

PLANNING BOARD
BOROUGH OF CLOSTER, NEW JERSEY
Minutes of Special Meeting
October 10th, 2013
8:00 P.M.

Prepared & Submitted by:
Rose Mitchell
Planning Board Coordinator

PLANNING BOARD
BOROUGH OF CLOSTER, NEW JERSEY
Special Meeting
Thursday,
October 10th, 2013

Mr. Lignos, Chairman called the Special Meeting of the Planning Board of the Borough of Closter, New Jersey held on Thursday, October 10th, 2013 in the Council Chambers of the Borough Hall to order at 8:00 PM. He stated that the meeting was being held in compliance with the provisions of the Open Public Meetings Act of the State of New Jersey and had been advertised in the newspaper according to law. He advised that the Board adheres to a twelve o'clock midnight curfew and no new matters would be considered after 11:00 P.M.

Mr. Lignos invited all persons present to join the Board in reciting the Pledge of Allegiance.

The following Planning Board members and professional persons were present at the meeting:

Mayor Heymann
Councilwoman Amitai
Mr. Lignos, Chair
Dr. Maddaloni, Vice-Chair
Mr. DiDio
Ms. Isacoff
Mr. Sinowitz
Mr. Pialtos
Ms. Stella- (alt # 1)
Mr. Nyfenger- (alt # 2)
Mr. Chagaris, Board Attorney
Mr. DeNicola, Board Engineer
Rose Mitchell, Planning Board Coordinator

The following Planning Board members and professional persons were absent from the meeting: Mr. BaBoo

Mr. Lignos read the correspondence list. There was no further discussion regarding mentioned.

Item # 1

Block 1607 Lot 1 (BL 1310/ L 2)
19 Ver Valen Street (7 Campbell Ave.)
Application # P-2013-03

Applicant: Closter Marketplace (EBA), LLC
Centennial AME Zion Church
Attorney: Mr. Basralian

***Refer to attached transcript.**

Motion was made by Dr. Maddaloni & seconded by Mr. DiDio to adjourn meeting. Meeting was adjourned at 11:26 PM.

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STATE OF NEW JERSEY
COUNTY OF BERGEN
BOROUGH OF CLOSTER
SPECIAL MEETING

IN THE MATTER OF
The Application of:

TRANSCRIPT OF
PROCEEDINGS

CLOSTER MARKETPLACE (EBA), LLC.,
CENTENNIAL AME ZION CHURCH, BLOCK
1607, LOT 1 (BLK 1310/L 2) 19 VER
VALEN STREET (7 CAMPBELL AVE.)
APPLICATION #P-2013-03

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BOROUGH OF CLOSTER MUNICIPAL BUILDING
295 Closter Dock Road
Closter, New Jersey
October 10th, 2013
8:00 p.m., Volume IX

B E F O R E:
PLANNING BOARD
JOHN LIGNOS, CHAIRMAN
SOPHIE HEYMAN, MAYOR
VICTORIA RUTI AMITAI, COUNCILWOMAN
MARK MADDALONI, BOARD MEMBER
IRENE STELLA, BOARD MEMBER
ROBERT DI DIO, BOARD MEMBER
LEONARD SINOWITZ, BOARD MEMBER
ADRIENNE ISACOFF, BOARD MEMBER
DEAN PIALTOS, BOARD MEMBER
PAUL NYFENGER, BOARD MEMBER
ARTHUR CHAGARIS, ESQ., BOARD ATTORNEY
NICK DENICOLA, P.E., BOARD ENGINEER
ROSE MITCHELL, BOARD SECRETARY

A P P E A R A N C E S:
WINNE, BANTA, HETHERINGTON, BASRALIAN & KAHN, P.C.
ATTORNEYS FOR THE APPLICANT
BY: JOSEPH L. BASRALIAN, ESQ.
SEGRETO, SEGRETO & SEGRETO, ESQS.
ATTORNEYS FOR THE OBJECTORS
BY: JOHN J. SEGRETO
GINA M. LAMM, CSR/RPR, Court Reporter
Job No. NJ1738304

1 CHAIR LIGNOS: Going to item No. 1,
2 block 1607, lot 1, 19 Vervalen Street. The
3 application P2013-03, Closter Marketplace, LLC.,
4 and Centennial AME Zion Church. Mr. Basralian is
5 the attorney.

6 This is a subdivision, site plan and
7 soil movement application. Was received back on
8 May the 16th. Was deemed perfected, with
9 stipulations, on June the 5th, at that work
10 session meeting. The application was continued
11 and received final perfection on June the 27th at
12 that general meeting.

13 Meetings have now taken place on
14 July the 11th, and the 18th, August 7th, 8th,
15 29th, September 12th, October 2nd, and the
16 application is here this evening to be continued
17 at this October 10th, 2013, special meeting.

18 Mr. Basralian, welcome.

19 MR. BASRALIAN: Good evening,
20 Mr. Chairman, members of the board. Continuation
21 hearing from October 2nd. I'd like to call,
22 Mr. Burgis, our first witness.

23 CHAIR LIGNOS: Mr. Burgis has
24 already been sworn in?

25 MR. BASRALIAN: No.

1 MR. BURGIS: No, I have not.

2 CHAIR LIGNOS: Oh, have not. I'm
3 sorry.

4 MR. CHAGARIS: Raise your right
5 hand. Do you swear to tell the truth, the whole
6 truth and nothing but the truth?

7 MR. BURGIS: I do.

8 MR. CHAGARIS: State your name,
9 please, and give us your business address.

10 MR. BURGIS: Joseph Burgis,
11 B-U-R-G-I-S. Office address at 25 Westwood Avenue
12 in Westwood.

13 MR. BASRALIAN: Thank you.

14 EXAMINATION BY MR. BASRALIAN:

15 Q Mr. Burgis, what is your occupation
16 and that of Burgis Associates, Inc.?

17 A I am a licensed professional planner. And
18 the firm consists of professional planners and
19 landscape architects.

20 Q And how long have you been a
21 licensed planner in the State of New Jersey and
22 how long have you been actively involved in your
23 profession?

24 A I have been a licensed planner since 1980,
25 and I've been a planner, initially working in New

1 York, since 1975.

2 Q And have you and your firm
3 represented municipalities or boards of adjustment
4 or planning boards? And if so, have you
5 undertaken any master plan review, or preparing of
6 master plans and reviewing the studies of
7 ordinances and giving guidance to municipalities
8 and the various board?

9 A Yes, I have. At present, the firm
10 represents approximately 32 municipalities in New
11 Jersey and in New York State. In the course of my
12 career I have represented in excess of 100
13 municipalities.

14 CHAIR LIGNOS: Now, you have -- you
15 have appeared before our board?

16 MR. BURGIS: Yes, I have.

17 CHAIR LIGNOS: Any member of the
18 board --

19 MR. MADDALONI: I move that we
20 accept his credentials --

21 CHAIR LIGNOS: Any objections? I
22 see and hear none. So, Mr. Basralian, you can
23 continue.

24 MR. BASRALIAN: Thank you.

25 BY MR. BASRALIAN:

1 Q Mr. Burgis, are you familiar with
2 the Closter Plaza shopping center?

3 A Yes, I am.

4 Q And are you familiar with the
5 proposed development? And since you are familiar
6 with the Closter Plaza shopping center, would
7 you -- and you're familiar with the proposed
8 development, would you please give the board, and
9 everyone else here, your overview of the project
10 as proposed by the applicant.

11 A Okay. Certainly. I know you've been
12 going through this for an extended period of time.
13 Once before as well. So, I'm just going to focus
14 on what I perceive as the significant planning
15 issues, because that will then seg-way directly
16 into my testimony on the variances that are being
17 requested.

18 As I'm presuming everybody, by now, is
19 aware, the site presently contains 211,553 square
20 feet of floor area. It also contains 720 parking
21 spaces, for a ratio of 1 parking space for every
22 294 square feet. Looking at it another way, it's
23 3.4 parking spaces per thousand square feet.

24 I'll use the word, for the most recent
25 master plan, it indicates the project, as a site,

1 is in a rundown condition. Simply put, it has
2 seen better days.

3 The applicant is proposing a two phase
4 redevelopment of the site. At phase I there will
5 be an increase of about 7,764 square feet, to a
6 total of 219,317 square feet.

7 In addition to that, there will be an
8 additional 10 parking spaces, increasing the
9 number of parking spaces to 730 stalls on site.

