the hallway, we could take questions
 17 from other members of the Public.
 18 CHAIRMAN LOURY: All right. I
 19 will open it up to the -- still with the
 20 Public. Does anybody have any questions, from
 21 the Public?
 22 MS. COFFEY: Mr. Chairman, while
 23 we are waiting, if it is all right, I may step
 24 out and use your restroom.
 25 CHAIRMAN LOURY: Yes.

1 MS. COFFEY: If there is other
 2 business, I am okay.
 3 (Hearing recessed at 8:15 p.m., and
 4 resumed at 8:18 p.m.)
 5 CHAIRMAN LOURY: I was remiss when
 6 Bill -- when our Mayor walked in. So as --
 7 Mayor Chegwiddden is sitting in the back. He
 8 is on the Board, but he is sitting in the
 9 back, there is no room up here. So I just
 10 wanted to acknowledge that.
 11 We were at questions for the
 12 Public.
 13 Mr. Van Eck?
 14 MR. VAN ECK: Thank you. A few
 15 questions.
 16 Good evening, Mr. Chase.
 17 You had mentioned briefly that
 18 there were some square footage changes between
 19 the internal spaces of the building, right?
 20 THE WITNESS: That is correct.
 21 MR. VAN ECK: Did the footprint of
 22 the building change in any way?
 23 THE WITNESS: It is my
 24 understanding the footprint of the building
 25 remained the same. As I mentioned, there was

1 just some delineation, internal to the
 2 building, as far as the square footage is
 3 concerned.
 4 MR. VAN ECK: Thank you. There
 5 was -- I believe you had testified about right
 6 turns coming out of the site onto Route 15.
 7 And I think you said there was a 27-second
 8 delay. Is that the right number?
 9 THE WITNESS: That is correct.
 10 MR. VAN ECK: And you believe
 11 that was two cars?
 12 THE WITNESS: So there is two
 13 different components. There is the average
 14 vehicle delay, which I testified to, and that
 15 was the 27 seconds that you just referenced.
 16 The software also calculates the
 17 95th percentile queue length, which, again,
 18 refers to 95 percent of the time there will be
 19 this many cars or less waiting there, and that
 20 was calculated to be two vehicles.
 21 MR. VAN ECK: How did you come to
 22 that figure? Is it based on the square
 23 footage of each type of use? How do you
 24 determine how many cars will be there, so that
 25 you can take an average to see how many would

1 be waiting in the queue?
 2 THE WITNESS: That is a great
 3 question. So we take the trip-generation
 4 calculation, as you mentioned, based on the
 5 size and type of use proposed. And then we do
 6 -- we run it through the analytical software
 7 called Synchro. That is the name of the
 8 software that we utilize to perform the
 9 traffic analysis.
 10 We input the existing traffic
 11 volumes on the adjacent roadway network. We
 12 surcharge the trip generations associated with
 13 the development on there. It analyzes the
 14 operational conditions of the driveway. And
 15 it performs this calculation and gives us that
 16 number.
 17 MR. VAN ECK: If there are two
 18 cars, can you show us where they would queue
 19 to wait to get out?
 20 THE WITNESS: Certainly. There
 21 are -- again, here is the stop line associated
 22 with the right-turn egress-only driveway. So
 23 depending on where the vehicle is coming from,
 24 if it is coming from the drivethrough egress
 25 or if it is coming from the parking adjacent

1 to the eastern facade of the building, there
 2 is one vehicle that can sit in the channelized
 3 right-turn driveway. And then that second
 4 vehicle can either wait at the stop line here.
 5 It could potentially wait at the stop line
 6 exiting the drivethrough area, again,
 7 proceeding to the right-turn egress-only
 8 driveway.
 9 As I mentioned, it is -- 95 percent
 10 of the time, it is two vehicles or less. So
 11 that is not stating that there is always going
 12 to be two vehicles waiting there. We
 13 typically refer to that as a worst-case
 14 scenario, from a traffic engineering
 15 perspective.
 16 MR. VAN ECK: Just a quick
 17 question. You guys were looking at a 22-sheet
 18 set of plans, is that right? It was like 22
 19 sheets?
 20 THE WITNESS: Yes, sir.
 21 MR. VAN ECK: Can you tell me
 22 what the title of that is, and its last
 23 revision date?
 24 THE WITNESS: It is the
 25 preliminary and final site plan for Wharton 15

1 Developers, LLC. And it is last revised
 2 August 17, 2023.
 3 MR. VAN ECK: Was that before or
 4 after the Board approved the Application?
 5 THE WITNESS: That was after,
 6 sir.
 7 MR. VAN ECK: If someone wants to
 8 go northbound leaving this site, what do they
 9 have to do to go north?
 10 THE WITNESS: Depending on where
 11 they are oriented to, if it is Route 80, you
 12 know, you can take Mount Pleasant Avenue to
 13 Mount Hope. There is a full interchange with
 14 Route 80 in that direction.
 15 If they just wanted to purely go
 16 north on Route 15, underneath Interstate 80,
 17 they can, again, use Mount Pleasant Avenue and
 18 the adjacent roadway network directly off of
 19 Mount Pleasant to execute a U-turn to then
 20 come back and go north on Route 15.
 21 If they are destined to Main
 22 Street, Dewey, somewhere in that area, the
 23 neighborhood, which is to the -- I will call
 24 it to the southwest of the subject property,
 25 you can continue south on Route 15, utilize

