

BOROUGH OF GARWOOD PLANNING BOARD
COUNTY OF UNION - STATE OF NEW JERSEY

REGULAR MEETING FOR:

LIDL U.S. OPERATIONS, LLC
BLOCK 501.01 LOT 8
10 SOUTH AVENUE
CASE NO. PB19-05

TRANSCRIPT OF PROCEEDINGS
CONTINUED PUBLIC HEARING

WEDNESDAY, OCTOBER 23, 2019

B E F O R E:

STEPHEN GREET, Chairman
STEVE BARCAN
KEN CAPOBIANCO
JOHN MALCOLM
RICHARD McCORMACK, Councilman
STEPHEN NAPOLITANO
WILLIAM NIERSTEDT (Recused)
PAUL TARANTINO
SARA TODISCO, Mayor (Recused)
KATHLEEN VILLAGGIO
MICHAEL VENA

A L S O P R E S E N T:

DONALD B. FRASER, JR., ESQUIRE, Board Attorney
VICTOR E. VINEGRA, P.E., P.P., Board Engineer
ADELE LEWIS, Board Clerk

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TRANSCRIPT of the stenographic notes of the continued proceedings in the above-entitled matter, as taken by and before ANGELA C.

BUONANTUONO, a Certified Court Reporter, Registered Professional Reporter, Certified LiveNote Reporter and Notary Public of the State of New Jersey, held at THE BOROUGH OF GARWOOD MUNICIPAL BUILDING, 403 South Avenue, Garwood, New Jersey 07027 on Wednesday, October 23, 2019, commencing at 7:30 in the evening.

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

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(Exhibits not retained by reporter.)

1 (Time noted, 7:40 p.m.)
 2 CHAIRMAN GREET: So we will proceed
 3 then with PB19-05. That's 10 South Avenue in the CC
 4 Zone, continuation of application for Lidl U.S.
 5 Operations, LLC.
 6 Mr. Hehl?
 7 MR. FRASER: I think as a preliminary
 8 matter -- thank you, Mayor. As a preliminary matter
 9 we should address the question of the correspondence
 10 received from Mr. Brennan, which I handed over to
 11 Mr. Barcan so I don't remember the date --
 12 MAYOR TODISCO: September 26th.
 13 MR. FRASER: -- September 26, 2019,
 14 and the comments that Mr. Brennan had advanced with
 15 respect to his perception of comments made by
 16 Mayor Todisco and Mr. Nierstedt.
 17 I know, Mayor, you had something you
 18 wanted to say?
 19 MAYOR TODISCO: I do. So I wanted to
 20 say this evening that I have considered the letter
 21 of September 26, 2019, submitted by
 22 Mr. Jeffrey Brennan on behalf of the objectors to
 23 the Lidl application. And there's nothing wrong
 24 with my discussions with the owner of the property
 25 regarding use of the parking lot for the benefit of

1 Mr. Brennan's clients in particular or to any
 2 objectors in general. I know what I said and it
 3 wasn't at all.
 4 I have no bias nor prejudice which
 5 would impact my ability to be fair and impartial in
 6 connection with Lidl's application, which of course
 7 is basically to replace a present supermarket with a
 8 new supermarket and both are permitted uses.
 9 However, I acknowledge that Mr. Brennan has
 10 expressed an opinion I am biased. I understand the
 11 need for there not to be even any appearance of bias
 12 and I do not wish to make myself the issue nor do I
 13 wish to make that an issue with this board or in any
 14 way taint any decision of this board.
 15 Therefore, although Mr. Brennan's
 16 opinion is respectfully misplaced, and while I do
 17 not believe that I'm legally or ethically required
 18 to recuse myself, I have decided to recuse myself
 19 from participating in any consideration of this
 20 application.
 21 That's it, Mr. Chairman.
 22 CHAIRMAN GREET: Thank you,
 23 Mr. Nierstedt.
 24 MR. NIERSTEDT: Thank you.
 25 MR. FRASER: Mr. Hehl, all yours.

1 the citizens of this borough. And I certainly did
 2 not condition approval of the application upon the
 3 applicant providing a simple "Welcome to Garwood"
 4 sign.
 5 However, very importantly, I do not
 6 wish to be the issue here. This application should
 7 be considered on its merits. While I do not believe
 8 that I am legally or ethically required to recuse
 9 myself, I have decided to recuse myself from
 10 participating in any consideration of the
 11 application.
 12 Thank you, Mr. Chairman.
 13 MR. FRASER: Good evening, Mayor.
 14 CHAIRMAN GREET: Thank you.
 15 MAYOR TODISCO: Thank you.
 16 CHAIRMAN GREET: Mr. Nierstedt?
 17 MR. NIERSTEDT: Thank you,
 18 Mr. Chairman. I also received a letter through
 19 Mr. Fraser from Mr. Brennan, so I also have a
 20 statement.
 21 I have considered the letter of
 22 September 26, 2019, submitted by Jeffrey Brennan,
 23 Esquire on behalf of the objectors to the Lidl
 24 application. I specifically reject the assertion
 25 that I made any comment that was disparaging to

1 MR. HEHL: All right, thank you.
 2 As you are aware, this is our third
 3 hearing before the board on this application. We
 4 completed the testimony, continued testimony last
 5 month of our site engineer, our architect, our
 6 traffic engineer. One of the requests that Mr.
 7 Vinegra had had was a lighting plan, which we had a
 8 lighting plan prepared by Bohler Engineering which
 9 we submitted. Also there was a request for a wall
 10 in front of the carts to shield them from the
 11 roadway.
 12 So what I would like to do is just
 13 briefly call upon Mr. Ben Crowder from Bohler
 14 Engineering to briefly describe those two items. He
 15 has an exhibit to show to the board. And then we'll
 16 move on to our planning testimony.
 17 CHAIRMAN GREET: Sure.
 18 MR. FRASER: Mr. Chairman, he was
 19 previously sworn.
 20 MR. HEHL: No, actually Brad Bohler
 21 was here the last two hearings.
 22 MR. FRASER: So that's why I don't
 23 recognize him.
 24 B E N C R O W D E R, having been
 25 sworn, testifies as follows:

1 MR. FRASER: Please state and spell
2 your name and give your address.
3 THE WITNESS: Ben Crowder. Last name
4 is C-R-O-W-D-E-R. Business address is 35 Technology
5 Drive, Warren, New Jersey, 07059.

6 DIRECT EXAMINATION

7 BY MR. HEHL:

8 Q. Mr. Crowder, if you could please give
9 the board the benefit of your work, educational
10 experience, area of expertise, licenses you hold and
11 whether you have been accepted as an expert in the
12 field of professional engineering?

13 A. Sure. I'm an associate with the firm
14 Bohler Engineering. We're headquartered in Warren,
15 New Jersey. A Bachelor of Science degree in civil
16 engineering from the University of Pittsburgh with
17 over 10 years of site civil design experience.

18 Mostly a licensed professional
19 engineer in the State of New Jersey, New York and
20 Pennsylvania. And I have been before many boards
21 such as this on several other Lidl applications
22 across the State of New Jersey.

23 MR. FRASER: And your licenses are all
24 current?

25 THE WITNESS: That's correct.

1 THE WITNESS: What are we up to, for
2 the record?

3 I'll mark this as Exhibit A-6 and,
4 again, for the record, this is the lighting plan,
5 which was Sheet C-6 of 12 within our preliminary and
6 final site plan documents last revised October 9,
7 2019.

8 (Exhibit A-6, Lighting Plan, is
9 marked.)

10 THE WITNESS: So as Mr. Hehl
11 indicated, feedback from the September hearing was
12 the associated parking lot and site lighting
13 associated with the existing site. Lidl, through
14 coordination with our office and the landlord owner
15 of the overall site, have worked with our office to
16 establish a new LED parking lot area or parking lot
17 LED lighting design for the overall parking
18 facility. That includes brand new state-of-the-art
19 LED fixtures.

20 The mounting height of those lights
21 within the parking field is 25 feet in height, which
22 complies with your ordinance section. We also have
23 some additional LED wall pack lights predominantly
24 lighting and illuminating the loading area on the
25 northern portion of the site.

1 MR. FRASER: Mr. Chairman, I recommend
2 that Mr. Crowder be accepted as an expert in the
3 field of civil engineering.

4 CHAIRMAN GREET: So be it.

5 BY MR. HEHL:

6 Q. Mr. Crowder, first could you take the
7 board through a brief description of the lighting
8 plan. I know it's more technical in nature.

9 A. Absolutely. I don't intend to mark
10 this. This is Sheet 6 within our revised site plan
11 documents of our 12-sheet set. Just for reference,
12 these are preliminary and final site plans prepared
13 by my office, Bohler Engineering. That's a revision
14 date of October 9, 2019.

15 MR. FRASER: Wait a second. If it's
16 October 9, is that already before the board, Mr.
17 Hehl?

18 MR. HEHL: Yes.

19 MR. FRASER: That's something that has
20 come in since that time?

21 MR. HEHL: Yes.

22 MR. FRASER: Maybe we should just mark
23 it.

24 MR. HEHL: We can mark it, that's

25 fine.

1 Overall we're able to provide a
2 uniform light throughout the parking field that is
3 both the Lidl takeover space as well as the balance
4 of the parking facilities, in particular the areas
5 where we have some pedestrian vehicular interaction
6 with the grocery store use as well as both access
7 points along South Avenue.

8 MR. HEHL: And then the other exhibit
9 and I guess we're A-7.

10 (Exhibit A-7, Facade Design, is
11 marked.)

12 THE WITNESS: So the other component,
13 and I will, for the record, this Exhibit A-7 is a
14 proposed facade design that's been prepared by our
15 project architect, Larson Design Group, with a date
16 of October 9, 2019.

17 Also based on some feedback from the
18 September 25th hearing was the introduction of a
19 screen wall along the southern facade of the
20 building as a screening element for the cart storage
21 underneath the grocery store canopy area.

22 CHAIRMAN GREET: And what will the
23 height be on that screen?

24 THE WITNESS: Forty-two inches.

25 CHAIRMAN GREET: Forty-two.

CROWDER - DIRECT**13**

1 MR. HEHL: I have no further questions
2 of Mr. Crowder at this time.

3 CHAIRMAN GREET: In that case I will
4 open it up to the board for any questions of this
5 witness.

6 MS. VILLAGGIO: With the lighting plan
7 that is going to be the islands, Victor, are you
8 going to have any different like --

9 MR. VINEGRA: It appears they have
10 totally revamped it. All new poles, all new
11 fixtures.

12 THE WITNESS: Correct.

13 MR. VINEGRA: All new heights. I
14 didn't think the old lighting met the standards.

15 You're not saving the poles?

16 THE WITNESS: No.

17 MR. VINEGRA: Just the bases, I guess
18 you're going to save the bases?

19 THE WITNESS: Yes, just the bases if
20 deemed suitable in the field. But the proposed
21 light poles are going to be in very similar
22 locations as existing conditions, just upgraded,
23 enhanced to the LED. Some additional lights around
24 the perimeter but those would be equipped with
25 shields.

CROWDER - DIRECT**14**

1 MS. VILLAGGIO: Pilings? Is it going
2 to be on an island or is it going to be a
3 standalone --

4 THE WITNESS: All light pole locations
5 will be behind a protected curb area up on a
6 concrete light pole base foundation.

7 CHAIRMAN GREET: We had made some
8 discussions I believe the last time that you were
9 here and we were talking a little bit about the
10 possibility of eliminating some of those islands and
11 expanding the parking location, there's parking and
12 striping to come into, you know, compliance.
13 Compliance I understand is short, a very minuscule
14 difference. But also along those same lines, and
15 again I'm jumping in on this, on the light aspect of
16 it only because the poles are mounted and within
17 these islands. So that's why I'm bringing it up
18 now.

19 And it was mentioned that possibly
20 they could eliminate quite a few of those islands,
21 expand the compliance factors for the parking and in
22 addition, maybe even put some landscaping on maybe
23 some strategic areas. Not so prevalent or so many,
24 but a few strategically placed trees or shrubbery
25 that might be even recessed a little bit so it would

CROWDER - DIRECT**15**

1 accommodate drainage into the root system and you
2 would have -- supply some water.

3 MR. HEHL: I will let Mr. Crowder
4 expand on that but the team did look at that and
5 felt that the configuration as it exists does
6 function very well. But, again, I will let
7 Mr. Crowder expand on it.

8 THE WITNESS: Yes, the way it lays
9 out, these are very de minimus exceptions as it
10 relates to parking space, the striping, the drive
11 aisle widths.

12 One thing as an overall improvement to
13 the center, as indicated, the lighting is very
14 outdated. That was something that I think the
15 landlord and Lidl have come to an agreement on as a
16 compromise, because Lidl doesn't, as an applicant,
17 doesn't have as much control as they would like just
18 being a future tenant. But through discussions and
19 certainly with their new stores and adding the LED
20 area lighting, that was something we thought was a
21 big enhancement to the existing parking lot today.

22 BY MR. HEHL:

23 **Q.** And there is obviously the landscaping
24 plan that was described last time, any of the trees
25 that need to be replaced will be replaced?

CROWDER - DIRECT**16**

1 **A.** Yes.

2 **Q.** And other ones added?

3 **A.** Yes. We are introducing -- I know
4 that was some feedback from professionals as well as
5 in prior hearings -- but adding 10 additional street
6 trees along South Avenue. And then implementing an
7 additional 16 on-site based on -- and that's an
8 enhancement from our original application.

9 CHAIRMAN GREET: Thank you.

10 MS. VILLAGGIO: The wall that's going
11 to be built by the carts, is there going to be
12 openings on the bottom for the water to drain?

13 MR. HEHL: It actually does show on
14 the --

15 THE WITNESS: -- the graphic, yes.

16 MS. VILLAGGIO: So it won't build up.

17 THE WITNESS: Correct. So you will
18 have an area for the drainage to get out through the
19 space.

20 CHAIRMAN GREET: Anyone else from the
21 Board? Steve, yes.

22 MR. BARCAN: I saw a comment -- I
23 missed the last meeting but reading the transcript,
24 I saw a reference to a retaining wall on the western
25 border of the property that's leading to the, in

CROWDER - DIRECT**17**

1 some cases, a couple of the rows, they're shorter
 2 aisle widths or they're shorter space dimensions.
 3 And I just would like to know a little bit more
 4 about that.
 5 MR. HEHL: In the rear?
 6 MR. BARCAN: Yes.
 7 MR. HEHL: Okay. Let's pull up the
 8 site plan. I think that was, if I recall, it was
 9 the existing retaining wall to the rear. I know
 10 there was a comment about --
 11 MS. VILLAGGIO: There was a comment
 12 with regard to the weeds.
 13 MR. HEHL: Yeah, cleaning that up.
 14 MS. VILLAGGIO: Yes, and the Japanese
 15 knotweed that's in there.
 16 BY MR. HEHL:
 17 **Q.** That invasive species that was
 18 growing --
 19 **A.** Oh, yeah, understood. I think we
 20 agreed to that.
 21 **Q.** Mr. Crowder, perhaps you can point out
 22 for Mr. Barcan where that retaining wall is?
 23 **A.** On the northern property line?
 24 **Q.** Yes.
 25 **A.** So there is a retaining wall along the

CROWDER - DIRECT**19**

1 25 feet with lighting. The middle aisle shows no
 2 poles in lighting and there actually happens to be
 3 some handicap parking spots in the beginning.
 4 THE WITNESS: Yes.
 5 COUNCILMAN McCORMACK: So explain why
 6 there's no poles there, maybe?
 7 THE WITNESS: Yeah, absolutely. So
 8 based on the fixture that was selected, it's a Garco
 9 LED fixture, that mounting height of 25 feet. These
 10 area lights that are centralized within the parking
 11 lot, their distribution of lot is very circular. So
 12 we're able to install these lights every other
 13 double parking bay because you have enough
 14 illumination combining between those adjacent rows
 15 to account for that space.
 16 COUNCILMAN McCORMACK: Thank you.
 17 CHAIRMAN GREET: Anyone else on the
 18 board? Seeing none, I'll open it up to the general
 19 public for questions of this particular witness.
 20 MR. BRENNAN: Good evening, Mr. Chair,
 21 members of the board. Jeff Brennan, attorney
 22 admitted to practice in the State of New Jersey. I
 23 represent Fred and Faith Balsamo, 233 Locust Avenue.
 24 C R O S S E X A M I N A T I O N
 25 BY MR. BRENNAN:

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1 northern portion of the both parking field and the
 2 existing building structure. No changes to that
 3 wall or the associated improvements in that area. I
 4 know there were comments that did pertain to some
 5 plant species in that area which was something that
 6 we agreed to eliminate.
 7 **Q.** And I know again after the first
 8 hearing there was a redesign of the dumpster area to
 9 have it face --
 10 **A.** Correct. So with our original
 11 application the trash enclosure was oriented in a
 12 southerly direction from a loading and unloading
 13 perspective. Based on feedback, we've turned that
 14 clockwise 90 degrees so it now loads to the west
 15 which faces the balance for the loading operations
 16 on the northern side of the building.
 17 CHAIRMAN GREET: All right.
 18 THE WITNESS: Yes, sir?
 19 COUNCILMAN McCORMACK: So I had two
 20 questions, but I think Kathy asked my first
 21 question, is the drainage, there's a new wall to the
 22 shopping carts. I see them in the diagram here.
 23 But my second question is to the
 24 lighting on C-6. So we have three islands within
 25 the parking lot but only two islands show LED poles,

