

HARRISON ZONING BOARD OF ADJUSTMENT

Reorganization Board	)	
appointments	)	
	)	
Calendar Z-2023-02	)	
All Seasons Child Care and	)	TRANSCRIPT OF
Learning Center	)	PROCEEDINGS
10-12 North Third Street,	)	
Harrison, New Jersey	)	
Block 14, Lot A	)	
-----	)	
	)	
	)	

TRANSCRIPT of the stenographic notes of
the proceedings in the above-entitled matter, as
taken by and before SUZANNE M. CARR-MCGUIRE, a
Certified Court Reporter and Notary Public of the
State of New Jersey, held at the Harrison Town Hall,
318 Harrison Avenue, Harrison, New Jersey, commencing
at 6:30 p.m.

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1 A P P E A R A N C E S:

2
3 HARRISON ZONING BOARD OF ADJUSTMENT

4 Commissioner Jack Chen
Commissioner Susan Karas
5 Commissioner Michael Gallagher
Commissioner Eugene Gilmore - Chairman
6 Commissioner Alberto Garrido

7
MICHAEL PICHOWICZ, ESQ
8 MCKINLEY MERTZ, PE
PAUL ZARBETSKI, Recording Secretary
9

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1 Mr. PICHOWICZ: I hereby declare this
2 meeting to order and state this is a meeting of the
3 Zoning Board of Adjustment for the Town of Harrison,
4 scheduled for January 17th, 2024 at 6:30, 318
5 Harrison Avenue, Harrison New Jersey 07029. This is
6 a regular meeting and proper public notice in
7 compliance with the Sunshine Law has been published
8 and a copy on file with the town clerk's office.
9 Please stand for the pledge.

10 (Whereupon, the Pledge of Allegiance is
11 recited.)

12 MR. ZARBETSKI: Chen.

13 MR. CHEN: Yes.

14 MR. ZARBETSKI: Gallagher.

15 MR. GALLAGHER: Present.

16 MR. ZARBETSKI: Garrido.

17 MR. GARRIDO: Here.

18 MS. ZARBETSKI: Karas.

19 MS. KARAS: Here.

20 MR. ZARBETSKI: Kelly.

21 CHAIRMAN GILMORE: Absent.

22 MR. ZARBETSKI: Maza.

23 CHAIRMAN GILMORE: Absent.

24 MR. ZARBETSKI: Gilmore.

25 CHAIRMAN GILMORE: Here.

1 MR. ZARBETSKI: Also present Michael
2 Pichowicz, attorney and McKinley Mertz, planner.

3 MR. PICHOWICZ: Today's our
4 reorganization meeting so we'll dispense with the
5 regular meeting in order to conduct the
6 reorganization at this time. Can I hear nominations
7 for the election of chairman for the year 2024.

8 MS. KARAS: I nominate Gene Gilmore.

9 MR. PICHOWICZ: Any other nominations?

10 MR. GARRIDO: No.

11 MR. PICHOWICZ: We'll close the
12 nominations. All in favor?

13 (Whereupon, unanimous ayes recited.)

14 MR. PICHOWICZ: Any opposed. Hearing
15 none. We cast one vote for Gillmore.
16 Congratulations, you're the chairman.

17 CHAIRMAN GILMORE: Sure. I have a
18 nomination open for election of the vice-chair person
19 for the year 2024. May I have a nomination.

20 MR. GALLAGHER: Sue Karas.

21 CHAIRMAN GILMORE: Any other
22 nominations?

23 MR. PICHOWICZ: Motion and close
24 nomination.

25 CHAIRMAN GILMORE: Don't have anyone

1 more.

2 MR. PICHOWICZ: We have to elect.

3 CHAIRMAN GILMORE: Okay. Motion to
4 close the nominations for vice-chair.

5 MR. PICHOWICZ: All in favor.

6 (Whereupon, unanimous ayes recited.)

7 MR. PICHOWICZ: Opposed? One ballot for
8 Sue Karas as the vice chairman.

9 CHAIRMAN GILMORE: Okay. Nomination
10 open for election of the secretary for the year 2024.
11 Any nominations?

12 MS. KARAS: I nominate Mike Gallagher.

13 MR. PICHOWICZ: I think this is the one
14 for Isabel.

15 CHAIRMAN GILMORE: Secretary of our
16 board.

17 MS. KARAS: I Nominate Mike Gallagher.

18 CHAIRMAN GILMORE: Mike Gallagher. Any
19 other name names? Motion to close.

20 MR. PICHOWICZ: All in favor.

21 (Whereupon, unanimous ayes recited.)

22 CHAIRMAN GILMORE: Anyone against?

23 MR. PICHOWICZ: One vote for the
24 secretary. Close nominations. We need board
25 secretary.

1 MR. ZARBETSKI: Regular business, Mike?

2 MR. PICHOWICZ: You can put it right
3 below or you can put it after.

4 CHAIRMAN GILMORE: Nomination for
5 recording secretary or vote on these chairs now? We
6 had -- that was vote for nomination.

7 MR. PICHOWICZ: No they went.

8 CHAIRMAN GILMORE: Nomination for the
9 recording secretary.

10 MR. GALLAGHER: Isabel.

11 CHAIRMAN GILMORE: Any others?

12 MR. GALLAGHER: Isabel.

13 CHAIRMAN GALLAGHER: Any others? Motion
14 to close.

15 MR. PICHOWICZ: All in favor.

16 (Whereupon, unanimous ayes recited.)

17 CHAIRMAN GILMORE: Any against? Hearing
18 none.

19 MR. PICHOWICZ: Secretary, cast one vote
20 for secretary. Congratulations, Isabel.

21 MR. ZARBETSKI: I'll let her know.

22 MR. PICHOWICZ: Re-appointment for the
23 board attorney.

24 CHAIRMAN GILMORE: Nomination for the
25 board attorney, Mike Pichowicz for the year of 2024.

1 I need a second.

2 MS. KARAS: I'll second it.

3 CHAIRMAN GILMORE: Nominations closed.

4 All in favor.

5 (Whereupon, unanimous ayes recited.)

6 CHAIRMAN GILMORE: All against? Cast
7 one vote for Mike, the board nomination of board
8 attorney.

9 MR. ZARBETSKI: Meting dates.

10 MR. PICHOWICZ: Year-end reports.

11 Motion for the approval of the year-end report for
12 2023.

13 CHAIRMAN GILMORE: I need approval for
14 the year-end report for 2023. We have a motion.

15 MR. GALLAGHER: Motion.

16 MS. KARAS: I'll second.

17 CHAIRMAN GILMORE: Roll call.

18 MR. ZARBETSKI: Chen.

19 Mr. CHEN: Yes.

20 MR. ZARBETSKI: Gallagher.

21 MR. GALLAGHER: Yes.

22 MR. ZARBETSKI: Garrido.

23 MR. GARRIDO: Yes.

24 MR. ZARBETSKI: Karas.

25 MS. KARAS: Yes.

1 MR. ZARBETSKI: Gilmore.

2 CHAIRMAN GILMORE: Yes. List of meeting
3 dates for the year 2004.

4 MR. PICHOWICZ: I amended the third
5 November meeting is going to be marked Thursday
6 November 14th, 2024.

7 MR. ZARBETSKI: Yes, so November 14th.

8 MR. PICHOWICZ: It's a Thursday.

9 CHAIRMAN GILMORE: Motion.

10 MS. KARAS: I'll make a motion.

11 CHAIRMAN GILMORE: Second.

12 MR. CHEN: Second.

13 CHAIRMAN GILMORE: Roll call.

14 MR. ZARBETSKI: Chen.

15 MR. CHEN: Yes.

16 MR. ZARBETSKI: Gallagher.

17 MR. GALLAGHER: Yes.

18 MR. ZARBETSKI: Garrido.

19 MR. GARRIDO: Yes.

20 MR. ZARBETSKI: Karas.

21 MS. KARAS: Yes.

22 MR. ZARBETSKI: Gilmore.

23 CHAIRMAN GILMORE: Yes. Approval of the
24 minutes from December 20th, 2023 meeting. Motion.
25 I'm sorry for approval of the minutes.

1 MS. KARAS: I'll make a motion.

2 MR. GALLAGHER: Second.

3 CHAIRMAN GILMORE: Roll call.

4 MR. ZARBETSKI: Chen.

5 MR. CHEN: Yes.

6 MR. ZARBETSKI: Gallagher.

7 MR. GALLAGHER: Yes.

8 MR. ZARBETSKI: Garrido.

9 MR. GARRIDO: Yes.

10 MR. ZARBETSKI: Karas.

11 MS. KARAS: Yes.

12 MR. ZARBETSKI: Gilmore.

13 CHAIRMAN GILMORE: Yes. Correspondence.

14 MR. ZARBETSKI: I don't see any.

15 CHAIRMAN GILMORE: None. Under new

16 business calendar Z-2023-02. Continuation of

17 application of All Seasons Child Care and Learning

18 Center for the child care center at property located

19 at 10-12 North Third Street Block 14, Lot 26, a D-1

20 variance. D-1 variance and minor site plan approval

21 are being sought from the zoning requirements of the

22 land development ordinance proposing a care child

23 center in the ground floor commercial space. Do we

24 have anybody here from --

25 MR. LINDENFELSER: Kenneth Lindenfelser,

1 I'm the attorney for the applicant. Do you want me
2 to proceed with the application?

3 MR. PICHOWICZ: Opening statement, you
4 can call your witnesses, make closing statements.

5 MR. LINDENFELSER: We are here today for
6 All Seasons Child Care who is looking to utilize the
7 building in question as an additional daycare center.
8 They run several in the area already. And a use
9 variance is required it's just outside of one of the
10 zones that permits the use.

11 Today I'm going to present witnesses
12 Jenny Chavez, who is the operator of the facility.
13 She will talk about her business and what they plan
14 on doing if the approvals are given. Her husband,
15 Jose Soares, who will then talk about the process of
16 acquiring this site and how they have gone about
17 renovating the site to be able to conduct the day
18 care business there. We also have an architect of
19 the project to renovate the first floor to make it a
20 day care. And we have an planner who will discuss
21 the impacts of allowing the day care in this area.

22 Do you want to present anything from
23 your planner?

24 MR. PICHOWICZ: Not yet. Just for the
25 record. The applicant will run through his

1 witnesses. At the end of his witnesses we will then
2 open to the public, they ask question of the
3 witnesses, ask questions, put their feelings on the
4 record, things like that. We wait for the applicant
5 to finish and you'll have a chance today to ask
6 questions or bring up points.

7 MR. LINDENFELSER: Okay. Then I'll
8 start with the first witness Jenny Ron-Chaves, the
9 owner of the building as well as the All Seasons
10 Child Care.

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1 JENNY RON-CHAVEZ, having been duly sworn, testified
2 as follows:

3 MR. PICHOWICZ: State your name and your
4 business address on the record.

5 MS. RON-CHAVEZ: Jenny Ron-Chaves 41
6 Stewart Avenue, Kearny, New Jersey 07032.

7 THE REPORTER: Can you speak up.

8 MS. RON -CHAVEZ: 41 Stewart Avenue.

9 MR. PICHOWICZ: Do we know if their
10 voices are getting picked up?

11 DIRECT EXAMINATION BY MR. LINDENFELSER:

12 Q. Ms. Chavez, would you tell the board
13 your business operations, the name of your company,
14 and what you do?

15 A. All Seasons Child Care Center. We are
16 in the business for ten years and this will be the
17 fourth center that we are going to be opening to the
18 public. We serve from ages from zero to 13, although
19 they are different centers, but each individual
20 center has different age group so that we will give
21 the service according to the age. This will in
22 addition because we do have the need for the
23 community, they have the need for more service.

24 Q. The three existing centers that you have
25 where are they located?

1 A. The one is in the -- number one we just
2 recently moved to the Vermella, 1100 Frank E. Rodgers
3 Boulevard south.

4 The second location is 313-315 five
5 Frank E. Rodgers Boulevard north. Then we have 603-
6 605 Harrison Avenue. And then this will be the
7 fourth.

8 Q. Where is the address for the fourth one,
9 that's 10-12 North Third?

10 A. 10-12 North Third.

11 Q. And your other three facilities they're
12 all state licensed?

13 A. Yes. They are state licensed and we
14 also we do work with Urban League or subsidy to help
15 the parents pay for the service?

16 Q. The new location that you're hoping to
17 open what age groups would that be serving?

18 A. Two-and-a-half to 13 is the license that
19 we -- we already asked for the license -- state
20 department license to come in to do a courtesy they
21 were there and the license passed and the license age
22 is two-and-a-half to 13.

23 Q. And does the state dictate the
24 configuration of the day care centers and what needs
25 to be included?

1 A. Yes. In order for us to give the
2 capacity that they recommend based on the square
3 footage they had to require toilets and sinks for us
4 to care for the children.

5 Q. And the proposed plan for 10-12 has that
6 been reviewed by the state?

7 A. The plans that we have they're based on
8 the requirements that they gave on the courtesy.

9 Q. And so --

10 A. They meet the requirements from the
11 state required, yes.

12 Q. Will you need any additional approvals
13 from the state before you could operate?

14 A. We have to obtain certificate of
15 occupancy and every other -- you know, other ends of
16 the certification that we have to do in the process,
17 yes, in order to obtain it.

18 Q. And the CO is being delayed, at least in
19 part, due to the use issue that we are here for
20 tonight?

21 A. Right, yes. That will be a big, big
22 reason.

23 Q. As part of the state requirements
24 they'll have to actually approve your facility before
25 you can --

1 A. Absolutely.

2 Q. -- open?

3 A. Yes, absolutely. I mean the CO is one
4 of things that we have to go -- we have to go through
5 other certifications from the state. But, yes, we
6 have to comply to everything before licensing will
7 come, actually to come in. As any other of my
8 centers they have to come in, see how it is and then
9 license the center.