1 turning or whatever he said. There is no
 2 testimony on that, so that is not --
 3 MR. ZAKIN: If it is a new
 4 application, you can't reference -- I mean,
 5 you can't reference --
 6 MR. VAN ECK: We are good.
 7 Were you the author of the traffic
 8 analysis that was presented tonight?
 9 THE WITNESS: I was not. Mr.
 10 Taylor was. But again, I reviewed it in
 11 detail and am very familiar with the
 12 Application.
 13 MR. VAN ECK: Other than that
 14 report, are there any physical changes to the
 15 site plan on this amended application?
 16 THE WITNESS: There are not, sir.
 17 MR. VAN ECK: So when we say that
 18 the circulation pattern changed, there is no
 19 circulation change on the site itself,
 20 correct?
 21 THE WITNESS: That is correct,
 22 the circulation patterns remain consistent
 23 with the prior site plan.
 24 MR. VAN ECK: Has there been any
 25 changes to the signage on site, as part of

1 Route 46, and you can get back that way.
 2 MR. VAN ECK: Does Mr. Taylor
 3 work with Dynamic Engineering?
 4 THE WITNESS: He does.
 5 MR. VAN ECK: And he is a traffic
 6 engineer, correct?
 7 THE WITNESS: Yes.
 8 MR. VAN ECK: And you are aware
 9 he testified at the prior application?
 10 THE WITNESS: I am.
 11 MR. VAN ECK: And he referenced a
 12 term called trip training. Do you know what
 13 that means?
 14 THE WITNESS: Trip training?
 15 MR. VAN ECK: That is what he
 16 claims. It is a dual purpose or dual use and
 17 it is like trip training.
 18 THE WITNESS: I would have to see
 19 the context in which that was utilized, sir.
 20 CHAIRMAN LOURY: I am just going
 21 to have to ask to keep the questions and
 22 testimony that the Applicant --
 23 MR. ZAKIN: This is a new
 24 application.
 25 CHAIRMAN LOURY: There is no trip

1 this amended application?
 2 THE WITNESS: There is not, sir.
 3 MR. VAN ECK: So the only change
 4 we have is your testimony about traffic
 5 impacts?
 6 THE WITNESS: And the amended
 7 traffic impact study that was submitted to the
 8 Borough.
 9 MR. VAN ECK: Which is what your
 10 testimony this evening is based upon?
 11 THE WITNESS: Yes.
 12 MR. VAN ECK: You had testified
 13 that the site could function this way, and you
 14 are here to show that it could function with
 15 only using these two points of ingress and
 16 egress, correct?
 17 THE WITNESS: Correct.
 18 MR. VAN ECK: In your expert
 19 opinion, how will the site function? Are you
 20 saying that no one is going to travel across,
 21 through Bob's, and up through the ShopRite
 22 property?
 23 THE WITNESS: Again, it is my
 24 testimony that the site will function
 25 adequately through only utilizing the access

1 points solely contained on it -- within its
 2 property. You are correct, sir, there is no
 3 physical barrier precluding anyone from making
 4 that movement. But as I testified to this
 5 evening, it is my professional opinion, there
 6 is no reason for someone to make that
 7 movement.
 8 MR. VAN ECK: Are you aware that
 9 there is signage onsite that directs people
 10 northbound across the Bob's property and then
 11 out through ShopRite? That there is actually
 12 a sign onsite that says to go north on 15 to
 13 go through Bob's?
 14 MS. COFFEY: Mr. Van Eck, what
 15 property are you saying that signage is on? I
 16 am not clear.
 17 MR. VAN ECK: There are two
 18 properties in the application tonight,
 19 correct, Bob's and the Diner, correct?
 20 MS. COFFEY: Which one are you
 21 talking about is having signage?
 22 MR. VAN ECK: There is a sign
 23 located right here in the island.
 24 MS. COFFEY: So you are referring
 25 to the Diner property?