10 This actually represents a slight
11 reduction in the ratios. We would end up with a
12 ratio of 1 space for every 333 square feet.
13 Excuse me. 3.3 parking spaces per thousand square
14 feet.

15 And as you've heard, this really is a
16 function of the retention of the K-mart through
17 the end of their lease in August of 2015.

18 MR. CHAGARIS: So, you'll have 3.3
19 per thousand at the end of phase I?

20 MR. BURGIS: Yes.

21 At the end of phase II, on the other
22 hand, we will be reducing the amount of floor
23 space on site from 219,317, by 10,980 square feet,
24 and wind up with a total of 208,337 square feet.

25 At the same time we are increasing the number of

1 parking spaces to 820, increasing the ratios to 1
2 parking space for every 254 square feet, or,
3 again, looking at it another way, we would have
4 3.94 parking spaces per thousand square feet.

5 BY MR. BASRALIAN:

6 Q Now, the reduction at the end of
7 phase II, how does that compare to the square
8 footage of the existing center?

9 A Well, it actually represents a reduction
10 of 3,216 square feet. And the ratios will
11 increase to 1 parking space for every 254 square
12 feet, as I mentioned, or that 3.94 spaces per
13 thousand.

14 In addition to those specific numbers,
15 there's a number of enhancements, that I think are
16 very pertinent to the application. In terms of
17 the physical and esthetic enhancement, you know,
18 you've heard other's, and in your own master plan,
19 the site has been described as a tired old center.
20 And that's a direct quote from the 2009 master
21 plan.

22 Q And that refers specifically to
23 Closter Plaza?

24 A Yes, it does. As I think we can all
25 agree, the site has a very limited architectural

1 appeal at present, and that would be replaced with
2 a design that emphasizes varied rooflines,
3 attractive signage, and canopies. There will be a
4 change from a site that has virtually no
5 landscaping on site at present, and that would be
6 replaced with landscaping in the parking lot, and
7 improved perimeter landscape material along the
8 streets and the streetscape.

9 The circulation design will also be
10 significantly improved. Right now there is a lot
11 of conflicting turning movements by virtue of the
12 relationship of the one-way circulation aisles,
13 and the relationship of those aisles to the
14 pedestrian movement on the site. That's all going
15 to be replaced with a two-way vehicular flow
16 throughout the property, characterized by 24 foot
17 wide aisles to enhance the on-site internal
18 circulation.

19 You've heard from the engineer previously,
20 where he talked about, of the buckling pavement
21 that existed. That will be replaced with a
22 repaved parking lot. And he also talked about
23 drainage improvements to enhance that aspect of
24 the site.

25 So, in summary we're making substantive

1 improvements to the site. And that is important
2 because of, A; the number of variances that are
3 being sought and exceptions from the ordinance.
4 And, B; the relationship of those features to the
5 Poland v. South Plainfield case. Because that
6 case stands for the proposition that when one
7 looks at a project such as this, you do not simply
8 look at each individual variance and have it stand
9 on its own, but you have to look at the
10 application within the context of a comprehensive
11 integrated approach through the review process.
12 And when you hear me talk about the basis for the
13 variance relief, you'll see what I -- I mean by
14 that.

15 Q Okay. Continuing with your
16 testimony, you did reference the master plan. And
17 there was specific provisions in the master plan,
18 or at least the updated one. And you talked
19 about -- mentioned Closter Plaza shopping center.
20 Is there a specific reference or other items which
21 you want to refer to in that master plan regarding
22 the center, in particular, in the concept of the
23 master plan for development, in the -- in the
24 business district?

25 A Yes. Well, actually, I would like to

1 first step back and look at some of your prior
2 master plan documents. But they all carry
3 through, a set theme, is, focused to a large
4 degree on the issues associated with the shopping
5 center. Even going back to your 1981 land use
6 plan, then looking at the various, you know, 1996
7 re-examination report, the 2002 re-examination
8 report, as well as your current 2009 document,
9 they all have the same basic recommendations and
10 the same basic goals and objectives. The one
11 caveat to that statement, is that, as you read
12 through to the most current document, it's a much
13 more, for lack of a better word, hard hitting
14 document, in terms of its characterization of the
15 subject site, and what needs to be done to make
16 improvements here. But all of the documents have
17 a basic land use recommendation, designates the
18 site for business use.

19 A number of the goals and objectives that
20 are contained in going back to the 1981 document,
21 flow through to the present. Those master plan
22 goals talk about encouraging a desirable visual
23 environment. They talk about encouraging the best
24 possible design for new -- new development and
25 redevelopment. And it speaks to ensure compatible

1 land use arrangements.

2 In 2002 the re-examination report actually
3 went one step further, for the first time there
4 was a reference to the state development and
5 redevelopment plan in the master plan. And the
6 state development and redevelopment plan has a
7 very specific intent. It specifically said that
8 for the Metropolitan planning area, and that
9 encompasses most, but not all of Bergen County,
10 but it does include Closter. The intent is to
11 revitalize towns and to stabilize older suburbs.
12 And the text also pointed out how the upgrading of
13 aging facilities is a significant aspect of the
14 state plan. And parenthetically that was what the
15 2002 re-examination report talked about. And
16 amongst the issue that it raised, in the 2009
17 reexamination report, it talked about esthetic
18 enhancements of the streetscape, and building
19 facades. It talked about enhancing customer
20 parking and improved customer parking. And these
21 concepts, while in some respects talking about
22 your central businesses district, in 2009 master
23 plan, it said all of those issues also applied to
24 the Closter Plaza.

25 Now, in 2009, actually that document went,

1 not 1, not 2, but probably 3 or 4 steps further
2 than these prior documents. First, it clearly
3 indicated that the 2009 re-examination report
4 reinforced all the prior master plans and
5 re-examination goals and objectives. But it also
6 added a specific goal, which was to "encourage the
7 revitalization of the central business district
8 and Closter Plaza." And this is the document that
9 really hones in on the issues associated with the
10 subject site.

11 That plan detailed the weaknesses of our
12 property, it specifically said that the attraction
13 of the site is weak due to an outdated physical
14 form, and it's weak, due to a tired and depressing
15 visual imagery. And it concluded that this site
16 is underutilized. And it also says, the site
17 needs a "complete revamping through either
18 redevelopment or substantive renovation, to
19 enhance the look and feel and character of this
20 site."

21 Now, the plan also pointed out that in the
22 prior master plan documents where those master
23 plan documents talked about circulation
24 improvements in the central business district,
25 facade improvements in the central business

1 district, and streetscape improvements in the
2 central district -- central business district.
3 All of those issues equally apply to the subject
4 site. And I think that's informative for this
5 discussion, when we talk about the variance relief
6 being sought, because in every one of those
7 instances, this application affirms and reinforces
8 those issues, and to a large degree, implements
9 those recommendations.

10 Q Did it not also say that, you know,
11 money spent in one area will benefit the whole of
12 the area?

13 A Yes. There was a section in the 2009
14 re-examination report that specifically talked
15 about how, by attracting -- attracting people to
16 the Closter Plaza, there will be a spill over
17 affect for the surrounding businesses. And,
18 consequently will enhance, not only the character
19 of Closter Plaza, but it will also have an
20 enhancement for the rest of the business district
21 of Closter.

22 Now, there was a number of other issues
23 that that master plan pointed out. And I think
24 it's very instructive, because of some of the
25 discussions, that I understand have taken place

1 here. One, is that the plan specifically said
2 that the fear of allowing any big box retailer is
3 unfounded. It went on to say that limiting the
4 store's -- any store size, may "interfere with the
5 natural market forces which are needed to drive
6 this site's redevelopment." And it could, "stimy
7 development all together, leaving the site "to
8 drag along in its current obsolescent state." And
9 the culsion -- the conclusion to all of this,
10 resulted in a number of recommendations contained
11 in that plan. It specifically calls for a
12 strategy that encouraged a commercial center,
13 anchored by a supermarket. It also called for the
14 establishment of a market driven plan that has
15 focused on quality of design, which would thereby
16 allow the market to determine tenancy and the size
17 of the stores. There was very strongly worded,
18 since it's your document, I assume you all know
19 about this, but it was very strong in its wording,
20 that suggested that store size should not be the
21 driving force, and quality of design and character
22 should be the driving force to get back tenants
23 into this mall.