10 Q. And the state looks at safety for the
11 children?

12 A. Yes. We have safety. They actually --
13 the safety of the program how is set up and
14 everything they have done that in every single one of
15 my centers.

16 Q. Most of the families that come to your
17 centers where are they residing?

18 A. Local. They are actually -- they're
19 local Harrison families. I just moved, the first one
20 we moved from Warren Street to Vermella building that
21 I thought that I was going to perhaps maybe not have
22 the drive, because although it is very close to drive
23 especially at five o'clock, now a lot of people are
24 going down here from the center all the way over
25 there taking the childrens. In the winter, like

1 today, it's very busy, but they drive them all the
2 way down there so it is a need. And two years old,
3 we have a lot of two years old.

4 Q. Do some of your families walk to your
5 centers?

6 A. Here it's a lot better, yes, they will
7 be walking. Here is a lot of walking distance.

8 Q. You mean when you say "here"?

9 A. Here I mean North Third and around here
10 the center of Harrison is a lot more convenient for
11 them to walk in the sense.

12 Q. And the customers that drive they'll be
13 using the on-street parking, the meter parking in the
14 area if they need to park and bring in their child or
15 pick up their child?

16 A. Yes.

17 Q. Is that the same --

18 A. Yes. As any other of the centers,
19 correct.

20 Q. Is that a common arrangement for day
21 care centers in the West Hudson area?

22 A. Yes. Yes fortunately, yes. Because I
23 live in Kearny so it's everywhere, everywhere. Some
24 towns a little bit easier than other, but most of the
25 time they use the street to park to pick up the kids.

1 Q. But based on your business revenues and
2 your experience there is a need for an additional --

3 A. Yes.

4 Q. -- center in Harrison?

5 A. Yes, definitely, it is. It is very
6 highly, it's growing day by day.

7 Q. What are your hours of operation?

8 A. Open at seven and we close at six.

9 Q. Seven a.m.?

10 A. To six p.m.

11 Q. And Monday through Fridays?

12 A. Monday through Friday and work
13 year-round. We just close the major holidays.

14 Q. Saturdays and Sundays you are not open?

15 A. No. We are closed for the weekends.

16 MR. LINDENFELSER: Any questions from
17 the board?

18 CHAIRMAN GILMORE: Yeah. When you were
19 asked about local it is very unclear what you
20 considered where your children would be coming from
21 locally. Of course I know Harrison because Harrison
22 is there. Comparing that to your other day cares,
23 which you should have some kind of record of where
24 the majority of your people come from.

25 A. Majority of the people come from

1 Harrison.

2 CHAIRMAN GILMORE: Just Harrison.

3 MS. RON-CHAVES: Harrison and East
4 Newark.

5 CHAIRMAN GILMORE: That's what I'm
6 asking.

7 MS. RON-CHAVES: Harrison.

8 CHAIRMAN GILMORE: Local just doesn't
9 mean Harrison local means what other towns that
10 surround you.

11 MS. RON-CHAVES: Yes, Harrison. We do
12 have few from Kearny. We have few from -- in the
13 Vermella we have few from Newark because it's closer
14 to them, but majority are from Harrison and East
15 Newark.

16 MR. PICHOWICZ: Some of the other
17 questions, how many employees will you have?

18 MS. RON-CHAVES: All depending on the
19 kids, but basically we are looking to do -- there's
20 three classrooms so more less going to be nine
21 people.

22 MR. PICHOWICZ: I thought I saw 13.

23 MS. RON-CHAVES: Plus the director and
24 the staff. So yeah, 13.

25 MR. PICHOWICZ: So 13 employees all at

1 the same time?

2 MS. RON-CHAVES: No. From seven to six
3 so in the heart of day, yes, all of them will be
4 there.

5 MR. PICHOWICZ: Also you're -- you have
6 to be licensed by the Department of Children and
7 Families?

8 MS. RON-CHAVES: Correct.

9 MR. PICHOWICZ: Not the Department of
10 Education.

11 A. No.

12 MR. PICHOWICZ: Do you have any interest
13 in making that site a preschool for three and four
14 year olds?

15 MS. RON-CHAVES: Will be -- my license
16 goes to two to 13 so some of them are going to be
17 preschool.

18 MR. PICHOWICZ: So where would they come
19 from, just Harrison?

20 MS. RON-CHAVES: Harrison and East
21 Newark.

22 MR. PICHOWICZ: Okay.

23 MS. MERTZ: For the children that are
24 kindergarten age and older do they -- is it an after
25 school program?

1 MS. RON-CHAVES: After school program,
2 correct.

3 MS. MERTZ: How do they get to you?

4 MS. RON-CHAVES: Normally we pick -- we
5 walk. We pick them up and we walk.

6 MS. MERTZ: So those students would be
7 predominately from the Harrison schools, maybe couple
8 of East Newark, but they're not coming from further
9 away?

10 MS. RON-CHAVES: No, walking distance.
11 We don't drive them. We don't.

12 MS. MERTZ: You don't provide pick-up
13 service?

14 MS. RON-CHAVES: Walking distance,
15 that's exactly why Harrison location we actually did
16 it because of the convenience to be next to the
17 Kennedy School, which is right there, they're the
18 little ones so it is convenient for us not to walk
19 especially in the winter from far.

20 MS. MERTZ: You said 13 full-time
21 employees, nine of which will be teachers, the rest
22 kind of administrative staff. During after hours do
23 you have a cleaning crew come in or on weekends or
24 does that happen within your --

25 MS. RON-CHAVES: Within in the time.

1 Within the operation time. We do bring from every
2 once a month somebody to clean the rugs or the
3 floors.

4 MS. MERTZ: Steam cleaning?

5 MS. RON-CHAVES: A company to actually
6 clean the rugs and floor.

7 MS. MERTZ: But typically it will happen
8 by those 13 employees during the day and no special
9 crews you need.

10 MS. RON-CHAVES: Ah-hum.

11 CHAIRMAN GILMORE: Do you have any idea
12 of a drop off point or pickup point? My concern with
13 that is you're located in a very congested area
14 between Harrison Avenue and Cleveland Avenue and you
15 have possibly 13 employees coming. Is there parking
16 for those employees? In other words, do they all
17 walk or are you going to have people that are going
18 to drive?

19 MS. RON-CHAVES: Well, most of the ones
20 that are going to be going in there they actually --
21 they are Harrison and East Newark residents. There
22 is going to be some like me, I'm going to be driving
23 from Kearny.

24 CHAIRMAN GILMORE: How many of your
25 employees --

1 MS. RON-CHAVES: It will be half and
2 half for the most part. I'm going to say half and
3 half. Half are going to be driving and half walking.

4 CHAIRMAN GILMORE: So seven?

5 MS. RON-CHAVES: Yeah.

6 CHAIRMAN GILMORE: You also say there's
7 no food prepped on-site?

8 MS. RON-CHAVES: No. We don't.

9 CHAIRMAN GILMORE: But it's prepped
10 elsewhere?

11 MS. RON-CHAVES: Well, so far what we do
12 is the parents will pack the lunch. That's what I've
13 been doing so far all the ten years. But we do --
14 are going through a vendor, applying for the -- to go
15 into the food program. So if that goes the vendor
16 will be coming in to drop off the --

17 CHAIRMAN GILMORE: So you're not having
18 any food brought to this complex?

19 MS. RON-CHAVES: Nope. There's going to
20 be -- like for like my other ones their parents will
21 send the lunch.

22 MS. KARAS: You just said you were going
23 to have a vendor, though. Is the vendor going to be
24 bring food in there?

25 MS. RON-CHAVES: I mean, yes. We are

1 applying for the food program.

2 CHAIRMAN GILMORE: So you will have
3 food.

4 MS. KARAS: So you will have food?

5 MS. RON-CHAVES: If I get approved.

6 CHAIRMAN GILMORE: You say no
7 deliveries. Then another concern is 84 children.

8 MS. RON-CHAVES: That's the estimation
9 based on the square footage.

10 CHAIRMAN GILMORE: That doesn't mean you
11 can't have it. In other words, you can have up to 84
12 children.

13 MS. RON-CHAVES: Up to.

14 CHAIRMAN GILMORE: The question that was
15 put to you how many, not what the limit was we are
16 asking how many.

17 MS. RON-CHAVES: How many --

18 CHAIRMAN GILMORE: How many children.

19 MS. RON-CHAVES: I will say, like I
20 said, all depends on the licensing because they
21 actually even they come and measure it. I do have to
22 give space for the -- take away from the square
23 footage we have certain amount of space square
24 footage for all purpose room, that's not going to be
25 used unless they go in so that eliminates from square

1 footage. So I want to say just giving the -- the
2 other 60, 60 kids altogether.

3 CHAIRMAN GILMORE: Sixty.

4 MS. MERTZ: Is it your experience from
5 your other facilities that all -- whatever the
6 capacity is all end up on-site all the time? Do you
7 have different schedules? Do some kids only sign up
8 for three days a week.

9 MS. RON-CHAVES: We do have a
10 combination of part-time and full-time.

11 MS. MERTZ: How often, and if you don't
12 have this information that's okay, but how often
13 would you say you would have your full facility --

14 MS. RON-CHAVES: One day.

15 MS. MERTZ: Okay.

16 CHAIRMAN GILMORE: Now, as far as
17 drop-off place. You have any places that could be
18 used as a drop-off? Because here you're saying that
19 if this approved then you would apply for one.

20 MS. RON-CHAVES: Well, the corner is
21 already, right, I mean because there is a pizzeria
22 there so it is already at the corner, they have
23 already marked as a drop-off.

24 CHAIRMAN GILMORE: It's yellow, it's not
25 a drop-off.

1 MS. RON-CHAVES: It's yellow.

2 MR. GALLAGHER: It's 25 feet to the
3 corner.

4 MS. KARAS: But it's not necessarily a
5 drop-off because if the pizza people are there or
6 other people park it's not going to be a specific
7 drop-off spot.

8 CHAIRMAN GILMORE: Right.

9 MS. KARAS: Right?

10 MS. RON-CHAVES: Right.

11 CHAIRMAN GILMORE: I think you should
12 have checked into that before coming to us saying
13 that after we approved this then you would try for a
14 parking spot. I think it's the tail wagging the dog.

15 MR. LINDENFELSER: Correct me if I'm
16 wrong, but in a prior application it was recommended
17 by the board that --

18 CHAIRMAN GILMORE: Which board?

19 MR. PICHOWICZ: Might have been the
20 planning.

21 MS. RON-CHAVEZ: The first center that I
22 opened on --

23 CHAIRMAN GILMORE: The reason I'm asking
24 is because this is from you guys.

25 MS. RON-CHAVES: I know.

1 CHAIRMAN GILMORE: And the other reason
2 I'm still asking is because these are questions that
3 were asked by our planning person and I'm just going
4 by your answers.

5 MS. RON-CHAVES: Okay. Because like I
6 said, prior experience.

7 CHAIRMAN GILMORE: So and if you know
8 you needed something, especially on that street, I
9 would think that you would come to us with an
10 approval. Because if we approve this we would have
11 to -- we wouldn't know whether you got an approval or
12 not.

13 MS. RON-CHAVES: Like I said.

14 CHAIRMAN GILMORE: I don't know that the
15 town is even willing to give the approval. We have
16 nothing to do with that. We are a town board, but we
17 don't hear everything that goes on to the board.

18 MS. RON-CHAVES: I understand, but like
19 I said by prior -- like the first time that we did we
20 came in front of the board and at that time they
21 approved it, obviously they said -- because when we
22 went to traffic and to request that they said we
23 cannot give it to you unless you are approved. So
24 that's why we came here based on prior experience
25 that we had to come here to get approval and another

1 of course traffic and to see -- and the only --well,
2 they did put the sign on Warren that was for the
3 corner of Warren and Frank Rodgers Boulevard the
4 drop-off with the time from seven to nine and it was
5 another one for pick up it was from four to six that
6 they were allocating. And the traffic department
7 actually went and did it after we got approval.
8 That's why we -- that's what I -- because of that
9 experience we did it.

10 CHAIRMAN GILMORE: Like I said it's hard
11 for us to approve something that doesn't exist.

12 MS. RON-CHAVES: I get the same thing.
13 Like I said, it's hard for them to approve if
14 something was not approved, so it was like --

15 CHAIRMAN GILMORE: In a personal opinion
16 how do you feel the traffic situation in that area
17 is.

18 MS. RON-CHAVEZ: I will say it's going
19 to be same thing there at Frank Rodgers Boulevard and
20 cross street, every where it's going to be.

21 CHAIRMAN GILMORE: So with no drop-off,
22 so that means cars stopping in the middle of the
23 street at Third Street to drop off, that street to me
24 seems a lot skinnier than other streets, okay. And
25 that's not even talking about if it snows, okay. And

1 the suggestion of parking on corners when that's on
2 the -- in the yellow and another school is right
3 around the corner, my fear with this is the safety of
4 the children going to school and coming from school.
5 That just seems like a bad location for pedestrians,
6 for kids walking back from school, adding your 60
7 kids walking back and forth. Now, I'm assuming some
8 of those kids will be from Harrison. But my -- I'm
9 not saying that Harrison doesn't need another
10 daycare, but what I'm saying is, like with this,
11 okay, trash pick-up. What's your private company
12 that's --

13 MS. RON-CHAVEZ: Allied.

14 CHAIRMAN GILMORE: So their truck has to
15 stop in the middle of Third Street to pick up your
16 container.

17 MS. RON-CHAVES: The bar actually used
18 to hire --

19 CHAIRMAN GILMORE: I understand that,
20 but we're not talking about adults going into the
21 building we are talking about children three and up,
22 okay. So that dumpster, now they have to stop on
23 Third Street, wheel out the dumpster and then dump it
24 and wheel it back in. We have no idea what time that
25 they would be doing that. And if it's, again, if

1 it's in the middle of kids going to school between
2 the hours that you work and being picked up from the
3 hours that you work it just causes a really dangerous
4 situation.