1 MR. VAN ECK: Diner property.
 2 Are you aware of that sign?
 3 THE WITNESS: That sign will not
 4 continue to be in place in the proposed
 5 conditions. That sign will be eliminated.
 6 MR. VAN ECK: Okay. So you are
 7 now changing your application to remove
 8 signage?
 9 THE WITNESS: No. It wasn't on
 10 the prior application. That is an existing
 11 condition that is currently in the field.
 12 MR. VAN ECK: And you are aware
 13 that the prior resolution approval says that
 14 all signage existing onsite shall remain. Are
 15 you aware of that condition of this Board's
 16 resolution?
 17 THE WITNESS: Typically, the
 18 signage will reflect what is proposed in the
 19 site plan. Not all existing signage will
 20 remain. Certainly signage that exists today
 21 will be in conflict with signage that is
 22 proposed in the site plan with -- with the
 23 condition of the subject property.
 24 MR. VAN ECK: And it is your
 25 position -- and you have indicated, you are

1 not closing off the cross access points
 2 between the Diner and Bob's, correct?
 3 THE WITNESS: That is correct.
 4 MR. VAN ECK: That is all the
 5 question I have. Thank you.
 6 CHAIRMAN LOURY: Thank you.
 7 All right. Does anyone else from
 8 the Public have any questions for the
 9 testimony that was given?
 10 All right. Hearing none. I will
 11 close it to the Public.
 12 MS. COFFEY: Thank you, Mr.
 13 Chairman.
 14 It sounded like there were some
 15 other folks who wanted to provide testimony on
 16 the Application, Mr. Chairman, for example,
 17 the police chief. Do we need to make room for
 18 them --
 19 CHAIRMAN LOURY: You are done?
 20 MS. COFFEY: I am done. I have no
 21 further questions for Mr. Chase.
 22 MR. ZAKIN: Do you have any
 23 other --
 24 MS. COFFEY: No other witnesses.
 25 MR. ZAKIN: Okay. So you are --

1 you completed your --
 2 MS. COFFEY: We have.
 3 MR. ZAKIN: Okay.
 4 CHAIRMAN LOURY: So now I will
 5 open it up to any members of the Public that
 6 have any testimony, any further questions,
 7 testimony that they want to provide for the
 8 Board's benefit or for anybody's benefit. I
 9 will open it up to the Public for general
 10 testimony now.
 11 MR. ZAKIN: We will swear you in
 12 and you can proceed with testimony on this
 13 amended application.
 14 I will swear you in, and then state
 15 your name and affiliation. Raise your right
 16 hand.
 17 (ERIC NEGRI, ESQUIRE, NORRIS
 18 McCLAUGHIN was sworn in.)
 19 MR. ZAKIN: Okay. Proceed.
 20 MR. ERIC NEGRI: Eric Negri,
 21 Norris McLaughlin, on behalf of NNN REIT, LP,
 22 which is the property neighboring the Diner
 23 property.
 24 I am here only to comment for the
 25 record that this amended application or this

1 amended site plan is not needed and that the
 2 initial plan that was approved was properly
 3 approved and that the access that was
 4 contemplated in that application was proper
 5 under the existing grievance and uses of
 6 property.
 7 MR. ZAKIN: Thank you.
 8 CHAIRMAN LOURY: Thank you.
 9 All right. Anybody else from the
 10 Public want to comment, testify rather?
 11 MR. HARRIS: I do have a
 12 question. Since Mr. Van Eck is representing
 13 the objector and they spoke originally, can I
 14 ask a question of Mr. Van Eck?
 15 MR. VAN ECK: You can ask it. I
 16 don't have to answer it.
 17 MR. ZAKIN: You certainly can.
 18 If you would like to -- based on the
 19 circumstances, you can.
 20 MR. HARRIS: Yes, I guess I do.
 21 Does any use that is proposed on
 22 this application or the previous -- let's talk
 23 about this application. Does any use that is
 24 proposed on this application by law, strictly
 25 speaking, the way it is laid out, does it

1 CHIEF DAVID YOUNG: David Young,
 2 Chief of Police, Borough of Wharton.
 3 I had reviewed the Application, the
 4 new Application and the previous Application.
 5 And like I had mentioned earlier, the property
 6 had existed previously, very successfully, in
 7 my opinion, with egress coming off of 15
 8 solely and exiting right onto 15 southbound.
 9 Again, I think it operates
 10 successfully again like that. And if anybody
 11 has any questions --
 12 MR. ZAKIN: And by previously,
 13 you mean prior to the cut-through?
 14 CHIEF DAVID YOUNG: I believe it
 15 was in approximately 1986 to 2011, 2012,
 16 before the cut-throughs were put in on the
 17 Bob's property.
 18 Prior to that, there was only one
 19 way in off of 15 southbound -- it was a
 20 left-hand turn there also -- into the Diner
 21 property, but you could only exit the Diner
 22 property and back onto 15, you could only make
 23 a right.
 24 So that was in existence for
 25 20-something years on that property. And I

1 encumber the ShopRite property?
 2 MR. VAN ECK: I am not going to
 3 make any comments this evening.
 4 MR. HARRIS: I figured.
 5 MR. VAN ECK: I didn't provide
 6 any testimony. I wasn't sworn in. I am here
 7 to ask questions and I gave a legal argument
 8 on the amended --
 9 MR. HARRIS: I understand.
 10 MR. VAN ECK: -- jurisdiction.
 11 MR. ZAKIN: And then, Chief, did
 12 you want to -- you don't have to testify.
 13 Would you like to testify?
 14 CHIEF DAVID YOUNG: Whatever the
 15 Chairman or the Board would like.
 16 CHAIRMAN LOURY: I think we
 17 heard --
 18 MR. ZAKIN: Since you did before,
 19 why don't we swear you in and -- so that way
 20 you -- you could give your statement properly
 21 sworn.
 22 (CHIEF DAVID YOUNG, WHARTON POLICE
 23 DEPARTMENT, was sworn in.)
 24 MR. ZAKIN: Please state your
 25 name and affiliation and give your testimony.