24 Q With respect to the zone in which
25 this property is located, the district 3 business

1 zone, would you just briefly review the zoning,
2 the permitted uses, and -- and how this project
3 falls well within -- entirely within the
4 definition of the district 3 business zone.

5 A Well, certainly. There's quite a list of
6 permitted uses allowed as of right in this zone.
7 The zone includes; retail and service commercial
8 uses. It includes offices. It includes
9 restaurants. It includes movie theaters. Beyond
10 that, it also includes houses of worship and
11 public uses. I mean it suggests another era,
12 farms on the site, and nurseries, and the like.
13 So, every kind of activity that is contemplated by
14 the applicant here, which is basically a retail
15 establishment and a restaurant use, is a permitted
16 use allowed as of right on the property.

17 Q Now, did you also review the
18 variances, which the applicant has requested, and
19 if so, would you please review them for the board,
20 and your opinion as to whether or not these
21 variances can be granted within the confines,
22 within the definition of the law, regarding no
23 detriment to the substantial good and no detriment
24 to the zone plan and zoning ordinance.

25 A Certainly. There are six individual

1 variance requests that are being made here. One
2 regards the maximum impervious coverage of the
3 shopping center lot. The ordinance permits up to
4 80 percent of the site can be covered by
5 impervious material, and that includes building
6 and paved surfaces. The existing condition
7 already does not comply to that requirement. The
8 existing site has 93.7 percent of its area covered
9 by impervious material.

10 In phase I that would be reduced slightly
11 down to 91.42 percent. And at the end of phase II
12 it would result in an impervious coverage factor
13 of 93.02 percent.

14 Q And that's a reduction, however,
15 over the -- or is that a reduction over the
16 current impervious coverage of 93.7 percent? And
17 is that being accomplished by still increasing the
18 parking by 100 spaces as well as adding the
19 landscaping?

20 A Yes, it is. That's one of the intriguing
21 aspects of this part of the application, while
22 we're slightly reducing the amount of impervious
23 coverage on site, we are still able to gain a
24 total of 100 additional parking spaces over and
25 above what exists today. There is a parking

1 shortfall on the site today, as everybody knows,
2 in terms of code standards. So, this is a
3 significant feature. And, to a large degree, that
4 is, that ability to provide additional parking is
5 a function of the internal redesign that is being
6 proposed. We're going from a, you know, the
7 one-way circulation system that you're all
8 familiar with, to a two-way vehicular flow, with
9 conforming 24 foot wide aisles, and by virtue of
10 the redesign we find space to provide the
11 additional 100 spaces.

12 Q While we're talking about impervious
13 coverage, let's just refer to the proposed lot
14 1.01, which is sought to be subdivided, although
15 there are no -- there was no current application
16 for any structural improvement or building on that
17 site. Would you just review the impervious --
18 maximum impervious lot coverage with respect to
19 the lot 1.01.

20 A I said there were 6 variances. Actually
21 there's 2 related to impervious coverage. The
22 second variance is the impervious coverage for
23 that subdivided lot. Again, the ordinance permits
24 80 percent. That lot has an 83 percent impervious
25 coverage factor. And, obviously, because no

1 development is being proposed at this time, that
2 factor flows through, both, phase I and phase II.

3 Q So, it's currently at 83 percent.
4 And would remain at 83 percent?

5 A Correct.

6 Q Thank you. What are the other
7 variances that you reviewed and that the applicant
8 is seeking?

9 A There is a front yard setback variance on
10 the Homans Avenue side of the property. This is a
11 function of the proposed ramp serving the grocery
12 store on that side of the site. There is a 42
13 foot linear portion of that ramp that extends
14 within the required 10-foot setback. And that
15 setback actually varies from as close as 4 feet to
16 just under 10 feet. The rest of the ramp. The
17 ramp in total is 73 feet in dimension. The rest
18 of it is at the 10-foot dimension or a little
19 beyond it. But there's 42 feet of the ramp that
20 doesn't comply. And -- I guess there wasn't a
21 question yet.

22 Q Well --

23 A That represents just about 6 percent of
24 the total linear dimension of the wall facing
25 Homans Avenue.

1 Q And, so, in setting forth the
2 variances that are required, you take the worst
3 case scenario. So, even if 1 foot of that ramp
4 encroaches within the 10-foot setback we would
5 still require a variance?

6 A That is correct.

7 Q And are you familiar with the length
8 of the entire structure or building along that
9 side, so as a percentage of the total, would you
10 be able to tell the board, if not a percentage, as
11 compared to the 73 square feet that you said of
12 the total ramp, 40 some odd feet --

13 A Yeah, 40 feet -- 42 feet to be precise.

14 Q -- because the rest of it would be
15 conforming then out of the setback.

16 A And out of a 960 foot linear dimension
17 along that wall facing Homans.

18 Q So, it is only the 40 feet, 40 some
19 odd feet that it encroaches on?

20 A Correct. Yeah, it's unfortunate when you
21 see these kind of statistics in a public notice,
22 for example, the impression is that the entirety
23 would be 4 feet away from -- or away from the
24 front property line. It's only 42 feet of the 960
25 foot linear dimension.

1 Q Thank you. Would you also review
2 the other variances that are being requested in
3 connection with the application.

4 A There's a variance being requested for the
5 number of principal buildings on site. At
6 present -- well, the ordinance permits 1 principal
7 building on the site. The site presently contains
8 four. And in both phases I and phase II we are
9 reducing that number to 3. And in addition to
10 that, the ordinance limits the maximum retail area
11 of any individual store, to 45,000 square feet.
12 As you know, the existing K-mart is 84,020 square
13 feet. That will continue through phase I. But in
14 phase II that structure will be reduced to 73,040
15 square feet.

16 And then finally, building height. The
17 ordinance permits a maximum building height of
18 25 feet. The K-mart building, at present, is
19 29.88 feet in height. The theater is 33.79 feet
20 in height. By virtue of the redesign -- well, the
21 theater stays the same. That doesn't get changed.
22 But the K-mart structure will be reduced to 27 1/2
23 feet. And then the grocery building will be at
24 27. I said 27 1/2 feet. It's 27 feet --

25 Q Five inches.

1 A -- 5 inches. And the same holds true for
2 the grocery store.

3 Q And the rest of the structure then
4 would conform to the maximum 25-foot height, which
5 is measured to the top facade, is that not the
6 case?

7 A That is correct.

8 Q And not to the -- not to the ceiling
9 height within the building.

10 A Correct.

11 Q All right. They're also asking for
12 a number of waivers, design waivers, as set forth
13 in article 9 of the -- of the zoning ordinance.
14 Would you review the waivers that are being
15 sought, please.

16 MR. CHAGARIS: Excuse me,
17 mr. Basralian, before did you say earlier that
18 there are 6 variances or I misunderstood?

19 MR. BURGIS: Well, I had separated
20 out the maximum impervious coverage for each
21 individual lot.

22 MR. CHAGARIS: I see. So, that
23 would be -- okay.

24 MR. BASRALIAN: Right. Just to
25 reiterate, there's the impervious coverage for

1 Closter Plaza. Then there is the impervious
2 coverage for proposed lot 1.01. And that's the 6
3 variances.

4 MR. CHAGARIS: Got it.

5 BY MR. BASRALIAN:

6 Q Okay. With respect to the design
7 waivers that are being sought and applied for,
8 would you please review them, perhaps starting
9 with the front yard setback.

10 A There are a couple of setback exceptions
11 that we're seeking. One is the front yard parking
12 setback along Vervalen Street. It's 5 feet. The
13 ordinance requires a minimum of 10 foot setback.
14 At present it's a 0-foot setback. So, we're
15 increasing that to 5 feet. We're also increasing
16 that to 3.6 feet along Homans Avenue. And there
17 is a dimension that will exist in, both, phases I
18 and II. I should point out that along Vervalen,
19 actually the existing parking extends over the
20 property line into the formal right-of-way.

21 Q And that will be --

22 A Corrected.

23 Q -- corrected, and as set forth in
24 the plans submitted, as well as the landscape
25 design plans, submitted by, and testified to by

1 Mr. Hamilton?

2 A That is correct.

3 Q Thank you.

4 A There's a side yard parking variance. The
5 ordinance requires a 5-foot dimension. At present
6 there is a 0-foot dimension and that dimension
7 will continue.

8 For the church, there is a parking setback
9 of 0 feet. And that's a function of a placement
10 of a handicapped stall, on their property to
11 assist them. All the other parking spaces will
12 comply. But it's the one handicapped stall that
13 necessitates relief for the church.