5 MS. RON-CHAVES: Okay. That's something
6 to --

7 CHAIRMAN GILMORE: This is just my
8 opinion.

9 MS. RON-CHAVES: You know what --

10 CHAIRMAN GILMORE: I lived in Harrison
11 for 67 years. I live right next to the new Kennedy
12 School and you'd be surprised how many more people
13 drive their kids to school than not. And that's,
14 again, the age of the school that you will be
15 handling. So my main -- my biggest thing is the
16 congestion at the corners, the congestion at the
17 light because we know when people are going to work
18 they'll block the box and we got kids have to walk
19 past that. I just don't want to add more congestion
20 into that area. I think it's an unsafe situation.

21 MR. PICHOWICZ: Question, do you have an
22 arrangement with East Newark to educate their
23 preschool kids?

24 MS. RON-CHAVES: Yes, I do.

25 MR. PICHOWICZ: How many kids would they

1 be sending there?

2 MR. LINDENFELSER: Mr. Pichowicz, I
3 don't believe the contract dictates a location it
4 just does a service, so.

5 CHAIRMAN GILMORE: Say if you needed to
6 use that facility.

7 MS. RON-CHAVEZ: If I needed to use that
8 facility.

9 CHAIRMAN GILMORE: Like so how many kids
10 are they giving you to put in different places?

11 MS. RON-CHAVES: Forty-five.

12 CHAIRMAN GILMORE: Now, is that over and
13 above the 60?

14 MS. RON-CHAVEZ: No, no, that's
15 including the 60.

16 MS. KARAS: I have a question about that
17 if you're going to bring 45 from East Newark are they
18 all going to walk?

19 MS. RON-CHAVES: Yes.

20 MS. KARAS: I have to disagree with you.
21 I live in town. Lincoln School -- I mean it's a mile
22 square, Lincoln School which is second and third
23 grades you can't even get down Cross Street or
24 William Street morning or afternoon when it's drop
25 off and pickup. So now you're coming from further

1 away, East Newark, which is further blocks to come to
2 this side of town and I don't believe that those
3 people are all going to walk unless they're going to
4 walk all the kids as one class, that's just my --

5 MS. RON-CHAVES: Your opinion. I mean,
6 like I said, I'm sure that is going to be --

7 MR. GALLAGHER: Especially inclement
8 weather.

9 MS. KARAS: Even in nice weather you
10 can't walk down, I'll just say by Lincoln because my
11 granddaughter goes there. You can't walk down Cross
12 Street at three o'clock. That's where the third
13 graders come out. And William Street at three
14 o'clock that's where the second graders come out. So
15 that whole area is inundated with cars. It's takes
16 20 minutes to go down --

17 MS. RON-CHAVES: The second is even
18 right there.

19 MS. KARAS: I've seen that.

20 MS. RON-CHAVES: We go through all that
21 and that's what I'm saying right now the contract for
22 East Newark we are taking it to Harrison Avenue and
23 they're going and --

24 MS. KARAS: They're going to go all the
25 way down there, they're not going to come here. Is

1 that what you're saying?

2 MS. RON-CHAVES: No, I mean just backing
3 to the traffic, referring to the traffic and driving
4 which I know is a little further for them that in the
5 side and I don't think has changed the driving or the
6 traffic in Harrison Avenue as more than normal.

7 MS. KARAS: All of Harrison has a lot of
8 traffic.

9 MS. RON-CHAVES: Okay, but just because
10 of that --

11 MS. KARAS: Bringing 45 kids from East
12 Newark over there that's going to be a lot. Those
13 people are not going to walk I can tell you right
14 now. I'm just saying that's my opinion.

15 MS. RON-CHAVES: I completely
16 understand.

17 MS. KARAS: There's going to be a lot of
18 cars and you only have one spot for drop-off and
19 pick-up and you're going to have East Newark kids as
20 preschool, right. Is that what you're saying? Is
21 that what you asked, Mike? Is it going to be a
22 preschool?

23 MR. PICHOWICZ: Three and four years
24 old.

25 MS. KARAS: Three and four pre-K they're

1 all going to come at the same time, it's not a
2 regular child care.

3 MS. RON-CHAVES: Like I said, just as I
4 just said I don't know if they're going to use that
5 facility for that we are leaving the way they are
6 right now.

7 MS. MERTZ: So can I clarify. So the
8 agreement you have with East Newark for 45 children
9 that's spread across the three existing facilities
10 and then should this be approved this one as well?

11 MS. RON-CHAVES: It could be. Like I
12 said I have the contract. I have to house them the
13 best and the best scenario possible.

14 MS. MERTZ: Do you currently have --
15 that contract is current in place and you're housing
16 those 45 students currently.

17 MS. RON-CHAVES: Yes.

18 MS. KARAS: Where are they, though, if
19 you have them now?

20 MS. RON-CHAVES: I just said Harrison
21 Avenue.

22 MS. KARAS: Sorry, it's hard to hear
23 sometimes.

24 CHAIRMAN GILMORE: Harrison Avenue you
25 have the option of having three to four no parking

1 areas at the end of Davis Avenue, that alleviates the
2 dropping off kids on Harrison Avenue.

3 MS. RON-CHAVEZ: Like I said, I mean --

4 CHAIRMAN GILMORE: I am just stating
5 that there you have a drop-off area.

6 MS. RON-CHAVES: Like I said --

7 CHAIRMAN GILMORE: And it doesn't seem
8 to affect the --

9 MS. RON-CHAVES: I was afraid honestly
10 not because of East Newark when we opened because
11 particularly in that facility holds 57.

12 MS. KARAS: Share them.

13 MS. RON-CHAVES: Taking away the fact
14 that East Newark, forget about that, and I put --and
15 I had full, that center was full to capacity so 57
16 kids before, now is less because of East Newark, but
17 before I have 57 there.

18 MS. KARAS: Okay, we're not talking
19 about Harrison Avenue at this point we're talking
20 Third Street which --

21 MS. RON-CHAVES: Based on experience.

22 MS. KARAS: It's a much more narrow
23 street.

24 MS. RON-CHAVES: And the capacity
25 here --

1 CHAIRMAN GILMORE: Very short street, so
2 three cars double-park you don't have a lane, totally
3 blocked from Cleveland Avenue to Harrison Avenue.

4 MR. PICHOWICZ: Just to clarify some of
5 the statements. When you're in a commercial zone or
6 a non-residential zone the ordinance and the statute
7 exempts you from parking, exempts you from permitted
8 density, etcetera. There's a statute on that and
9 there's an ordinance on that. The difference here
10 you're in a 2F-1 zone which is a residential zone so
11 you don't get those exceptions. You know, you fall
12 under having to provide these things or make an
13 argument on how you can alleviate these things. Like
14 if you had an arrangement with another property owner
15 to use their parking lot or something else like that,
16 which you don't have yet, or at least I haven't heard
17 yet. So those are two differences. And you're
18 right. You run daycare centers and from what I
19 understand they're top quality daycare centers.
20 People are happy with them, we don't hear complaints.
21 But the parking situation is a little different
22 because they're in commercial zones. And that's the
23 difference between those three and the one here
24 tonight. And I'm sure your planner is going into
25 more of that, I just want to sort of put that

1 explanation out there.

2 MS. RON-CHAVES: Thank you.

3 CHAIRMAN GILMORE: You said you were
4 inspected for safety, okay. The safety you were
5 talking about was inside your complex?

6 MS. RON-CHAVES: Correct.

7 MS. MERTZ: You quickly mentioned
8 earlier, and I didn't catch it, the drop-off and pick
9 up times. I think you were talking about your
10 current facilities, are they the same?

11 MS. RON-CHAVEZ: Yes.

12 MS. MERTZ: Say them again.

13 MS. RON-CHAVEZ: Seven to nine and four
14 to six that was what we were given on the first
15 center that we opened by the traffic department.

16 MS. MERTZ: Are there any times in your
17 existing facility do you offer like half time or half
18 day?

19 MS. RON-CHAVES: Not any more. Before
20 COVID we used to, but after COVID we just do the
21 part-time is three day full-time.

22 MS. MERTZ: Instead of five half days?

23 MS. RON-CHAVES: Because of opening and
24 closing the doors and less contact. So we just said
25 in the morning, in the afternoon and that's it.

1 MS. MERTZ: So parents have to drop off
2 between seven and nine and have to pick up between
3 four and six.

4 MS. RON-CHAVEZ: Right. That alleviates
5 leave the gap of the traffic.

6 MR. PICHOWICZ: You submitted as part of
7 the record a courtesy life safety checklist from the
8 office of licensing so there's a lot of requirements
9 and safety requirements that you have to meet.
10 Right?

11 MS. RON-CHAVEZ: Yes.

12 MR. PICHOWICZ: You also get inspected
13 every year?

14 MS. RON-CHAVES: Yes.

15 MR. PICHOWICZ: Reapply every year.

16 MS. RON CHAVEZ: Well, no. Inspection
17 every three years.

18 MR. PICHOWICZ: Three years.

19 MS. RON-CHAVEZ: Renewal.

20 MR. PICHOWICZ: They come and look every
21 year?

22 MS. RON-CHAVES: Correct.

23 MR. PICHOWICZ: I want to say it as part
24 of the record.

25 MS. RON-CHAVES: Every year they come in

1 they see something they decide they have to come in
2 within 30 days, within 30 days again until everything
3 is clear.

4 MR. PICHOWICZ: Typically they would
5 give you a temporary license?

6 MS. RON-CHAVES: Yes. First time they
7 come in they know, they see it, assess it, they
8 re-measure it again that's when we actually have the
9 final number of capacity. Then we have to go through
10 all the paperwork and they will actually give me a
11 temporary, give anyone 30 day they have to come back
12 so we can clear everything. If something is not
13 correct or something needs to be fixed, they'll give
14 me another -- not just me everybody 30 more days.
15 And then obviously after that everything has to be
16 taken care of. And the renewal process the same
17 thing once they come to the renewal they go through
18 the whole thing. If you need to do something they
19 give you temporary just to keep operating.

20 CHAIRMAN GILMORE: From your original
21 permits how long was it until when you found out,
22 when you went to the planning board?

23 MS. RON-CHAVES: That will be up to --

24 MR. LINDENFELSER: Commissioner, are you
25 talking about the current application?

1 CHAIRMAN GILMORE: Well, when you
2 actually -- because I'm looking at the application
3 and it says proposed use it has, of course, child
4 care center, but it's whited out. So I was just
5 curious what the previous proposal was.

6 MS. RON-CHAVES: It was child care.

7 CHAIRMAN GILMORE: Looks --

8 MR. LINDENFELSER: There's a typo or
9 something.

10 MR. PICHOWICZ: There's a filing on
11 record that you were accepted on I think August 8th
12 that in, and my understanding it went through,
13 permitting process as if it was an institutional
14 school type of thing and it wasn't until later that
15 it was determined it was really a daycare center
16 because the institutional use might have been exempt
17 as well from zoning but typically they're, like if
18 they're run by the boards of education, which they're
19 not, and they're not licensed by the Department of
20 Education they're licensed by the Department of
21 Family Services so that was the mix up there.

22 But there is on file the first
23 application came in as a preschool and then it was
24 changed. I can show it to you, I have one.

25 MR. LINDENFELSER: Show it to the

1 commissioner. He seems to want to see what is
2 underneath that white-out.

3 MR. PICHOWICZ: Well, I have to show it
4 to you, too, because there was a statement there
5 wasn't anything before. Let me just find it. We
6 don't have Isabel here, you have to bear with me. So
7 I have the application. We'll mark it as B-1, B as
8 in Board 1. I'll show it to you. Paul, can you --

9 Put B-1 it's the first application
10 that's set for preschool and Mr. Lindenfelser needs
11 to see it, too.

12 (Exhibit B-1, first application was
13 received and marked for identification.)

14 MR. LINDENFELSER: Thank you. This is a
15 site plan waiver application.

16 MR. PICHOWICZ: But on the first page --

17 MR. LINDENFELSER: -- to planning board,
18 it's not part of this application.

19 MR. PICHOWICZ: We're going through the
20 chronology of what --

21 MR. LINDENFELSER: Dated August 8th and
22 it does list, as Mr. Pichowicz said, it does have
23 proposed use, preschool.

24 MR. PICHOWICZ: Then subsequent to that,
25 Mr. Lindenfelser, we had a like an SSPRC meeting from

1 the planning board to discuss what the use was and
2 since, you know, even the name of the company called
3 All Season Daycare, right. If you were going to run
4 a school it would just be limited to those three and
5 four year olds, but if you are running a school it
6 was open up to everyone. Their questioning is are we
7 going to open it to everything. And then that's when
8 everything else started falling into place, where
9 they're not licensed by the department of ed, there's
10 services and all that stuff. That's kind of where
11 that confusion came from.

12 MR. LINDENFELSER: Well, the confusion
13 actually came before that, right.

14 CHAIRMAN GILMORE: But I was only asking
15 when I seen it was whited out.

16 MR. LINDENFELSER: I can't explain why
17 it was whited out on your application if it's a whole
18 separate application.

19 MR. PICHOWICZ: Okay. I think you
20 re-filed kind of almost the same paperwork and just,
21 you know, that's what I would have done I would have
22 whited out and put daycare center. I'm not saying
23 you did it, but somebody did. But that was just
24 clarification on what you're applying for.

25 CHAIRMAN GILMORE: We are -- my board

1 wasn't privileged to that board paperwork so it just
2 seemed like it was whited out and I was just curious
3 why it was whited out.