1 think it can work again that way, if it has
 2 to.
 3 MR. ZAKIN: And you are currently
 4 the Chief. And how long have you been
 5 affiliated with Wharton?
 6 CHIEF DAVID YOUNG: I have been
 7 with Wharton since August of 1995.
 8 MR. ZAKIN: So you were there
 9 prior to the Diner opening. So you have been
 10 there throughout this whole period?
 11 CHIEF DAVID YOUNG: No, I was --
 12 the Diner was already open at that point, but
 13 the ShopRite was not developed originally.
 14 MR. ZAKIN: I am sorry. It was
 15 '86.
 16 CHIEF DAVID YOUNG: There was
 17 other business in the back. There used to be
 18 a roller rink where Bob's is now, prior to it
 19 being Branch Brook. There were other
 20 businesses on 15 at that time, but not the
 21 current, like, setup that it is now, but it
 22 is --
 23 MR. ZAKIN: So ShopRite opened
 24 approximately 2000, I think, and so you were
 25 there prior to that?

1 CHIEF DAVID YOUNG: Yes.
 2 MR. ZAKIN: Thank you.
 3 Anybody else from the Public have
 4 any testimony?
 5 Yes, sir.
 6 (PETERSON ERICS was sworn in.)
 7 MR. PETERSON ERICS: Peterson
 8 Erics. I own the property where the
 9 Townsquare Diner is.
 10 We opened the Diner actually 1987,
 11 my family did. It was accessed -- DOT has
 12 come to us several times to change the access,
 13 the ins and outs. Originally the entrance was
 14 on the other side where the exit is and
 15 vice-versa.
 16 About 20 years ago, they changed
 17 the exit, where you couldn't make a left-hand
 18 turn onto Route 15 north. You had to make a
 19 right-hand turn only. So for a good ten years
 20 or so, it was a right-hand turn out onto 15
 21 south.
 22 When Bob's was being built, they
 23 had approached us to use the easement -- to
 24 create an easement actually -- to access our
 25 property to their property, because they

1 the company that developed the property.
 2 MR. ERIC NEGRI: And when around
 3 was that?
 4 MR. PETERSON ERICS: I am getting
 5 old, so my memory is kind of fuzzy. I think
 6 it was around ten years ago. It was 2014 or
 7 2016. I don't want to give exact dates. I am
 8 not sure.
 9 MR. ZAKIN: I believe they were
 10 the first ones that have some of the
 11 resolutions here. And I believe they were --
 12 the name on the first resolution for Bob's was
 13 Morris Ventures. And they had two
 14 applications and I have -- it was -- they had
 15 one -- they had -- the first one was, I think,
 16 for signage.
 17 Yes, the first one was for signage
 18 and it was bifurcated and that one was
 19 approved or -- was approved in July 2014 and
 20 then there was a -- I am sorry.
 21 The first one, I think, was just
 22 for the -- was for the site plan. And then
 23 there was one for signage. It was bulk
 24 variances, site plan, and then the -- yes.
 25 So the first one was November 2015.

1 needed the easement also to access their
 2 property. They were landlocked.
 3 I was here in front of the Planning
 4 Board, and I testified then in front of the
 5 Planning Board, when Bob's was being built,
 6 that the benefit of that easement benefits
 7 Wharton. Not only from the Diner's
 8 perspective, Bob's and also ShopRite.
 9 We see ShopRite vehicles coming
 10 through our property all day, every day,
 11 including the owners of ShopRite using the
 12 access point, and I have that on video. And I
 13 have pictures as well, which I have submitted
 14 to my attorney.
 15 So the easement benefits the Town.
 16 It made things much safer on Route 15 and it
 17 was a convenience to, you know -- you know,
 18 everybody in town.
 19 Does anybody have any questions for
 20 me?
 21 MR. ERIC NEGRI: So you said that
 22 someone from the Bob's property approached you
 23 with respect --
 24 MR. PETERSON ERICS: It was Morris
 25 Ventures, I believe, back then, the name of

1 And then the second one was December 2015.
 2 MR. VAN ECK: I have a question,
 3 if I may.
 4 Are you aware that patrons of your
 5 diner cut through the ShopRite property to go
 6 to East Dewey.
 7 MR. PETERSON ERICS: Some patrons
 8 do, but some patrons also use it to access
 9 ShopRite. So I am aware it goes both ways,
 10 not just one way.
 11 MR. VAN ECK: If you want to go
 12 northbound from your property, leaving the
 13 Diner property, how would you go to go
 14 northbound?
 15 MR. PETERSON ERICS: It depends.
 16 It depends exactly where I am going north.
 17 There are times when I would use the ShopRite
 18 property, yes.
 19 MR. VAN ECK: You had indicated
 20 you had seen ShopRite vehicles, I guess, using
 21 your site. Describe that to me a little more.
 22 MR. PETERSON ERICS: Do you want to
 23 see it on video? I have one from today.
 24 MR. VAN ECK: Sure.
 25 MS. COFFEY: How are we --