14 The number of parking spaces for the
15 shopping center is also at a issue. The code
16 requires, for phase I, a total of 1,524 parking
17 spaces. As I said earlier, there are presently
18 720, in the phase I, that will increase to 730.
19 And at the end of phase II, that will stay at 730
20 -- excuse me, 820.

21 Q That will be increased then from 720
22 to 820?

23 A Yes.

24 Q Thank you.

25 A And in phase II, the ordinance would

1 require a slight reduction down to 1,461 spaces.

2 Well, there's that reduction, we're increasing the
3 amount of spaces, as I said to 820 stalls.

4 For the church, there are 16 parking
5 spaces required. There will be 14 on site.

6 Q And how many are there currently?

7 A Thirteen. No, no, there are 16 on site
8 now.

9 Q No.

10 A I'm sorry. There are 0 provided under the
11 existing conditions.

12 Q So, just to clarify, there are 16
13 required. There are none. But at the conclusion
14 of phase I there will be 14 spaces, including 1
15 handicapped space?

16 A Correct.

17 Q Okay. Thank you.

18 A The length of the parking spaces is also
19 at issue. The ordinance requires the length of
20 parking spaces to be 20 feet. And we are
21 proposing 18 feet.

22 Q Now --

23 A And that is for the --

24 Q That's for the church.

25 A That's for the church. For the shopping

1 center, the ordinance, again, in this instance,
2 requires a 10 X 20 foot stall. In many instances
3 we are proposing 9 X 16 and 9 X 18-foot stalls.
4 So, a variance -- a waiver from, or exception is
5 required for that. The church parking stalls do
6 comply.

7 MR. DENICOLA: Just to reiterate for
8 the board, a 9 X 16 parking stall only occurs
9 where the car is able to overhang the landscaped
10 areas by 2 feet.

11 MR. BASRALIAN: Right --

12 MR. DENICOLA: I just want to
13 reiterate that.

14 MR. BASRALIAN: Mr. Keller
15 testified, I think we have 16 1/2 feet. It's only
16 where -- those are only along the area, as
17 Mr. DeNicola said, where there's an overhang, and
18 it gives you the same length as being proposed at
19 18 feet.

20 MR. BURGIS: Thank you. I was
21 saving that for the argument. I appreciate that.

22 The width of the two-way driveway is
23 also in issue. The ordinance requires a 30 -- a
24 50 foot dimension. We are proposing 24 to 26 foot
25 dimension.

1 Sidewalks are required around the
2 building. We are providing, in some areas, but
3 not in other's. The sidewalk has to be 6 feet
4 above pavement. And, in some instances, it's
5 right flat at the tabletops.

6 MR. DENICOLA: Extension.

7 MR. BURGIS: Yes.

8 MR. BASRALIAN: And for that --
9 that, for edification of the board, it was
10 Mr. Keller who addressed the reasons for that,
11 specifically.

12 MR. BURGIS: And, finally, the
13 number of loading spaces. The ordinance requires
14 a total of 16. There are 8 existing. There will
15 be 9 that will be provided.

16 BY MR. BASRALIAN:

17 Q That's 9 in phase I. And I believe
18 there is one more in phase II, increases to 10, is
19 that correct?

20 A Yes.

21 Q Thank you.

22 A Now, the location of the loading spaces is
23 also necessitates relief. They are permitted in
24 the side or the rear yard only. Seven are being
25 proposed in the front yard and 8 are being

1 proposed -- in phase I and 8 are proposed in phase
2 II. This is obviously a function of the fact that
3 we have 2 front yards on this lot and we can't get
4 around that fact.

5 MR. DENICOLA: Just to go back,
6 because on the plans, on the zoning schedule, it
7 says, 10 loading bays for phase I and 11 for phase
8 II. Not the 9.

9 MR. BASRALIAN: You're correct. And
10 as I look at the number here, I thought it was
11 incorrect. But I needed to look at the plan. But
12 you're correct. It's 10 and 11. Right.

13 MR. DENICOLA: Okay.

14 Q We're also requesting, and it's been
15 submitted early on, a sign waiver and a package of
16 signs, and how it would be presented to the board,
17 or how it would be presented, the size of the
18 signs, dependent upon the -- the frontage of each
19 of the tenants. So, we're seeking waivers, as
20 well, for the signs, is that correct?

21 A That is correct. There's a number of
22 waivers associated with the signage. One relates
23 to the provision of ground signs. One is
24 permitted. One exists today. Five are being
25 proposed in phase I and phase II. The size of the

1 sign, the code permits -- it's in relationship of
2 2 linear feet of the linear dimension of the store
3 front, and -- with a cap of 36 square feet. What
4 we are recommending, is, a varied schedule. That,
5 for those store fronts that have up to 50 linear
6 feet, they would be capped at 36 square feet. For
7 those that go up to then 100 linear feet, they
8 would be capped at 75 square feet. And anything
9 above 100 linear feet would be capped at 150
10 square feet.

11 Q So, those signs on facades of 50
12 square feet or less would be compliant then with
13 the code?

14 A That is correct.

15 Q Thank you.

16 A The height of the ground sign is limited
17 by your ordinance to 15 linear feet. Excuse me,
18 15 feet. The existing sign on site is 45.3 feet
19 in height. In the proposal the height is going to
20 be 23 -- 23 feet in height.

21 Q That's in phase I. And in phase II
22 it reduces to 22 feet.

23 A Twenty-two feet.

24 Q Twenty-two feet. Thank you.

25 MR. SINOWITZ: What will the square

1 footage of the face of the sign be?

2 MR. BURGIS: Pardon me.

3 MR. SINOWITZ: The square footage of
4 the face of the sign. The face.

5 MR. BASRALIAN: The sign face, of
6 the large signs.

7 MR. BURGIS: Which one?

8 MR. BASRALIAN: Which one are you
9 talking --

10 MR. SINOWITZ: Your large ground
11 sign.

12 MR. BASRALIAN: That's on the --

13 MR. BURGIS: The ground sign?

14 MR. BASRALIAN: It's on the plans.

15 MR. DENICOLA: Oh, the principal
16 sign on Vervalen.

17 MR. SINOWITZ: Yeah.

18 MR. BASRALIAN: It's on the plan.

19 And I don't recall. I can look at it for you,
20 Mr. Sinowitz. But it's on the plan, and was part
21 of Mr. Roncati's testimony. Let me just open this
22 up.

23 MR. BURGIS: There's one that's 23
24 feet X 11 feet 2 inches, if you do the math. And
25 this is sign A, that would be 255 square feet in

1 size. There's a second sign of 80 square feet.
2 And then there's a real -- rear wall sign along --
3 on the Homans Avenue side of the site, which will
4 be 100 square feet.

5 MR. SINOWITZ: Okay. Thank you.

6 BY MR. BASRALIAN:

7 Q They're also seeking a waiver on the
8 methodology for the measurement -- I'm sorry,
9 methodology for the measurement of the site
10 distance. That's the driveway. It is a waiver,
11 that was testified to, in the rational by -- by
12 Mr. Keller. But would you just review it since it
13 is a waiver that we are requesting.

14 A Yeah. The ordinance requires a
15 measurement from the driver seat, with the front
16 of the vehicle 10 feet behind the right-of-way
17 line. And Mr. Keller is measuring the sight
18 distance with the driver's eye at 14.5 feet behind
19 the extended curb line.

20 Q Would you also review, if you would,
21 the statutory criteria for variance -- for the
22 variances and the waivers that are being sought by
23 the applicant.

24 A Okay. Certainly. There are two aspects
25 to these kinds of variance reliefs that the

1 municipal land use law identifies. One, is the
2 positive criteria in the statute. And the other
3 is the negative criteria of the statute. And for
4 bulk variances there is three different approaches
5 that the applicant can take on the positive
6 criteria.

7 One can argue what's specifically called a
8 C-1 variance relief, which is a physical features
9 test. And that physical features test requires an
10 applicant to show that there are physical features
11 that affect the ability to comply to code.

12 Alternatively, an applicant can argue
13 what's called the C-2 variance relief approach.
14 And that's also commonly referred to as a public
15 benefits test. And that indicates that,
16 essentially, if the variance relief being sought
17 represents a better zoning and planning
18 alternative for the property, in contrast to
19 what's required by code.