CROWDER - CROSS**20**

1 **Q.** Mr. Crowder, the date of this plan is
 2 what?
 3 **A.** Is October 9, 2019.
 4 **Q.** Do you know the actual date that it
 5 was submitted to the board or the Borough and made
 6 available for public inspection?
 7 **A.** I do not. I would defer to Mr. Hehl
 8 on that.
 9 **Q.** So you don't know if that was ten days
 10 in advance of today's meeting?
 11 **A.** We submitted our plans in advance of
 12 that. The actual date that Mr. Hehl filed them, I
 13 would defer to him.
 14 **Q.** Okay. The new feature, the wall here
 15 that you referred to, have you looked at the
 16 definition of "fence" in the ordinance?
 17 **A.** I have not specific to that wall.
 18 **Q.** Okay.
 19 MR. BRENNAN: That's all I have.
 20 CHAIRMAN GREET: Thank you. Anyone
 21 else? Seeing none, I'll close that portion of the
 22 meeting.
 23 Mr. Hehl, do you have another witness?
 24 MR. HEHL: Yes. I would now like to
 25 call upon our professional planner,

1 Mr. John McDonough.
 2 JOHN M c D O N O U G H, having
 3 been sworn, testifies as follows:
 4 MR. FRASER: State and spell your name
 5 and give your address.
 6 THE WITNESS: Sure. Hi, everyone. My
 7 name is John McDonough. It's spelled
 8 M-C-D-O-N-O-U-G-H. Business address, 101 Gibraltar
 9 Drive over in Parsippany, New Jersey.
 10 DIRECT EXAMINATION
 11 BY MR. HEHL:
 12 Q. Mr. McDonough, I know you have
 13 testified before this board in the past but if you
 14 could please give the board your work, educational
 15 experience, area of expertise, licenses you hold and
 16 again whether you have been accepted as an expert in
 17 those fields and that your licenses are in full
 18 force and effect?
 19 THE WITNESS: Sure. I'm a licensed
 20 professional planner here in the State of New
 21 Jersey. I'm also a member of American Institute of
 22 Certified Planners. That's our national
 23 certification. It allows us to essentially testify
 24 anywhere in the nation.
 25 I testify in that capacity on a

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1 nightly basis throughout the State. Nice thing
 2 about my practice, we get to see the full
 3 cross-section of New Jersey from the rural to the
 4 suburban and the urban as well.
 5 I testify in court. I have been
 6 accepted here before and I have been accepted
 7 everywhere else I go. Have never not been accepted.
 8 MR. HEHL: I offer Mr. McDonough as an
 9 expert in the field of professional planning.
 10 MR. FRASER: I don't think he answered
 11 your question as to the current status of his
 12 license.
 13 MR. HEHL: Oh, yes.
 14 THE WITNESS: Current and in good
 15 standing, yes.
 16 MR. FRASER: Subject to that
 17 qualification, Mr. Chair...
 18 CHAIRMAN GREET: We will accept his
 19 qualifications.
 20 MR. HEHL: Great, thank you.
 21 BY MR. HEHL:
 22 Q. Mr. McDonough, you have been here at
 23 the hearings previously in connection with this
 24 application, obviously well familiar with the
 25 project, the existing conditions and the site. If

1 you could please provide the planning justification
 2 for the variances associated with this application?
 3 A. Sure. Pretty straightforward
 4 application. It came out of the gate with the
 5 overriding emphasis of this application to replace a
 6 supermarket with a supermarket. A pretty
 7 straightforward change of occupancy from a planning
 8 standpoint.
 9 What I would like to do, Mr. Chairman,
 10 with your permission, is just give some exhibits to
 11 the board to lay the foundation for the planning
 12 conclusions. This is primarily a signage
 13 application.
 14 There are some existing
 15 non-conformances which are essentially not changing.
 16 But the applicant is asking the board essentially to
 17 ratify a sign package that is going to be less
 18 intense than the sign package that is there right
 19 now. That's a variance. It's not an exact
 20 replicate of what's there but it is a change, but
 21 it's a change for the better.
 22 So with that, I would like to hand out
 23 some exhibits that I brought along. And this is
 24 going to be file size 11 by 17. And I brought
 25 enough for all the board members. I guess I will

MCDONOUGH - DIRECT 24

1 start with Mr. Barcan and just work my way around.
 2 MR. FRASER: Do you have enough copies
 3 that Mr. Brennan can have one too, Mr. McDonough?
 4 THE WITNESS: I'll give Mr. Brennan
 5 one. We'll see where we end up. I brought 13
 6 copies.
 7 MR. FRASER: So we're being handed a
 8 five-page packet. So we're going to mark this as
 9 one exhibit.
 10 THE WITNESS: Yes.
 11 MR. FRASER: Adele, is it seven,
 12 eight?
 13 MS. LEWIS: Eight.
 14 MR. HEHL: Is this going to be one
 15 package, John?
 16 THE WITNESS: Yes.
 17 MR. HEHL: A-8.
 18 (Exhibit A-8, Planning Packet, is
 19 marked.)
 20 THE WITNESS: So the first page of A-8
 21 is a simple tax parcel map. It shows the subject
 22 property outlined in yellow. This is actually a
 23 single tax lot, Block 501, Lot 8. It's oversized
 24 with respect to the zoning. It's actually about
 25 double what the minimum zoning requirement is. And

**MCDONOUGH - DIRECT
25**

1 it's been developed as a grocery store essentially
 2 since the 1980s.
 3 Some of the interesting geometric
 4 things about this particular piece of property is
 5 somewhat of a sideways lot in terms of its
 6 orientation; it's got more frontage than it's got
 7 depth. So that will become a basis for the signage
 8 relief that the applicant is seeking that is
 9 somewhat of an atypical relationship that minimizes
 10 the exposure of the property and also puts the
 11 parking on the side of the building as opposed to in
 12 front of the building, which, again, is what's
 13 triggering, to a certain extent, the relief that the
 14 applicant is seeking here for signage.
 15 You can see we're also close to the
 16 border with Cranford Township, it would be to the
 17 right in this particular photo -- map, rather. And
 18 of course we've got the frontage on South Avenue as
 19 well.
 20 The second page shows the actual
 21 established pattern of the neighborhood. This is a
 22 built-out lot with a building all the way to the
 23 left or to the west in this particular photograph
 24 and then the parking lot to the right. The
 25 applicant is, as you have heard, essentially working

**MCDONOUGH - DIRECT
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1 with what's there.
 2 This is an adaptive reuse, not
 3 entirely taking over the building but taking over a
 4 portion of the building. And, again, modest
 5 modifications to the site as it presently exists.
 6 The neighborhood, we'll flip over to
 7 the third page, which are a series of color codings
 8 to show the established land use pattern in the
 9 neighborhood. The red is indicative of commercial
 10 land uses. You can see this is a commercial land
 11 use in a commercial setting here, remote from
 12 residential.
 13 We actually took a look at the
 14 objecting property address. It's over 1,500 feet
 15 away. It is separated from the subject site, if you
 16 go as the crow flies, by a ball field, by a lit ball
 17 field with light stanchions that are 100 feet high.
 18 So there are certainly visual intrusions before this
 19 site has any impact on that objecting property line.
 20 This site does back up on the fourth
 21 side, I'll say, to railroad tracks, which you see in
 22 brown. And, again, you see the clear distinct lack
 23 of residential uses in the immediate area which
 24 would be that yellow or that gold color.
 25 Fourth page shows the surrounding

**MCDONOUGH - DIRECT
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1 zoning and the zoning of the subject site. We're
 2 here in the CC Zone. This is the Community
 3 Commercial Zone, it's a zone where the use is
 4 permitted. It's a zone that does allow for Class 54
 5 or Category 54 under the old SIC census
 6 classification system. That system has since been
 7 updated but again it defaults back to that older
 8 system.
 9 So Category 54 a food market is
 10 allowed. And it's actually a zone, as the preamble
 11 says, that not only allows but encourages mixed
 12 uses. And by mixed uses, interesting, the
 13 definition in the ordinance is all non-residential
 14 uses. So retail, office and the like are all
 15 permitted here in this particular zone under any of
 16 those SIC categories which are listed, including the
 17 food use that the applicant has before you now.
 18 Permitted use before, permitted use now.
 19 This is not the downtown district.
 20 This is not the general business district which is
 21 aimed more at offices. This is the district that is
 22 to serve the larger community with retail uses. So
 23 spot on with the intent and purpose of what the zone
 24 is looking for.
 25 And then the last page are photographs

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1 that I actually took of the property myself. We're
 2 looking at, in frame number one, the view of the
 3 subject building from the street. Again, this is
 4 somewhat of a replacement in kind in terms of the
 5 sign package. You can see that there are two sign
 6 panels there associated with the Super Fresh. In
 7 the view to the right, or frame number two, is a
 8 view of the subject site from the parking lot. You
 9 can see one of the signs blocked out.
 10 But the total approved square footage
 11 of that particular sign equates to upwards of
 12 290 square feet. The applicant is proposing
 13 142 square feet here. So it is actually a reduction
 14 of about half of the sign package that was
 15 previously there on the building.
 16 The applicant is also looking to
 17 continue the theme of window signage. Some relief
 18 is associated with that as well. But the side
 19 that's associated with the parking lot framed to the
 20 right, that is going away. That is going to be all
 21 glazing. So it's only the side facing the street
 22 where we're looking for that 100 percent glazing
 23 allowance. Again, a continuation of what's there.
 24 An improvement of the graphics. The
 25 graphics say that the only things that can be

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1 displayed are products. In the particular view that
 2 you see here, people are shown. People are coming
 3 out of the proposed plan. It's actually going to be
 4 food entirely that's shown. So in that regard, in
 5 that minor technicality, this is moving closer to
 6 the zoning requirement.

7 Frame number three, you get a sense of
 8 the parking lot and as it exists now. Certainly an
 9 underutilized piece of property. Completely
 10 contrary to the zone intent, which is supposed to
 11 encourage economic development, stable ratable base.
 12 This is one of your key economic development
 13 districts here in town.

14 The zone wants to see that space
 15 filled. The Master Plan wants to see that space
 16 filled. It encourages active uses, a mix of vibrant
 17 uses. And that is exactly what the applicant is
 18 doing here, bringing that dead parking lot back to
 19 life.

20 Frame number four shows the existing
 21 free-standing sign, which is approximately
 22 162 square feet now. It's non-conforming with
 23 respect to height. It's going away. The applicant
 24 is going to pull in a conforming sign in terms of
 25 height, maintaining that 15 feet. And the overall

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1 area is going to be 96.45 square feet.

2 So, again, a reduction from that over
 3 100 square feet down to south of 100 square feet
 4 with the proposed sign. And you have seen the
 5 visuals. Certainly a significant visual improvement
 6 over the goalpost sign that is there now with more
 7 of a monument-style sign.

8 So, again, the key two points here
 9 are, number one, reactivating dead space with a very
 10 viable land use, pulling in jobs, pulling in
 11 ratables, pulling in a service that serves the local
 12 public. And number two, a substantial visual
 13 improvement over the property that presently exists.

14 You can see the elevations of the
 15 building as proposed now, the improvement with
 16 respect to the sign package, a much simpler, more
 17 tasteful design than that which has historically
 18 been on the property.

19 With respect to the relief that the
 20 applicant needs, I think the best way to walk the
 21 board through is the roadmap that your own planner
 22 has given you on Page 6 of 10 of his report. And
 23 that is Mr. Vinegra's report dated September 18,
 24 2019.

25 And you can see that there are nine

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1 categories or nine sections of ordinance relief that
 2 the applicant is seeking. One of them has actually
 3 been crossed out, so we're down to eight. That was
 4 with respect to the free-standing sign at 28.8 feet
 5 tall. We have now complied at the 15-foot tall
 6 height.

7 But following along on this list, the
 8 first four are pretty easy. They're all
 9 continuations of existing conditions. Number one is
 10 the rear yard setback. The applicant is not
 11 increasing the size of the building, seeking to
 12 ratify or continue that which is already there. A
 13 rear yard setback of 5.2 feet whereas a minimum of
 14 ten feet is required. Again, a preexisting
 15 condition.

16 Number two, the width of the lot,
 17 8.12 feet whereas a maximum of 500 feet is
 18 permitted. Again, an existing condition that the
 19 applicant is looking to ratify and to continue.

20 Number three, another preexisting
 21 condition. There are 40 spaces along the rear
 22 property line that don't have fully conforming size
 23 standards, nine by 17.7 and 37 spaces are 8.9 by
 24 20.5. The ordinance requires 9 by 18.

25 You have heard testimony from not only

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1 one witness but two witnesses before me as to the
 2 engineering logic behind that and how the site will
 3 function safely and efficiently as it did and as it
 4 will with the continuation of those dimensions.

5 Number four, the project has aisle
 6 widths of 22 feet -- I'm sorry, 22.2 feet, 23.1 feet
 7 and 23.7 feet which is less than the 24 feet.

8 Again, a continuation of a preexisting
 9 non-conforming condition, looking for ratification.

10 You have heard the same testimony as you did for the
 11 stall dimensions.

12 The same goes with the aisle
 13 dimensions that the site will function safely and
 14 efficiently and strikes that nice balance to provide
 15 an adequate supply of off-street parking and
 16 dimensions that are certainly reasonable within
 17 sound planning measures.

18 Number five, the project has four
 19 mounted wall signs where only one is permitted.

20 And, again, referring back to Exhibit A-7, I think
 21 the exhibit speaks for itself, a very clear, very
 22 clean sign package. The four signs are the two
 23 Lidls on the corner and then the word "mart" or the
 24 tag line, the identifier as food market. Not much
 25 different than what we had before or originally with

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1 the word Pathmark as the logo. And then I think it
 2 said Super Fresh or another tag line associated with
 3 it -- Super Center previously associated with it.
 4 So, again, not substantially different
 5 from a quantity standpoint that was there before
 6 except this is a much more compact, tasteful package
 7 than the other sign package which essentially took
 8 up the whole frame and was boxed out.
 9 Number six, the proposed project has
 10 an area of 142.4 square feet of signage per facade.
 11 It's a function of either the linear feet of the
 12 frontage, two square feet per foot of building
 13 frontage, but no more than 40 square feet maximum.
 14 And that's the lower threshold that the applicant is
 15 seeking the relief for. 142.4 per facade, if we add
 16 up both the Lidl and the food market. If the board
 17 wants I can break down what each component is but
 18 the aggregate is 142.4, whereas 40 feet is allowed.
 19 And just to take you back to what I said before,
 20 that is an improvement over that which previously
 21 existed at 167.19. So a substantial improvement
 22 over that which was previously there.
 23 In fact, if we take the whole box,
 24 which was counted originally, that's 290 square
 25 feet. So the lower number I just gave you related

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1 to a box around the text, but there was actually a
 2 frame around the sign before which would make it
 3 double what the applicant is proposing here.
 4 Number seven, the proposed project has
 5 a mounted wall sign which projects 16 inches where a
 6 maximum of 12 inches is permitted. The Lidl logo is
 7 curved as it comes out from the building and that's
 8 where that extra four inches are. It relates to
 9 assembling the, I'll say, the wiring package or the
 10 lighting package behind but it's also related to
 11 that curved nature of the logo and the sign.
 12 Clearly imperceptible as a variance.
 13 It's not the entire sign that is sticking out but
 14 just a portion of that apex of that curve. It's so
 15 high up that it's clearly not going to interrupt any
 16 clear lines of looking. Certainly not going to seem
 17 obtrusive in the overall visual appearance of the
 18 building.
 19 Finally, with respect to the
 20 ground-mounted sign, I don't know if we have a copy
 21 of that handy -- I don't think we need it, Ben, it's
 22 okay. The proposed sign is going to be flush with
 23 the ground, bearing in mind, of course, that this is
 24 a monument-style sign so there's going to be the
 25 nice pedestal at the base and then another panel

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1 that identifies -- we had shown I think five
 2 potential tenants on the property. There will be a
 3 minimum of at least two other tenants on the
 4 property by virtue of the way the ordinance breaks
 5 down the minimum size requirements. The applicant
 6 is showing five, seeking relief with respect to the
 7 height of the sign or the clearance of the sign from
 8 the ground. Zero feet being proposed, ten feet
 9 being required, but you have heard the testimony as
 10 to the clear lines of site. The planning intent,
 11 therefore, is met that this is not going to
 12 interrupt any view sheds or safe ingress or egress
 13 or stopping or turning into the subject property.
 14 Overall a very, very nice sign package as the
 15 applicant is proposing here.
 16 Just to tie this back to the legal
 17 basis for the relief, an applicant for a "c(2)"
 18 variance needs to either demonstrate "c(1)" hardship
 19 or "c(2)" balancing, that the benefits of the
 20 application as a whole substantially outweigh the
 21 detriments. I think this is really a "c(2)"
 22 application which is certainly a betterment over
 23 that which previously existed and which continues
 24 through perpetuity, but I think there's an element
 25 of "c(1)" here as well to the extent that the relief

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1 relates to the land and the structures that are
 2 lawfully existing thereon. That's the basis for
 3 relief under "c(1)(a)" or "c(1)(b)".
 4 Also, again, given the nature of the
 5 property, that it is oriented sideways to the
 6 roadway, which I think warrants that additional
 7 relief as well. It's not a typical lot I'll say
 8 where that access is usually longer to the street.
 9 That said, either aspect of the test
 10 is met. I think the board can move favorably on the
 11 "c(2)" balancing test whereby multiple purposes of
 12 zoning are advanced here, including Purpose A,
 13 promotion of the general welfare with an overall
 14 improved sign package and a revitalization of the
 15 site.
 16 Purpose G, to provide for a variety of
 17 uses in appropriate locations. It was appropriate
 18 for this use before, it will continue to be
 19 appropriate. This is a more modern version of that
 20 which has historically existed here.
 21 Purpose M, which is the planning goal
 22 to efficiently use our land. This is not a
 23 wholesale reconstruction of the site, therefore the
 24 typical, I'll say construction nuisances are not
 25 going to be associated with this particular piece of

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1 property. A retrofit of that which is already there
 2 and I think our applicant has done a really nice job
 3 architecturally, operationally and from a site
 4 standpoint in terms of fitting this use into what is
 5 there now.