1 MR. PETERSON ERICS: I am sorry.
 2 Let me put it this way. There is a Glass
 3 Gardens, Inc., truck that goes through my
 4 property almost every day, and he doesn't do
 5 it safely. He goes about 25, 30 miles an
 6 hour, if I had to guess. He goes pretty
 7 quick. Glass Gardens, which I believe is
 8 ShopRite.
 9 MR. VAN ECK: And what type of
 10 vehicle is that?
 11 MR. PETERSON ERICS: It is a box
 12 truck, and there is also vans.
 13 MR. VAN ECK: So multiple
 14 vehicles?
 15 MR. PETERSON ERICS: There is
 16 multiple vehicles.
 17 I also see the bread trucks. I
 18 have had a ShopRite -- 16 little rig getting
 19 stuck at the billboard pulling out, trying to
 20 use the access and get stuck one night,
 21 because he cut the corner too tight.
 22 I had another 16 rig -- 16 ShopRite
 23 rig run over my signs on the property, which
 24 ShopRite reimbursed us to fix those signs.
 25 So, yes, there are many times you

1 easement that gives them rights to access your
 2 property, does it?
 3 MR. PETERSON ERICS: From what I
 4 understand, when we did the easement in 2014,
 5 2015, whenever it was, it is the easement on
 6 the egress, so it was going through the
 7 Planning Board and done legally.
 8 The easement grants us access to
 9 the property next to us. Their easement
 10 grants everybody access to the property next
 11 to them. So I thought, through the easements,
 12 everybody has cross-access.
 13 MR. ZAKIN: That is why the
 14 easement next to you -- you mean to the Bob's,
 15 and by the easement next to them, you mean to
 16 the ShopRite?
 17 MR. PETERSON ERICS: Yes.
 18 MS. COFFEY: But you are not aware
 19 of a contract between you and ShopRite that
 20 gives them right to go onto your property?
 21 MR. PETERSON ERICS: There is no
 22 contract between ShopRite or us.
 23 MS. COFFEY: Thank you.
 24 MR. PETERSON ERICS: I would like
 25 to say also that there are customers that do

1 can tell specifically they are ShopRite
 2 vehicles.
 3 MR. VAN ECK: Thank you.
 4 MR. HARRIS: I have a follow-up
 5 question to that.
 6 Would it be easier for ShopRite
 7 just to own your property and operate through
 8 that, do you think? I mean, based upon the
 9 amount of traffic and -- do you think that --
 10 do you think it would be easier for ShopRite
 11 just to --
 12 MR. PETERSON ERICS: I own a diner
 13 right now. I am not speculating on what
 14 ShopRite wants to do. There is a contract
 15 that I have.
 16 MR. HARRIS: Right.
 17 MR. PETERSON ERICS: I don't know.
 18 I don't know what -- ShopRite never approached
 19 me about this. They have never come to us. I
 20 am not sure.
 21 MS. COFFEY: May I just ask one
 22 question, too?
 23 CHAIRMAN LOURY: Sure.
 24 MS. COFFEY: Sir, just to be
 25 clear, though, ShopRite does not have an

1 park on our property and walk over to
 2 ShopRite, to do their shopping and come back
 3 to our place to eat. So -- and that does go
 4 both ways, I am sure.
 5 CHAIRMAN LOURY: Any other
 6 questions for any of the testimony?
 7 MR. VAN ECK: I would like to
 8 call Robert Allen.
 9 CHAIRMAN LOURY: Pardon me?
 10 MR. VAN ECK: I would like to
 11 call Robert Allen as a witness.
 12 MR. ZAKIN: We are already at the
 13 testimony portion.
 14 MR. VAN ECK: That is what I am
 15 calming him for, testimony.
 16 MR. ZAKIN: But you are not a
 17 party to this Application.
 18 MR. VAN ECK: I am an objector
 19 and I am putting on an objector's case. I am
 20 allowed to call witnesses. I mean, if the
 21 Board wants to vote and tell me I
 22 can't call --
 23 MR. ZAKIN: See, I asked you. You
 24 said you didn't have any witnesses.
 25 MR. VAN ECK: Well, I do now.