4 MR. PICHOWICZ: You have the latest
5 application, if I look at the handwriting it's the
6 same on everything, which it should have been, and
7 then just the use.

8 MR. LINDENFELSER: No, I --

9 MR. PICHOWICZ: I don't think there's
10 anything nefarious about it.

11 CHAIRMAN GILMORE: I was just curious
12 what it was.

13 MS. RON-CHAVEZ: The courtesy was
14 requested as a daycare center.

15 CHAIRMAN GILMORE: See, we didn't know
16 that.

17 MS. RON-CHAVEZ: From the very
18 beginning, actually the first --

19 CHAIRMAN GILMORE: That's the planning
20 board.

21 MR. LINDENFELSER: There is a preschool
22 indication and it looked like -- when they went to
23 the planning board, but I don't know what the
24 relevance of that is to this proceeding.

25 CHAIRMAN GILMORE: Just something I

1 wanted to know.

2 MR. LINDENFELSER: Okay. I don't know
3 if that's the same paperwork. I don't know if that
4 -- underneath that white-out if it does say
5 preschool, it may. I don't know.

6 CHAIRMAN GILMORE: Any professionals
7 have any questions.

8 MS. MERTZ: I just have one last
9 question, Mr. Chairman. To go back to a comment you
10 asked earlier when the Chairman mentioned about
11 recycling and trash. Was the intention to keep
12 stand-alone containers in this concrete paver area
13 then the haulers would bring it out to their truck or
14 is it a dumpster?

15 MS. RON-CHAVEZ: Yes. Actually because
16 of the prior personal business that they had, for me
17 was easier instead of putting garbage cans outside I
18 actually store it neatly the way he had it in the
19 back with that container there for that to be taken
20 over once so that way you don't put -- for kids even,
21 for the public to be putting the stuff out it will be
22 easier and not to bother, you know, like to wait for
23 town garbage truck to take it. I was going to take
24 that and keep it the same way that the gentleman had
25 it before.

1 MS. MERTZ: That was one container
2 instead of multiple?

3 MS. RON-CHAVEZ: One container with
4 multiple bins for them to use then the company will
5 come and --

6 MS. MERTZ: That would be stored inside
7 or outside?

8 MS. RON-CHAVEZ: It's on the alleyway.
9 I going to do same way as gentleman had it before.
10 And that way -- and it goes at same amount. Actually
11 I was thinking to use the same company. I asked them
12 and they've been using them for long time so I was
13 going to keep doing that.

14 MS. MERTZ: Thank you.

15 MS. RON-CHAVEZ: That has a valid point,
16 we have to schedule before they come out and when
17 it's no more traffic or anything so we don't bother
18 anybody else. That's a very good point.

19 MS. MERTZ: Thank you. I wanted to
20 clarify the process.

21 MS. RON-CHAVEZ: That was the idea.

22 MS. MERTZ: I'm okay.

23 MS. RON-CHAVEZ: Garbage that's a
24 problem, too.

25 CHAIRMAN GILMORE: No more questions?

1 Do you have another witness.

2 MR. LINDENFELSER: Yes, Jose Soares, one
3 of the owners of the building.

4

5 JOSE SOARES, having been duly sworn, testified as
6 follows:

7 MR. PICHOWICZ: State your name and give
8 your business address for the record.

9 MR. SOARES: Jose Soares. My office is
10 over here at 400 Harrison Avenue, Harrison, New
11 Jersey. 07029.

12

13 DIRECT EXAMINATION BY MR. LINDENFELSER:

14 Q. Are you one of the owners of 10-12 North
15 Third Street?

16 A. Yes, I am.

17 Q. And the child care company that Ms.
18 Ron-Chavez was testifying to, you are her husband?

19 A. Correct.

20 Q. And are you involved in the running of
21 the child care company?

22 A. I do the maintenance, the construction,
23 the clean-up after everybody leaves, fix the lights,
24 everything that needs to be done.

25 Q. Sometime ago did it become apparent that

1 the daycare company would need another location?

2 A. Yes.

3 Q. And did you then start to look for a
4 location that would suit the needs of the --

5 A. Yes, we actually look at a couple of
6 spots in Harrison, but they didn't have the size that
7 we needed or the location was harder for -- to
8 commute. It was more in residential areas and it was
9 just more of a difficult spot. This we felt was a
10 better location due that it was a restaurant with a
11 catering hall.

12 Q. So at the time you first saw the
13 building as a potential daycare center it was
14 operating as a bar and a catering facility?

15 A. Correct.

16 Q. And it was for sale or how did you learn
17 it was for sale?

18 A. Yes. That location has been for sale
19 for over five years. The owner was not the easiest
20 person to deal with. He had several people look at
21 it, but due to the conditions of the building and all
22 the repairs that it needed even for a restaurant a
23 lot of people just backed away.

24 Q. When you began negotiating for the
25 building did you do any research on the permitted

1 uses of the building?

2 A. Yes, I went to the building department,
3 spoke with the building official, Rocco, and told him
4 what we were looking to do. He said he felt that it
5 would fit great into the plan of the town since they
6 were getting complaints every month or every week
7 from the catering hall and the bar, especially when
8 they were doing parties in the back and 100 people,
9 100 plus people in the back in the middle of the
10 nights, on weekends, because of the parking
11 situation, people urinating in the street, the
12 police. So he guided us and said it was a good
13 location and he felt it would be a better use for the
14 building than what was there now.

15 Q. And did you -- was he familiar with the
16 other operations you run in Harrison?

17 A. Yes. They've been inspected and --

18 MR. PICHOWICZ: Mr. Lindenfelser, we are
19 getting into a lot of hearsay here. We allow a lot
20 of it, but to get into those type of conversations.

21 MR. LINDENFELSER: Just to establish the
22 mindset of Mr. Soares when he purchased the building.

23 CHAIRMAN GILMORE: How long have you
24 owned the building?

25 MR. SOARES: We closed in April or May.

1 CHAIRMAN GILMORE: SO just recently.

2 MR. SOARES: That's why we purchased it,
3 we were told to go ahead.

4 CHAIRMAN GILMORE: When you went to
5 Rocco was the paperwork that you filled out for a
6 school or child care?

7 MR. SOARES: Daycare. They know that --
8 that's why the blueprints that we submitted say on
9 the daycare.

10 CHAIRMAN GILMORE: Right. But the
11 original one said --

12 MR. SOARES: That was filed afterwards.
13 They asked us to do that once we had the approvals
14 and they know we run daycares.

15 CHAIRMAN GILMORE: I have to see the
16 dates. Go ahead.

17 Q. So you purchased in April of 2023?

18 A. Correct.

19 Q. And you were under the impression it was
20 a permitted use?

21 A. Sure. We were issued permits to start
22 the demo, which we did. And then we supplied the
23 blueprints and on the blueprint you see it does say
24 daycare. And our architect is here who did the
25 blueprints. And then they gave us permits to go

1 ahead and start building, which we have been and
2 we're almost completed now.

3 Q. So the construction is what percentage
4 complete?

5 A. Ninety-two percent. We're finishing
6 tiling the floors, all the plumbing, electrical, the
7 drop ceilings, the HVAC system are all in, everything
8 is painted.

9 CHAIRMAN GILMORE: If I could, when did
10 -- when you received the information that you had to
11 come before the zoning board what percentage was the
12 building at at that point?

13 MR. SOARES: Sixty-two percent, 65.

14 CHAIRMAN GILMORE: So even though you
15 were coming to the zoning board you continued to
16 build.

17 MR. SOARES: Yes. Because at that point
18 there was no turning back.

19 Q. So the town received the plans that your
20 architect prepared, issued the permits, you went
21 ahead, this is all before the August application that
22 was referred to as the preschool?

23 A. Correct.

24 Q. And then at some point were you
25 contacted regarding the property again that there was

1 an issue with what you were doing?

2 A. Yes. We were told that we have to fill
3 out the application to go in front of the board, so
4 we did. Originally we were thinking it was the
5 planning board and then after they reviewed it we
6 actually had a meeting set up, sent out all the
7 notices and everything that we were supposed to do
8 and then they came back and said, nope, wrong board.
9 You have to go to the zoning board, let's do it all
10 over again. So we filed. We actually filed twice
11 already. We are trying to do whatever the town needs
12 us to do we're not trying --

13 CHAIRMAN GILMORE: I understand.

14 MR. SOARES: We're been in this town for
15 many years. Like I dealt with Mr. Condaris (ph),
16 most of you know. So we've been here doing for many,
17 many years. We're not trying to do anything around
18 anybody's back and we think --

19 CHAIRMAN GILMORE: Nobody -- we are not
20 trying to make you feel that you did something wrong.

21 MR. SOARES: We think improvements --

22 CHAIRMAN GILMORE: We're just trying to
23 find out the facts, because we are getting the facts
24 now that's what this meeting is about.

25 MR. SOARES: And that's the same thing

1 my wife said. When he did the first location it was
2 the planning board and we were told that once you had
3 the approval to go out to mayor and council to get --
4 ask for the loading and unloading. And that was our
5 intention to do now, after the hearing here, if
6 everything went well, we would approach them and do
7 the same thing, to have seven to nine drop-off and
8 four to six pick-up, two spots or one spot allocated.
9 On the corner you have that brick building that's
10 been there for years. We did approach because it is
11 a corner, it would have been a nicer spot. The owner
12 said yes then he said no because they're looking to
13 do something else in future. That's fine. Everybody
14 has an opinion. All right, that's when we said try
15 to set of things, see what we can accomplish with him
16 and we did. And that would be my thing. We have the
17 alleyway which they call a driveway. It's an
18 alleyway. There's no parking there, there's no
19 parking --

20 CHAIRMAN GILMORE: I'm very familiar
21 with the property.

22 MR. SOARES: My thing was to go to the
23 mayor later and try to get a pick-up and drop-off
24 allocation, same as we did over here on Warren, which
25 they approved there. And approved some of other

1 daycares have it also in town. That's what our
2 intention is to do.

3 CHAIRMAN GILMORE: Which ones have the
4 drop-off.

5 MR. SOARES: Study hall has a sign out
6 there says no parking during the -- it's also the
7 daycare the sign is there. They have it. We had it
8 over here. I think the sign is still there, it's no
9 longer there. So it's something that the town has
10 done before and the town can probably do it again,
11 which would alleviate a lot of your concerns, which
12 is same as ours.

13 CHAIRMAN GILMORE: Keep going.

14 Q. So after the confusion about whether a
15 variance was required or not you found yourself with
16 a 62 percent complete project and the need to now go
17 for approvals that were not anticipated or disclosed
18 to you prior to July, I guess was it 2023?

19 A. Around there.

20 Q. Then you followed up with the first
21 application?

22 A. Followed up with first application. We
23 filled everything out. We got the 200 foot radius,
24 we did the mail outs. We did the publications. And
25 after that is when we were told, nope, wrong board.

1 You have to go to the zoning board. Which said, all
2 right, we did what we do, then we filed.

3 Q. Your architect prepared the plans in
4 accordance with the recommendations from the state?

5 A. Yes.

6 Q. He's here tonight to talk about that?

7 A. Yes.

8 Q. Then you hired a planner who can discuss
9 the impacts on the community benefits?

10 A. Correct.

11 Q. Anything else you want to tell the board
12 about the project?

13 A. No, everybody is -- you can take a look
14 at it.

15 CHAIRMAN GILMORE: Anyone have
16 questions?

17 MR. PICHOWICZ: Mr. Soares, how much did
18 you pay for the property?

19 MR. SOARES: I think it was nine
20 something.

21 MR. PICHOWICZ: And how much have you
22 spent or are you going to spend in the
23 rehabilitation, approximately?

24 MR. SOARES: We contemplate about 180 in
25 construction costs so probably about 275 because of

1 the condition of the building was in such that we
2 just had to reinforce walls and put up temporary
3 walls and permanent walls. We've actually gotten a
4 little farther than most people would do, we own the
5 building so I want to make sure it's not going
6 anywhere.

7 MR. PICHOWICZ: So you think the total
8 expense in rehab is going to be about 300,000?

9 MR. SOARES: Pretty close.

10 MR. PICHOWICZ: And did you rehab the
11 apartments at all?

12 MR. SOARES: Not yet. That's going to
13 be our next venture.

14 MS. MERTZ: There's two apartments in
15 the upper?

16 MR. SOARES: Four, one-bedroom.

17 MS. MERTZ: Four.

18 MR. SOARES: They're all one-bedroom.

19 MS. MERTZ: They're all accessed by the
20 one stairwell?

21 MR. SOARES: Yes, side stairwell. Yeah,
22 it's front and rear.

23 CHAIRMAN GILMORE: Is there any parking
24 for them? You don't have any off-street parking.

25 MR. SOARES: No, that building has no

1 off-street parking.

2 MS. MERTZ: Out of curiosity do you know
3 how old the building is?

4 MR. SOARES: The foundation is out of
5 stone so it would be in the early 1900s, late 1800s,
6 the original side of the building was done. The
7 building was a bakery originally and then it became
8 restaurants.

9 MS. MERTZ: Thank you.

10 BY MR. LINDENFELSER:

11 Q. All the work you have done you have gone
12 through permitting and inspections?

13 A. Oh, yes. Do not want to go against that
14 because the town and the state, the state requires
15 that we give them the CO.

16 Q. So all the permits are in place, all the
17 permissions are in place it's just the CO, which is
18 being held up by issue of the use?

19 MR. SOARES: Correct. The issue of the
20 use and just done and like I said we got all our
21 building, electrical, plumbing, HVAC, rough
22 inspections, now just wait for the call for the
23 final.