6 And then finally, Purpose, I the
 7 planning goal to promote a desirable visual
 8 environment. I'll let the elevations speak for
 9 itself. It is certainly going to improve the image
 10 and the identity of the site, surrounding
 11 neighborhood and I believe the community as a whole,
 12 as a very nice place to invest and certainly an area
 13 that attracts national brands such as this.

14 All said, I believe the statutory test
 15 for the relief that the applicant is seeking is met.
 16 This is a really good application for this
 17 particular location. It makes very good planning
 18 sense. No substantial detriment to the surrounding
 19 neighborhood. No substantial impairment to the
 20 intent and purpose of the Zone Plan which looks,
 21 again, to have active uses in the CC Zone, serving
 22 I'll say a neighborhood-type scale.

23 And with that, I believe the statutory
 24 burden has been met by all of the evidence that the
 25 applicant has put on the record and approval is

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1 warranted here.

2 MR. HEHL: Thank you, Mr. McDonough.
 3 I have no questions at this time.

4 CHAIRMAN GREET: Okay, thank you.
 5 I'll open it up to the board for any questions of
 6 this witness.

7 MR. BARCAN: I have one.
 8 CHAIRMAN GREET: Steve, you have
 9 something?

10 MR. BARCAN: Yeah. I was looking at
 11 the ordinance today to prepare for this and the
 12 design standard section, Chapter 106, Article 9,
 13 off-street parking is a design standard so that the
 14 inconsistencies, to the extent we have them, it
 15 seems to me could be design waivers and --

16 MR. HEHL: Design waivers rather
 17 than...

18 MR. BARCAN: -- and not "c" variances
 19 with a different test. So I wonder if you --

20 THE WITNESS: Yeah, I can take that.
 21 I think the board is well aware that whenever we're
 22 dealing with something outside of the zoning scheme
 23 and more in the design aspect of a structure of the
 24 ordinance, we're dealing with a different test. The
 25 balancing, the hardship does not have to be met.

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1 This is a lower standard. We move from Section 70
 2 of the Land Use Law to Section 51, whereby an
 3 applicant simply has to demonstrate a sense of
 4 reasonableness, meeting sound design standards,
 5 sound engineering standards, planning standards.

6 And there's also an aspect of -- the
 7 word used in the statute is impracticability, which
 8 is a fancy way of saying serves no practical
 9 purpose. And to enforce strict adherence to the
 10 rule here and from a planning standpoint I think
 11 would pull in an element of impracticability here
 12 and serve no practical planning purpose. With that
 13 I believe that the lower standard under Section 51
 14 is met.

15 MR. HEHL: Thank you, Mr. McDonough.
 16 And thank you, Mr. Barcan.

17 MR. McCORMACK: On the square footage
 18 of signage, so before we had Super Fresh and Super
 19 Fresh was the retailer that took over this whole
 20 building and that square footage you had mentioned,
 21 I know I jotted it down. Now we're talking about
 22 Lidl and it's only part of the building.

23 The other vacant part which is going
 24 to be presented to hopefully another rental, how
 25 does that fit into the square footage of signage in

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1 this building?

2 THE WITNESS: Well, at this point it's
 3 an unknown because we don't know what the other
 4 tenants are going to be. But, again, just looking
 5 at the relief that was granted for the Food
 6 Emporium, that was upwards of 290 square feet. And
 7 I would say there's plenty of wiggle room here to
 8 get up to that 290 and the 142 square feet -- 142.4
 9 per side that the applicant is proposing.

10 MR. McCORMACK: So at the end of the
 11 day you're saying it may be predicted that 290
 12 square foot would be with the other rental of this
 13 property?

14 THE WITNESS: Yeah, I think that's
 15 something that the board can certainly weigh as the
 16 applicant goes -- bear in mind, any other sign
 17 package that comes in here is going to need relief
 18 because you have exceeded that 40 square feet.

19 MR. McCORMACK: Thank you.
 20 MR. TARANTINO: And to take that one
 21 step further, I don't know if Lidl has the right to
 22 refuse or allow, would there ever be additional
 23 tenant signage on the South Avenue facade of the
 24 building for the other tenants?
 25 THE WITNESS: The answer is I don't

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1 know. I do know that there was additional
 2 signage associated --
 3 MR. HEHL: I can represent that it's
 4 within their leasehold area.
 5 MR. FRASER: All right, I want to be
 6 clear about that. So you're saying, Mr. Hehl, that
 7 on the South Street frontage, Lidl's lease says
 8 there can be no sign other than the Lidl on that
 9 facade?
 10 MR. HEHL: That's correct. I can make
 11 that representation.
 12 MR. TARANTINO: Thank you.
 13 MR. FRASER: Okay. But then to say
 14 with the point on the side facing parking lot, so
 15 there's 290-something feet that's -- of signage that
 16 was there when it was Super Fresh and Lidl is going
 17 to use 142; that's what you're saying,
 18 Mr. McDonough?
 19 THE WITNESS: 142.4, yes.
 20 MR. FRASER: 142.4 out of the
 21 290-something that had been there previously?
 22 THE WITNESS: Yes.
 23 MR. FRASER: So just doing some simple
 24 math, there's another 150 feet of signage that would
 25 have to be put up to equal what was there before?

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1 THE WITNESS: Yes.
 2 MR. FRASER: So, hypothetically, if
 3 the same amount of signage were to be permitted,
 4 that 140 feet is available for future applicants who
 5 would take up the rest of the space?
 6 THE WITNESS: Yes.
 7 MR. FRASER: Okay.
 8 CHAIRMAN GREET: Anybody else from the
 9 board have any questions of this witness? Steve.
 10 MR. BARCAN: Yeah. Mr. McDonough, is
 11 it even clear to you as a planner that some of these
 12 variances are required?
 13 This is a developed site with, reading
 14 the review report, a variance for lot width, a
 15 variance for rear setback of a building that is
 16 already there. And even in theory, I understand the
 17 signage has changed, but parking lot layout; is it
 18 necessary?
 19 MR. HEHL: We felt that in presenting
 20 the application they were noted as preexisting
 21 non-conforming conditions, we felt that we would
 22 provide the justification, whether it be existing
 23 condition -- we're treating them as, and the
 24 justification is as the fact that they're existing
 25 conditions. But, yes, they technically are not

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1 variances that are being created by this application
 2 or that we, frankly, even have to present the proofs
 3 for but we have done that.
 4 MR. BARCAN: Being careful, okay.
 5 MR. HEHL: Yeah.
 6 CHAIRMAN GREET: Any other questions?
 7 Steve, do you have anymore?
 8 MR. BARCAN: No.
 9 CHAIRMAN GREET: Anybody else? Seeing
 10 none, I will open it up to the general public for
 11 questions of this specific witness.
 12 MR. BRENNAN: Would you like me to
 13 introduce myself again, Mr. Chair?
 14 CHAIRMAN GREET: Just briefly.
 15 MR. BRENNAN: Again, Jeff Brennan,
 16 attorney admitted to practice on behalf of the
 17 Balsamos.
 18 C R O S S E X A M I N A T I O N
 19 BY MR. BRENNAN:
 20 **Q.** Mr. McDonough, you testified that the
 21 variances could be justified under either "c(1)" or
 22 "c(2)," correct?
 23 **A.** Correct.
 24 MR. BRENNAN: With respect to "c(1),"
 25 you're not saying there's any issues with the

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1 topography of this property, correct?
 2 THE WITNESS: No, I'm not doing this
 3 under "c(1)(b)," I'm doing this more under "c(1)(a)"
 4 related to the shape of the property or I would say
 5 "c(1)(c)" under the structures that are lawfully
 6 existing on the land.
 7 MR. BRENNAN: But let's just be clear
 8 because I think it was also your testimony that the
 9 size of the property is way more than what's
 10 required for the zone?
 11 THE WITNESS: That's correct.
 12 MR. BRENNAN: All right. A couple of
 13 the variances I think you noted were preexisting
 14 non-conforming conditions?
 15 THE WITNESS: Yes.
 16 MR. BRENNAN: For example, related to
 17 the parking lot, the space width. That would be
 18 one?
 19 THE WITNESS: Correct.
 20 MR. BRENNAN: There was another one
 21 relating to the aisle width, correct?
 22 THE WITNESS: That's correct.
 23 MR. BRENNAN: Are you aware that part
 24 of Lidl's proposal is to mill and resurface the
 25 entire parking lot?

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1 THE WITNESS: Yes.
2 MR. BRENNAN: So how could that be a
3 preexisting non-conforming condition? You're
4 destroying it, right?
5 THE WITNESS: Yes, but I recognize the
6 fact that the current condition could continue for
7 perpetuity as is. I think that carries some weight.
8 I think the board can give that some deference in
9 the evaluation of the application.
10 MR. BRENNAN: Do you have any
11 authority or case law to support that proposition?
12 THE WITNESS: I don't know. I don't
13 know if I do.
14 MR. BRENNAN: All right. I think you
15 testified early on that this proposal is essentially
16 replacing the supermarket with a supermarket,
17 correct?
18 THE WITNESS: Yes.
19 MR. BRENNAN: That's not really true,
20 is it?
21 THE WITNESS: I don't understand the
22 question.
23 MR. BRENNAN: Well, it's a supermarket
24 and something else, correct?
25 THE WITNESS: Yes.

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1 MR. BRENNAN: But we don't know what
2 that something else is?
3 THE WITNESS: That's correct.
4 MR. BRENNAN: Or those two other
5 something elses are, correct?
6 THE WITNESS: Correct.
7 MR. BRENNAN: Okay. Don't you have to
8 know that to evaluate this application if you're the
9 board?
10 THE WITNESS: I don't think so at all.
11 MR. BRENNAN: Are you going to make a
12 representation, or can Lidl make a representation,
13 that this is going to be a permitted use?
14 MR. FRASER: For the record, clarify
15 what you mean by "this," Counsel, in that question.
16 MR. BRENNAN: I'm sorry, I lost you.
17 MR. FRASER: Could you rephrase that
18 question? The way you addressed it, "This is going
19 to be a permitted use," what is "this"?
20 MR. BRENNAN: I apologize, "this"
21 being the unidentified space.
22 THE WITNESS: The answer is right now
23 it is shown as generic retail space. If it's
24 not -- if an actual land user is not a permitted
25 use, we'll be right back in front of this board.

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1 BY MR. BRENNAN:
2 **Q.** Okay. Well don't they have to know
3 that now --
4 **A.** No.
5 **Q.** -- to evaluate this --
6 **A.** Not at all.
7 MR. BRENNAN: So, for example, you're
8 saying that there's no standard in this ordinance or
9 standards in this ordinance whereby it matters what
10 this second use is or third use is?
11 **A.** So long as it's a permitted use and
12 the applicant has shown that the parking supply
13 meets the demand.
14 **Q.** But it makes no difference -- well,
15 that's a good point. The parking analysis, for
16 example, that makes no difference as to what type of
17 use that is?
18 **A.** Again, I think the applicant's traffic
19 engineer has given a very reasonable, practical
20 approach to calculating the parking demand on the
21 site and the parking requirements. And it is not
22 atypical for a site plan application to involve one
23 end-user and some sort of the future generic user.
24 That's not atypical at all.
25 **Q.** Okay. Thanks for that answer but this

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1 is my question: Are there standards in the
2 ordinance that dictate how much parking there has to
3 be based on the use?
4 THE WITNESS: Yes.
5 MR. BRENNAN: And we don't know what
6 that second use is, correct?
7 THE WITNESS: It's undefined at this
8 time.
9 MR. BRENNAN: Okay. Can you have a
10 second use on the same property?
11 THE WITNESS: Yes, you can.
12 MR. BRENNAN: Are you sure about that?
13 THE WITNESS: I am emphatically clear
14 about that.
15 MR. BRENNAN: Okay. Can I refer you
16 to Section 106-106 of the ordinance?
17 THE WITNESS: I read it extensively,
18 yes.
19 MR. BRENNAN: Okay. So tell us what
20 it says.
21 THE WITNESS: That's the generic
22 standard. That's a municipal-wide standard.
23 MR. BRENNAN: What does it say?
24 THE WITNESS: It says dual uses is
25 prohibited. More than one use is prohibited.

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1 MR. BRENNAN: Okay. Now let's talk
 2 about what the CC Zone specifically permits.
 3 Does it permit more than one use on a
 4 property?
 5 **A.** Clearly.
 6 **Q.** Okay. Where does it say that?
 7 THE WITNESS: I'll take the board
 8 through the whole thing.
 9 MR. BRENNAN: Just --
 10 THE WITNESS: Where does it say it?
 11 MR. BRENNAN: -- where does it say
 12 that? Very simple question.
 13 THE WITNESS: It says it in the
 14 preamble which says, "The zone's primary purpose is
 15 to encourage and promote active mixed-use areas.
 16 The definition of a mixed-use area is a development
 17 with a variety of complementary and integrated uses,
 18 including but not limited to retail, services,
 19 businesses and office uses. Such developments may
 20 include an anchor use or uses as well."
 21 MR. BRENNAN: I see. So mixed-use
 22 areas. And you think "areas" means single property,
 23 correct?
 24 THE WITNESS: Yes.
 25 MR. BRENNAN: But it doesn't say that,

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1 purpose generally that the board is supposed to
 2 glean somehow means ignore 106, this is what really
 3 controls?
 4 THE WITNESS: The express purpose is
 5 right there, permitted uses in the CC Zone are to be
 6 developed as part of a comprehensive development of
 7 different size uses. It goes on to say what --
 8 MR. BRENNAN: Keep reading.
 9 THE WITNESS: It goes on to say,
 10 "Anchor uses are permitted to be single-store
 11 facilities provided they are linked with other uses
 12 to form one comprehensive development advancing the
 13 zone purpose. An anchor store, the largest retail
 14 establishment in a mixed-use shopping center that
 15 draws customers and thereby generates business for
 16 the remaining stores as the center."
 17 I didn't write this. This is what the
 18 black and white says.
 19 **Q.** So, again, no mention of specific
 20 property like 106?
 21 THE WITNESS: The definition of a
 22 mixed-use development is a development on a tract of
 23 land.
 24 MR. BRENNAN: On a tract of land but
 25 not a specific property?

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1 does it?
 2 THE WITNESS: A development of a tract
 3 of land. It's exactly what it says. That's the
 4 clear language of the ordinance.
 5 MR. BRENNAN: Okay. Does it say
 6 specific property, like the other ordinance section
 7 that I referred you?
 8 THE WITNESS: It says, "A development
 9 of a tract of land." It can't be any clearer.
 10 MR. BRENNAN: Well, I think it can be
 11 clearer because 106 contains that express
 12 prohibition.
 13 **A.** It's a generic prohibition. That
 14 would mean multi-families are not permitted. That
 15 would mean multi-tenanted office buildings are not
 16 permitted. There are exceptions.
 17 This ordinance is crystal clear that
 18 that's an exception. It's not only allowed, it's
 19 encouraged here.
 20 **Q.** So we have 106 that has an express
 21 statement that you cannot have more than one use on
 22 a lot, and you're saying ignore that, there's
 23 another section of purpose --
 24 **A.** Not specific, that preempts.
 25 **Q.** -- not specifically permitted uses but

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1 THE WITNESS: There's no -- that's a
 2 stretch.
 3 **Q.** Different question. Section B, same
 4 ordinance section, permitted uses?
 5 **A.** Yes.
 6 **Q.** Tell me where it says --
 7 MR. BARCAN: What section are you
 8 going to?
 9 MR. BRENNAN: Section B, that's
 10 106-95(b), permitted uses.
 11 THE WITNESS: Yes.
 12 BY MR. BRENNAN:
 13 **Q.** Okay. Tell me where it says in that
 14 section of permitted uses where you can have two of
 15 one thing or more than two of one thing in the same
 16 zone?
 17 **A.** "All uses within these categories are
 18 permitted unless specifically excluded." And then
 19 there's a whole list, there's a whole list of
 20 categories that it could be.
 21 **Q.** Nothing about multiple uses, correct?
 22 **A.** It says right here "all uses within
 23 these categories." You can read it the way you read
 24 it. I think it's crystal clear what it says. This
 25 is a mixed-use zone. This is a mixed-use district.