1 MR. ZAKIN: Okay. So you would
 2 like to -- who would you like to call and for
 3 what purpose?
 4 MR. VAN ECK: To rebut the
 5 testimony of the Diner.
 6 MR. ZAKIN: But who would you
 7 like to call to rebut the testimony of the
 8 Diner?
 9 MR. VAN ECK: Robert Allen.
 10 MR. ZAKIN: And identify who that
 11 is again for us?
 12 MR. VAN ECK: Sure. It is this
 13 gentleman right here in the blue blazer.
 14 MR. ZAKIN: What is his title or
 15 affiliation?
 16 MR. VAN ECK: I would be happy to
 17 swear him in and have you -- have him explain
 18 his position for you.
 19 MR. ZAKIN: Tell us first.
 20 MR. VAN ECK: He is a
 21 representative of ShopRite.
 22 MR. ZAKIN: All right. Please
 23 proceed.
 24 CHAIRMAN LOURY: Do we need to
 25 check with the Applicants? I mean, this is

1 position? What company do you work for?
 2 A. I work for Glass Gardens.
 3 Q. Is Glass Gardens the owner of the
 4 ShopRite that is adjacent to the subject
 5 property?
 6 A. Yes.
 7 Q. And what is your role with Glass
 8 Gardens?
 9 A. I manage all of their real estate.
 10 Q. And as part of the management of
 11 that real estate, do you have an opportunity
 12 to visit the site on a regular basis?
 13 A. Yes.
 14 Q. How many times a year would you say
 15 you visit the ShopRite in Wharton?
 16 A. 30 to 40 times a year.
 17 Q. During those visits, have you ever
 18 observed existing diner customers using the
 19 ShopRite property, driving across the ShopRite
 20 property to go out to East Dewey?
 21 A. Yes, sir.
 22 Q. And if you were someone who --
 23 strike that.
 24 There was some testimony this
 25 evening that vehicles associated with the

1 new. So this is new territory for us. I
 2 mean, do --
 3 MR. ZAKIN: If this is
 4 relevant -- it is up to you as the Chair. Do
 5 you believe that this is relevant to the
 6 Application present? He is an objector within
 7 -- at your discretion -- has a right to put on
 8 a case as an objector and examine witnesses
 9 and --
 10 CHAIRMAN LOURY: I don't see any
 11 -- I think it is -- you said you had a
 12 question for the owner of the Diner?
 13 MR. VAN ECK: This is in rebuttal
 14 to the Diner's testimony.
 15 CHAIRMAN LOURY: I don't see
 16 any --
 17 MR. HARRIS: I think it was
 18 within the normal constraints.
 19 CHAIRMAN LOURY: Yes. Sure.
 20 Thank you for bearing with us. This is new
 21 for us. So appreciate it.
 22 (ROBERT ALLEN, GLASS GARDENS, was
 23 sworn in.)
 24 EXAMINATION BY MR. VAN ECK:
 25 Q. Mr. Allen, can you explain your

1 ShopRite Glass Gardens used the Diner
 2 property. Did you hear that testimony --
 3 A. I did.
 4 Q. You have to wait for me to finish.
 5 Did you hear that testimony from
 6 the Diner owner?
 7 A. Yes.
 8 Q. And is it -- have you ever -- do
 9 you have a policy with your drivers as to
 10 whether or not they can -- how are your
 11 drivers supposed to access your site?
 12 A. Usually through the front entrance
 13 of our store.
 14 Q. And that would be the
 15 southerly-most driveway on your property?
 16 A. Yes.
 17 Q. On Route 15?
 18 A. Yes.
 19 Q. And the trucks are not supposed to
 20 enter on Dewey, correct?
 21 A. Correct.
 22 Q. Would there be any reason why a
 23 truck would pass that exit, going southbound,
 24 and, instead, choose to go through the Diner's
 25 property? Is there any benefit to the driver

1 for doing so?
 2 A. I would assume they are avoiding
 3 traffic backups in front of the store.
 4 Q. Have you ever done that? Have you
 5 ever personally skipped the driveway and gone
 6 through the Diner's property?
 7 A. No.
 8 Q. Are you aware of any signage that
 9 tells you, you can't do that?
 10 A. No.
 11 Q. Thank you.
 12 MR. ZAKIN: Do you have anything
 13 else?
 14 MR. VAN ECK: That is it. Thank
 15 you. I appreciate it.
 16 CHAIRMAN LOURY: All right. I
 17 will close the testimony to the -- any public
 18 testimony.
 19 All right. So Alan, do you want to
 20 walk us through like we usually do? Just kind
 21 of give us a brief -- and then we will
 22 deliberate?
 23 MR. ZAKIN: Yes.
 24 It appears this way -- this is a
 25 standard that -- we have had many applications

1 to amend a prior resolution, and that is what
 2 this is.
 3 And so we have had a -- as was
 4 described in memos from our professionals,
 5 this is an amendment of the approved site plan
 6 with some bulk -- minor bulk variances for the
 7 Wharton 15 property to, who is the contracted
 8 purchaser for the Diner -- what was already
 9 passed in the site plan and it is amended as
 10 proposed with a new traffic circulation plan
 11 that was testified to by the Applicant.
 12 And based on the testimony today,
 13 it is up to the Board to just -- based on the
 14 hearing today, to decide if you agree that the
 15 Applicant should -- their proposal to amend
 16 the site plan with this new traffic flow
 17 pattern should be approved.
 18 CHAIRMAN LOURY: Okay.
 19 MR. ZAKIN: Questions?
 20 CHAIRMAN LOURY: Does anybody have
 21 anything we want to deliberate, talk about,
 22 before I put it to a vote?
 23 MR. BOSWORTH: I probably go to
 24 ShopRite 150 times a year, maybe more.
 25 CHAIRMAN LOURY: I am with you.