24 MR. PICHOWICZ: Can you just go over the
25 safety improvements made. Did you put in sprinklers?

1 Were they in already and did you rehab them?

2 MR. SOARES: No, that building does not
3 have sprinklers. We did -- what we did reinforced
4 the whole building with two-by-sixes instead of
5 two-by-fours. We added all fire proof sheetrock on
6 both sides of the primary walls. The ceilings, if
7 though they're drop ceilings above the drop ceilings
8 we have all double layers of five-eighths fire proof
9 sheetrock so it's encapsulated, that whole area.

10 CHAIRMAN GILMORE: No fire suppression
11 system?

12 MR. SOARES: No, because there's no
13 babies in the building so it wasn't required.

14 CHAIRMAN GILMORE: But didn't you
15 remodel the whole downstairs?

16 MR. SOARES: Yes we did. But it does
17 have all new effective alarms went in and put all new
18 sensors and all new fire detection system, which it
19 didn't have before, now it has, even the hallways and
20 everything has it.

21 Q. All the emergency exits and requirements
22 of the state are being addressed?

23 A. Yes.

24 Q. And would have to be met before --

25 A. Oh, yes. They come in and make sure

1 they have extinguishers, pull stations, all that.

2 Same as the other centers we have.

3 MR. LINDENFELSER: Anything further?

4 CHAIRMAN GILMORE: I'm good.

5 MR. LINDENFELSER: Next we'll call the
6 architect on the project.

7

8 JORGE FERNANDES, having been duly sworn, testified as
9 follows:

10 MR. PICHOWICZ: Please state your name,
11 spell your last name and give your business address
12 for the record.

13 MR. FERNANDES: Jorge Fernandes,
14 F-E-R-N-A-N-D-E-S, registered architect. Business
15 address 75 Parkhurst Street, Newark New Jersey.

16

17 DIRECT EXAMINATION BY MR. LINDENFELSER:

18 Q. Mr. Fernandes, are you acquainted with
19 the project at 10-12 --

20 MR. PICHOWICZ: Can we just put his
21 qualifications on the record so we can qualify him as
22 an expert maybe.

23 Q. Certainly. Where did you go to school?

24 A. I have Bachelors from NJIT in
25 architecture and my license to practice architecture

1 is current and in effect.

2 MR. PICHOWICZ: How long have you been a
3 architect licensed in New Jersey?

4 MR. FERNANDES: I have been licensed
5 since 2018.

6 MR. PICHOWICZ: Have you appeared before
7 land use boards before?

8 MR. FERNANDES: I have.

9 MR. PICHOWICZ: Have you appeared in
10 Harrison land use boards.

11 MR. FERNANDES: No, I have not.

12 MR. PICHOWICZ: The boards that you were
13 out did they qualify you as an expert in the field of
14 architecture.

15 MR. FERNANDES: They have.

16 MR. PICHOWICZ: Mr. Chairman, I move his
17 qualifications.

18 CHAIRMAN GILMORE: Accepted.

19 MR. LINDENFELSER: Thank you, Mr.
20 Chairman.

21 Q. Were you approached by Mr. Soares to
22 help with the remodeling of the 10-12 North Third?

23 A. Yes, I was.

24 Q. And would you explain the project to the
25 board?

1 A. The premises when I first walked them it
2 was still set up as a bar. He had the bar in the
3 front. It had the rear catering hall that I believe
4 it was being used to that effect.

5 The renovations that we proposed, the
6 conversion that we proposed was we were going to take
7 the bar area in front and make two classrooms. And
8 then the catering hall in the rear would be a larger
9 classroom. And in the middle of that we have an
10 office, reception area and also multi-purpose room.

11 Now, the three classrooms are going to
12 be 990 square feet, 987 square feet and 1,093 square
13 and each of those classrooms have direct access to
14 that alleyway in event of an emergency this way the
15 students can egress through the alleyway without
16 having the go through the building to the front side.

17 CHAIRMAN GILMORE: Can I ask one
18 question, are you removing one door in front of the
19 building?

20 MR. FERNANDES: Be are removing one door
21 in front of the buildings.

22 MS. MERTZ: Are the windows going to
23 stay the same?

24 MR. FERNANDES: The windows are going to
25 stay. We are going to have same windows on the side,

1 windows in the front and pretty much every classroom
2 is going to have one of them.

3 MS. MERTZ: So you'll just be
4 maintaining them in terms of the front facade you're
5 going to maintain the two large windows and the one
6 door on the left. Is that correct?

7 MR. FERNANDES: Yes, correct.

8 MS. MERTZ: I was curious, too.

9 CHAIRMAN GILMORE: Go ahead.

10 Q. Did Mr. Soares provide you with a list
11 of requirements that the state uses for daycare
12 centers?

13 A. Yes.

14 Q. And did you use that list to design the
15 project?

16 A. I used that as well as the building code
17 requirements for I-4 and these use groups. And one
18 of the biggest requirements for I-4 is the exit
19 directly to the outside from each classroom on the
20 ground floor.

21 Q. All the work on the project is taking
22 place within the existing shell of the building?

23 A. Yes, it is.

24 Q. Any deviations from the Harrison zoning
25 code other than the use that we're here for would be

1 pre-existing, nonconforming issues?

2 A. That is correct.

3 Q. And you believe that this project will
4 pass the state's requirements?

5 A. Yes.

6 Q. The safety and fire items that Mr.
7 Soares identified are they sufficient, as a
8 architect, for the use of this building as a daycare
9 center?

10 A. Yes, they are.

11 Q. Do you have any other points on this
12 project that you would like to point out to the
13 board?

14 A. No, not really. That's the scope of
15 what we did, of our intervention. I am open to any
16 questions.

17 CHAIRMAN GILMORE: So you're planning is
18 basically just for the inside of the building?

19 MR. FERNANDES: Yes.

20 Q. Just for the first floor?

21 A. Just for the first floor.

22 Q. In the entire first floor is only a
23 daycare there's no other areas or business?

24 A. Correct. Except for the, of course, the
25 entry stair into the apartments on the right, the

1 rest is all for daycare.

2 MS. MERTZ: Is there any exterior
3 lighting or existing --

4 MR. FERNANDES: I don't have any on my
5 plan. We are going to be reusing the existing
6 fixtures that were on the side --

7 MS. MERTZ: Is there some existing in
8 that alley?

9 MR. FERNANDES: I believe there are,
10 yes.

11 MS. MERTZ: They're probably required to
12 be above the doors anyway. Correct?

13 MR. FERNANDES: Correct.

14 MS. MERTZ: Do you know if the owner, I
15 should have asked the owner, do you know if they're
16 anticipating any signage in the front?

17 MR. FERNANDES: I am sure they are. I
18 haven't designed it. So I'm sure they're going to
19 have to apply for --

20 MS. MERTZ: The current sign doesn't
21 comply, just for the board also, because it extends
22 into the right-of-way. That today would need
23 approval from the council.

24 MR. PICHOWICZ: Did they take it down?

25 MS. MERTZ: Okay so that's done. I am

1 assuming they will comply with or seek approval.

2 MR. SOARES: Yes, the existing sign will
3 all be removed, all the brackets overhanging the
4 sidewalk, was Skyline Lounge, that's all coming down.
5 What we're doing, my wife is doing, the awnings, the
6 fabric awnings over the window all will be lighted
7 and it will go alongside the alleyway also, the small
8 LED lighting all going in.

9 MR. PICHOWICZ: If you are going to use
10 awnings you're going to need mayor and council
11 approval.

12 MR. SOARES: Correct.

13 MR. PICHOWICZ: Thank you.

14 MR. SOARES: They're going to be the
15 thinner size.

16 CHAIRMAN GILMORE: Can I ask who the
17 general contractor was?

18 MR. SOARES: Myself, Limestone Building,
19 licensed and insured.

20 MR. LINDENFELSER: Any other questions
21 for the architect? Proceed to the planner.

22

23 WILLIAM STIMMEL, having been duly sworn, testified as
24 follows:

25 MR. PICHOWICZ: State your name, spell

1 your last name and give your business address for the
2 record, please.

3 MR. STIMMEL: My name is William
4 Stimmel, S-T-I-M-M-E-L. My professional address is
5 PO Box 280, Rutherford, New Jersey.

6

7 DIRECT EXAMINATION BY MR. LINDENFELSER:

8 Q. Mr. Stimmel, what is your educational
9 background?

10 A. I'm a graduate of NJIT with a degree in
11 civil engineering. I've been employed for the last
12 24 years in the State of New Jersey as an engineer
13 and a planner. I've been a licensed engineer since
14 2004, that license is current. License planner since
15 2010, that license is current. And I have testified
16 as an expert in engineering or planning in front of
17 over 70 municipal boards in the State of New Jersey
18 including Harrison Zoning Board.

19 MR. PICHOWICZ: Move his qualifications.

20 CHAIRMAN GILMORE: Accepted.

21 MR. PICHOWICZ: You're testifying in
22 both capacities?

23 MR. STIMMEL: I anticipate testifying as
24 a planner. If any engineering issue can come up then
25 so be it.

1 MR. PICHOWICZ: You have the blessing of
2 both ends.

3 MR. LINDENFELSER: Thank you, Mr.
4 Pichowicz.

5 Q. Mr. Stimmel have you had a chance to
6 examine the building located at 10-12 North Third
7 Street?

8 A. I did, yes.

9 Q. Can you describe the area that it is
10 located in?

11 A. Sure. The building essentially has two
12 portions. There's the commercial ground floor which
13 occupies the majority of the site. Then there's
14 residential apartments on the upper floors. There's
15 four residential apartments in the building at
16 present.

17 The applicant is intending to renovate
18 the ground floor of the building to allow it to serve
19 as a child care center. If you're looking at the
20 building from the street there's commercial uses to
21 the left, residential uses to the right, that more or
22 less fits with the zoning pattern in the area of the
23 properties. To the left of the site front on
24 Harrison Avenue, Harrison Avenue is in a commercial
25 zone. The site and the properties to the right are

1 in the 2F-1 zone, which is primarily a residential
2 zone and is primarily intended for development with
3 one and two-family dwellings.

4 Obviously the exiting use of the
5 property that is the bar, tavern, catering hall,
6 whatever you would like to call it, is nonconforming
7 for the requirement of the zone and so is the
8 proposed child care center which is why we're here
9 for a use variance tonight.

10 Q. What zone is it located in, the subject
11 building?

12 A. The 2F-1 two-family detached zone.

13 Q. And then how far is it, is the next
14 commercial zone?

15 A. It adjoins the commercial zone to the
16 left or to the south of the property.

17 Q. So it's a couple of building outside of
18 the commercial zone?

19 A. I believe the next building is in the
20 commercial zone, because the pizza place on the
21 corner and adjoining commercial tenants but up
22 against the subject property.

23 Q. So it's right on the line?

24 A. Correct.

25 Q. Between the commercial zone and the

1 residential zone?

2 A. Correct.

3 Q. How does a daycare center impact the
4 community?

5 A. Daycare centers are on the short list of
6 uses which are considered inherently beneficial
7 according to the Municipal Land Use law. It means a
8 use which is universally considered a value to the
9 community, fundamentally serves the public good and
10 promotes the general welfare, in this case through
11 the education and caring for very small children.
12 Such a use includes but is not limited to hospitals,
13 school, child care center, group home or certain
14 renewable energy facilities.

15 Q. So it's considered an inherently
16 beneficial use?

17 A. Correct.

18 Q. The use that it's replacing what are the
19 benefits to the community in replacing the prior use
20 with a daycare center?

21 A. Well, the prior use, the bar, has a
22 benefit to the community, like any other commercial
23 use would. In this case it allows for entertainment
24 options and provides jobs, provides viable business
25 in a location, certainly though not considered

1 inherently beneficial.

2 Some of the problems you have with the
3 bar, and specifically a bar located in a residential
4 zone, are that the hours of operation are largely out
5 of phase with the residential uses. Your typical
6 personal that is home enjoying their property on a
7 weekday evening over the course of the weekend which
8 happens to be the times that bars are generally the
9 busiest. When bars are closing it's after a lot of
10 people have gone to bed. You have got noise issues,
11 traffic, parking, of course deliveries. So a bar
12 typically would not be considered compatible with
13 development in a residential zone.

14 Q. And a daycare center would be
15 compatible?

16 A. I think it certainly would be.
17 Obviously the need for daycare is driven by the need
18 to take care of, educate young children in the
19 community. Harrison certainly is a densely populated
20 community. Right in the area of the site in question
21 Harrison Avenue and Frank E. Rodgers Boulevard are
22 commercial zones and essentially everything to the
23 north and west of that is in the same zone as the
24 subject property. So it's a very dense residential
25 zone as you travel north and west of the site.

1 Q. Is it -- was there less of a
2 parking-wise both uses are nonconforming?

3 A. Correct.

4 Q. Is a daycare center less of a
5 nonconforming use than the bar and catering hall?

6 A. Yes, I didn't do a formal calculation.
7 I wasn't in the bar prior -- I haven't been in the
8 building before or since the remodeling, let's say,
9 but from a look at the ordinance the parking
10 requirement for the bar/restaurant would be one space
11 per three seats. Whereas for a school, which I
12 suppose would be the closest use that's specifically
13 listed, I came up with one per four teachers.

14 Mr. Pichowicz had talked about the
15 exemption for daycare centers and child care centers
16 as it is referenced in the Municipal Land Use. The
17 MLUL does allow for an exemption for the parking
18 requirement for those -- going to call them
19 commercial child care centers as opposed to the ones
20 that might be in someone's home. It makes a number
21 of specific references to child care both in the home
22 and outside the home and I think that shows the
23 preferred nature of that type of use. Again, being
24 specifically cited as inherently beneficial.

25 So I think based on those numbers even

1 setting aside the issue of the exemption I think
2 there's a lesser standard for parking for the daycare
3 as opposed to the bar.

4 Q. The traffic in the area how would it
5 compare, the old use or the prior use, to the
6 proposed use? Is it impacted?