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1 MR. BRENNAN: So let's accept your
2 definition and let's say you can have multiple uses
3 on the same property. Do any limitations or
4 restrictions apply with respect to those uses?
5 THE WITNESS: Yes.
6 MR. BRENNAN: What are those?
7 THE WITNESS: Size limits.
8 MR. BRENNAN: Okay. Tell us about
9 that.
10 **A.** A food store can be upwards of
11 60,000 square feet. Another anchor could be upwards
12 of 17,000 square feet. And then there's an average
13 size requirement beyond that.
14 **Q.** So 60,000 for the primary, correct?
15 **A.** For the -- if it's a food use. It
16 doesn't have to be a food use.
17 MR. BRENNAN: Which this is, I think
18 we'll both agree, right?
19 THE WITNESS: Yes.
20 MR. BRENNAN: And then no more than 17
21 for the second use?
22 THE WITNESS: Yes.
23 MR. BRENNAN: What is the proposed
24 space for the second use?
25 **A.** I think it's 20 -- I have 22,103 in my

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1 notes.
2 **Q.** So accepting your definition for
3 purposes of this hypothetical, is that a permitted
4 use?
5 **A.** Yes.
6 MR. BRENNAN: Didn't you just tell me
7 you can't have more than 17,000 square feet for the
8 second use?
9 THE WITNESS: Oh, by itself, no. But
10 it's still a permitted use. 17,000 would be the max
11 for a single unit within that space.
12 MR. BRENNAN: But you're over that?
13 THE WITNESS: That's remainder space.
14 The demise of that space has not yet been defined.
15 MR. BRENNAN: Well you're making a
16 representation to this board. You are trying to get
17 a site plan approval for this.
18 THE WITNESS: Correct.
19 MR. BRENNAN: This is the only one --
20 unless you know of some other plan, this is the only
21 plan that the board is acting on tonight?
22 **A.** Correct.
23 MR. BRENNAN: Is there another plan?
24 THE WITNESS: No.
25 MR. BRENNAN: So what we have is

**MCDONOUGH - CROSS
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1 what's the square footage here?
2 THE WITNESS: The numbers I have, and
3 we can always get a correction --
4 **Q.** I'll read it off the plan, 28,666 --
5 THE WITNESS: That's what I have.
6 MR. BRENNAN: -- for Lidl. Okay. For
7 the remainder piece?
8 **A.** 22,013. We're stitched.
9 **Q.** So that's not permitted by the
10 ordinance, correct?
11 In the current configuration that's
12 appearing before the board on the plan that you,
13 Lidl, wants to get approved, that is not permitted,
14 correct?
15 **A.** If --
16 MR. FRASER: Wait a minute. What is
17 not permitted? I didn't understand your question.
18 MR. BRENNAN: The size of the second
19 use.
20 MR. FRASER: But there's no use
21 proposed for that at this time. Isn't that correct,
22 Counsel?
23 MR. BRENNAN: It doesn't matter. By
24 definition anything else has to -- it triggers a use
25 variance.

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1 MR. FRASER: But there's no
2 application that triggers the use variance --
3 MR. BRENNAN: The mere --
4 MR. FRASER: There's no use proposed.
5 MR. BRENNAN: I apologize for talking
6 over.
7 MR. FRASER: There's no use proposed
8 for that, is there?
9 MR. BRENNAN: Doesn't matter.
10 Anything else that you do in that space, it triggers
11 a use variance. By dividing, by demising --
12 MR. FRASER: You mean it would trigger
13 a use variance at some point in the future, not --
14 MR. BRENNAN: No, right now. Because
15 you're creating a space for a second use that's not
16 permitted by your ordinance.
17 MR. VENA: Can I ask a question? By
18 what you just said, that they're creating a use, a
19 second use, didn't you just say before, five minutes
20 ago, that they might be proposing two other uses or
21 three --
22 MR. BRENNAN: I have no idea.
23 MR. VENA: What I'm saying is I'm
24 listening to you say that just because there's a
25 piece left over, isn't it up to the real estate

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1 agent or whoever it is to sell that as or rent it as
 2 a smaller space?
 3 MR. BRENNAN: Here is the problem with
 4 that: They're seeking approval for this plan.
 5 MR. VENA: Yeah, just --
 6 MR. BRENNAN: They're seeking approval
 7 for this plan.
 8 MR. VENA: I understand.
 9 MR. BRENNAN: There is absolutely no
 10 guarantee that they'll ever return to you for any
 11 other use that goes into this space. Okay? So this
 12 is your one last chance to control that.
 13 MR. VENA: But what I don't understand
 14 is if someone were to come in to rent that extra
 15 space, and we all know that it's over the maximum,
 16 wouldn't that trigger that they would have to come
 17 before us?
 18 MR. BRENNAN: But by granting -- if
 19 you were to grant the approval tonight, you are
 20 already doing that. You're already setting aside
 21 that amount of space for another use which, albeit
 22 hasn't been identified but under the specific
 23 requirements in your ordinance cannot exist, cannot
 24 exist.
 25 MR. FRASER: I appreciate that counsel

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1 me that. This is the same thing.
 2 **Q.** This is a "d(1)." At the very least
 3 it's a "d(3)." At the very least it's a "d(3)."
 4 MR. BARCAN: Is this appropriate?
 5 MR. FRASER: Counsel, that's not a
 6 question.
 7 BY MR. BRENNAN:
 8 **Q.** Isn't it?
 9 **A.** No.
 10 MR. BRENNAN: That's all I have for
 11 the witness.
 12 MR. FRASER: Mr. Hehl? Or, I'm sorry,
 13 do other members of the public have any questions?
 14 CHAIRMAN GREET: Anybody else from the
 15 public that would like to address this witness?
 16 Seeing none, I will close the public.
 17 Mr. Hehl?
 18 MR. HEHL: We have no further
 19 witnesses at this time.
 20 CHAIRMAN GREET: Thank you.
 21 Okay, commentary from the board,
 22 discussion?
 23 MR. HEHL: Do you have a witness? I'm
 24 sorry.
 25 CHAIRMAN GREET: Go ahead.

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1 is responding to Mr. Vena but this is really
 2 argument and we're on his questions of this witness.
 3 THE WITNESS: So is there an open
 4 question?
 5 BY MR. BRENNAN:
 6 **Q.** I apologize, I lost track.
 7 **A.** I think you were asking me about is
 8 that a variance at 22,000 square feet?
 9 **Q.** Right. Does that satisfy the criteria
 10 of the ordinance as it exists right now as it's
 11 proposed?
 12 **A.** Even if it were a variance, and I'm
 13 not conceding that it is, it would not be a use
 14 variance because it's an area regulation and that's
 15 a bulk variance, that's not a use issue.
 16 A use is a use. A variance is not a
 17 use.
 18 **Q.** Ordinarily I would agree with you but
 19 it's under the permitted uses section, so the use is
 20 dictated by the size. It's like a conditional use,
 21 it's a conditional use variance.
 22 **A.** I completely disagree because I've
 23 lived it in court. And, for example, a multi-family
 24 development is only allowed on a 40,000 square-foot
 25 lot. It's a bulk variance. I have had courts tell

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1 MR. HEHL: No, I believe Mr. Brennan
 2 has a witness. I didn't want to just --
 3 CHAIRMAN GREET: Oh, I'm sorry.
 4 MR. FRASER: I think procedurally the
 5 objector gets to -- and it makes more sense, the
 6 objector puts on his witness, if any, before the
 7 board takes it under advisement.
 8 CHAIRMAN GREET: I apologize.
 9 MR. FRASER: No, I mean it's not
 10 wrong, but I just think it will work out better.
 11 MR. BRENNAN: Mr. Chair, Barbara
 12 Woolley-Dillon, professional planner.
 13 B A R B A R A W O O L L E Y - D I L L O N,
 14 having been sworn, testified as follows:
 15 MR. FRASER: Please state and spell
 16 your name and give your address.
 17 M S. W O O L L E Y - D I L L O N: Yes. It's
 18 Barbara Allen, A-L-L-E-N, Woolley, W-O-O-L-L-E-Y,
 19 hyphen, Dillon, D-I-L-L-O-N. My address is 125 East
 20 Main Street, Suite 2B, Tuckerton, New Jersey.
 21 D I R E C T E X A M I N A T I O N
 22 BY MR. BRENNAN:
 23 **Q.** Ms. Woolley-Dillon, can you please
 24 give the board the benefit of your educational and
 25 professional background?

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1 **A.** Yes. I am a licensed professional
2 planner in the State of New Jersey. I possess the
3 NJPP, New Jersey Professional Planner, as well as
4 the AICP licenses. I am current with my licenses.
5 I also am current and I think have
6 exceeded my 32 required current -- I'm sorry, credit
7 maintenance hours for this current cycle including
8 law and ethics. I also have a certification from
9 Rutgers University with regard to wetlands
10 delineation, environmental certification to do
11 environmental soils, et cetera. And I believe
12 that's all that is relevant for this application.
13 **Q.** And what is your day job?
14 **A.** Okay, maybe I shouldn't say this too
15 loud given all the controversy and hubbub. I am
16 currently the director of planning and development
17 for the city of Atlantic City.
18 I have also been a zoning official for
19 the Borough of Mantoloking, as well as the Borough
20 of Lavallette, Seaside Park, as well as having done
21 code enforcement for both of those boroughs and
22 Mantoloking, as well as having been the certified
23 floodplain manager for the Borough of Seaside Park
24 as well as Lavallette.
25 **Q.** And your qualifications have been

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1 accepted by various boards in the State of New
2 Jersey?
3 **A.** Just about 100 boards. I have
4 appeared in several communities, just about every
5 county -- I'm sorry, every municipality in Cape May
6 County, almost every single one in Atlantic County.
7 I've also been up this way. I have been to --
8 **Q.** I don't think we need an exact
9 location. But almost 100?
10 **A.** Yes.
11 **Q.** Okay.
12 **A.** I have also been accepted as an expert
13 by the federal courts and I have prepared quite a
14 few Master Plans, Master Plan Re-Examination
15 Reports. We are currently preparing the Master Plan
16 for Atlantic City. I have also prepared a number of
17 special planning studies for other communities. And
18 I'm actually getting ready to proceed -- pursue, I'm
19 sorry, my Ph.D. in planning back at the University
20 of Pennsylvania. I have eight courses left.
21 **MR. BRENNAN:** Mr. Chair, we would
22 proffer Ms. Woolley-Dillon as an expert in the field
23 of land planning.
24 **CHAIRMAN GREET:** Certainly, we'll
25 accept her.

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1 **MR. BRENNAN:** Thank you.
2 **BY MR. BRENNAN:**
3 **Q.** Ms. Woolley-Dillon, can you please
4 tell us what materials you reviewed in anticipation
5 of giving your testimony tonight?
6 **A.** Yes. I looked at the zoning
7 ordinances, Master Plans, Master Plan Re-examination
8 Reports. I also was not present at the May 22,
9 2019, hearing, so I did review the official
10 transcript from that meeting.
11 I looked at the plans, applications up
12 until the most recent plan, and I'm looking at it
13 now. And I have also reviewed the relevant case law
14 and the Municipal Land Use Law.
15 **Q.** Okay. And you were present at the
16 prior meeting for this application; were you not?
17 **A.** That is correct.
18 **Q.** In September?
19 **A.** Yes.
20 **Q.** If you could please give us the
21 benefit of your analysis and conclusions on the
22 application?
23 **A.** Okay. In taking a look at the
24 application I believe, and this is going to get
25 right to the matter, I think that there is -- the

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1 use variance, I'm sorry, not just for the food
2 market but it started -- this is where the line of
3 questioning with Mr. Baron was going.
4 Your ordinances talk about what are
5 the permitted use groups and he described them as
6 kind of being almost conditionally permitted. When
7 they talk about the use groups for this particular
8 zone, and this is the CC Zoning District, we've
9 already hashed over the grocery store so I won't go
10 there, but what I find interesting is in Section
11 106-95.B, which is permitted uses, in number two it
12 clearly states, retail business services uses are
13 limited to a maximum unit size of 6,000 square feet.
14 And then if you go under B(1), "Retail trade uses,
15 limited to a maximum unit size of 17,000 square
16 feet."
17 Where this is important is the
18 applicant's professional planner gave testimony
19 about the balance of what's available in the site.
20 They talked about they have approximately 22,000,
21 just a little over that, square feet left. Anything
22 that you're going to put in that 22,000 square feet,
23 we don't know what it is. It's already going to
24 exceed what's permitted by your ordinance unless
25 it's another grocery store.

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1 In talking about the sign variances,
 2 and if I've got this correctly -- I'm sure I am
 3 going to be told if I didn't -- the applicant's
 4 planner kind of characterized the whole application
 5 as it's really a lot of sign variances. Okay, but
 6 we also have other things going on here.
 7 In talking about the signage
 8 variances, you hit it on the head, they talked about
 9 what's there. Part of what the board can use to
 10 grant variance relief is if you are reducing or
 11 eliminating certain existing non-conforming
 12 conditions. And they give the overall number, it's
 13 about 300 square feet, but it's for one use. We now
 14 have one plus who knows how many others. I don't
 15 believe shopping centers are permitted in the CC
 16 Zoning District. You have 150 square feet of
 17 signage left for whatever comes in here.
 18 That's -- they're saying a variance relief, we're
 19 eliminating it, we're getting rid of it, we're
 20 reducing it. But now in the next breath they're
 21 telling you, well, we can go back to that 150 by
 22 having a second use. It's not eliminating/reducing
 23 by any means what they had for the existing signage
 24 package. So in my opinion as a professional
 25 planner, that should be not considered as testimony

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1 to be granting the variance relief by this board.
 2 I'm sorry, I'm getting old. I have
 3 bifocal contacts but my one eye is not cooperating
 4 these days, so I apologize for that.
 5 It's not just signage variances, there
 6 are a lot of other things that are going on here.
 7 When you look at what they're doing with the parking
 8 area, they have admitted they're going to pull this
 9 apart, they're going to rip it up. They want to
 10 leave those old landscaping islands from a decade's
 11 old approval. We're now in the current day and age,
 12 we know more, we know better.
 13 They talked about the parking aisle
 14 widths being slightly substandard. The parking lot
 15 sizes, the stall sizes being slightly substandard.
 16 We grow, we improve with time. They have said it's
 17 a design waiver. It's similar to a "c(1)" variance
 18 relief which is it's really unreasonable to ask the
 19 board to enforce what's required in the ordinances.
 20 In my opinion, because they're ripping
 21 up the parking lot, they have a fresh chance to
 22 start again. In looking at what's required for your
 23 landscape islands I think they're woefully under.
 24 You have additional chances for great landscaping,
 25 better lighting. They want to use the existing

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1 landscape islands and have potentially twice as many
 2 parking spaces as may be required because again, we
 3 don't know what the other use is or uses are going
 4 to be.
 5 So based on the fact that they're
 6 actually removing, doing milling and overlay for the
 7 parking area, it's not a hardship and not
 8 unreasonable to ask them to come up and meet your
 9 current standard.
 10 I'm not an engineer but I can tell you
 11 the engineers put those standards in place for the
 12 minimum aisle widths and parking stalls for public
 13 health, safety and general welfare reasons. They
 14 don't meet them. They're not planning on it. Now
 15 is your time to get a fresh start. They're saying
 16 they're giving the site a fresh new look. Why not
 17 do the whole thing? I understand they're only a
 18 tenant but as the applicant why can't you get a new
 19 site?
 20 I know one of the things that your
 21 ordinances talk about are landscaped avenues of
 22 trees. I'm looking at some shrubs out front, not
 23 trees. I certainly don't think that this plan is
 24 comporting with what your ordinance envisions your
 25 Master Plan. I'm just struggling with it because

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1 there are a number of things, a number of items that
 2 it does not meet.
 3 They got rid of a sign height. I
 4 understand the need for a monument sign but still
 5 what they're requesting could be fixed. They could
 6 make it current. They're simply not proposing to do
 7 so. And I believe it's unfair for the board to
 8 accept something less than you should have and meets
 9 your current standards.
 10 They've talked about the purposes of
 11 zoning. They listed four that they believe the
 12 application meets for the "c(2)" criteria. I think
 13 that not only does it not meet four of them but
 14 potentially maybe even five. I understand the
 15 criteria that they gave. One of the items that was
 16 testified to is that this is going to be creating a
 17 stabilized tax base. We really shouldn't be making
 18 variance decisions on economic reasons. It's not a
 19 sound rationale for granting variance relief.
 20 I believe that the application
 21 actually contradicts Purpose A, D, H, and I. A is
 22 the promotion of the public health, safety, general
 23 welfare. What I started and led into, we have a
 24 chance to redo the parking area. We have a chance
 25 to make it meet current standards. Put in the

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1 trees, put in the landscaping islands. You're going
 2 to be reducing an urban heat island effect if you
 3 make them do what's required.
 4 They're not going to do that. And as
 5 I have stated before, engineers set the standards
 6 for what they determine to be appropriate minimum
 7 required conditions for safe circulation throughout
 8 the site. I know they say it works. I know they
 9 say it's there. Couldn't you do better?
 10 Second purpose I think again is D: To
 11 ensure that the development of individual
 12 municipalities does not conflict with the
 13 development and general welfare of neighboring
 14 municipalities, the county and the state as a whole.
 15 We talked about the location in proximity to the
 16 Township of Cranford. I've also talked about again
 17 the street-lined vista that you're not getting with
 18 the street trees.
 19 One of the things that I'm going to go
 20 into, your ordinance is heavy and hits very strongly
 21 on transit-oriented design principles and standards.
 22 I really am struggling to see that within this site
 23 plan. They could have done a much better job of
 24 incorporating really great TOD standards within
 25 this. I just am not seeing that.