20 If you recall, at the outset of my
21 testimony, I referenced the Poland v. South
22 Plainfield case. Because in that case there was
23 an application to develop a site for retail use.
24 It was formerly a car lot, if I recall correctly.
25 And in the end, the court said, this case will

1 stand for the proposition that when you're dealing
2 with a C-2 variance relief, you're not limited to
3 the benefits derived from each individual
4 variance. You can look at the totality of the
5 project as a whole and make some determinations
6 about the benefits that would be derived from the
7 entire proposal, and evaluate the relief being
8 sought within that context.

9 It's effectively a softer -- it softens
10 the statutory burden for an applicant. Because
11 one does not have to go through each individual
12 variance to make a determination.

13 Now, in addition to the positive criteria
14 there's the negative criteria. An applicant has
15 to show there's no substantial detriment to the
16 public good, and an applicant has to show that
17 there's no substantial impairment to the intent
18 and purpose of the master plan and zone plan of
19 the community.

20 Now, all of that differs when we deal with
21 waivers; the design standards of the ordinance.
22 There, a planning board can grant exceptions from
23 site plan requirements. It may be reasonable for
24 the general purposes and intent of the site plan
25 review process, and the statute talks about, if

1 the literal enforcement of the ordinance is
2 impractical or it will exact an undue hardship
3 because of peculiar conditions pertaining to the
4 site in question.

5 So, I guess I will just walk through these
6 --

7 Q Yes, if you would.

8 A In terms of the positive criteria, I would
9 like to go through the individual variance.

10 As I said earlier, there is relief being
11 sought for the impervious coverage factor. I
12 think, in terms of the context of the case law,
13 and in terms of the context of the municipal land
14 use law, the fact that we are reducing the amount
15 of impervious coverage, while at the same time
16 increasing the number of parking spaces to get the
17 site closer to conformance with parking, is very
18 informative for this relief.

19 And I think some of you have heard me say
20 in the past, planning is a balance of competing
21 interests. And, here, we have a variance being
22 requested, albeit it's with a reduction in
23 impervious coverage. It's with an increase in the
24 number of parking spaces by 100. It's with an
25 increase in the amount of landscape amenity on

1 site. And that landscape amenity is being placed
2 in such a manner that will have a significant
3 positive visual impact on the site. Because it's
4 not only along the frontage of the property, but
5 it's also within the parking lot itself. So,
6 there is a number of benefits associated with
7 that.

8 In addition, we've got an enhanced parking
9 ratio, by virtue of the fact that the end result
10 of this project actually reduces the amount of
11 floor space on the property, while at the same
12 time providing more parking. So, the parking
13 ratios get improved.

14 And, finally, in terms of the improved
15 safe and efficient circulation design, by virtue
16 of all the things I mentioned earlier, all
17 suggested the relief being sought for the
18 impervious coverage should be granted.

19 Q With respect to the other variances
20 that are requested, I assume by the way, with
21 impervious coverage, that applies also to proposed
22 lot 1.01?

23 A Yes.

24 Q Since it remains the same as it is
25 currently.

1 A Mm-mm. Now, in the context of the
2 statute, and as I said, we usually are required to
3 talk about C-1 versus C-2. And here I think it's
4 a clear C-2 argument. There are certain public
5 benefits that accrue by virtue of the grant of the
6 requested relief.

7 The public benefits relate to the
8 additional parking, the additional landscaping,
9 and the improved circulation. These are all
10 public benefits that accrue to the public at
11 large, and just not -- just don't benefit the
12 applicant himself.

13 Q Now, would you say that the
14 variances that are being sought are consistent
15 with the master plan re-examination that you've
16 referred to, and in particular, as the master plan
17 referred to Closter Plaza?

18 A Certainly. As I said earlier, the master
19 plan specifically talks about creating a desirable
20 visual environment. It talks about encouraging
21 the best possible design for development. It
22 talks about enhancing the esthetic nature of the
23 site and the circulation on site. And it
24 specifically talks about circulation, facade, and
25 streetscape improvements, all of which relate to

1 this application.

2 Q With respect to the variance being
3 sought for the front yard setback from Homans, by
4 virtue of the ramp, is the variance sought,
5 consistent with the same concept of the master
6 plan, given, in fact, that the property has, in
7 effect, two front yards?

8 A Yeah, that obviously is a limiting factor.
9 Your ordinance doesn't take into account the fact
10 that certain lots can be a through lot. So, in
11 this instance, we do have two front yards.

12 One of the benefits, in terms of the C2
13 context, is that by virtue of providing this ramp
14 where it's provided, it makes it easier for
15 individuals who are coming in small step vans, to
16 serve the building. But also, because of the
17 ramp, if by happenstance there's any emergency,
18 where they need to get people out of this building
19 in the front, and from the back, all at the same
20 time, or from the back, you got a handicap
21 accessible ramp now in the back of the building to
22 help people get out.

23 Q Thank you. The shopping center
24 currently consists of four structures. The
25 ordinance limits it to one structure. The

1 applicant seeks to reduce the buildings from four
2 to three, all of which are existing structures.
3 How does that fall within the variance requests
4 and has it any adverse effect or substantial
5 effect of the zone plan or the zoning ordinances?

6 A Well, again, within the context of the
7 statute, because it's a C1 variance relief, no
8 matter what we do here, we're going to have
9 multiple buildings on site. At a minimum you got
10 that front building. And near Vervalen. You
11 can't get away from that. So, at a minimum you're
12 always going to have two buildings. And by virtue
13 of the design that's being provided, you're
14 enhancing the circulation system.

15 Right now there's that access aisle, near
16 the grocery store building, the K-mart, that is
17 not the most safe and efficient circulation
18 feature on site. It's very narrow. It's
19 constrained.

20 In contrast to that, we're eliminating
21 that, and opening up the driveway access and
22 egress on the easterly side of the site. And it's
23 designed in a much better way than the other
24 conditions.

25 So, consequently, the physical features of

1 the existing site condition, with the elongated
2 building is one thing, but we're providing a safe
3 and efficient circulation out to Homans from
4 multiple points now. And that's the benefit.

5 Q I know you're referring to the
6 access site, which currently dead ends at the
7 northeast corner of the property, which would
8 exit, and have an entrance and exit to the entire
9 shopping center from Homans?

10 A Yes. Now, the difficulty is, if you were
11 to suggest, or someone were to suggest that you
12 had to link the long building facing Homans, and
13 what I'll call the other building, where the
14 theater is, and block off that exit and entrance
15 to Homans on the easterly corner of the site, any
16 person trying to drive through the easterly
17 portion of the site to gain access out to Homans
18 would end up going right along the main driveway
19 in front of all the buildings. They would be
20 forcing everybody to drive in the worst possible
21 location. Because that is where you've got all
22 your potential for pedestrian conflict. This
23 minimizes that potential.

24 Q And would you say that the design is
25 proposed with the access, the northeast corner of

1 the property, is consistent with good planning and
2 what is proposed under the master plan in terms of
3 improving of circulation?

4 A Yeah, the master plan makes reference to
5 it, in terms of the actual design of that area, is
6 characterized by, not only 24 foot wide aisles to
7 accommodate vehicular flow, but there's
8 additional, what I'll call, for lack of a better
9 word, open area, on either side of that aisle, to
10 enhance the sight vision clearance for any driver
11 who could then see any pedestrian movements in the
12 area.

13 Q Now, with respect to the height,
14 there are several structures which exceed the
15 maximum height permitted now. One is the K-mart
16 building. And one is the theater building. A
17 variance is being requested, certainly for the
18 theater building, which is existing and not going
19 to change. A variance is also requested for
20 K-mart and the grocery store building. Would you
21 please address those in terms of the plan, again,
22 and comparing it with, or bringing into it, if you
23 will, the master plan, and its -- its desire to
24 improve facades and the esthetics of the center,
25 in particular, Closter Plaza.

1 A Well, the master plan makes that specific
2 comment. Interestingly enough, one of the
3 purposes of the municipal land use law is also to
4 enhance the visual characteristics of site. One
5 of the benefits, and I'll talk about this in the
6 context of C2 variance relief. One of the
7 benefits of having it at varied heights, is that
8 it provides more visual interest in the site as a
9 whole.

10 Now, the problem here, is, that we have an
11 existing building. Many parts of the structure
12 are 25 feet in height. It's a very long building.
13 First off, it's a thousand feet in linear
14 dimension. And by providing these two structures
15 with a height of something in excess of 25 feet,
16 it provides more varied visual interest for those
17 looking at the building.