7 A. Well, they're both generators of
8 traffic. Obviously they generate at different times
9 of the day. I think the daycare center would be in
10 line with the traffic generated by the majority of
11 the commercial uses along Harrison Avenue. It would
12 have the drop-off in the morning, seven to nine, and
13 would have the pick-up in the evening at four to six.

14 But I think it's important to factor in
15 the testimony from the client who currently operates
16 three existing daycares, all of which are Harrison I
17 believe. And certainly has some familiarity with --
18 there was some indication that the site would have a
19 lot of people bringing the kids to school on foot.
20 And, again, I think that ties into the walkable
21 nature of the community in the density of the
22 residential development.

23 CHAIRMAN GILMORE: Can I ask a question?

24 MR. STIMMEL: Sure.

25 CHAIRMAN GILMORE: Have you stood on the

1 corner of Third and Harrison between seven and nine
2 o'clock in the morning?

3 MR. STIMMEL: No.

4 CHAIRMAN GILMORE: Do you live in
5 Harrison?

6 MR. STIMMEL: No, I do not.

7 CHAIRMAN GILMORE: Your last statement
8 stated that the cars on Harrison Avenue are just for
9 the stores on Harrison Avenue and that's not true.
10 That's all people going to 280, going to Newark,
11 coming through Harrison to get to where they have to
12 go to the PATH. So your statement about it's just
13 for the Harrison Avenue commercial units is not
14 correct.

15 MR. STIMMEL: I don't believe I said
16 that. Obviously there's going to be pass-through
17 traffic in any community. I think there is a volume
18 of traffic associated with the commercial uses on
19 Harrison Avenue and --

20 CHAIRMAN GILMORE: Associated.

21 MR. STIMMEL: In keeping with that.

22 CHAIRMAN GILMORE: Can I ask you how
23 many times have you been to Harrison?

24 MR. STIMMEL: In my life or in the
25 conduct of this application?

1 CHAIRMAN GILMORE: In your life.

2 MR. STIMMEL: Hundreds.

3 CHAIRMAN GILMORE: Okay.

4 Q. The issue that was discussed about the
5 pick-up and drop-off there was some discussion about
6 possibly getting permission from the town for a zone
7 at the location. What are your thoughts about the
8 impact of this daycare center regarding the pick-up
9 and drop-off and the safety of the children coming in
10 and out?

11 A. Is the question whether I think the
12 drop-off space would be helpful? Because I think
13 certainly it would. It would provide a benefit. I
14 think I'm inclined to believe that the applicant when
15 they provided testimony related to the operation
16 indicating that there's a large amount of pedestrian
17 traffic to and from the school, you know, as a
18 traffic engineer wearing the engineering hat we often
19 start off referencing ITE publications, the Institute
20 of Transportation Engineers which does projections of
21 site traffic across the country generally, across the
22 United States.

23 But if you have something that's more
24 specific you can say gas station in Clifton and we're
25 building a gas station in Clifton generates this much

1 traffic, it's helpful to be able to provide that
2 local flavor. So I think that's important to
3 consider.

4 Q. So you'll have a lessening, obviously
5 the bar closing, that bar traffic will no longer be
6 drawn to the area?

7 A. Correct.

8 Q. But the impact of the daycare will add
9 to will -- would replace some of the traffic.
10 Correct?

11 A. Yeah, I mean they're both commercial
12 uses, they're both generators of traffic, obviously
13 they generate traffic at different times. I think
14 the loss of the bar traffic with the removal of the
15 bar traffic, if you're not considering the loss,
16 would be offset to some extent by the addition of the
17 daycare traffic.

18 But I think in terms of other aspects I
19 think, you know, the daycare would be a clear
20 improvement. It wouldn't be so much of a like for
21 like replacement, would be obviously a benefit to the
22 neighborhood for all the uses for -- for all the
23 aspects of non-traffic and parking, the noise, the
24 deliveries, the negative impacts with after hours
25 crowds at the bar and things like that.

1 Q. Would there be a detrimental effect on
2 the traffic switching from the bar to the daycare
3 center?

4 A. It's possible there would be some
5 increase in the morning, certainly, because of the
6 fact that the bar would not be open. Whether that
7 would rise to the level of a substantial detriment to
8 the public good, as it were, which is what we're
9 trying to argue here. I don't believe that the site
10 traffic in the morning would represent a substantial
11 detriment. The difference between a daycare and a
12 school that if you go to Washington Elementary and
13 the school bell rings at eight o'clock, all the kids
14 that are going to school have to be there at eight
15 o'clock.

16 At the daycare it may be parents drop
17 their kids off any time between seven and ten
18 depending when they have to be at work. And the same
19 thing again in the afternoon, dismissal is not three
20 o'clock it's whenever the parents or grandparents or
21 whoever gets back to the site to pick the kids up.
22 So staggered drop-off, staggered pick-up which
23 diminishes the impact of site generated traffic at
24 peak times and sort of stretches the peak times out
25 over a larger window than you would have with public

1 elementary or junior high or high school.

2 Q. Would the granting of this use variance
3 be inconsistent with the goals of the Harrison zoning
4 ordinance in your opinion?

5 A. I don't believe so. The zoning
6 ordinance in the 2018 Master Plan re-exam talked
7 about eliminating incompatible uses from residential
8 zones. And I believe this application certainly does
9 that in my professional opinion.

10 We're providing a use which is
11 inherently beneficial replacing that bar which,
12 again, in my professional opinion is incompatible
13 with the residential zone in which it's located.

14 I think we have identified the public
15 good at stake here, it's the education and protection
16 of children. We have talked about any negative
17 impacts associated with the application which, from
18 everything we're hearing, our traffic and parking,
19 but we have those traffic and parking concerns with
20 the existing or previously existing use of the
21 property and you would have that with any other
22 commercial use which would potentially occupy that
23 space. So I think it's clear that redevelopment of
24 the site with the daycare is a net positive to the
25 community.

1 CHAIRMAN GILMORE: How about on a safety
2 level on the outside?

3 MR. STIMMEL: Pardon?

4 CHAIRMAN GILMORE: How about a safety
5 level for the kids going back and forth to school and
6 in terms of drop-off. You stated that between
7 certain times, the early statement you made was
8 during a popular time when all kids were going to
9 school from seven to ten or nine to ten you said or
10 ten the --

11 MR. STIMMEL: Seven to nine in the
12 morning typically peak hour.

13 CHAIRMAN GILMORE: Do you know this bar
14 at all.

15 MR. STIMMEL: I have never been.

16 CHAIRMAN GILMORE: You're generalizing
17 the bar, like you don't know how busy it was, how
18 much traffic it drew. So you're generalizing a bar
19 that evidently couldn't stay open because it didn't
20 have enough people going to it. So I have a problem
21 with you generalizing this bar with the bar that
22 people are in and out all day. So if you haven't
23 witnessed anything how can you -- you're
24 generalizing. I'm asking -- you're generalizing
25 whether or not one can get more traffic than the

1 other.

2 MR. STIMMEL: All I have to go on for
3 the operation of the previously existing bar is the
4 testimony that was provided by our client. Certainly
5 if the applicant were to move away from the proposed
6 daycare center and decide to reopen the bar, there's
7 the potential it could be the world's greatest bar
8 and people coming in and out there at all times of
9 day.

10 I can tell you that I have never seen a
11 residential zone in any municipality which allows
12 bars as a commercial use, unless it's something like
13 a mixed use, commercial, residential, like you have
14 close to a train station or in a transit village type
15 areas. So it's not one or -- one-family zones don't
16 generally allow bars.

17 CHAIRMAN GILMORE: At one point Harrison
18 was in the Guinness Book of World Records for having
19 a bar on every corner. So these bars go back a long
20 time.

21 MR. STIMMEL: As an aside I heard that
22 same statement four different times, I want to know
23 which it was true, it could be Harrison, could be
24 Manville, it could be Linden. I have heard a few
25 others. It's interesting.

1 MR. PICHOWICZ: In the middle of the
2 block, too.

3 MR. STIMMEL: In the middle of the
4 block.

5 MR. LINDENFELSER: Any other thoughts
6 about this application that we haven't covered?

7 MR. STIMMEL: I said everything that I
8 wanted to cover. If the board has any additional
9 questions certainly I'd be happy to try to answer.

10 MR. PICHOWICZ: Would you say there's a
11 shortage of daycare centers in the area?

12 MR. STIMMEL: I have to rely on what the
13 client said. They have three daycares in Harrison
14 and they have found there's a demand for a fourth.

15 MR. PICHOWICZ: You haven't studied
16 other preschools and populations or demographics or
17 anything?

18 MR. STIMMEL: I would not generally do
19 that, it's a little beyond the scope of use variance
20 application.

21 MS. KARAS: Did you do any type of
22 traffic study?

23 MR. STIMMEL: No.

24 MS. KARAS: Did you go up and down the
25 street at the times, seven to nine, four to six?

1 MR. STIMMEL: I have been up and down
2 Harrison Avenue at various times of the day. I've
3 been up and down Third as part of the application,
4 but I haven't done a formal traffic study, no.

5 MS. KARAS: Even if you have gone like
6 seven to nine where they're saying the drop-off times
7 or four to six which would be pick-up because they
8 aren't generally the busiest time for all traffic.
9 Seven to nine people are going to work. Four to six
10 people coming home. It's a very busy street at those
11 times.

12 MR. STIMMEL: It does not surprise me.
13 Certainly there's a lot of traffic in Harrison in the
14 morning and evening peak hours. I don't think that's
15 going to change as a result of this application. I
16 tend to think that's part of why I don't believe that
17 this will have a significant negative impact in terms
18 of traffic generation. You have already got -- you
19 have already got significant volumes on the streets.

20 If you have an area where there's no
21 traffic in the morning peak hour, you are adding a
22 non-permitted commercial use, you could argue that
23 there's quality of life impact, but the few cars
24 associated with this aren't really going to move the
25 needle in either direction, let's say.

1 MS. KARAS: Thank you.

2 CHAIRMAN GILMORE: So if they -- the
3 town didn't issue a parking spot or unloading area
4 you still have the same opinion?

5 MR. STIMMEL: I think there's a benefit
6 to asking for the loading spot and would hope that
7 the mayor and council would approve it.

8 CHAIRMAN GILMORE: That's not what I
9 asked.

10 MR. STIMMEL: I haven't finished. I
11 think it doesn't significantly change the overall
12 fact that the application is for an inherently
13 beneficial use. You've got an existing noncomplying
14 commercial use on the property. So I think the net
15 benefit still outweigh any detriment associated with
16 traffic and parking. So I think that, yes, in my
17 mind it would be better if that space were approved,
18 but if it weren't approved I don't believe it changes
19 the overall application.

20 CHAIRMAN GILMORE: Double-parked cars
21 dropping children off between seven and ten in the
22 morning is not going to interfere with the traffic on
23 Third Street? You are aware Third Street goes all
24 the way to Central Avenue and picks up traffic from
25 the Clay Street Bridge, people coming from over

1 Newark.

2 MR. STIMMEL: People double-parking,
3 people parking in crosswalks, people speeding to get
4 here.

5 CHAIRMAN GILMORE: We're talking
6 about --

7 MR. STIMMEL: Please let me finish.

8 CHAIRMAN GILMORE: We're talking about
9 this incidence. We are not talking about the rest of
10 the town. You're asking us to put a child care and
11 you're ignoring the safety of what happens when cars
12 get crazy in the morning and you're going to have
13 people dropping off on a slightly tighter street and
14 you don't see any detriment to that.

15 MR. STIMMEL: If this application were
16 for a property --

17 CHAIRMAN GILMORE: Yes or no? Every
18 time I ask --

19 MR. STIMMEL: I have to be allowed to
20 answer.

21 CHAIRMAN GILMORE: You are. It was just
22 a question.

23 MR. STIMMEL: If this application were
24 one property to the left in the commercial zone it
25 would be a permitted use, there would be no parking

1 requirement. And I don't think anyone would be
2 arguing. I don't see this being any different moving
3 one property to the right. Double-parking, fair
4 concern, but that's a police issue, it's not a land
5 use issue. The board can't govern drivers behaving
6 irresponsibly. People parking where they shouldn't
7 be, whether it's double-parking, in a crosswalk, in
8 front of a fire hydrant, you have to park in a legal
9 parking spot regardless of what use you're here for.

10 CHAIRMAN GILMORE: So the confusion it's
11 going to cause with the kids crossing the street and
12 everything, is okay with you. The way it was set up
13 was from years ago being in a commercial and that's
14 been awhile, okay.

15 So whether it goes one way or the other
16 doesn't change the length of the street, doesn't
17 change the traffic on the street and it doesn't
18 change the kids crossing especially with cell phones
19 and cars dropping, cars trying to go around so they
20 double-parked. Never mind pulling a child out of a
21 car and stop, double-park and brining it into -- so
22 all that doesn't matter?

23 MR. STIMMEL: I'm not saying it doesn't
24 matter, people have to drive responsibly.

25 CHAIRMAN GILMORE: Again, like you

1 said --

2 MR. STIMMEL: There's sites in Harrison
3 where --

4 CHAIRMAN GILMORE: -- that's a police
5 thing. We have get patrol policing but we can't
6 control where we put things.

7 MR. STIMMEL: If you limited daycares in
8 Harrison to locations where you could provide a
9 parking lot with whatever the board feels is adequate
10 amount of parking you wouldn't have any daycares in
11 the.

12 CHAIRMAN GILMORE: Listen, nobody is
13 asking for parking lots. What we are saying is that
14 location is a bad location especially at the times
15 kids are being loaded and unloaded. You got rush
16 hour on both ends and people coming from all the
17 streets on that end of town. If you look at the map
18 those -- that part of town has all through streets
19 where other parts of the town there's dead ends. Yet
20 there's not a continuous street.