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1 H is to encourage the location and
 2 design of transportation routes which will promote
 3 the free flow of traffic while discouraging location
 4 of such facilities and routes which will result in
 5 congestion or blight. Again I've talked about what
 6 they're not doing with the interior circulation. I
 7 believe that your police department has a concern
 8 with the access to the site. There was a really
 9 strong concern with the turn, and I believe it's the
 10 left-hand turn coming out. They're not really that
 11 supportive of it. They have a great concern of
 12 that. When your police department is telling you
 13 that they think there's a concern, time to sit up
 14 and take notice. And again, that's why I don't
 15 think it meets the Purpose H.
 16 And then I, to promote a desirable
 17 visual environment through creative development
 18 techniques and good civic design and arrangement. I
 19 talked about how you could get better. You could
 20 get more. This is simply re-stripping. You deserve
 21 better. This doesn't do it. It doesn't meet what's
 22 now required for that minimum public health/safety
 23 standard from your engineering perspective.
 24 We have talked about the "c(1)", I
 25 think I talked briefly about the "c(1)" criteria.

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1 They've got an existing building, I won't dispute
 2 that. But the signage, I understand what's there.
 3 One of the things that I looked at when I took a
 4 look at what they were doing and what was driving
 5 the variance relief for those signs at the front of
 6 the store, it's a very unusual configuration on the
 7 inside. When you look at the loading area that
 8 comes in the back of the store, that thing is
 9 massive. It's long, drives the whole way back
 10 through that. I understand that it's their standard
 11 design, but this is your community. It's their
 12 standard design to put the freezers here and do
 13 something else. Most communities have gotten wise
 14 to that. Yes, they understand standards, they
 15 understand what's normally accepted as a company
 16 logo, but you don't have to accept it. Your
 17 community can ask for something different. They're
 18 asking for variance relief. Now is your time to
 19 speak up. You don't have to give them everything
 20 they want.
 21 McDonald's is a case in point.
 22 McDonald's used to not do the special signs, it was
 23 always big arches, nothing unique. Communities got
 24 tired of seeing that. They wanted something special
 25 and unique that addressed their specific

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1 requirements in their community. They have asked
 2 for it and got it. So should you.
 3 As far as the other burden of proof we
 4 talk about things being substantial. It's always
 5 the gray line, it's always what we talk about. I
 6 think that there are negative impacts to the
 7 development and I don't think that they have really
 8 addressed them.
 9 I know -- I believe their planner gave
 10 testimony but didn't really identify anything
 11 negative. When he gave us his testimony, we're
 12 getting rid of half the signs, give us the variance,
 13 give us everything we have asked for. But what they
 14 forgot to tell you, again, that's only part of what
 15 they're proposing. You don't know what you're
 16 getting in its entirety. So the mitigation that
 17 they're claiming, reducing/eliminating existing
 18 non-conforming conditions, doesn't really fly here.
 19 It's not a valid argument.
 20 So I think it needs Use Variance
 21 relief. I think it needs it because we have the
 22 22,000 square foot which is not permitted. You
 23 can't have more than 17,000 for retail use -- or,
 24 I'm sorry, for certain uses, 6,000 for the other.
 25 You don't have it here. Unless you're going to put

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1 a second grocery store, that doesn't meet it. And
 2 I'm sure that Lidl won't want a second grocery
 3 store.
 4 So I think they need Use Variance
 5 relief if they're going to divvy this up to meet
 6 whatever is required. You now have three or more
 7 uses, that's now becoming a shopping center. And
 8 I'm going to talk briefly about the mixed-use --
 9 CHAIRMAN GREET: Can I ask you to just
 10 speak up, please.
 11 THE WITNESS: Oh, I'm sorry. I'm
 12 going to go back to, briefly, the mixed-use concept.
 13 It's talking about mixed-use area. It
 14 doesn't say one parcel, one size, one lot, shove it
 15 all on there. It says "mixed use", which could mean
 16 you have retail on one lot, you could have a
 17 shopping center on the other, you could have an
 18 office. It doesn't say mix it all on one lot. And,
 19 as a matter of fact, it doesn't want the larger
 20 commercial. It's supposed to be site and
 21 neighborhood context sensitive. I don't think
 22 that's doing it.
 23 So for the reasons that I have stated
 24 as a professional planner, I don't believe that they
 25 have met the burden of proof. I believe that they

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1 need more variance relief than has been indicated.
 2 And I do not believe that the benefits of the
 3 application, in simply re-striping it, outweigh any
 4 of the positives that would be generated by this.
 5 MR. BRENNAN: Mr. Chairman, that's all
 6 the testimony I have for Ms. Wolley-Dillon.
 7 MS. VILLAGGIO: I have a question.
 8 CHAIRMAN GREET: All right, go ahead.
 9 I was going to ask if Mr. Hehl --
 10 MR. FRASER: He goes after the board.
 11 MR. HEHL: No, I have no...
 12 MR. FRASER: Procedurally the board
 13 should question this witness and then members of the
 14 public. Obviously it's going to be Mr. Hehl amongst
 15 others, and then question...
 16 CHAIRMAN GREET: Okay, Kath.
 17 MS. VILLAGGIO: At the last meeting we
 18 spoke about the spaces, the width of the new spaces
 19 after they are being -- after it's milled and paved
 20 and we indicated and I'm -- I guess this is a
 21 question. Well, I am trying to make it into a
 22 question.
 23 It was said at the last meeting, if
 24 you were here, which I think you were, that we -- we
 25 wanted the 9-by-18 and that their engineer would

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1 work with our engineer to get it to be as close or
 2 at code of the 9-by-18. And also for the width, the
 3 width of the aisles, I think they're off by a foot.
 4 And at that time there was discussion that they
 5 would work with our engineer, Victor Vinegra, to
 6 make sure that you get it almost or at code. That
 7 was the testimony.
 8 Also my other question is do you, in
 9 your professional opinion, is what they're proposing
 10 as a food store or food market, is that good for
 11 this site, or should it be something else?
 12 THE WITNESS: No, I'm not arguing with
 13 the food store. What I have an issue with is that
 14 you're not seeing the whole thing. You don't have
 15 an entire picture to make a decision on. That's the
 16 concern that I have as a planner.
 17 The food store, it may be fine, but I
 18 don't know what else is coming behind it. And once
 19 you start generating a lot of variances, it then
 20 begs the question, what are we doing?
 21 So my concern as a professional
 22 planner is not necessarily the food store itself,
 23 but I don't know what else is coming behind this.
 24 And the issue with the boards is if you do not have
 25 sufficient information to make a decision then you

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1 shouldn't do so.
 2 MS. VILLAGGIO: And you indicated
 3 about the landscaping along South Avenue. There has
 4 been testimony that they're going to put in
 5 landscaping.
 6 THE WITNESS: Yes.
 7 MS. VILLAGGIO: Trees.
 8 THE WITNESS: Yes.
 9 MS. VILLAGGIO: They're going to
 10 replace 16 -- I just want to make sure, you know, do
 11 you know this?
 12 THE WITNESS: I have heard that.
 13 MS. VILLAGGIO: They're going to
 14 replace 16 on-site trees and they're going to
 15 replace the right-of-way trees, about ten.
 16 THE WITNESS: I have heard that. But
 17 the issue that I'm having is they're saying that
 18 this is their most recent plan, this is the
 19 most -- if I have gotten it correct, it has the most
 20 recent revision date, I believe it's -- I want to
 21 identify the correct one. I'm looking at a revision
 22 block, it says Number 2 at 8/9/2019.
 23 CHAIRMAN GREET: No, the board has
 24 10/9.
 25 THE WITNESS: I'm just reading off

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1 what the plan says, I'm sorry.
 2 MR. FRASER: Mr. Hehl, there was some
 3 testimony, I agree with this witness, about an
 4 October 9th plan. Why don't we get the October 9th
 5 plan up on the board.
 6 MR. HEHL: Well this is the Lighting
 7 Plan.
 8 MR. FRASER: So this is the most
 9 current plan?
 10 MR. HEHL: That's the most current,
 11 yes. The only October 9th was the Lighting Plan.
 12 CHAIRMAN GREET: That was the one we
 13 accepted into...
 14 MR. HEHL: Yeah.
 15 THE WITNESS: I'm going to go back to
 16 that.
 17 MS. VILLAGGIO: I would indicate that
 18 that was part of the testimony and that, you know,
 19 before this board -- and would that, you know, 16
 20 on-site trees and ten trees, in your opinion, is not
 21 sufficient enough even if we ask -- you know, even
 22 if we require them to be a certain width, trees
 23 themselves? Because that's what would be one of the
 24 requirements that you may not have heard yet. I'm
 25 asking your opinion.

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1 THE WITNESS: In looking at the
 2 representation that they have given you, no, it's
 3 not shown on there. I did hear the testimony
 4 however. I also know that we talked about the width
 5 of the site. I believe we talked about the site
 6 being oversized and it's an overly large site. It
 7 has 812, I believe they have indicated, .6 feet of
 8 frontage. Your ordinance requires that you have to
 9 have landscaping trees at 25 feet to 40 feet on
 10 center. If they're keeping all of these and adding
 11 additional trees that's fine, but they have had a
 12 chance between the meeting, they should have
 13 presented that to you so that you can see what
 14 you're accepting. It should be clearly shown on the
 15 plan.
 16 I'm sure that they'll work with your
 17 engineer.
 18 MR. FRASER: To rephrase Ms.
 19 Villaggio's question --
 20 MS. VILLAGGIO: Thank you.
 21 MR. FRASER: -- does it affect your
 22 opinion at all to hear that there are going to be 16
 23 trees planted on the site even if not shown on that
 24 plan, does that affect your opinion tonight?
 25 THE WITNESS: It may be because I

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1 don't know where they're planting the plants, the
 2 trees. I don't know if they're going to do
 3 something back here, on this side, up here, over
 4 here, that's not clear to me. I don't have a clear
 5 representation.
 6 MR. FRASER: Well at this point you're
 7 not sure, that's your answer.
 8 MR. BRENNAN: Mr. Fraser, can I just
 9 interject? I don't mean to start arguing.
 10 MR. FRASER: But go ahead and argue.
 11 MR. BRENNAN: But we're actually kind
 12 of getting into a legal issue now. You can only
 13 approve.
 14 MR. FRASER: No, no. No, she gave a
 15 bunch of opinions based upon that plan. It's a
 16 legitimate question.
 17 MR. BRENNAN: Sure.
 18 MR. FRASER: Does it affect your
 19 opinion at all to hear there's going to be 16 trees?
 20 MR. BRENNAN: And I think what she's
 21 telling you is it may, it may not, it depends what
 22 that plan looks like.
 23 MR. FRASER: Counsel, she's an
 24 excellent witness. She's very well qualified. She
 25 doesn't need you to testify for her if you don't

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1 want to be sworn. Let her answer the question.
 2 MR. BRENNAN: Okay.
 3 THE WITNESS: Do you want me to
 4 proceed?
 5 MR. BRENNAN: Okay. Just coming off
 6 of that slightly, I'm not going to testify for her,
 7 let me just say there is no plan that shows that
 8 proposal with the additional trees.
 9 MR. FRASER: I think that was the
 10 premise of the question, counsel.
 11 MR. BRENNAN: And I think Ms.
 12 Villaggio's point was it was agreed to with the
 13 applicant --
 14 MR. FRASER: Not assumed, discussed.
 15 MR. BRENNAN: -- and the board's
 16 professionals that there would be additional trees
 17 added at some future point in time. I don't want to
 18 put words in your mouth.
 19 MS. VILLAGGIO: Trees to be replaced,
 20 16 on site and ten in the right-of-way.
 21 MR. FRASER: It was a discussion with
 22 the board in testimony at the last meeting. The
 23 question is a completely legitimate question, does
 24 that affect this witness's opinion. If the answer
 25 is no, or I'm not sure, those are legitimate

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1 answers, counsel.
 2 MR. BRENNAN: Okay.
 3 MR. FRASER: Legitimate question. But
 4 she can answer the question without the assist,
 5 she's a witness.
 6 THE WITNESS: I have more. The other
 7 section I'm going to go to in your ordinance
 8 requires shade trees in the parking area, one tree
 9 per five parking spaces. At what they had indicated
 10 as of the last application at 337 parking spaces, I
 11 get 67.49 trees.
 12 Do I see this 67.49 trees anywhere on
 13 this plan?
 14 MR. FRASER: I must have missed it, I
 15 thought that direct was over.
 16 THE WITNESS: No, and this is what --
 17 they're indicating, that they're giving some trees
 18 here. They're not giving you trees in the rest of
 19 the site. It's still woefully short.
 20 MR. FRASER: And that wasn't my
 21 question.
 22 THE WITNESS: I don't believe that
 23 they --
 24 MR. FRASER: I had a very specific
 25 question.

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1 THE WITNESS: Ask the question again,
 2 I'm sorry.
 3 MR. FRASER: I did. Does it affect
 4 your opinion, "yes" or "no", that there will be
 5 these 16 trees proposed?
 6 THE WITNESS: It does not affect my
 7 opinion.
 8 MR. FRASER: Thank you. I have a
 9 couple of other questions, if I might.
 10 CHAIRMAN GREET: Sure.
 11 MS. VILLAGGIO: I guess I'm not...
 12 MR. FRASER: Do you want?
 13 MS. VILLAGGIO: I might come back.
 14 MR. FRASER: All right. I understand
 15 your point about the signage completely. I
 16 understand and that's why I was asking the question
 17 before about the 292 and they were going to use 150
 18 something of it. So you're saying, in essence, that
 19 there's no demonstration that at least on the
 20 signage facing the parking lot that there's really
 21 going to be any reduction and, therefore, it's not a
 22 need for relief; do I understand you correctly?
 23 THE WITNESS: It goes beyond that.
 24 It's not only the signage facing the parking lot
 25 because if I understand this correctly there's more

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1 signage coming over here where you have the
 2 100 percent coverage.
 3 MR. FRASER: I can't see what you're
 4 pointing to.
 5 THE WITNESS: Oh, I'm sorry. What did
 6 they label the exhibit?
 7 MR. BRENNAN: A-7.
 8 THE WITNESS: A-7.
 9 MR. FRASER: I'm going to address the
 10 two sites separately.
 11 THE WITNESS: Okay.
 12 MR. FRASER: But right now I'm talking
 13 about the side facing the parking lot.
 14 THE WITNESS: And please repeat the
 15 question.
 16 MR. FRASER: Okay. If I understand
 17 correctly, and I also went through this with the
 18 other planner, there was at some point 290 facing
 19 the parking lot, right? And it's now 150 something
 20 feet facing the parking lot, and we don't know what
 21 the other two or other one or however many other
 22 uses might there be which will need some signage
 23 facing the parking lot and that's the problem with
 24 the parking-lot-facing signage, correct?
 25 THE WITNESS: That's correct.

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1 MR. FRASER: And the concern that
 2 you're expressing is, well, there's only 140 -- I
 3 ballparked the number, I apologize -- but it's only
 4 140 feet left if we're going to keep it the same,
 5 and if we don't know what the use is we don't know
 6 how much signage those use or uses will need and so
 7 that's a problem, and so maybe we shouldn't be
 8 allowing 150 feet facing the parking lot; do I
 9 understand your parking-lot-signage argument?
 10 THE WITNESS: I couldn't have said it
 11 better, thank you.
 12 MR. FRASER: Now, on the side of the
 13 building facing South Avenue though I heard the
 14 representation from Mr. Hehl on behalf of the
 15 applicant previously that it was not going to be
 16 permitted, that there would be any additional
 17 signage facing South Avenue. Did you hear that as
 18 well?
 19 THE WITNESS: I believe I heard that,
 20 yes.
 21 MR. FRASER: All right. What is your
 22 opinion that on the South Avenue portion, facing
 23 South Avenue, as to the signage issue?
 24 THE WITNESS: The problem that I have
 25 with the request is they're covering 100 percent of

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1 the windows. The justification for that -- and I
 2 understand that there's something there, but you can
 3 always do better when you're getting something new
 4 and something different. The problem that I have is
 5 the justification that they're using for that is
 6 that's where the freezers are.
 7 My question is do the freezers have to
 8 be there in that specific location? If they were
 9 somewhere else within the store then you might not
 10 need 100 percent sign coverage and 100 percent
 11 coverage there.
 12 MR. FRASER: But would you still agree
 13 with me, nonetheless, that there's going to be a
 14 very major reduction in signage facing South Avenue?
 15 THE WITNESS: I believe that that's
 16 what they testified to.
 17 MR. FRASER: And do you have any
 18 opinion to the contrary that would undercut the
 19 veracity of that testimony?
 20 THE WITNESS: The only thing that I
 21 would offer is that they said that the other thing
 22 that they're doing is swapping out people for food,
 23 I believe that's what the picture is featured.
 24 That's about it.
 25 MR. FRASER: Now with respect to the

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1 you're identifying as well, we don't know what's
 2 going to go in there and a use variance might be --
 3 or your argument would be -- would be created?
 4 THE WITNESS: That's correct, yes.
 5 MR. FRASER: I'm not sure that I agree
 6 but I understand the argument.
 7 But here is my question. So what is
 8 the answer, that you can't put any use in the
 9 portion of the premises that Lidl proposes to occupy
 10 unless and until you know what's going in every
 11 square foot of that premises?
 12 THE WITNESS: The problem that I'm
 13 having is they're subdividing out a certain amount
 14 for their store, it's what they're leaving behind,
 15 we just don't know.
 16 MR. FRASER: But isn't that a problem
 17 to be addressed at the time that those 22,000
 18 remaining square feet are proposed to be utilized?
 19 THE WITNESS: Actually this drives to
 20 part of the "c(1)" variance relief. They're using
 21 an existing building.
 22 MR. FRASER: Right.
 23 THE WITNESS: That's part of the
 24 justification for the variance relief.
 25 If they gave you a bigger grocery