1 MR. BOSWORTH: And usually for me,
 2 if -- I live in Downtown Wharton. And
 3 sometimes I won't even go out of the ShopRite
 4 parking, and I will go 15 south to come around
 5 because it gets backed up.
 6 The Chief can attest to this. You
 7 don't even want to go near there
 8 Christmastime. So I have seen vehicles go
 9 both ways. I have done everything that these
 10 guys have said. I have parked in ShopRite and
 11 walked to the Diner and came back and shopped
 12 in ShopRite.
 13 I have gone to the Diner, loved the
 14 Diner. My mother-in-law goes there about
 15 every weekend. And so, I guess I am at a loss
 16 as to what the issue is here, because I think
 17 it is a symbiotic relationship between the
 18 properties, that it helps both sides.
 19 People get to use -- go to
 20 ShopRite, because it is easier for them get to
 21 from the Diner, if they choose to do that.
 22 But if I was in the Diner, coming
 23 back into Downtown Wharton, I would not go he
 24 back to the ShopRite parking lot. No sense.
 25 It just takes too long. It takes too long to

1 cut around and go through all that traffic.
 2 And it is easier to go -- to me, in my
 3 opinion, it is easier to go 15 south and flip
 4 around and go on 46 and come in that way. And
 5 I live by Robert Street Park. So I am not
 6 like down by Theodore's in Wharton. I am
 7 about midway.
 8 MR. HARRIS: If you don't mind, I
 9 have a different take on that, only because
 10 this Application isn't about sharing. This
 11 one isn't. And really, nothing on here says
 12 we are going to go ahead and share any other
 13 access routes than what is here.
 14 I mean, I -- the problem is
 15 ShopRite is not encumbered. I am. I am
 16 encumbered by the Municipal Land Use Law,
 17 which says I have to look at the Application
 18 for actually what it is and what is presented.
 19 So I can't -- I can't start
 20 guessing about what other access areas I am
 21 going to use. I mean, if I drive across the
 22 street to Cosco and over and then back around
 23 here, I am driving through other pieces of
 24 private property. I could do it at Walmart
 25 and Home Depot and everything else.

1 The truth is, I can guess all the
2 different places that I might go, but the
3 Application only talks about where it is going
4 and where it is planned to go. There is
5 nothing else here. It doesn't matter. It
6 doesn't meant what is next to it, whether it
7 is a road or a port. It just doesn't.

8 I would love to say, hey, why can't
9 you work together, but it is not even part of
10 the question. Who cares? Work by yourself.
11 If this is your only piece of property, you
12 can operate it independently.

13 As far as I am concerned,
14 ShopRite's property is not my concern for this
15 piece. Whatever they are doing is fine, but
16 this is by itself.

17 CHAIRMAN LOURY: That is one of
18 the -- it is self-sustainable. It is a
19 self-contained site plan.

20 MR. HARRIS: And that is what
21 makes it odd for me, because, for me, the only
22 thing I can think of is, why would you want to
23 stop a solution? You are literally -- you are
24 committing to all of the -- everything being
25 on this one application. Why would you come

1 in and try to stop that?

2 The motivation behind that just is
3 mind boggling to me, but I am not going to
4 guess or whatever. I am just simply saying it
5 operates by itself. The Application exists
6 unto itself. I don't have to drive through my
7 neighbor's lawn to get to my house. It is the
8 same thing.

9 CHAIRMAN LOURY: I agree.

10 MR. HARRIS: It doesn't make any
11 sense.

12 CHAIRMAN LOURY: And I like the
13 fact that it does comply with the Master Plan.
14 Jessica corroborated that, as the original did
15 as well. But being a self-sustained
16 application or site plan, it complies with the
17 Master Plan, which we all worked so hard on
18 way back when. So that is, kind of, my
19 thoughts on it.

20 Anybody else other than what Marc
21 said and Brian?

22 I will entertain a vote on the
23 application.

24 MR. BOSWORTH: I will make a
25 motion to vote on the Application as testified

1 today.

2 MR. ZAKIN: To approve?

3 MR. BOSWORTH: To approve.

4 MR. BIEHLER: Second.

5 CHAIRMAN LOURY: So can we just --
6 before we do, can we do just -- with putting
7 in with all the existing conditions of the
8 original plan, plus or minus that one that you
9 guys will work on with whether the Judge did
10 strike it or not. Did we have --

11 MS. COFFEY: Mr. Chairman, just
12 again to be clear, because we have this, like,
13 what does condition mean question.

14 CHAIRMAN LOURY: Right. Yes.

15 MS. COFFEY: I would say all of
16 the conditions, meaning requirements upon the
17 Applicant, that were in the prior resolution
18 can continue to be ones that the Applicant
19 would agree to agree to comply with.

