The Chairman called the meeting to order and stated it was being held in compliance with the "Open Public Meeting Act" and had been duly noticed and published as required by law.

ROLL CALL

Present: Mr. Robert Weil, Mr. John Daddario, Mr. Habib Quraishi, Mr. Hal Willard, Mr. Manny Leoncio, Mr. Neal Cupersmith and Mr. Jeff Senges

Absent: Mr. Lee Cohen, Len Patton and Mr. Manny Leoncio

Also, present, Mr. Stuart Platt, Board Solicitor, Mr. Ben Blair, Board Engineer from Churchill Associates, and Ms. Elaine Powell, Zoning Board Secretary.

APPROVAL OF MINUTES

Mr. Weil motioned to approve the minutes from July 14, 2016; seconded by Mr. Willard. Motion carried by the assenting voice vote by all board members with the exception of Mr. Senges, Mr. Cohen and Mr. Quraishi who abstained.

MEMORIALIZATION OF RESOLUTIONS

Upal and Neera Desai
25 Regan Lane
Block 213.01; Lot 5
Resolution No.16-019

Bill and Robyn Block
34 Nolen Circle
Block 213.09; Lot 19
Resolution No. 16-020

NEW BUSINESS

Khmer Buddhist Humanitarian Association
1234 Berlin Road
Block 262, Lot 6
Business Zone
Case #2016-013

Correspondence Request to revise Phase I of approved project to include the construction of the sewer pump station. Mr. Robert Baranowski, attorney for the applicant, was present.

Mr. Baranowski stated that they are requesting a change in Phase I of the project to add the sewer pump station due to the failure of the septic system. This issue was discussed in the pre-construction meeting for the project and it was suggested that they appear before the board to make the request. The house will be connected to the sewer system and the rest of the work will be completed for future connection of the remainder of the project. Mr. Baranowski further stated that the Developer's Agreement would be amended to reflect the change, but he requested a waiver of a performance guarantee for the sewer pump station as everything has been already approved as part of the site plan; it is just a change in the timing.

Stuart Platt stated that the Zoning Board does not have the jurisdiction to waive the bonding requirement; only the Township Committee may do that. He further state that all other conditions of previous approvals would have to be met.

Ben Blair of Churchill Associates clarified that the property owner would maintain the pump station.

The meeting was opened to the public; seeing no one, the public portion was closed.

Mr. Weil made a motion to approve the amendment of Phase I to include the construction of the sewer pump station. Mr. Willard seconded the motion.

Ayes: Mr. Robert Weil, Mr. John Daddario, Mr. Habib Quraishi, Mr. Hal Willard, Mr. Manny Leoncio, Mr. Neal Cupersmith and Mr. Jeff Senges

Nays: None

Chandrakantbhai Patel
121 Route 73
Block 228, Lot 2
Major Business (MB) Zone
Case #ZC2016-010

Seeking a use variance from Section 152.102(A) of the ULDO to construct a Dunkin Donuts Restaurant with a drive-thru in the Major Business (MB) Zone where retail uses and fast food restaurants are not permitted. Seeking other variances or waivers requested by the applicant or recommended by the Zoning Board.

Mr. Michael Albano, attorney for the applicant, was present. Also present were: Applicant, Mr. Chandrakantbhai "Charlie" Patel; Professional Planner, James Miller; Traffic Engineer, Nathan Mosley from Shropshire & Associates; and Mr. John Pettit, Professional Engineer from The Pettit Group. All were sworn in and recognized as experts in their field.

Mr. Albano stated that they were requesting a use variance for a Dunkin Donuts on a 2-acre lot, which is the standard lot size for a Dunkin Donuts. Mr. Pettit presented an aerial of the site showing the existing conditions, which was marked as A-1, and a conceptual plan dated 6/1/16, which was submitted with the application.

Mr. Ben Blair, Professional Engineer from Churchill Association was sworn in as the Zoning Board Engineer. Mr. Blair questioned why they were providing more parking spaces than needed and what they had proposed for the space next to the Dunkin Donuts. He stated more stacking would be desirable due to the proposed use.