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1 22,000 square foot issue versus the 17,000 square
 2 foot issue -- and I will confess that both yourself
 3 and Mr. McDonough have analyzed this ordinance in
 4 far greater detail than I ever have in my entire
 5 life, and I have been the planning board --
 6 THE WITNESS: Lucky us.
 7 MR. FRASER: -- I have been the
 8 planning board attorney in this town for the past
 9 20 years and I haven't done what you have done with
 10 this.
 11 But, if I understand correctly, the
 12 problem that you're saying is, well, in this 22,000
 13 block that is left, the maximum size of the use that
 14 could be put in there is 17,000 square feet; do I
 15 understand you correctly?
 16 THE WITNESS: Or 6,000 if it's retail.
 17 There's two different sections to the ordinance and
 18 it depends on what the use is.
 19 MR. FRASER: But whether it's 17,000
 20 or 6,000, those numbers are obviously both less than
 21 22,000, and that's the problem that you're
 22 identifying?
 23 THE WITNESS: That's absolutely
 24 correct, yes.
 25 MR. FRASER: And the concerns that

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1 store this may eliminate the other variances that I
 2 believe are needed. They haven't done that. You
 3 have an application at hand that is going to leave
 4 you with potentially a shopping center, which is not
 5 a permitted use or other -- the 22, almost
 6 23,000 square feet of space, which unless, as I
 7 stated before, they're going to give you another
 8 grocery store, whatever they're going to do here is
 9 either going to create a shopping center to meet
 10 that maximum requirement or they're not going to
 11 meet what is permitted by your ordinance, so it's
 12 going to require additional variance relief simply
 13 based on the size of what they propose.
 14 MR. FRASER: But does it become,
 15 according to your interpretation, does it become a
 16 shopping center just if they put two other uses into
 17 that 22,000 square foot block; does that make it a
 18 shopping center?
 19 THE WITNESS: It may. Depending on
 20 what they're doing with the uses, they may need to
 21 have additional uses depending on what the
 22 competition is, and this is part of the program --
 23 part of the problem. Your ordinance is very
 24 specific as to what's limited to the maximum size of
 25 17,000 square feet, the maximum size of 6,000 square

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1 feet. We have no information. We don't know what
2 this is going to become.
3 MR. FRASER: And did I hear you say
4 before -- I may have this wrong but I want to make
5 sure. Did I hear you say before that it's your
6 opinion that this present application requires a use
7 variance?
8 THE WITNESS: I believe it does
9 because they're giving you a 23,000 square foot --
10 MR. FRASER: No, no, the present
11 application, not the future with the 22,000.
12 You're saying that to put in this Lidl
13 supermarket within the footprint of where the
14 Pathmark used to be in the CC Zone, you're saying
15 requires a use variance; do I hear you correctly?
16 THE WITNESS: Yes.
17 MR. FRASER: All right.
18 THE WITNESS: And the reason why is
19 because they're allowing 23,000 square feet left,
20 which is what's driving the use variance.
21 MR. FRASER: What if that
22 22,000 square feet were left vacant, does this
23 application require a use variance?
24 THE WITNESS: If it were left vacant?
25 MR. FRASER: Right. If I were the

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1 landlord and I never rented out that 22,000 square
2 feet, does the Lidl application require a use
3 variance?
4 THE WITNESS: It's going to drive --
5 perhaps not a Use Variance --
6 MR. FRASER: Well that's my question.
7 It's a simple "yes" or "no" question.
8 THE WITNESS: -- but then it drives
9 other variances.
10 MR. FRASER: That wasn't my question.
11 I'll ask it a third time.
12 If in the event that that other space
13 is left fallow, does the Lidl application require a
14 use variance?
15 THE WITNESS: If they leave it with
16 nothing in it?
17 MR. FRASER: That's what the word
18 "fallow" means as I understand it.
19 THE WITNESS: I'm just breaking it
20 down so my brain handles it. If it's left with just
21 the Lidl and nothing else?
22 MR. FRASER: Which is the application
23 before us today.
24 THE WITNESS: That's it?
25 MR. FRASER: Does that require a use

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1 variance?
2 THE WITNESS: I do not believe so.
3 MR. FRASER: Thank you.
4 MR. TARANTINO: Don, can I ask another
5 question?
6 MR. FRASER: You're a board member, I
7 can't stop you.
8 MR. TARANTINO: Has the Lidl lease
9 been finalized?
10 MR. FRASER: Well that's not a
11 question for this witness but I think that Mr. Hehl
12 can provide us that information.
13 MR. HEHL: We can represent yes.
14 MS. VILLAGGIO: I have a question.
15 THE WITNESS: Yes.
16 MS. VILLAGGIO: My question is with
17 regard to the Lidl application -- the application,
18 if this board so chooses to okay the application,
19 okay some or all of the variances but puts a
20 stipulation, or a stipulation in the resolution
21 itself, that any -- that any tenant that wants to
22 rent the second half of that building, they have to
23 be before this board; would that suffice your
24 concerns?
25 THE WITNESS: I think that that's a

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1 given. And I don't know if it requires a legal
2 opinion, but I think that that's a given what else
3 is coming through.
4 CHAIRMAN GREET: That's the question.
5 MS. VILLAGGIO: So anything else that
6 would go in that building would have to come before
7 this board?
8 MR. FRASER: Well I agree with what --
9 I think that's legal opinion. I don't think that's
10 her place --
11 THE WITNESS: I didn't want to
12 overstep my bounds.
13 MR. FRASER: I agree with --
14 MS. VILLAGGIO: If it does, would
15 that --
16 MR. FRASER: I don't think that's a
17 question for this witness.
18 MS. VILLAGGIO: Okay, I'm sorry.
19 MR. FRASER: I think that that's
20 something that the board will take under advisement
21 and either counsel --
22 MS. VILLAGGIO: Well I was just
23 wondering because her concern was she voiced that if
24 it's leased with another tenant, well we have the
25 ability to prohibit it.

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1 MR. FRASER: All right. But the
2 witness did testify, I think her testimony said it's
3 a given that someone coming into that other space
4 they're going to have to come before this board.
5 I'm not sure what your question is but it's -- I
6 think it's not properly addressed to this witness.
7 MS. VILLAGGIO: Okay.
8 CHAIRMAN GREET: Paul, did you have
9 another question?
10 MR. TARANTINO: No, no follow-up.
11 CHAIRMAN GREET: Steve?
12 MR. BARCAN: Yeah. It seems to me
13 looking at the CC Zone and what it says that you're
14 focused on the word area, is that it, in terms of
15 how this property should be developed?
16 CHAIRMAN GREET: Steve, can you move
17 that microphone closer?
18 THE WITNESS: Which part specifically,
19 sir? I'm sorry.
20 MR. BARCAN: In other words, Section
21 106-95A, Purpose of the CC Zone: "This zone's
22 primary purpose is to encourage and promote the
23 conversion of underutilized industrial properties to
24 active, mixed-use areas" -- is that the word that
25 you're focused on to conclude that shopping centers

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1 are not permitted?
2 THE WITNESS: No. There's another
3 portion of anything that is not -- maybe it's a
4 two-part question, but with regard to the shopping
5 center, no. Your ordinance does not say that a
6 shopping center is a specifically permitted use so
7 when it's not listed as a specifically permitted use
8 then it is prohibited.
9 MR. BARCAN: Okay. So that's a
10 general provision that you think has to be in an
11 ordinance in order for shopping centers to be
12 developed without a use variance?
13 THE WITNESS: If you want a shopping
14 center you have to list it as a permitted use if you
15 want it as a permitted use without requiring a use
16 variance.
17 MR. BARCAN: All right. So let's just
18 look at this section again.
19 THE WITNESS: Sure.
20 MR. BARCAN: It says "active,
21 mixed-use areas consisting of retail, professional
22 office, and service business uses in close proximity
23 to the Central Business (CB) Zone and mass transit."
24 And those generally, retail and
25 professional offices, are generally laid out in

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1 further provisions of that section; am I right?
2 THE WITNESS: Yes.
3 MR. BARCAN: "A second purpose is to
4 encourage clustered uses that are larger in scale
5 than those that are appropriate for the CB and GB
6 Zones, but only of a size and intensity of a
7 neighborhood shopping center, not that of a regional
8 shopping center."
9 Doesn't that say that shopping centers
10 are permitted in the CC Zone?
11 THE WITNESS: No. If you break it
12 down very carefully and read it together as one
13 thought and one sentence it says that the uses are
14 to be of a size and intensity that are permitted in
15 essence in a neighborhood shopping center. It
16 doesn't say that a neighborhood shopping center is
17 permitted. What it's seeking is the uses, the types
18 of uses that you would generally find in a
19 neighborhood shopping center, but it does not say
20 that shopping centers are a permitted use in your
21 ordinance.
22 MR. BARCAN: That's how you read that?
23 THE WITNESS: Yes.
24 MR. BARCAN: "Finally, through large
25 minimum lot sizes, promotion of mixed uses, specific

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1 pedestrian and parking design regulations, and
2 encouragement of provisions for mass transit access,
3 it is the intent of this zone to encourage
4 pedestrian activity centered around an intensive
5 core of mixed uses."
6 I read this paragraph, I could not
7 read it any other way than to conclude that shopping
8 centers are permitted. And I have had a little
9 experience doing this in my legal career. I'm
10 retired now, I did land use work. I read a lot of
11 zoning ordinances. And I can't understand how you
12 could read that any other way.
13 THE WITNESS: Okay.
14 MR. BARCAN: I cannot.
15 THE WITNESS: How it can be read any
16 other way is it would say that a shopping center, a
17 neighborhood shopping center, would be a -- if you
18 go down under "Permitted uses in the CC Zone --"
19 MR. BARCAN: "-- are to be developed
20 as part of comprehensive developments of different
21 size uses." That's what it says.
22 THE WITNESS: Understood. But if
23 you'll let me --
24 MR. BARCAN: Do you think the language
25 that I've read is consistent with the notion that

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1 the shopping centers are permitted?
 2 THE WITNESS: I'm sorry, I wasn't
 3 finished answering the question.
 4 MR. BARCAN: Okay, go ahead.
 5 THE WITNESS: Okay. If you went to
 6 the permitted uses, B-1, 2, 3, 4, 5, if it
 7 specifically said in one of those numbered sections,
 8 shopping center, neighborhood shopping center,
 9 regional, then I would accept that a shopping center
 10 is a permitted use. It's giving a comparison of the
 11 kinds of uses that you want to see in that area.
 12 Ones that would be found in a neighborhood shopping
 13 center but not a regional. It doesn't specifically
 14 say --
 15 MR. BARCAN: So they have to be
 16 separate; they can't be comprehensively developed on
 17 a single piece of property?
 18 THE WITNESS: Based on what your
 19 ordinance states it doesn't say that a shopping
 20 center is a permitted use.
 21 MR. BARCAN: Are you familiar with
 22 Garwood Mall?
 23 THE WITNESS: I actually am, believe
 24 it or not.
 25 MR. BARCAN: Garwood Mall has -- I

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1 shopping center is a permitted use, whether it's
 2 neighborhood or regional, there's an implication
 3 that because it's not permitted it would have to
 4 require a use variance relief from the Board.
 5 MR. BARCAN: But there's no language
 6 that says it's not, that's just the way you read the
 7 section?
 8 THE WITNESS: I believe I gave a clear
 9 reading that it wants uses that are similar to
 10 what's envisioned or permitted in a
 11 neighborhood-type shopping center. It doesn't say
 12 we want a neighborhood shopping center here.
 13 MR. BARCAN: Okay.
 14 CHAIRMAN GREET: Anyone else on the
 15 board have questions?
 16 MR. BARCAN: I have one, actually.
 17 CHAIRMAN GREET: Yes, Steve.
 18 THE WITNESS: I thought you were
 19 letting me off easy?
 20 MR. BARCAN: In my experience I came
 21 across permitted uses that had conditions that were
 22 not conditional uses; is that a concept that you're
 23 familiar with?
 24 MR. BRENNAN: I object to the
 25 question. I mean is he testifying now? Are you

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1 have a picture of the sign here -- probably 20 uses
 2 on one the property including Kings.
 3 So you think that developed by Use
 4 Variance?
 5 THE WITNESS: I don't know the
 6 development history of it. I'm just familiar with
 7 the site, sir, that's all.
 8 MR. BARCAN: And are you familiar with
 9 Garwood Plaza on North Avenue?
 10 THE WITNESS: I know the general
 11 location of it and where it's at, yes.
 12 MR. BARCAN: It's got seven or eight
 13 uses.
 14 THE WITNESS: That's correct.
 15 MR. BARCAN: You think that developed
 16 by use variance?
 17 THE WITNESS: I don't know, sir, I
 18 didn't do the research to see if there was a
 19 specific decision or resolution. It may predate
 20 your current zoning ordinance.
 21 MR. BARCAN: And do you think that
 22 people can come in and get a Use Variance for a
 23 shopping center; is that rational?
 24 THE WITNESS: Based on the way your
 25 ordinance is written, because it does not say that a

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1 testifying?
 2 MR. FRASER: It's a predicate to his
 3 question.
 4 MR. BARCAN: That's right.
 5 THE WITNESS: I'm sorry, could you
 6 repeat the question?
 7 MR. BARCAN: I said in my experience I
 8 came across uses that are permitted but have
 9 conditions and were permitted uses.
 10 Is that something that you are
 11 familiar with?
 12 THE WITNESS: Yes. Conditionally
 13 permitted uses, yes.
 14 MR. BARCAN: No, no, no. Are you
 15 familiar with permitted uses that have conditions?
 16 THE WITNESS: Yes. Those are called
 17 conditionally permitted uses.
 18 MR. BARCAN: So let me just go to
 19 something here. The ordinance says gas stations are
 20 permitted as conditional uses, and eating and
 21 drinking establishments in certain zones are
 22 permitted uses. But it says in 106-105 that
 23 accessory senior citizen apartments shall be
 24 permitted as accessory to single-family dwelling
 25 units provided the following conditions are

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1 maintained. So it's calling it a permitted use.
2 THE WITNESS: Is there a question?
3 MR. BARCAN: Yes, is that -- that's
4 the language?
5 THE WITNESS: Sorry, I wasn't
6 following. I'm sorry.
7 MR. BARCAN: That's the language in
8 the ordinance. So based on that could that use
9 be --
10 THE WITNESS: Could you repeat what it
11 says?
12 MR. BARCAN: Well you could read it.
13 THE WITNESS: Okay. I'm sorry, but
14 I'm getting confused.
15 It says that in accordance with
16 106-105.B, "Senior Citizen accessory apartments
17 shall be permitted as accessory uses to
18 single-family dwelling units in," the following
19 zones, provided that they meet the following
20 conditions.
21 MR. BARCAN: And it doesn't call it a
22 conditional use?
23 THE WITNESS: I'm sorry?
24 MR. BARCAN: It doesn't call it a
25 conditional use by its language?