21 Third Street runs all the way into East
22 Newark where the fire department is and comes all the
23 way down so a through street like that is really a
24 popular use. I am just --

25 MR. STIMMEL: I don't see how this site

1 would be any worse from a traffic perspective than if
2 it was on Harrison Avenue.

3 CHAIRMAN GILMORE: Nobody is talking
4 about Harrison Avenue.

5 MR. STIMMEL: Daycare centers are
6 permitted on Harrison in the NC zone which is right
7 at the corner.

8 CHAIRMAN GILMORE: We're talking about
9 Third Street.

10 MR. STIMMEL: Right. Which has less
11 traffic than Harrison Avenue.

12 CHAIRMAN GILMORE: Yes. But not --
13 you're making it sound like it has no traffic.

14 MR. STIMMEL: I did not say that at all.

15 CHAIRMAN GILMORE: Do you have any other
16 witnesses? Are you finished?

17 MR. LINDENFELSER: Just a question and
18 certainly other questions.

19 Q. In a land use application is it a
20 consideration that drivers will not follow the rules
21 of the road and will not park and unload reasonably
22 safely?

23 A. No.

24 Q. Who's jurisdiction does that fall under?

25 A. That would fall to the police

1 department.

2 Q. So if the drivers coming to the daycare
3 center, of which we have a total of what, 60,
4 possible or according to the testimony a lot of whom
5 will be walking, so you're down to maybe 20 children
6 who will be delivered between seven and nine so
7 you're talking about one every ten minutes?

8 A. Something like that.

9 Q. And if they -- if those people follow
10 the rules of road is there any safety concern if they
11 park legally, if they take their children out on the
12 sidewalk side and walk them in?

13 A. No. Or if they cross at the crosswalk
14 there would be no safety issue.

15 Q. So if parents are double-parking and
16 getting their kids out in traffic and not following
17 the crosswalks is that a detriment to an application
18 in the land use?

19 A. No, it's not a consideration. It's a
20 valid concern, it's not a consideration for a land
21 use board.

22 Q. Thank you.

23 MS. MERTZ: Would I be allowed before
24 they sum up to ask Ms. Chavez a question about --

25 CHAIRMAN GILMORE: Of course.

1 MS. MERTZ: Based on all the
2 conversations we had about drop-off and pickup in
3 your current businesses is it the operation to when a
4 parent comes and stops in that drop-off area do they
5 walk their children into the building and into their
6 classrooms or do have attendants come and help get
7 the children out of their cars? Because that's going
8 to change the time that a car could potentially be
9 parked in a loading area.

10 MS. RON-CHAVEZ: Yes, the drop-off is
11 entrance they don't go into the --

12 MS. MERTZ: Parents do not enter?

13 MS. RON-CHAVEZ: Before COVID and after
14 COVID even more no one goes into the building. And
15 if there's assistant, the girls -- actually reminds
16 me that we do have somebody out there if they need
17 assistance for them to bring the child in.

18 MS. MERTZ: So for the proposed location
19 since you have the way the architect testified you
20 have one classroom that's going to be the entire
21 street frontage then stacked in the middle and then
22 there's one in the rear.

23 MS. RON-CHAVEZ: Correct.

24 MS. MERTZ: So if a parent were to stop,
25 say you were granted the loading area, and the parent

1 were to pull in someone would be at that front door
2 in the first classroom to walk them in or somebody
3 would bring them around the side and bring them to
4 the appropriate classroom.

5 MS. RON-CHAVEZ: We will accommodate --
6 yes, we will be having someone to bring the kid
7 whether the classroom in the street is right there.
8 The one for the back we will have someone there to
9 bring the kids inside.

10 MS. MERTZ: So parents don't exit their
11 cars?

12 MS. KARAS: Yes, they do.

13 MS. MERTZ: They might go to the
14 sidewalk --

15 MS. KARAS: In all fairness the parents
16 are going to exit the car, I'm sorry.

17 (Simultaneous crosstalk)

18 MS. RON-CHAVEZ: Come out, they have to
19 come to us.

20 MS. KARAS: They have to get out.

21 MS. MERTZ: At least --

22 MS. RON-CHAVEZ: It will be limited.

23 MS. MERTZ: They're not going all the
24 way into the building. I wanted to clarify. I know
25 every program has a different --

1 MS. RON-CHAVEZ: Like I said, we go
2 along with it to make it easier for everybody.

3 MS. MERTZ: That's it for me. So with
4 that I'll offer to the board the planning side of
5 this because this is an inherently beneficial use the
6 applicant did not have to speak to the typical
7 positive criteria where it's site suitability and all
8 of those items. They do have to speak to the
9 negative criteria, which is what I think we focused
10 on tonight with the drop-off and traffic and the
11 pick-up.

12 With the inherently beneficial use we
13 use a balancing test and their planner did speak to
14 this. What it comes down to really is any of those
15 negative, potentially negative impacts that the use
16 at this site could produce, are there any conditions
17 that would offset that in the eyes of the board to
18 make this an appropriate use.

19 If you were inclined to grant this I
20 think the number one thing would be that it would be
21 conditioned upon them getting that loading space or
22 two loading spaces from the council. And if they
23 were to not get those loading spaces they would have
24 to come back here. But that's as you move into,
25 because I think they have finished their application,

1 as you move into deliberation that's your job with
2 this inherently beneficial use, is that's what I just
3 said.

4 CHAIRMAN GILMORE: Thank you.

5 MR. PICHOWICZ: Open to the public.

6 CHAIRMAN GILMORE: Is there anyone from
7 the public that would like to speak?

8

9 CARMELA CONFESSORE, having been duly sworn, testified
10 as follows:

11 MR. PICHOWICZ: Please state your name,
12 spell your last name and give your business address
13 for the record.

14 MS. CONFESSORE: Carmela Confessore,
15 C-O-N-F-E-S-S-O-R-E. My business address is 22
16 Queens Bridge Drive, East Hanover, New Jersey.

17 MR. PICHOWICZ: If you can talk into the
18 mic, we have to be able to pick up.

19 MS. CONFESSORE: I'm just a little
20 concerned. I have two daycare centers in East
21 Hanover, but in Harrison for the past 35 year. And I
22 definitely agree with the craziness of the traffic
23 and the safety of the children. One of the places I
24 do have is on Frank E. Rodgers Boulevard -- on --
25 across the street from the police station and the

1 other one is on Essex Street, which we have a huge
2 parking lot. And there is a lot of traffic and it is
3 very dangerous for the children and I can see it.

4 But my concern is this, that Harrison is
5 one square mile. As present we have nine daycare
6 centers, nine. Our population isn't that big. Not
7 only that there -- we have public school now has a
8 private after school program that they off free to
9 the children. So, you know, they already have an
10 after school program.

11 I'm just -- I just don't believe that
12 someone went out and purchased a property not knowing
13 it wasn't zoned for a daycare center and now to house
14 East Newark children on top of that. Right now
15 they're housing 35 to 40 East Newark children that
16 used to be housed in Holy Cross and Lincoln School
17 and they took them out and put them in Harrison
18 daycare centers not our Abbott daycare centers, Four
19 Seasons Daycare Centers. So they're disbursed
20 throughout the town, which already is causing traffic
21 now. If this place opens it's going to be three and
22 four years old for East Newark, which they do have to
23 start at nine o'clock. It's going to be like a
24 regular school that's going to be run there.

25 So we, the Harrison people that have

1 been here for 30 something years and have businesses,
2 now we have to compete with East Newark with traffic
3 not just students, because we do get our students, we
4 have Abbott students. I don't understand why the
5 town would have to oblige to the next town, which
6 they have their own buildings they could do and bring
7 them across the town even causing more traffic.
8 Which there's a daycare right on Harrison Avenue and
9 mine is right around the corner. I mean Harrison is
10 one square mile. And I know it's a free country and
11 everybody could do it, people have invested a million
12 dollars without even finding out if they're zoned for
13 a daycare center. And they -- even if they knew it
14 wasn't, they still continued to do it, assuming it's
15 going to be done.

16 And what about the safety of the
17 children. I have taught in the public school for 30
18 years and I know the safety of the children and how
19 busy it is during the day, in the morning, afternoon,
20 and after pick-up. So and I can see it. I can see
21 the traffic. I just really don't feel that we should
22 change the ruling to oblige another town no less and
23 for profit. And infringe on our children that we
24 have in Harrison and the people that are paying big
25 taxes.

1 MR. PICHOWICZ: Is there a need for
2 another daycare send in the area?

3 MS. CONFESSORE: Absolutely not. There
4 would be ten daycare centers, ten. If you look at
5 the population they're not from Harrison. We know
6 the school. Our preschool with the Abbott program we
7 have 223 and there's no waiting list at all. Plus we
8 are five daycare centers in Harrison that we contract
9 with the board of ed where there's still room. And
10 plus we have three special classes at Kennedy School
11 for preschoolers. So where are all these children
12 coming from? Ten daycare centers. We used to have
13 bars at every corner now we going to have daycare
14 centers at every corner.

15 MR. PICHOWICZ: Has any daycare centers
16 gone out of business or stopped operations recently?

17 MS. CONFESSORE: Yes, Kids Academy.
18 They were with Abbott, ah-hum.

19 CHAIRMAN GILMORE: Is that the one on
20 Cross Street the one they just knocked down?

21 MS. CONFESSORE: Yes. And actually I
22 took over one of their classrooms. I just feel like
23 it's going downhill. I don't want daycare centers,
24 where's the quality of it?

25 MR. PICHOWICZ: Do you want to ask the

1 experts any question.

2 MS. CONFESSORE: Yeah. It was really
3 good about you are saying that there's -- it's not
4 bad with traffic and given all the statistics. You
5 live in Rutherford. Like you really don't know how
6 Harrison is during school hours and about daycare
7 centers.

8 MR. STIMMEL: Is there a question?

9 MS. CONFESSORE: Yeah. Like what makes
10 you an expert on saying that there's a need -- and
11 the traffic, the bar operates at night, daycares are
12 operating during the day.

13 MR. STIMMEL: I will come up to the mic.
14 I did acknowledge they both generate traffic but at
15 different times of the day.

16 MS. CONFESSORE: Absolutely. So at
17 night most people are already at home from work and
18 children are not out in the street, so if it's a bar
19 they're not going, children won't be in danger with
20 the traffic. Bars are usually open at night so the
21 daycares are during the day, but it's on a main road.

22 MR. STIMMEL: Is there a question?

23 MS. CONFESSORE: No. Just making that
24 statement to you. You're saying it really -- there's
25 not much of a difference between the bar traffic and

1 the daycare center traffic which is opposite day and
2 night?

3 MR. STIMMEL: Um --

4 MS. CONFESSORE: So I'm just making a
5 point. There's a big difference. You make it sound
6 like it was no big deal, but it is, just saying.
7 Listen I've been -- I've lived in Harrison almost all
8 my life. And I have been here servicing -- I was the
9 first daycare center in Harrison and I have taught in
10 the public school and I'm here for the children and
11 the community. I've been here for a long time so I'm
12 here to basically fight for the safety of the
13 children. And I can see if we wanted to house our
14 own children. We're housing our neighbor's children.
15 Why doesn't East Newark get their own. We are
16 already taking care of East Newark and it's only
17 causing traffic. Thank you.

18 CHAIRMAN GILMORE: Thank you. Anyone
19 else?

20 MR. PICHOWICZ: Anyone else from the
21 public like to be heard? Make a motion, you can ask
22 for a motion to close the public portion.

23 CHAIRMAN GILMORE: Can we have a motion
24 to close the public portion at this time.

25 MR. GALLAGHER: Motion.

1 MS. KARAS: Second.

2 CHAIRMAN GILMORE: All in favor.

3 MR. PICHOWICZ: Any opposed or not
4 voting? It's unanimous. Mr. Lindenfelser, would you
5 like to make a summation?

6 MR. LINDENFELSER: Briefly. So there's
7 a couple of paths that I want to discuss. One is
8 about the project itself. So you have got a building
9 that is one building out of the commercial zone. One
10 building away we wouldn't even have to come here.

11 You have a bar that has been in
12 existence at this location for many years. The
13 proposal is to replace that bar with a legally,
14 inherently beneficial use of a daycare center, which
15 is entitled to a lot of deference under the land use
16 laws.

17 The planner testified about how a bar
18 really is not a good establishment for a neighborhood
19 residential area, whereas a daycare center is much
20 more appropriate. So it carries out an inherently
21 beneficial use. It carries out an improvement to
22 your community. The only negative that's been
23 brought up, the only concern is the drop-off issue,
24 which the applicant has indicated they'll cooperate
25 fully to try to alleviate that and to address that.

1 As they have done at their other locations.

2 You would hope that parents would mind
3 the safety of the children and not put them in a
4 dangerous spot when they're dropping off. We can't
5 control that. It's the same in the all the other
6 towns in West Hudson as well. Notices were sent to
7 all the community members within 200 feet of this
8 property that would be most impacted by the proposed
9 changed, not one of them has come here today to
10 object. We only had one objector who is a competitor
11 of the proposed use.

12 So I think the approval benefits the
13 Town of Harrison, benefits the people of Harrison.
14 Is another daycare center needed? Well, businesses
15 are businesses, they'll be out of business if they
16 don't have the clients. They have the clients,
17 they'll stay in business. So I don't think there's
18 much of a concern and certainly a willingness to
19 address the concern.