Mr. Senges questioned why they needed access to Dutchtown Road and if the applicant was familiar with the residents' issues with commercial access through the neighborhood. Dutchtown Road was turned into a cul-de-sac when the medical campus was approved to prevent commercial business from using it as a means of access through the neighborhood. Mr. Senges further questioned what access the site would have if they did not have rear access. Mr. Pettit stated that if Dutchtown Road was a rear-yard with a 100-foot setback and Route 73 was a front-yard with a 50-foot setback, they would have no buildable area. Mr. Pettit was asked how far from their property to the nearest residential property to which he stated 100 feet. The board disagreed.

Mr. Mosley stated that he had not done a full traffic report but stated that he had visited the site and is familiar with the area. NJDOT would have jurisdiction and Route 73 has a commuter traffic pattern. Mr. Mosley described the uses in the area and stated that there is a deceleration lane in front of the site. Dunkin Donuts peak time is morning and second highest volume is on Saturday. Mr. Senges stated that the business use is contrary to the traffic pattern.

Mr. Mosley stated there are two Dunkin Donuts on the opposite side of the highway, one in Berlin and one in Marlton, which makes this a perfect location as the people on the opposite traffic pattern have nowhere to go. He also stated that having more than one access point on

the property is better for traffic and would benefit residents by allowing them access to the site. Mr. Senges stated that the reason for cutting off Dutchtown Road was to keep traffic out. Mr. Mosley stated that major traffic is already on Route 73 and that they would not cut through, but would go back on Route 73. Dutchtown Road is not needed for the site, but needed for safety.

Mr. Mosley presented the peak-trip generation information. Dunkin Donuts has 203 trips between 7 am-9am Monday through Friday, 86 trips between 4-6 pm peak, and 170 trips on Saturday at peak between 11am-2pm. Traffic generation for Dutchtown Road would be 5-10% and 75% of traffic would utilize the drive-thru.

Mr. Weil expressed concern that there would be traffic coming out of hospital and jug handle accelerating in the acceleration lane to get onto Route 73 while people would be trying to use the same lane to decelerate to get into Dunkin Donuts. Mr. Mosley stated that they would have to complete a weave analysis.

Mr. Miller, Professional Planner, stated that first he would address the positive criteria for the proposed use. He testified there is a prohibition of fast-food restaurants in the MB zone but not restaurants. While he could find no criteria in the Master Plan for the reasoning of this, he believed that the objective was probably aesthetics and the concern that fast-food restaurants tend to accumulate in one area. It also seems that the intent was for large developments along the Route 73 corridor. He stated that Dunkin Donuts differs from other fast-food franchises and restaurants in that it generates the most traffic in the morning whereas all others peak multiple times throughout the day. Mr. Miller further stated that Dunkin Donuts is mostly pass-by traffic where other restaurants are destination.

Mr. Senges stipulated that the reason for no fast-food restaurants could have been due to the trip generation of such uses and not aesthetics and that other sit-down restaurants have clients locating there for 1-hour or more. Dunkin Donuts would have 200 trips per hour during peak time and restaurants do not. Mr. Platt added that Dunkin Donuts' peak hours would be the same as Route 73's peak hours and most restaurants are not open in the morning.

Mr. Miller testified that there is a bias as to the aesthetics of fast-food restaurants and that having a drive-thru is not a distinguishable feature of just fast food restaurants. Other permitted uses, such as banks, have drive-thru windows as well. He also distinguished Dunkin Donuts from other fast-food restaurants as Dunkin Donuts has a very low food preparation. Mr. Albano stated that Dunkin Donuts is amenable to the aesthetics of the building.

Mr. Miller testified that the size of the project would be a good fit for the site and would be compatible with land use patterns in the area and would be buffered to the residential area. There are very few uses of any type that could utilize this property due to its size. Mr. Platt questioned what impacts would be buffered, to which Mr. Miller responded the building. Mr. Platt asked what about light, noise and traffic? Mr. Miller stated all those would be present for any use.

With regard to the negative criteria, Mr. Miller felt that it was a failure of the Township Committee to include this use in the district.