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1 THE WITNESS: It says that if they
2 meet the following conditions then it is permitted,
3 which is the "d(3)" or a conditionally permitted
4 use.
5 MR. BARCAN: All right. And that's
6 all I have.
7 CHAIRMAN GREET: Okay. Thanks, Steve.
8 Anyone else?
9 MR. BRENNAN: Mr. Chair, I just have
10 some very brief follow-up based on some of the
11 questions that were asked.
12 MR. FRASER: Well, wait a minute,
13 don't we typically, before we open it back up for
14 redirect, open it up to the public?
15 CHAIRMAN GREET: Yeah. And before we
16 do that we're going to take a break.
17 THE WITNESS: Thank you. I was about
18 to ask.
19 (A recess was taken at 9:30 p.m.)
20 (The record resumes at 9:36 p.m.)
21 MR. BRENNAN: Thank you, Mr. Chair.
22 MR. McCORMACK: I have a question. So
23 my question is aimed at the parking spots. So right
24 now we have 347 parking spots with the proposed 16
25 plantings of trees. In your testimony you were

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1 saying that this parking lot should have 65 trees.
2 I'm taking each tree represents five parking spots.
3 That comes down to a total of 282 parking spaces.
4 How does that put an impact onto the renter, Lidl,
5 on their patrons going into that store?
6 THE WITNESS: Meaning that there's not
7 adequate -- that I don't believe that there are
8 adequate --
9 MR. McCORMACK: That there's not
10 adequate parking spots. And then we're going to
11 continue to discuss the rental of the extra square
12 footage.
13 How do those 65 trees come into effect
14 of affecting that parking lot?
15 THE WITNESS: Okay. Because the
16 ordinance requires a ten-foot wide landscape island
17 and it's every so many parking spaces, if you'll
18 bear with me I will look at my notes so I get the
19 exact count so I answer correctly -- I believe it's
20 every 15 parking spaces it says that there's
21 supposed to be a ten-foot wide landscape aisle.
22 So let's get, for example, and then I
23 have to do this because these numbers are small.
24 The 40 parking spaces in the top row, 40 divided by
25 15 is at least two and a half landscaped islands, if

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1 my math is -- my math is pretty bad but I think
2 that's about right.
3 MR. FRASER: Between two and three.
4 THE WITNESS: Exactly. 45 would be
5 great. But these are not even meeting the minimum
6 required which would be nine. A landscaped island
7 is ten feet. So it's going to knock out at least
8 three more parking spaces here to give you the trees
9 that you should be having. That's just up here.
10 Continuing down they say 12, 15,
11 there's something here. I believe they have 11.
12 They don't have the street trees. There's this sub
13 maybe five-foot-wide gravel with concrete curb,
14 they're half of what they should be. Your patrons
15 and I know this because I do a lot of shopping, I
16 cannot stand going through the heat island in a
17 parking lot with no trees to get to the store.
18 Yes, the birds utilize the trees, my
19 car gets hit occasionally with what's coming down,
20 but part of what happens with the tress is they
21 serve a purpose. Trees help to eliminate that heat
22 island effect. Asphalt is a very dark color. Dark
23 colors absorb light. What happens when you have a
24 sea of asphalt with suboptimal trees and landscaping
25 is you should have every 15 parking spaces canopy

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1 trees in sufficient islands. There should be breaks
 2 for respiration of the trees.
 3 MR. FRASER: Is this within planning
 4 expertise?
 5 THE WITNESS: Yes, it is. I actually
 6 studied environmental sciences as part of my
 7 undergraduate and graduate degree, if you would like
 8 to know, at Penn if that qualifies it.
 9 Part of what urban planning has coined
 10 is the heat island effect. That's what we get when
 11 we have a sea of asphalt parking with the improper
 12 breaks of trees. Part of why you put the trees in
 13 is to give relief. If you're parking all the way
 14 out here, you get a spot in that 95-degree heat,
 15 basically whatever the heat is, not including what
 16 is being reflected up in the parking lot, it gives
 17 you a chance to come in under the next shade tree.
 18 Part of why you don't want the heat island effect is
 19 it raises climate conditions, it raises the
 20 temperature on the site.
 21 I know for a fact, I have gotten in my
 22 car, and we have these down where I live, no trees.
 23 I start up the car, I look at the temperature in the
 24 parking lot. By the time I get out in the street
 25 and actually start moving it can drop up to ten

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1 degrees. So you're actually heating up the
 2 environment by not giving adequate street trees.
 3 So I do think it affects the users.
 4 There's also the aesthetic enhancement. You should
 5 be expecting that as a community.
 6 MR. McCORMACK: Are you answering my
 7 question? My question was we're reducing the
 8 parking spaces. So if you want to continue on
 9 saying about the trees, and if the board would allow
 10 me, if the trees are surrounded by a curbing and
 11 it's only three to four feet for the tree, how does
 12 the tree absorb the water that you're talking about
 13 to give us the shade?
 14 THE WITNESS: Actually they're
 15 landscaped islands. They have three or four feet.
 16 Your ordinance requires ten feet, and there's a
 17 reason why. Even with a compact root-ball system
 18 with some trees it needs a minimum of ten feet.
 19 That's really what's recommended for the landscape
 20 islands. Five doesn't do it. Everything dies in
 21 there and what you have pretty soon you have all the
 22 roots sticking up, there's no grass, it's dead.
 23 That's why you have the ten-foot island requirement.
 24 That's what your ordinance requires.
 25 Did I answer the question?

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1 MR. McCORMACK: Not really, but thank
 2 you.
 3 THE WITNESS: Okay.
 4 CHAIRMAN GREET: Anyone else? Do you
 5 want to proceed?
 6 MR. FRASER: The public now. He
 7 doesn't get to cross his own witness. The public
 8 and then if he wants to redirect.
 9 CHAIRMAN GREET: Anyone else in the
 10 public now?
 11 MR. HEHL: I have nothing.
 12 CHAIRMAN GREET: Seeing none, I'll
 13 close that portion of it.
 14 MR. BRENNAN: Just very briefly
 15 redirect.
 16 R E D I R E C T E X A M I N A T I O N
 17 BY MR. BRENNAN:
 18 Q. You were asked a couple of questions
 19 about the Garwood Mall and the Garwood Plaza; do you
 20 remember that?
 21 A. Yes.
 22 Q. Have you seen approvals for those
 23 particular projects?
 24 A. No.
 25 Q. Do you know what zoning was in place

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1 when those project were approved?
 2 A. No.
 3 Q. Do you know if those were deemed
 4 permitted uses under whatever zoning existed at that
 5 time?
 6 A. No, I do not.
 7 Q. Do you know if use variances were
 8 granted?
 9 A. No, I do not.
 10 MR. BRENNAN: That's all I have.
 11 CHAIRMAN GREET: Thank you.
 12 MR. FRASER: Any further witnesses?
 13 MR. BRENNAN: I have one further
 14 witness, it's your planner.
 15 MR. FRASER: Well Victor is the
 16 board's planner so he doesn't need to be sworn. And
 17 that's totally proper, go ahead.
 18 MR. BRENNAN: Mr. Vinegra, do you have
 19 a copy of your review letter in front of you?
 20 MR. VINEGRA: Yes.
 21 MR. BRENNAN: And can you turn to
 22 Page 8 of 10, please?
 23 MR. FRASER: This is the
 24 September 18th letter, counsel?
 25 MR. BRENNAN: Yes.

1 MR. VINEGRA: Yes.
 2 MR. BRENNAN: Could you read comment
 3 Number 2 aloud?
 4 MR. VINEGRA: "The applicant shall
 5 testify to if the future tenant of the second
 6 proposed space will be a use consistent with the
 7 required uses in the Community Commercial Zone to
 8 confirm an additional use variance is not required.
 9 Section 106-106 of the Garwood ordinance prohibits a
 10 lot containing more than one principal lot
 11 structure". Let me --
 12 MR. FRASER: No question there.
 13 MR. VINEGRA: This letter was written
 14 jointly between myself and a professional planner.
 15 You will see that on page -- the last page where she
 16 signs it along with myself, and I have determined
 17 that --
 18 MR. FRASER: Victor, you have to wait
 19 for a question. Right now you're a witness.
 20 MR. BRENNAN: So there was co-authors
 21 to this letter, correct?
 22 THE WITNESS: That is correct.
 23 MR. BRENNAN: You're one of the
 24 authors?
 25 THE WITNESS: That's correct.

1 MR. FRASER: So, counsel, you have no
 2 further questions, correct?
 3 MR. BRENNAN: No further questions.
 4 CHAIRMAN GREET: Would you like to
 5 summarize?
 6 MR. HEHL: Well before I do that I
 7 just wanted to indicate that we have had
 8 discussions, and I think it was raised by a couple
 9 of board members that came up at the last hearing,
 10 that the comment with respect to the -- and we did
 11 speak briefly to Mr. Vinegra, when they're redoing
 12 the parking lot they will reconfigure the aisle
 13 widths and the parking lot -- well the aisle widths
 14 and the parking lot dimensions to eliminate those
 15 two. And they would be, as Mr. Barcan indicated,
 16 design waivers and/or variances.
 17 So they will now have conforming aisle
 18 widths and conforming parking lot lengths.
 19 MR. FRASER: Conforming parking spaces
 20 you're trying to say?
 21 MR. HEHL: Yes, and aisle widths.
 22 CHAIRMAN GREET: So all the parking
 23 spaces will be conforming?
 24 MR. HEHL: Yes.
 25 CHAIRMAN GREET: And the aisle widths

1 MR. BRENNAN: Is Ms. Flemming here
 2 tonight?
 3 THE WITNESS: No, she's not.
 4 MR. BRENNAN: Okay. So you or her, or
 5 both of you, had a concern or saw an issue with
 6 respect to Section 106-106 of the ordinance whereby
 7 one use is permitted on one property, correct?
 8 MR. VINEGRA: That was to be expanded
 9 by Ms. Flemming but that is a question that is Ms.
 10 Fleming's question.
 11 MR. BRENNAN: Okay. And she's not here
 12 tonight, right?
 13 THE WITNESS: That is correct.
 14 MR. BRENNAN: That's all I have.
 15 MR. BARCAN: Actually...
 16 CHAIRMAN GREET: Yes, Steve?
 17 MR. BARCAN: There's a correction.
 18 That question is not correct. It doesn't say more
 19 than one use is not permitted on a property. It
 20 says more than one principal use, which is defined
 21 as the primary or predominant use of any lot.
 22 MR. VINEGRA: Upon closing I'm going
 23 to go into certain things.
 24 MR. BARCAN: Okay. That's all, it was
 25 just wrong. Thank you.

1 will be conforming?
 2 MR. HEHL: Yes.
 3 CHAIRMAN GREET: Thank you.
 4 MR. FRASER: You could have saved a
 5 lot of discussion.
 6 CHAIRMAN GREET: Okay.
 7 MR. HEHL: Don, I would assume I go
 8 second, though? The objector...
 9 MR. FRASER: Oh, yeah. You're right.
 10 MR. HEHL: I don't know if you have a
 11 summation.
 12 MR. BRENNAN: Yeah. Are you done
 13 discussing?
 14 MR. FRASER: The procedure should be
 15 that the objector should sum up, Mr. Hehl should sum
 16 up, and then the board should take it under
 17 advisement.
 18 I'm sorry, it's Mr. Brennan, right?
 19 MR. BRENNAN: Yes.
 20 MR. FRASER: I was going to call you
 21 Mr. Baron, I know somebody did earlier.
 22 MR. BRENNAN: Either way it works.
 23 MR. FRASER: That would be impolite.
 24 Mr. Brennan.
 25 MR. BRENNAN: Not impolite, I know who

1 you're talking about.

2 Mr. Chair, members of the board,

3 first, before I start, I just want to thank you very

4 much for your time and attention to this matter.

5 Inevitably somebody is not going to be happy with

6 the result tonight. Obviously the applicant wants

7 an approval. My client wants there to be no

8 approval. So no matter what you do somebody is not

9 going to be happy. And frankly, you know, you're

10 not paid, you're here on your own accord and it's

11 all volunteer and you get a lot of grief. But I

12 just wanted to thank you at the outset.

13 But I also wanted to mention to you

14 that as board members each of you took an oath

15 before you sat yourselves and that oath was to

16 uphold the Constitution, of course, but also to

17 uphold the laws of the state and the laws of your

18 Borough.

19 I would respectfully submit to you

20 that if you do that you cannot approve this

21 application. First of all, I appreciate very much

22 that my letter had some weight, my prior letter

23 pointing out the various things necessitating the

24 recusal. But, frankly, that doesn't go far enough.

25 Those board members by virtue of their very

1 participation -- and I don't assign any ill-will to

2 them personally, I don't doubt for one second that,

3 you know, they take their duties very seriously as

4 far as board members, as far as officials of the

5 town, but the remedy in that situation was a do over

6 in essence. It's not to step down at this point and

7 to keep going. The taint, which is a term used in

8 the case law, is ascribed to the entire application.

9 So, respectfully, I don't think that you can

10 consider this application based on the comments that

11 were previously raised in my letter.

12 But there's actually another reason

13 why I don't think you have jurisdiction to consider

14 this application tonight. You're currently

15 comprised as a planning board. Your mayor was

16 previously sitting, she recused herself, of course,

17 for tonight. But your Class 3 council member is

18 also sitting. The problem is that this application

19 implicates a use variance, a "D" variance, and that

20 can only be granted by a Zoning Board of Adjustment.

21 There has been a lot of back and forth

22 over this issue but your ordinance is pretty clear

23 if you look at it. There's an express provision

24 that says no more than one principal use on one

25 single lot. That's what it says. I didn't make it

1 up, your governing body did.

2 But that's not the only reason why you

3 need a use variance in this case, well not you but

4 Lidl. The store, as currently comprised, is only

5 one component of the use of the site. There is a

6 second use which we have gone over exhaustively that

7 presently comprises over 22,000 square feet. There

8 is, and I appreciate what this board member said,

9 but there is nothing in your ordinance that permits

10 that as currently comprised.

11 And as you well know from doing this

12 from a long period of time even if there wasn't a

13 jurisdictional question the proofs for a use

14 variance are entirely different than what they are

15 for a bulk or area variance. Obviously you have to

16 prove special reasons. That, of course, didn't

17 occur. With a use that's not inherently beneficial

18 Medici applies and there is the enhanced burden of

19 proof. None of that was testified to tonight. And

20 I understand the applicant's position that they

21 didn't have to, but respectfully I think if you read

22 your ordinance, if you follow your own ordinance,

23 they did.

24 But even putting all that aside. Even

25 if you don't believe that a Use Variance is

1 required, that "D" relief is required for this, just

2 on the "C" relief alone the justification doesn't

3 exist. I think you heard my planner testify

4 extensively, you could be doing so much better with

5 this site. You know, it's not every day that a

6 property like this opens itself to you and you have

7 the opportunity for input. You know, it might be

8 another 20 years before you have a shot at this.

9 So, you know -- and I appreciate that they are

10 making the parking lot conforming, but why should

11 that be any different for signage? I mean, yeah,

12 they're bettering what's there, but they could do so

13 much better. And I get what their planner said but,

14 you know what, it's a situation where the benefits

15 have to substantially outweigh the detriments.

16 There is no question that he made an

17 argument that it's better. But is it substantially

18 better? There's a reason why that word is in the

19 Municipal Land Use Law.

20 So, again, I want to thank you for

21 your time and attention to this matter. It's not

22 easy but the proofs required are the proofs

23 required. It is what it is. It's two uses.

24 Whether or not they exist now or later, by

25 definition the way you're cutting this site up, the

1 way Lidl proposes to cut this site up, you have to
 2 get a "D" variance.
 3 Thank you.
 4 CHAIRMAN GREET: Thank you.
 5 MR. HEHL: Thank you very much. And
 6 appreciate, again, the nights that this board,
 7 volunteers, have heard this matter.
 8 This is a great application for
 9 Garwood. It's taking a vacant supermarket and
 10 repurposing it with another supermarket. The
 11 applicant has responded and done a great job in
 12 designing this site, reducing the amount of signage,
 13 the justification just on the size of the lot for
 14 the signage that we're seeking, getting rid of a
 15 free-standing sign, putting a monument sign,
 16 agreeing to reconfigure the parking lot, adding
 17 street trees, adding trees within the parking lot
 18 area.
 19 As Mr. McDonough had indicated, this
 20 is an existing site. There's preexisting
 21 non-conforming conditions that we're not
 22 exacerbating. Again we're reducing the signage.
 23 The criteria for the grant of the variances
 24 associated with that signage have clearly been
 25 provided. We have eliminated again the parking lot

1 sizes and the aisle width, whether they be design
 2 waivers or variances. So I think that the
 3 justification for this, this application, the site
 4 plan approval, have been clearly demonstrated.
 5 I just want to touch on the -- I think
 6 Mr. Fraser touched on the members, I don't think I
 7 need to expand on that, but I do want to touch on
 8 the Use Variance. I think that Section 106-95 is
 9 clear. It anticipates, it references shopping
 10 center. It references mixed-use development. It
 11 may govern the size of those units within there but
 12 the application is not seeking that this is now
 13 being split up and there's a use for that other
 14 section. This is an application for this portion of
 15 the site alone and it clearly does not trigger a "D"
 16 variance or a use variance. But as far as the "C"
 17 variance it's clearly the justification for those
 18 and the improvements that are being made to this
 19 site and having, again, repurposed this vacant site
 20 for the Borough of Garwood have clearly been
 21 demonstrated. We have had testimony not only from
 22 the applicant, from our engineer, our traffic
 23 engineer, again architect, planner, supporting all
 24 of the aspects of this application.
 25 For all of these reasons we request

1 that the board grant the application. We have
 2 worked with the board and the board professionals.
 3 This application has changed from the first time it
 4 was submitted, including supplying a Lighting Plan
 5 that was requested by the board, upgrading the
 6 lighting now from old lighting to new LED lights
 7 with new poles. And I think for all of these
 8 reasons we request that the board grant this
 9 application and look forward to this exciting
 10 project for Garwood.
 11 Thank you.
 12 CHAIRMAN GREET: Thank you.
 13 MR. FRASER: The public had their
 14 opportunity at the same time as Mr. Brennan did, but
 15 if you think it's unclear that the public had that
 16 opportunity I guess you could clarify that but I
 17 think it was clear.
 18 CHAIRMAN GREET: Victor, you mentioned
 19 something about you wanted to summarize a little
 20 bit?
 21 MR. VINEGRA: Well just obviously you
 22 have the applicant and obviously you have the
 23 opposition planner here tonight, but when this
 24 application was filed we did a review, our office
 25 did a review, and we felt it did meet the

1 requirements of the Community Commercial Zone.
 2 And a couple of things that were
 3 missed and I don't think were specified, it's called
 4 a mixed-use development. You know, you can --
 5 it's nomenclature, we used to call it shopping
 6 center. We're calling this a mixed-use development.
 7 And the mixed-use development it's one of the -- and
 8 Steve Barcan read into testimony earlier, that it
 9 was one of the main purposes of the zone, this
 10 zone's primary purpose is to encourage and promote
 11 the conversion of underutilized industrial
 12 properties to active mixed-use areas. If you look
 13 at the definition of mixed-use areas, as Mr. Barcan
 14 read in before, "A development of a tract of
 15 land" -- not plural, singular -- "with structures
 16 with a variety of complimentary and integrated uses
 17 such as but not limited to retail, service
 18 businesses and office businesses."
 19 So right now we don't know what's
 20 going to happen in the other uses, the other empty
 21 space. It could be a mix of things, it could be
 22 office, it can become service. It doesn't have to
 23 be shopping, it doesn't have to be retail. This is
 24 a Mixed-Use Zone.
 25 Something that wasn't clarified and

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1 which I definitely do not agree with the opposition
 2 planner, is that under Section C unit sizes, each
 3 mixed-use development shall have at least one anchor
 4 at a minimum of 12,000 square feet. It says one.
 5 So the crafter, the author of this ordinance was
 6 looking into what we call modern day power centers,
 7 larger buildings, they're not super large, like
 8 let's say a regional shopping center, but they were
 9 looking to have at least one anchor of at least
 10 17,000 square feet. You could have three or four
 11 anchors in this zone. So the other store could be
 12 developed as a single unit, a dual anchor, or it
 13 could be developed as smaller stores. If they don't
 14 meet the ordinance they would have to come back
 15 before this board. But they're not here tonight.
 16 It's empty space. And it will remain empty until
 17 they submit for an occupancy and then at that time
 18 the zoning officer will review.