18 Q Well, you testified that the K-mart
19 building is currently 29.88 feet. And in phase II
20 it will be reduced, both in size, and in height.
21 And in such, in reducing the height of the
22 building, it would be reduced to 27 feet 5 inches.
23 The theater building, you testified, would remain
24 the same at 33.79 feet, which is a pre-existing
25 condition on it. Even though you've just said it,

1 are the designs that are proposed by the applicant
2 for the K-mart building, 27 feet 5 inches, and the
3 grocery store at 27 feet 5 inches, again,
4 consistent with the good design and the esthetics,
5 which the master plan talks about?

6 A Yes, I would say it is. The master plan
7 talks about the poor quality of the existing
8 design, and it talks about encouraging design
9 elements which will enhance the visual impression
10 of the building. And, obviously, that's what this
11 does.

12 Q Thank you. There is a limitation,
13 within the ordinance, of a maximum of 45,000
14 square feet. The K-mart building, once it's
15 reduced in size, will be replaced with a smaller
16 building, which is currently, since there are no
17 tenants for it, would, at that end of phase II, be
18 greater than 45,000 square feet. Would you
19 address the grandfathering of that aspect of it.
20 Again, in context of the master plan with respect
21 to store sizes.

22 A Well, there's two aspects. One is there
23 is an existing condition of over 80,000 square
24 feet there. It will be reduced somewhat so the
25 magnitude of the existing variances, in fact,

1 being reduced. But beyond that, your master plan
2 is very explicit in terms of its statements
3 regarding the unfounded fear, to use its words,
4 that are associated with concern about larger
5 buildings on this site. It has a lot of language
6 about why a larger building would be appropriate
7 here, because it would help encourage the
8 redevelopment of the shopping center. And it
9 points out that from a planning perspective, there
10 really are no issues associated with the larger
11 building that would result in any adverse planning
12 to consider.

13 Q The master plan re-examination
14 report, to which you've referred to a number of
15 times now, also talks about an anchor grocery
16 store. How is the proposed grocery for Closter
17 Plaza consistent with -- consistent with the
18 master plan?

19 A Yeah, it's interesting. Because it's
20 rarely -- you rarely see a master plan that looks
21 at a specific site and offers specific uses for a
22 retail site. But in this particular instance, it
23 went out of its way to say that a supermarket
24 would be appropriate in this location. And, as
25 you know, we've got the 41,000 square foot grocery

1 store being proposed.

2 Q And for the variances and waivers,
3 just, again, if you would, review the negative
4 criteria, and how this applicant complies, and in
5 your opinion, whether or not it represents
6 substantial detriment to the public good in the
7 zone plan and zoning ordinance.

8 A Well, the first prong is the negative
9 criteria because you have to show there's no
10 substantial detriment to the public good. In this
11 instance, what we have, is, a redevelopment of a
12 tired old shopping center. A slight reduction in
13 its floor space, while at the same time
14 re-skinning it, providing 100 more parking spaces
15 than exist today, providing the landscape
16 amenities that you've heard about, providing an
17 improved and enhanced on-site circulation system,
18 and providing improved drainage on site.

19 So, within a context of no substantial
20 detriment to the public good, well, that's the
21 statutory language. And then you can really go
22 one step beyond that, and not worry about a
23 substantial detriment, but a substantial
24 enhancement to the site. In terms of the --

25 Q That also includes, for example,

1 elimination of the narrow driveway between the
2 K-mart building and the grocery store that
3 currently exists. Would that enhance the --
4 enhance the very criteria you were talking about?

5 A All right. Yes, it would. One of the
6 difficulties that we all know with that access is
7 the relationship of the driveway to the buildings
8 on either side. Is the side of that driveway, and
9 the ability to see pedestrians, you know, crossing
10 at that point, that's all being taken care of by
11 this application. So, if I hadn't mentioned that
12 internal circulation improvement, that should also
13 be highlighted.

14 Q Thank you.

15 A In terms of the second prong of the
16 negative criteria, I've already touched upon this
17 in some detail. The statute asks that you show
18 there is no substantial impairment to the intent
19 of the master plan. And the word substantial is
20 not just coming from me, it's right out of the
21 statute. Not only is there no substantial
22 impairment to the intent of the plan, but in so
23 many ways this application affirms your master
24 plan's recommendation, and affirms your master
25 plan's goals and objectives. I'm not going to

1 repeat them all, but suffice it to say, all that I
2 said earlier, falls into play right in this
3 section.

4 Q Thank you. Couple more questions.
5 Were you present during the hearing at which the
6 board's planner, Mr. Banisch, testified to, as to
7 jurisdiction? And if you were, do you concur with
8 his conclusion or have any additions to the
9 statements he made at that time?

10 A I do -- I do concur with his conclusions.
11 As you may be aware, we represent, not only a lot
12 of municipalities, but I represent a lot of
13 applicants before boards. And my understanding of
14 4055D-70D, of the statute, which is the section
15 that's at issue, clearly differentiates intensity
16 issues versus bulk issues.

17 Intensity issues are those issues that
18 relate to the greater intensity of use of the site
19 over and above what the ordinance would permit
20 them in the square footage.

21 In this particular instance, your
22 ordinance doesn't limit the site to less than
23 what's being proposed, other than through parking
24 and coverage factors, that the only way you can
25 actually limit the amount of floor space that one

1 is entitled to, is take it over to a D variance,
2 is through floor area ratio.

3 For whatever reason, the governing body
4 here has chosen not to regulate intensity of use
5 to floor area ratio.

6 It's the same way we regulate residential
7 intensity through density. We regulate non
8 residential through FAR. And this municipality
9 doesn't have an FAR ordinance that would apply
10 here.

11 What's notable, is that where the negative
12 cri -- one of the special reasons arguments that
13 one has to make for a D variance, is, that you
14 have to show that the site is particularly suited
15 for the use. That's the language that one has to
16 address. It doesn't say, one has to address, the
17 site is particularly suited for the use and the
18 number of structures.

19 Number of structures is not an intensity
20 issue. Number of structures is a design issue.
21 And the key is, you know, whether or not you're
22 allowed the amount of floor space through an FAR
23 limitation or not. And we don't have that here.
24 So, that's why I concur with Mr. Banisch. He came
25 to that same conclusion, I think pretty much for

1 the same rationale.

2 Q Mr. Banish also came to the
3 conclusion that the structures were -- would
4 contain all permitted uses so that there was no --
5 no jurisdictional issue as to uses. And, further,
6 that the structures were being reduced from 4 in
7 number to 3 in number. And that diminished the
8 nonconformity, visive, the structures, all of
9 which is grandfathered from previous approval, is
10 that the case?

11 MR. SEGRETO: I object to the
12 question.

13 MR. CHAGARIS: And the basis is of
14 your objection?

15 MR. SEGRETO: I am objecting to the
16 form of the question and he is paraphrasing what
17 Mr. Banisch said. And I don't think he's
18 paraphrasing correctly what he said.

19 MR. CHAGARIS: Well, Mr. --

20 MR. BASRALIAN: I believe I asked
21 the question properly, and it's appropriate, but I
22 will rephrase the question in any case.

23 MR. CHAGARIS: Okay.

24 Q You indicated you were present
25 during Mr. Banisch's testimony. Do you concur

1 with his conclusions with respect to the permitted
2 uses that would be contained in the buildings, and
3 that none of those rose to the level of a use
4 variance or a D variance. That's the first part
5 of the question.

6 A Yes, when I went through the list of
7 permitted uses earlier, I pointed out how the
8 application is consistent with that list. I
9 obviously concluded that there is no D1 use
10 variance associated with this application.

11 Q And in your opinion are the current
12 structures, numbering 4 on the site, validly
13 nonconforming?

14 A Yes.

15 Q And in your opinion does the
16 reduction of the -- of the number of buildings on
17 the site, from 4 to 3, diminish that
18 nonconformity?

19 A That is correct, yes.

20 MR. BASRALIAN: Thank you. I have
21 no further questions of this witness at this
22 point, Mr. Chairman.

23 CHAIR LIGNOS: Okay. Members of the
24 board, questions of this witness? Okay. Let me
25 see if I can -- I'll start over on one side and

1 then I'll go around. Mayor, do you have a
2 question?