20 On top of all of that you have this
21 family that's been operating in Harrison for over a
22 decade who, as Mr. Pichowicz indicates, has an
23 excellent reputation at the daycare centers they do
24 run. Who went to buy this building, who went to the
25 town, who -- whether you want to put fault on any

1 particular person, who was led to believe that this
2 was a permitted use. Who applied for the
3 construction permits. Who submitted the plans. Who
4 were given permits. Who began work. And according
5 to testimony completed over 62 percent of the work on
6 that building, investing well over a million dollars
7 on the assumption that the information they were
8 given was correct. And that the procedures that they
9 were taking were going to be fruitful, only to be
10 told in August or late July that additional approvals
11 were needed. Which they have done everything now to
12 come before this board to hire professionals, to try
13 and do the right thing.

14 So I think there's also a bit of
15 fairness argument here or consideration to the
16 circumstances. So I think weighing everything I hope
17 the board sees the benefit to the town and urges the
18 client to address your concerns. They're valid
19 concerns, I'm not saying they're not. Unfortunately
20 every school in this area at the drop-off times and
21 pick-up times it's tough. It does take a strong
22 police presence to try and address that. But they're
23 willing to work with you, willing to work with the
24 town and mayor and council, police and try and
25 control that and make it safe. They don't want an

1 unsafe condition for these children. It doesn't help
2 their business if something happens. Under all the
3 circumstances I would hope that you can see it clear
4 to approve this application. We're here if there's
5 any additional questions.

6 MR. PICHOWICZ: Thank you.

7 MR. LINDENFELSER: Thank you ladies and
8 gentlemen.

9 MR. PICHOWICZ: You want to hear the law
10 now. I'm going to paraphrase from an article that I
11 found that was pretty much on point here. It states
12 that whenever a nonconforming use seeks to expand or
13 where an owner seeks to construct a use not permitted
14 in the zone, which is what we have, a variance is
15 required under NJSA-40:55d-70b. Such variances
16 require a five vote super majority of the board to be
17 approved. You have five members here tonight and you
18 need all five voting yes to allow the use. If
19 there's somebody abstains or votes no, and let's say
20 it's four to one, then it's not approved. So just
21 you need super majority of five votes.

22 Normally the applicant must
23 affirmatively prove special reasons justifying the
24 variance. What they call the so-called positive
25 criteria. In addition they must prove the negative

1 criteria and the statute by showing the variance can
2 be granted without substantial detriment to the zone
3 plan, zoning ordinance or public good.

4 Obviously in those cases there's a heavy
5 burden on the applicant to prove special reasons why
6 it should be allowed. However, in 2000, the year
7 2000, the Municipal Land Use Law was amended and
8 specifically NJSA-40:55d-4 was amended for inherently
9 beneficial use, which is a use which is universally
10 considered a value to the community because it
11 fundamentally serves the public good and promotes the
12 general welfare. Such uses include a child care
13 center.

14 So it's absolutely on point as an
15 inherently beneficial use which we've all been saying
16 from the start. However, when it's inherently
17 beneficial they meet the positive criteria. In other
18 words, they have proven that it's a worthwhile use,
19 that's what the statute says, that's what the case
20 law says.

21 But what happens is, and there's a case
22 Zika, Zika versus the town, Board of Adjustment Town
23 of Wall, that they created a four-part balancing test
24 that the board must engage when evaluating compliance
25 with the negative criteria, four inherently

1 beneficial uses.

2 The tests required the board to, one,
3 evaluate the public interest served by the inherently
4 beneficial use. Two, identify any adverse
5 consequences of granting the variance. Three,
6 consider conditions which may be imposed to mitigate
7 any adverse consequences. And, four, then balance
8 the public interest in granting the variance versus
9 the adverse impact as lessened by any conditions you
10 may impose and determine on balance whether there
11 would be substantial detriment, not just detriment,
12 it's substantial detriment to the public good if the
13 variance was granted. Only if the detrimental is
14 substantial can the board deny the variance.

15 Applicants should keep in mind the first
16 prong of the test basically involves the more
17 important uses to community, the more difficult it is
18 for the board to find that any detriments may exist
19 for use which would be substantial enough to justify
20 the denial of the application.

21 So you have to look basically to see if
22 the applicant has proven its case with respect to
23 Zika.

24 Now, with reference to what the town
25 said as far as permits, etcetera. We heard what the

1 applicant said. We don't have anybody from the town
2 here to say what happened or what went on. My
3 understanding is that the first that the applicant
4 set forth that this was going to be a school and
5 that's what the town looked at, the school. But it's
6 actually not a school licensed by the department of
7 ed. It's a school licensed by, you know, the state I
8 think families and services. So that could be some
9 of the mix-up as identified in the beginning. We
10 just don't know. But obviously the applicant bought
11 the building and then made substantial improvements
12 to it.

13 I encourage all of you, if you're for or
14 against it, to put your reasons on the record,
15 identifying these tests, evaluate the public
16 interest, identify adverse consequences, consider
17 conditions that may be imposed and then balance it.

18 I proffer to you that if you put in a
19 resolution approving it that the mayor and council
20 must grant a loading zone for this application to be
21 approved. I don't believe that that is a valid
22 condition because if it's not -- if, let's say, the
23 mayor and council decide not to allow that in their
24 wisdom, it doesn't mean the application fails. It
25 would just be saying, well, it was a condition that

1 you couldn't do. So it's not really in their
2 control, but obviously you can ask them to do that if
3 you want to approve it. But just know that you can't
4 mandate it. You can't force and say like it has to
5 be done, because then what happens the applicant
6 comes back and, no, the application has been heard
7 already and we already heard it's not mandatory.

8 You also heard about the other centers
9 that were owned they were in commercial zones
10 already. That's why they didn't have to come in with
11 the parking or the ratio tests and whatever. And
12 there's a statute on point for that as well, 40:55-d
13 -- I think 66. Let me get it. 40:55d-66.6 which
14 basically says child care centers for which upon
15 completion a license required from the Department of
16 Human Services shall be permitted use in all
17 non-residential districts of the municipality.
18 That's why nothing -- and it goes further about
19 calculating parking and space and all, but this 66.6
20 does not apply here because they're in the 2F-1 zone.

21 So once again I encourage you to discuss
22 it, put your reasons on the record and when you're
23 finished you can make a vote for it or against it.
24 Note, however, you need five affirmative votes to
25 pass this. After that if the application passes

1 we'll get into the site plan and any of the variances
2 that are required with that.

3 CHAIRMAN GILMORE: Okay. Who wants to
4 go first? Are we voting with the explanation for
5 just --

6 MR. PICHOWICZ: I think you're
7 discussing the merits or detriments now.

8 CHAIRMAN GILMORE: Okay. I have nothing
9 against daycare centers. The only problem I have
10 with this particular daycare center is its location.
11 And even though we were told that there was no
12 detriment to the community and that the police should
13 handle everything that comes along with your
14 construction and your daycare. We've had no -- any
15 kind of study of traffic for this application and the
16 safety of our children does -- if we approve this and
17 something happens, being that -- like you were asked
18 do people actually come out to people's cars to take
19 their children. So the car stands there while the
20 parent has to get out, double-parked, come around,
21 get out in traffic, come around, get their child out
22 of the car on the curb side, bring them to the door
23 and then back out, go around and get in their door in
24 traffic. Again, that street is smaller than average
25 as far as I know. And I believe originally we were

1 told that the timing was the opposite. So what I
2 understand was the school was proposed first then
3 changed to a daycare.

4 MR. SOARES: The blueprint.

5 MR. PICHOWICZ: You can't testify, it's
6 over.

7 CHAIRMAN GILMORE: What I've understood
8 from what he have -- I mean there's -- the garbage
9 pick-up, 84 children, which of course everybody is
10 going to walk, which I find that hard to believe, no
11 deliveries, when -- is kind of a little guessey for
12 me. But the drop-off and the time of the drop-offs
13 of your operation and the school's operation and
14 traffic is a problem for me.

15 MS. KARAS: I don't disagree. I think
16 if we did approve it then that would be an onus -- it
17 would be an onus on the police department to make
18 sure that there -- they have police out there all the
19 time to make sure they're not double-parking and, you
20 know, and it's safety of the children. We can't
21 guarantee the police are going to be there. It's a
22 big room, it's EMS right around the corner, so.

23 CHAIRMAN GILMORE: Mike.

24 MR. GALLAGHER: The congestion that it
25 going on, beside the congestion that we have I find

1 it is detrimental for the area and the community just
2 as was just stated. Police department, EMS services
3 back there. 280 gets bogged up, knocked up, cars
4 coming in and off, it's a terrible traffic out there.
5 And I look at it as detrimental to put that type
6 thing in and students, too, in particular kids.

7 MR. CHEN: That's two-way street traffic
8 so if someone double parking we have problem other
9 parking the other side. And only thing we take all
10 away the parking space make double edge to each side,
11 but we cannot take parking space on that street
12 because we can't get the parking space, no, so it's a
13 problem. It's a narrow street.

14 CHAIRMAN GILMORE: You're last. We are
15 going to be voting soon. Anything that you have to
16 say before you vote to explain your note.

17 MR. GARRIDO: No. No, I have nothing to
18 say.

19 CHAIRMAN GILMORE: There's nothing on
20 this application that bothers you?

21 MR. GARRIDO: No.

22 MR. LINDENFELSER: Mr. Pichowicz, before
23 we vote may I say something on behalf -- not about
24 the application just a request.

25 MR. PICHOWICZ: Why don't we just take a

1 five-minute break. Okay.

2 (Whereupon, there is a brief recess.)

3 CHAIRMAN GILMORE: I need a motion to
4 reconvene.

5 MR. PICHOWICZ: Back in session.

6 MS. KARAS: I'll make a motion.

7 MR. GALLAGHER: Second.

8 CHAIRMAN GILMORE: All in favor.

9 (Whereupon, unanimous ayes are recited)

10 MR. PICHOWICZ: Mr. Chairman the
11 applicant has asked for the opportunity to hire a
12 traffic expert to come in and obviously look at all
13 the questions the board had and to make a
14 determination on, you know, what exactly exists there
15 at the times and how things work. And if there is a
16 traffic expert to be hired it would be mutual agreed
17 upon traffic expert between basically me and Mr.
18 Lindenfelser and his clients, somebody done in the
19 area before, and this way you can look at that person
20 as kind of a neutral person coming in to give their
21 assessment, okay.

22 The second thing, they are going to
23 request from the mayor and council that there be some
24 type of drop-off zone there. We'll put together a
25 letter, do it right away and try to get some type of

1 agenda.

2 Third thing they would and I guess we
3 would, too, like to hear from Rocco Russomanno, the
4 construction official, on what occurred when they
5 bought the place and were told, you know, what Mr.
6 Sorra (ph) said. Because we have no way of really
7 verifying it's basically hearsay. But if he comes
8 and tells what occurred then we'll have his side of
9 the story.

10 And the fourth thing, they agreed to
11 extend the time limit for the board to act until we
12 can get all of these things together so that the
13 board doesn't run out of time, you know, granting a
14 decision while we wait for these things. Obviously
15 we would hope by the next meeting -- Paul, do you
16 have that next meeting?

17 MR. ZARBETSKI: February 21st.

18 MR. PICHOWICZ: February 21st. February
19 6th is the mayor and council.

20 MR. ZARBETSKI: February 21.

21 MR. GALLAGHER: It's a Wednesday.

22 MR. PICHOWICZ: Mr. Lindenfelser, I put
23 those representations on the record. Does that
24 fairly resemble what your client is asking for as
25 well and agreeing to?

1 MR. LINDENFELSER: Exactly, Mr.
2 Pichowicz. I think that gives us a chance to address
3 the board's concerns and get the facts out.

4 MR. PICHOWICZ: Thank you. So there was
5 a motion on the table to adjourn this meeting and the
6 next regularly scheduled zoning board of adjustment
7 meeting which would be February 21st, 2024 here at
8 6:30 where the application will continue. In the
9 mean time as a benefit to the two absent members
10 today will be able to read the transcript and then
11 participate in the meeting. So hopefully we get the
12 transcript a week before or so so they can get on
13 here. Motion would be in order for that.

14 CHAIRMAN GILMORE: Motion.

15 MR. GALLAGHER: Motion.

16 MR. CHEN: Second.

17 MR. ZARBETSKI: Chen.

18 MR. CHEN: Yes.

19 MR. ZARBETSKI: Gallagher

20 MR. GALLAGHER: Yes.

21 MR. ZARBETSKI: Garrido.

22 MR. GARRIDO: Yes.

23 MR. ZARBETSKI: Karas.

24 MS. KARAS: Yes.

25 MR. ZARBETSKI: Gilmore.

1 CHAIRMAN GILMORE: Yes.

2 MR. PICHOWICZ: This is an announcement
3 for everybody in the public, this meeting for this
4 application has been carried to the next regularly
5 scheduled meeting of Harrison Board of Adjustment to
6 be held Wednesday, February 21st at 6:30 p.m. This
7 is your notice. They'll be no further notice by
8 mailing or publication. In the event that we're not
9 ready with the traffic expert we will still have the
10 meeting to adjourn the matter again. We might be
11 able to do that through Zoom if there is no --

12 MR. ZARBETSKI: Ask Counsel for --

13 MR. PICHOWICZ: Mr. Lindenfelser, they
14 have on February 6th mayor an council meeting so
15 obviously getting in sooner than later would be good
16 for that.

17 MR. LINDENFELSER: We'll address it
18 right away.

19 MR. PICHOWICZ: Thank you.

20 CHAIRMAN GILMORE: Motion to adjourn.

21 MS. KARAS: Motion.

22 MR. GALLAGHER: Second.

23 CHAIRMAN GILMORE: All in favor.

24 (Whereupon, unanimous ayes recited.)

25 (Proceedings conclude 9:07

CERTIFICATE

I, SUZANNE M. CARR-MCGUIRE, a Certified Court Reporter and Notary Public of the State of New Jersey, do hereby certify the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

Notary Public of the State of New Jersey

My Commission expires July 24, 2024

CCR License Number 30XI00148300

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