19 But I don't see anywhere in this
 20 ordinance having an empty space of over
 21 17,000 square feet would make this a "D" variance.
 22 So that's why this board is hearing this
 23 application.

24 The ordinance goes on and on about if
 25 you were to make this more a traditional shopping

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1 center, you know this space has to be typically
 2 2,000 square foot shopping center unit, but it's
 3 really promoting mixed-use, this crafter. And the
 4 author is not here tonight but the author who
 5 crafted this was really looking at mixing -- and I
 6 talked to the author about this, and the board, I
 7 have been with the board for quite some time, to do
 8 a true mixed-use, possibly have offices mixed in
 9 with this, personal services that could be mixed in
 10 with this. But then the ordinance, if you read
 11 further -- that's why it's a little confusing --
 12 then we're going into size of the units. But it was
 13 crafted so you didn't have any one particular -- the
 14 crafter of this ordinance, if you look at Section
 15 B(2) under Permitted Uses, under 106-95 Community
 16 Commercial, B(2), "Retail businesses limited to a
 17 maximum size of 6,000 square feet."

18 So obviously if they're limiting the
 19 uses to a maximum size of 6,000 square feet to a
 20 zone where you need an area of 100,000 square feet,
 21 they're looking for a Mixed-Use Zone. That's why
 22 there were limitations. The crafter of this
 23 ordinance, and it was adopted by council obviously,
 24 was looking for a Mixed-Use Zone and that's why it's
 25 here. And that's why as the reviewer and the zoning

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1 officer signed off on having it come before this
 2 board.
 3 And Mr. Barcan is also correct that
 4 anything beyond 106-106 is truly a design waiver not
 5 a variance. They testified as if it was a variance,
 6 which some planners will do, but the burden of proof
 7 is lesser on a design waiver than it is on a
 8 variance.

9 So Leigh Fleming who helps me craft
 10 these letters now, she took certain things that went
 11 beyond 106-106. So when you go through the
 12 ordinance, 106-90, 106-100, you know, if it's listed
 13 in the zoning table that's a true variance
 14 requirement. If it's under -- after 106-106 it
 15 says -- it's called supplementary. So if you go to
 16 106-106, it's called Supplementary Regulations and
 17 those are design waivers.

18 So also it came up today where the
 19 islands and the parking aisles, yes, if it was a
 20 brand new development we have in the past created
 21 end islands, made maybe the owner or the applicant
 22 lessen the size of the buildings, the size of the
 23 building to have more end islands to promote more
 24 green space to an application. But this is a
 25 preexisting application that has had approval from

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1 this board in the past. So the square footage is
 2 there. So the square footage is there. To
 3 take -- you know, you would love to, sure, I would
 4 love to add to the letter, I want a green space down
 5 the middle, I want all this additional green space.
 6 The problem with doing that it can become the excuse
 7 that now this building has to have partial removal
 8 of the building and that can be construed as a
 9 hardship to be -- to be requesting such because it
 10 was a previously approved application by one of
 11 these boards.

12 And that's it, I just want to sum up,
 13 there may be a little confusion in the way the
 14 ordinance reads. It really was written as a
 15 mixed-use area. And, you know, in my professional
 16 opinion I don't feel two or three units in one
 17 building is really considered a shopping center.

18 CHAIRMAN GREET: Okay. Thank you.
 19 Okay, folks, it's up to us for discussion.

20 MS. VILLAGGIO: This proposed
 21 application is a lot better than what exists right
 22 now. Even though it's empty with no tenants, it's
 23 much nicer than the food store that was there
 24 before, not the Pathmark, that was nice, but, you
 25 know...

1 But I remember when that land was a
2 lumbar yard way back when, I'm an old-timer in town,
3 and it is substantially better than what exists now
4 especially redoing the parking lot, redoing the
5 signs and we're getting rid of that free-standing
6 sign, the big free-standing sign and making a
7 15-foot monument sign, it's going to make it look
8 much nicer. That with the new fencing that needs to
9 be replaced, with the trees.

10 Speaking of that, Victor, what width
11 should they be the trees, replacement trees? I
12 don't want sticks. What would you recommend?

13 MR. VINEGRA: They submitted a revised
14 Landscaping Plan, we'll review and comment.

15 MS. VILLAGGIO: Okay.

16 MR. VINEGRA: The street trees, we
17 have a street tree ordinance that was testified.

18 MS. VILLAGGIO: Yes, we do.

19 MR. VINEGRA: The street trees were
20 planted there when that stream was reconfigured
21 about maybe 15 years ago. They're in pretty good
22 condition so really you couldn't add additional
23 street trees to that along South Avenue.

24 So we'll look into that and we'll make
25 sure that -- because in our review letter anything

1 that is dead has to be replaced, and they have added
2 some additional trees and we'll ask them to fill in
3 there.

4 MS. VILLAGGIO: Okay.

5 MR. VINEGRA: It's normally two and a
6 half inch caliper. We have an in-house landscape
7 architects who are licensed architects that will do
8 the review.

9 MR. VINEGRA: All right.

10 CHAIRMAN GREET: Well I'm just going
11 to make reference that I appreciate all the dialogue
12 that transpired tonight. There was a lot of
13 expertise given by various members of -- or
14 participants in the Lidl application and that's
15 greatly appreciated because it gives us a better
16 perspective of what to look for.

17 But even among the experts -- and we
18 have had quite a few tonight, in addition some
19 highly skilled folks from the Board -- they have
20 interpretations of our code and, granted, it's an
21 interpretation made by them. So again, it's an
22 opinion in a lot of aspects and I think that opinion
23 can be weighed either way.

24 And from my perspective, I'm along the
25 same lines as Kathy. I mean that facility being

1 empty so long is just a vacant piece of property
2 that is doing absolutely no good to anyone. We have
3 an applicant here who is willing to do some major
4 work. Granted, maybe not to the interpretive
5 measures that some folks here think that it should
6 be. However, I think that's left up to our board to
7 make that determination and that is what I'm going
8 to ask the board to do shortly.

9 But at this point in time I,
10 personally, think that it's a good project. I think
11 it should go forward. I think there were a lot of
12 accommodations that were done over the last several
13 sessions that we did and we met. So with that being
14 said I will just kind of end my dialogue and if
15 anyone else has anything to add, please do at this
16 time.

17 Steve?

18 MR. BARCAN: Yeah, so just to get to
19 the is it a permitted use or not to have a shopping
20 center, I mean I think my view on that was pretty
21 explicit earlier. I just want to read the last
22 sentence of the section that Victor was looking at,
23 which is 106-95.C(2): "The references to unit sizes
24 in these regulations transfer" -- I take it means
25 express -- "the Borough's intent to require a

1 variety of uses in any CC Zone development." So if
2 that doesn't tell you that shopping centers are
3 permitted, I just -- I always thought it was clear,
4 but now I see this sentence and that's even more
5 clear.

6 The pictures I showed of the other
7 malls in town, one of them where Kings is and one of
8 them is on North Avenue with the CVS, I mean maybe
9 they got a use variance for that, I doubt it.

10 MS. VILLAGGIO: The one on North
11 Avenue was a redevelopment.

12 MR. BARCAN: Okay, there you go. So
13 by definition and by law it's permitted. It's just
14 not conceivable to me that somebody comes in with a
15 shopping center for a variance, and one is right
16 down the street and also has a supermarket. You
17 have to start somewhere with one user. And in my
18 experience, and the ordinance has -- like home
19 occupation is another example, it's a permitted use
20 in certain zones under a certain section. And you
21 go there and it says home occupations are a
22 permitted use subject to the following conditions.
23 In my opinion that does not make it a conditional
24 use. It doesn't say it is and there are other uses,
25 like gas stations which are commonly conditional

1 uses, and in this ordinance they all say that.
 2 Now in terms of the signage, you know,
 3 what do they do, they put their name up and their
 4 logo. And we know it's reduced from before. And
 5 you have to have identification and you
 6 really -- this is the corner of the building. So
 7 this point was made earlier that the property is
 8 very long. And I went there, it was yesterday, if
 9 you go to the driveway on the Cranford end you can't
 10 read the signs on the building. And I bet you if
 11 you go down to the other end you won't be able to
 12 read everything either.

13 So from a safety point of view I would
 14 think you would need a sign on each wall just -- and
 15 they haven't really -- they're not greedy here, they
 16 have the name and the logo and the logo people will
 17 be used to it.

18 The other thing about sign area that
 19 struck me as I read the transcript, this is Brad
 20 Bohler testifying on Page 27 of the last hearing:
 21 "So some of the calculations in the sign area, you
 22 know, the ground sign, include a Welcome to Garwood
 23 sign part of it, as well as the base in there as
 24 part of the calculations. The reason the base is
 25 higher and elevated because you come down on South

1 Avenue there is that concrete guide wall for the
 2 river, the stream, and some vegetation there as
 3 well. So we are trying to elevate that so that you
 4 could actually see the sign as you come across that
 5 area." It's a safety thing.

6 And that's -- and that really is, by
 7 its design, that driveway with an island in the
 8 middle is expected to be the busier one, I
 9 understand on weekends at least the other one, which
 10 is more difficult, kind of a sharper left turn,
 11 there was police out there when it was busy, so that
 12 adds to the square footage for sure on that area.
 13 And it says Lidl would be about 81 square feet and
 14 then it gets into the visibility.

15 So I think that the signage we know
 16 it's going down and we know it is going down since
 17 it was filed. And we see with regard to the
 18 monument sign which is much more attractive than a
 19 free-standing sign, we have it at Shop-Rite. That's
 20 much bigger than this one by the way because I
 21 measured it today so I know it. It's reasonable,
 22 you know, what they have done.

23 And whoever wants to come into the
 24 rest of the space we'll see who it is and if they
 25 meet the standards of the ordinance they'll

1 presumably get a permit, and if not they'll be here.
 2 But I don't see it as a use variance, either this or
 3 what would come of that as long as the use is
 4 permitted. And it's a very long list of what's
 5 permitted so I would be surprised if it doesn't
 6 qualify from that point of view. And I really don't
 7 think if it's -- if the square footage somehow is
 8 off, I don't believe that would turn it into a Use
 9 Variance then, but we're not there yet so...

10 CHAIRMAN GREET: Thank you, Steve.

11 MR. BARCAN: Sure.

12 CHAIRMAN GREET: Anybody else from the
 13 Board?

14 MR. VENA: I agree with everything you
 15 said.

16 CHAIRMAN GREET: Anybody? No? Paul?

17 MR. TARANTINO: I think everything has
 18 been said.

19 MR. NAPOLITANO: Yes.

20 CHAIRMAN GREET: Very good. With
 21 that, if all is said and done, I would like to have
 22 someone make a motion.

23 MR. VENA: I'll make that motion, Mr.
 24 Chairman, that we accept the application.

25 CHAIRMAN GREET: With some conditions?

1 MR. VENA: With some conditions. Bob?

2 MR. NAPOLITANO: I'll second it.

3 MR. VENA: We know that the parking
 4 lot is going to get re-stripped, re-milled and
 5 re-stripped.

6 CHAIRMAN GREET: That's correct, and
 7 come into compliance.

8 MR. VENA: And come into compliance.
 9 Trees, they have suggested that 26 trees are coming.
 10 And they're going to be in touch with our engineer.
 11 We want to make sure that's done and, if possible,
 12 we'll get some more vegetation.

13 MS. VILLAGGIO: And they need a
 14 bicycle rack has to be included.

15 MR. VENA: Yes, a bicycle rack has to
 16 be included.

17 MS. VILLAGGIO: A front door added for
 18 fire access. Handicap spaces to be increased to
 19 eight. And that was testified to.

20 MR. BARCAN: I think it's on the
 21 plans.

22 CHAIRMAN GREET: Yeah, I think all
 23 these items were testified to.

24 MS. VILLAGGIO: They were all
 25 testified to.

1 MR. CAPOBIANCO: They changed that at
 2 the last.
 3 MR. VINEGRA: Also a lot of these
 4 items are in the review letters so they become part
 5 of the record.
 6 MS. VILLAGGIO: And everything that is
 7 included in Mr. Vinegra's review letter shall be
 8 included.
 9 MR. BARCAN: You have to be careful
 10 with that because there are some things in here not
 11 consistent with drawing more of a position with the
 12 applicant. So whatever is consistent.
 13 MR. FRASER: So I think it's a motion
 14 by Mr. Vena to grant the approval for the site plan
 15 and the variances requested, consistent with the
 16 testimony on the record at the three hearings, and
 17 subject to the conditions of Mr. Vinegra's review
 18 letter except as contradicted and changed at those
 19 three hearings, and specifically including but not
 20 limited to the bicycle rack, the 26 trees, the
 21 milling and repaving and re-striping of the parking
 22 lot in accordance with the conditions of the
 23 ordinance that pertain to proper parking space size
 24 and proper aisle size, and including the front fire
 25 door and including the increase of the handicap

1 transcripts?
 2 MR. TARANTINO: I missed the first
 3 meeting.
 4 MR. FRASER: Have you read that
 5 transcript?
 6 MR. TARANTINO: Correct.
 7 MR. FRASER: And you signed the
 8 certification?
 9 MR. TARANTINO: I believe I did.
 10 MS. LEWIS: Yes.
 11 MR. FRASER: I just want to be clear.
 12 And this is, in fact, a "C" variance notwithstanding
 13 the objector's position, I understand his position I
 14 think, but notwithstanding that it's a "C" variance
 15 that the board is voting on.
 16 CHAIRMAN GREET: Roll-call.
 17 MS. LEWIS: Ken Capobianco?
 18 MR. CAPOBIANCO: Yes.
 19 MS. LEWIS: Councilman McCormack?
 20 COUNCILMAN MCCORMACK: Yes.
 21 MS. LEWIS: Stephen Greet?
 22 CHAIRMAN GREET: Yes.
 23 MS. LEWIS: Kathy Villaggio?
 24 MS. VILLAGGIO: Aye.
 25 MS. LEWIS: Paul Tarantino?

1 spaces consistent with applicable regulations in Mr.
 2 Vinegra's letter.
 3 That's what I have.
 4 CHAIRMAN GREET: Do I hear a second?
 5 MR. NAPOLITANO: Second.
 6 CHAIRMAN GREET: Any further
 7 discussion?
 8 MR. FRASER: So, Mr. Vena, your motion
 9 was what I just said, correct?
 10 MR. VENA: Right on, spot on.
 11 CHAIRMAN GREET: Any further
 12 discussion? Hearing none, I will ask for a vote.
 13 MR. FRASER: Actually let's just make
 14 sure one other thing. Everybody voting was here for
 15 all three of the hearings, or if not, let's identify
 16 who it is, who it is not, so that they can certify
 17 that they have read the transcript. I know Mr.
 18 Barcan --
 19 MR. BARCAN: I signed the form.
 20 MR. FRASER: Okay. Is there anybody
 21 other than Mr. Barcan who was not here at all of
 22 them?
 23 MR. NAPOLITANO: I certified.
 24 MR. FRASER: Steve, Mr. Napolitano.
 25 You both signed and certified you read the

1 MR. TARANTINO: Yes.
 2 MS. LEWIS: Steve Napolitano?
 3 MR. NAPOLITANO: Yes.
 4 MS. LEWIS: Mike Vena?
 5 MR. VENA: Yes.
 6 MS. LEWIS: John Malcolm?
 7 MR. MALCOLM: Yes.
 8 MS. LEWIS: And Steve Barcan?
 9 MR. BARCAN: Yes.
 10 MS. LEWIS: Motion carries.
 11 CHAIRMAN GREET: Very good.
 12 MR. HEHL: Thank you very much.
 13 CHAIRMAN GREET: Congratulations.
 14 MR. HEHL: Look forward to the project
 15 moving forward.
 16 MR. FRASER: Mr. Hehl, I consider it
 17 unlikely that we're going to be memorializing this
 18 at the November meeting.
 19 MR. HEHL: We'll see what we can do.
 20 MR. FRASER: I consider we won't be
 21 memorializing this until December.
 22 MR. HEHL: We'll see what we can do.
 23 MR. FRASER: Just being real.
 24 MR. HEHL: Have a great night.
 25 (Hearing adjourned at 10:20 p.m.)

Angela C. Buonantuono

CERTIFICATE

I, ANGELA C. BUONANTUONO, a Notary Public and Certified Court Reporter of the State of New Jersey and Registered Professional Reporter, do hereby certify that prior to the commencement, the witnesses were duly sworn to testify the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the hearing 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.

Angela C. Buonantuono, CCR, RPR, CLR
License No. 30X100233100
Dated: November 7, 2019

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