3 MAYOR HEYMANN: I'll pass now.

4 CHAIR LIGNOS: Councilwoman.

5 MS. AMITAI: I'm thinking about it.

6 Let me go through --

7 CHAIR LIGNOS: Mr. -- Dr. Maddaloni.

8 MR. MADDALONI: I don't know if you
9 can answer this, but you talked a lot about what
10 would result at the end of phase II. For one
11 thing, an improved parking to square footage
12 ratio. Which, frankly to me is not that
13 important. But what is more important to me,
14 though, is, when this phase II will actually be
15 completed. And I haven't heard any discussion
16 about that. Because what concerns me more, is
17 that this plaza not be in a protracted state of
18 construction. Could you speak to that issue?
19 Because what I did hear, was -- the only article
20 of fact I heard was that K-mart's lease ends in
21 August of 2015. So, given that as the basis, how
22 long after that do you anticipate phase II being
23 completed so that we can get a completed shopping
24 plaza, and not a site under construction?

25 A It's my understanding that the work will

1 begin shortly thereafter. Although I'm really not
2 the one you should be asking that question of.
3 But that's my understanding.

4 MR. MADDALONI: Mr. Basralian,
5 would you be able to answer that question with one
6 of your other experts?

7 MR. BASRALIAN: If you would just
8 rephrase it I will, because I was busy reading
9 something, and I found an error and so.

10 MR. MADDALONI: How soon -- yeah,
11 how soon can we expect phase II to be completed?

12 MR. BASRALIAN: As I indicated early
13 on in one of the hearings, that if the building
14 were vacant today, and we could start
15 construction, phase II would go at the same time.
16 So, as soon as that building is vacant.

17 MR. MADDALONI: In August of 2015 it
18 will be, correct?

19 MR. BASRALIAN: Yeah. It's going to
20 go in phases.

21 MR. MADDALONI: Can you commit to
22 that? I mean that's when their lease is over.

23 MR. BASRALIAN: It depends upon a
24 lot of things. It's all not going to happen
25 simultaneously, because you're going to start on

1 one side and move down the line. A lot depends on
2 when we're able to commence construction. But it
3 is the intent to do that as soon as that building
4 is available. And we're permitted to go forward
5 with construction. So, there's not intended to be
6 a year -- years and years delay in that aspect of
7 it. The desire of the applicant has stated early
8 on they would move forward as soon as they were
9 able to do so. I don't control, necessarily, when
10 we're going to be able to start depending upon the
11 procedure and where we go from here, but as --

12 MS. AMITAI: How long may it take to
13 finish a project of this magnitude?

14 MR. BASRALIAN: I'm not the right
15 person to ask that. I believe there was some
16 testimony early on from Mr. Roncati as to the
17 anticipated construction period.

18 MS. AMITAI: Two years?

19 MR. BASRALIAN: I don't believe it
20 was that long. I would have to confirm with him.
21 I don't recall. And I don't want to misstate it,
22 councilwoman.

23 CHAIR LIGNOS: Dr. Maddaloni, are
24 you finished with your questions?

25 MR. MADDALONI: Yes, that's all for

1 now. Thank you.

2 CHAIR LIGNOS: Ms. Stella.

3 MS. STELLA: No questions.

4 CHAIR LIGNOS: No questions. Start
5 on that side. Mr. Nyfenger, questions?

6 MR. NYFENGER: No.

7 CHAIR LIGNOS: Mr. Pialtos,
8 questions?

9 MR. PIALTOS: No questions.

10 CHAIR LIGNOS: Ms. Isacoff,
11 questions?

12 MS. ISACOFF: No, but I want to
13 thank you for a very clear presentation.

14 MR. BURGIS: Oh, thank you.

15 CHAIR LIGNOS: Mr. DiDio?

16 MR. DIDIO: I have no questions at
17 this time.

18 CHAIR LIGNOS: Mr. Sinowitz.

19 MR. SINOWITZ: No, sir.

20 CHAIR LIGNOS: Mr. -- Mr. Boswell.

21 MR. DENICOLA: Yes. Couple of
22 things. The buildings that are being removed, in
23 terms of certain buildings being removed, greater
24 than 50 percent, does that affect the number of
25 buildings remaining on site? Because it is a

1 variance. So, if greater than 50 percent of the
2 building is being removed, does that constitute
3 the removal of that particular structure?

4 MR. BURGIS: I don't agree that
5 that's necessarily a variance.

6 MR. DENICOLA: I didn't say it was a
7 variance.

8 MR. BURGIS: I thought you just did.

9 MR. DENICOLA: No.

10 MR. BASRALIAN: I thought you said
11 that is a variance.

12 MR. DENICOLA: No. Being removed.
13 If greater than 50 percent -- well, it is a
14 variance. Because number of buildings on site is
15 a variance, over the -- over the -- over 1. If
16 removal of 50 percent of a structure is considered
17 removal of that structure, and you're putting that
18 structure back, is that in itself a variance?

19 MR. BURGIS: No.

20 MR. DENICOLA: No. Okay.

21 MR. CHAGARIS: Could you explain
22 your answer?

23 MR. BURGIS: I believe there's case
24 law to that effect. And usually that -- that
25 issue relates to matters where there is a fire or

1 a structure burned down. Not redevelopment of the
2 site.

3 MR. BASRALIAN: And that would apply
4 to a nonconforming building. A nonconforming
5 building containing a nonconforming use. Where
6 there are different -- different standards on
7 removal.

8 MR. BURGIS: That is correct.

9 MR. SEGRETO: Is Mr. Basralian
10 testifying or is he making an argument?

11 MR. BASRALIAN: It doesn't matter.
12 I'll ask him the ques -- and you know the answer
13 as well. I'll ask him the question.

14 MR. SEGRETO: It sounded like a
15 misstatement of the law, the way I know it.

16 MR. BASRALIAN: Well, you can argue
17 that at the appropriate time, if you wish.

18 MR. SEGRETO: Right.

19 MR. BASRALIAN: Okay. I guess the
20 question was, to restate it, is, is there a
21 limitation on the amount of a structure that can
22 be -- can be removed in a redevelopment of a site
23 that would rise to the level of a variance?

24 MR. BURGIS: No, not that I'm aware
25 of, no.

1 CHAIR LIGNOS: Mr. DeNicola, do you
2 have any other question? Hold on a second.
3 Mr. DeNicola.

4 MR. DENICOLA: Yeah, if you look at
5 the definition of building, are you familiar with
6 the definition of building in the Closter code?

7 MR. BURGIS: Yes.

8 MR. DENICOLA: All right. It's your
9 belief that if you read that definition of
10 building, the applicant is adding a building, but
11 it's connected via a roof structure. They're not
12 really adding a building. That's part of the
13 other building, the way you read the code, is that
14 correct? Or is that not correct?

15 MR. BURGIS: That's correct. It's
16 one -- that part is one building.

17 MR. DENICOLA: Okay. I think that's
18 all my questions.

19 CHAIR LIGNOS: Mr. Chagaris.

20 MR. CHAGARIS: Mr. Burgis, in the
21 planning field, are you familiar with the
22 context -- concept of a single enterprise on a
23 piece of property?

24 MR. BURGIS: I'm not sure what
25 you're referring to.

1 MR. CHAGARIS: The context is a --
2 in other words, would you -- how would you
3 characterize this structure, this shopping center
4 structure?

5 MR. BURGIS: Oh, it's a single
6 development tract, if that's what you're referring
7 to.

8 MR. CHAGARIS: Even though there's
9 more than one building?

10 MR. BURGIS: Oh, yeah, certainly.

11 MR. CHAGARIS: So, it's a single
12 development that consists of more than one
13 building, is that what your testimony?

14 MR. BURGIS: Correct.

15 MR. CHAGARIS: Does the removal of a
16 part of that building affect that characteristic?

17 MR. BURGIS: No, not at all.

18 MR. CHAGARIS: And could you explain
19 what you mean by that?

20 MR. BURGIS: In planning, and in the
21 context of the municipal land use law, there is
22 something to be said about developing large
23 parcels, and I'll identify this as a large parcel,
24 in a comprehensive and integrated way. Oftentimes
25 you will see it in multiple buildings. Sometimes

1 you see it in one large building. You know, but
2 oftentimes you do see multiple buildings on a
3 site. But they're developed together, in one
4 fashion, to create a coordinated esthetic, a
5 coordinated parking arrangement, a coordinated
6 utility infrastructure system, and the like. And
7 that's what we have here. And that's typical.
8 It's very common.