20 I know Mr. Van Eck mentioned that
21 he thought there was something about retaining
22 all existing signage, and we don't have that,
23 to go north go this way, sign on the plan --
24 so I would say, as modified by the plans that
25 are before the Board.

1 CHAIRMAN LOURY: I would like to
2 even be more specific and say -- because it
3 was -- there was testimony on it -- I would
4 say that one of the conditions says that that
5 direction to Route 15 should come down. There
6 was testimony to it. So that should come
7 down. If it is there, then it should
8 definitely come down.

9 MS. COFFEY: The Applicant will
10 comply with that. So I suppose that would be
11 a new condition, but the Applicant is
12 certainly happy to comply with that.

13 MR. ZAKIN: And then to the
14 extent that the original approval had this
15 language about the nature of the properties
16 having this easement between ShopRite and
17 Bob's, which continues to be a fact, there is
18 an easement between ShopRite and Bob's, but it
19 would not be a condition upon the Applicant to
20 do anything with that easement. It is not our
21 business.

22 CHAIRMAN LOURY: That is the one we
23 are talking about.

24 MS. COFFEY: Exactly.

25 CHAIRMAN LOURY: We agreed with

1 that. That was really a factual --
 2 MS. COFFEY: Excuse me. Just --
 3 my client was commenting -- the sign that we
 4 are talking about, our understanding is that
 5 the existing sign is on the Diner property.
 6 And provided it is on the Diner property, we
 7 will certainly agree to remove it. If it is
 8 not on our property, then we can't.
 9 CHAIRMAN LOURY: I do know there
 10 is signage on the ShopRite. We are not
 11 talking about that.
 12 MS. COFFEY: And there may also be
 13 signage on Bob's, which we are not looking to
 14 modify any of Bob's signage.
 15 MR. HARRIS: You can't.
 16 MS. COFFEY: Right. Because it is
 17 not our purview.
 18 MR. ZAKIN: And I am not aware of
 19 anything that the Judge had ruled about that
 20 in terms of changing any of the conditions
 21 that were currently -- just the conditions
 22 meaning in the resolution. But if there is,
 23 obviously we will do that.
 24 And otherwise, I would think other
 25 than the one condition mentioned to take down

1 SECRETARY RUFFO: Mr. Bosworth?
 2 MR. BOSWORTH: Yes.
 3 SECRETARY RUFFO: Ms. Chiappa?
 4 MS. CHIAPPA: Yes.
 5 SECRETARY RUFFO: Mr. Patel?
 6 MR. PATEL: Yes.
 7 SECRETARY RUFFO: Ms. Molde?
 8 MS. MOLDE: Yes.
 9 SECRETARY RUFFO: Mr. Biehler?
 10 MR. BIEHLER: Yes.
 11 SECRETARY RUFFO: Chairman Loury?
 12 CHAIRMAN LOURY: Yes.
 13 MS. COFFEY: Thank you all. We
 14 appreciate it. It was a little complex. So
 15 we appreciate you all following along.
 16 (Hearing concluded at 8:54 p.m.)
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 the directional sign that was referenced on
 2 the Diner property, that there would be an
 3 amended resolution that would simply say the
 4 -- all of the -- all of the guidance in the
 5 current resolution would remain except for the
 6 traffic flow would change to reflect the
 7 current proposed traffic flow that would have
 8 just have ingress and egress for -- to Route
 9 15 for users of the new use for Wharton 15 for
 10 what is now the Diner property.
 11 CHAIRMAN LOURY: Does that make
 12 your motion better, Brian?
 13 MR. BOSWORTH: Sure.
 14 CHAIRMAN LOURY: Then I heard a
 15 second.
 16 SECRETARY RUFFO: Mayor
 17 Chegwidden?
 18 MAYOR CHEGWIDDEN: Yes.
 19 SECRETARY RUFFO: Councilwoman
 20 Vasquez?
 21 COUNCILWOMAN VASQUEZ: Yes.
 22 SECRETARY RUFFO: Mr. Rathjens?
 23 MR. RATHJENS: Yes.
 24 SECRETARY RUFFO: Mr. Harris?
 25 MR. HARRIS: Yes.

1 CERTIFICATE
 2
 3 I, RITA GARDNER, Notary Public of
 4 the State of New Jersey and a Registered
 5 Professional Reporter, do hereby certify that
 6 the foregoing is a true and accurate
 7 transcript of the testimony as taken
 8 stenographically by and before me at the time,
 9 place and on the date hereinbefore set forth.
 10 I DO FURTHER CERTIFY that I am
 11 neither a relative nor employee nor attorney
 12 nor counsel of any of the parties to this
 13 action, and that I am neither a relative or
 14 employee of such attorney or counsel, and that
 15 I am not financially interested in the action.
 16
 17 Notary Public of the State of New Jersey
 18
 19
 20 Dated: July 8, 2024
 21
 22
 23
 24
 25

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