Mr. Platt asked if parking in the rear of the property would have a negative impact on the neighbors, to which Mr. Miller responded yes. Mr. Senges asked if having a drive-thru would have a negative impact on the neighbors, to which Mr. Miller responded yes. Mr. Miller also stated that banks and pharmacies have drive-thru impact and any use would generate a traffic and parking impact.

Mr. Platt questioned if the site was evaluated with the Route 73 Architectural Standards and was informed that it would be designed to be compatible with said standards.

Mr. Miller testified that it is significant to point out that the Starbucks on the other side of Route 73 does not have an impact and shows that a coffee shop can be compatible to the area. Mr. Platt stated that the Zoning Board has found that Starbuck's is not a fast-food restaurant. When questioned, Mr. Miller stated that the Starbucks was hundreds of feet from the nearest residence. Mr. Weil stated that the homes behind the Dunkin Donuts proposal are closer to Starbucks that the homes behind it.

Mr. Miller stated that he believes he has satisfied the positive and negative criteria.

Mr. Blair advised the board that even with a 50-foot front-yard setback from Dutchtown Road, some of the Drive-thru drive aisle is within that 50-foot area.

After conferring with his client, Mr. Albano stated that they do not have an issue with one-way access on Dutchtown Road but having no access would be a problem.

The meeting was opened to the public. Mr. Frank Sarnese, 3 Dutchtown Road, was sworn in. Mr. Sarnese was concerned with the driveway onto Dutchtown Road, which is a residential street, and the proximity of the driveway to his home. He stated it would be safety hazard for the residents and their children on the street and it would lower the value of his home. He would rather see something like a daycare facility.

Mr. Platt asked the applicant if the Dunkin Donuts would be a 24-hour business. Mr. Patel responded that it would be from 5:00 am to 11:00 pm daily. Mr. Platt stated that you could look at hours of operation of this use compared to other permitted uses in the zone, which may have more, or less, of an impact.

Mr. Eyal Arev, 7 Dutchtown Road, was sworn in. Mr. Arev stated he also owns 5 Dutchtown Road, a vacant residential building lot. He stated that the aerial presented was old and that there are currently 150-200 homes between this property and Cooper Road. The main access to these homes is Cooper Road, Dutchtown Road and Woodbrook Road. If there were an entrance from the Dunkin Donuts to Dutchtown Road, it would be horrible for the residents. If there is no entrance on Dutchtown Road, then there could be a parking problem on Dutchtown Road with people walking to the Dunkin Donuts. He has concerns with both the traffic and the hours. It will be a detriment to the neighborhood.

Seeing no further public comment, the Public Portion was closed.

Mr. Albano stated that Mr. Pettit had used a scale to determine that it was approximately 121 feet from the Dunkin Donuts building to the front corner of the closest home on Dutchtown Road. Mr. Albano also stated that Mr. Patel will not agree to no access on Dutchtown Road but would agree to only having the Dunkin Donuts on the site.

Mr. Weil made a motion to approve the use variance to construct a Dunkin Donuts with drive-thru. Mr. Cupersmith seconded the motion.

Ayes: None

Nays:

Mr. Weil – The applicant did not provide adequate testimony to show the impact to the neighborhood. No traffic study was done and he had concerns with regard to the entrance on Dutchtown Road. He felt it was not a benefit to the community.

Mr. Willard – While he felt the expert witnesses were excellent, he did hear enough testimony to support and approval of this application.

Mr. Daddario – While he felt the positive criteria was met, the negative criteria and the impact on the neighbors was not.

Mr. Quaraishi

Mr. Cupersmith – Applicant did not prove hardship and the negative impacts are substantial.

Mr. Senges – There is a substantial detriment to the Master Plan. Traffic is an impact with fast food and 200 trips per hour is an excessive impact on the neighborhood. The acceleration lane coming from the traffic light with decelerating Dunkin Donuts customers would be an issue.

The application was denied 6-0.

The meeting was opened to the public.

The public portion of the meeting was closed.

Seeing no further business Mr. Willard makes a motion to adjourn, seconded by Mr. Cohen.

Elaine D. Powell
Acting Zoning Board Secretary