9 MR. CHAGARIS: Now, the fact that
10 part of the property that exists at the present
11 time is being subdivided off into creating of the
12 lot 1.02, does that have a -- that fact, that
13 you're requesting, that's being requested in this
14 application, does that play any role on the
15 intensification of the remaining parcel?
16 Intensification of the use --

17 MR. BURGIS: The smaller lot or the
18 larger lot?

19 MR. CHAGARIS: Larger lot.

20 MR. BURGIS: No, it does not.

21 MR. CHAGARIS: Could you explain?

22 MR. BURGIS: Yeah. First of all,
23 the ordinance only requires a minimum 7,500 square
24 foot lot in this zone. And the size lot is
25 obviously much larger than that. It's 636,000

1 plus square feet. So, within the context of your
2 own ordinance, you know, this is a reasonable
3 developable lot that stands on its own, even with
4 the subdivision.

5 MR. CHAGARIS: And it's your prior
6 testimony that it's only through the use of the
7 mechanism of what's known as FAR, that would judge
8 whether or not there is an intensification of the
9 use?

10 MR. BURGIS: Yeah. In relation to
11 this application. There are other intensity
12 issues built into the municipal land use law.
13 There's FAR for floor space. There's height
14 greater than 10 percent of what's permitted, is
15 another issue. And there's density to regulate
16 residential development. Those are the intensity
17 issues. What's interesting, is that when you look
18 at the evolution of case law on those matters, the
19 regulatory process has been watered down for those
20 activities.

21 It all started with the Coventry
22 case back in 1988, which was a Supreme Court case
23 regulating multi-family development as a
24 conditional use. And it's my one Supreme Court
25 case. So, I know it very well. In that instance

1 the applicant was required to have a front yard
2 setback as a condition of a conditional use,
3 equivalent to 1/3rd of the depth of the lot. And
4 most of the zone had, you know, 200 foot depth.
5 That particular lot had a 1200 foot depth. So, it
6 needed, basically a 400 foot front yard. We
7 argued before the board that, A, that was a
8 ridiculous standard. But, B, the real approach
9 that you should look at, is, does the site
10 function well irrespective of not meeting that
11 condition. The Supreme Court agreed with us,
12 that, in fact that that should be the law of the
13 land regulating conditional uses.

14 Fast forward a couple of years
15 later, there was a density variance. It went up
16 to -- it was an Appellate Division case. And they
17 said, the Coventry process should be applied to
18 density. And then they turned around,
19 subsequently, and said, the Coventry process
20 should apply to FAR. And then separately they
21 said the same thing about building height. So,
22 they adjusted the process. But the one thing
23 they've done, is always focused on intensity
24 issues. Not the other control for other types of
25 D variances.

1 MR. CHAGARIS: Thank you. Now,
2 there's no conditional use being required for this
3 site at all?

4 MR. BURGIS: No, not at all.

5 MR. CHAGARIS: And there's no -- the
6 use that's -- that's being -- that exists and is
7 being proposed, is that permitted in the zone?

8 MR. BURGIS: Yes, it is.

9 MR. CHAGARIS: So, there's no
10 expansion of a nonconforming use?

11 MR. BURGIS: That is correct.

12 MR. BASRALIAN: Correction. There
13 is no nonconforming use on the site now. So,
14 there could not be an expansion now.

15 MR. CHAGARIS: Thank you. And is
16 there an expansion of a -- well, there's a
17 nonconforming structure on the site though.

18 MR. BURGIS: Only in terms of
19 setback. But that's a bulk variance, which this
20 board has the right, under the municipal land use
21 law, to hear and vote upon.

22 MR. DENICOLA: Well, there's more
23 than just that.

24 MR. BURGIS: Well, there's other's
25 but --

1 MR. CHAGARIS: Right. And a number
2 of them.

3 MR. DENICOLA: Yeah, the building
4 height is a nonconforming condition --

5 MR. BURGIS: Right, yeah, there's
6 all those I mentioned earlier, but they are all
7 bulk variances, that this board has the right to
8 hear under 4055DC70C 1 & 2.

9 MR. CHAGARIS: Now, the fact that
10 the theater is more than 10 percent than the
11 permitted use, that doesn't trigger a --

12 MR. DENICOLA: Height, height,
13 height.

14 MR. CHAGARIS: Height, I'm sorry.

15 MR. BASRALIAN: No. Permitted
16 height he means.

17 MR. CHAGARIS: Height. I'm sorry.
18 It's more than 10 percent above the permitted
19 height, that doesn't trigger a D variance?

20 MR. BURGIS: No, because that height
21 exists, and it's not a function of this
22 application.

23 MR. CHAGARIS: Now, as to the
24 parking issue, I believe you testified that
25 approximately 1,400 square -- I'm sorry, 1400 --

1 1500 spaces are currently required under the
2 ordinance?

3 MR. BURGIS: Yes. I'll give you the
4 exact number in a second. 1,524 under phase I and
5 1,461 under phase II.

6 MR. CHAGARIS: That's what's
7 required under the ordinance?

8 MR. BURGIS: Correct.

9 MR. CHAGARIS: And what is your --
10 do you have an opinion about the adequacy, or not,
11 of those requirements?

12 MR. BURGIS: Those --

13 MR. CHAGARIS: If you have an
14 opinion what is your opinion?

15 MR. BURGIS: I certainly have an
16 opinion about that.

17 MR. CHAGARIS: Okay. What is that
18 opinion?

19 MR. BURGIS: You require 1 space for
20 every 175 square feet of floor space. That is a
21 very outmoded standard. You rarely see it in a
22 zoning ordinance today. It used to be that
23 ordinances are being changed to 1 per 200. Now
24 we're seeing 1 per 225. And even 1 per 250 for
25 retail.

1 In many instances, in Paramus, where
2 I spent a lot private development work and at one
3 time was their planner, we were seeing and
4 granting -- getting relief granted for the
5 equivalent of 3. -- 1 space for every 300 square
6 feet in recognition of reduced -- this is an
7 excessive standard. It overstates the case
8 dramatically.

9 MR. CHAGARIS: What has changed over
10 time to make it excessive at this point?

11 MR. BURGIS: You do internet
12 shopping? That's a significant -- that will
13 have -- well, now has, and will continue to have,
14 an even greater impact on the amount of parking
15 required in shopping centers.

16 MR. CHAGARIS: Also, in terms of the
17 size of the stalls, I believe you said the
18 requirement is 10 X 20, and that you're proposing
19 some stalls at 9 X 16 and others at 9 X 18.

20 MR. BURGIS: It's 9 X 16 with a 2
21 foot overhang.

22 MR. CHAGARIS: Right.

23 MR. BURGIS: So, effectively they're
24 9 X 18. And that is the standard parking stall
25 that is recommended throughout the industry today.

1 Again, the only times you see a 10 X 20-foot stall
2 seems to be in older ordinances that have not been
3 updated over the past ten years or so.

4 And it's also a function of car
5 dimensions today. The largest car, I think it's
6 the Expedition. The Expedition is 18 feet 9
7 inches or 17 feet 9 inches. Excuse me.

8 MR. CHAGARIS: I have nothing
9 further. Thank you very much.

10 MR. BASRALIAN: I do have a
11 question.

12 BY MR. BASRALIAN:

13 Q Mr. Burgis, Mr. Sinowitz asked the
14 square footage of the sign at the front of the
15 shopping center. And I think you indicated it was
16 somewhat over 200 and -- 200 square feet. The
17 plans actually show it as 170. I can't read it.
18 I think it's 178.5. Did you, by chance, include
19 the base of that in your calculations?

20 A Yeah. My calculation included the base.
21 And the sign is obviously is the top of the base.

22 Q So, the sign it says, maybe you can
23 read the print better than I can.

24 A I believe it's 178.3 or 5.

25 MR. BASRALIAN: Thank you. I have

1 no other questions at this point.

2 CHAIR LIGNOS: Mr. Burgis -- I'm
3 sorry.

4 MR. DENICOLA: One follow-up.

5 CHAIR LIGNOS: Yeah, I'll go around
6 one more time. Let me just finish my questions.

7 Mr. Burgis, if I understand your
8 testimony, you felt that the 1,400 or so cars that
9 would be required for this application under our
10 ordinance, is based on about one -- I'm sorry, a
11 car per you said --

12 MR. BURGIS: 175.

13 CHAIR LIGNOS: 175. I believe your
14 testimony also said that that's rather an outdated
15 criteria or standard, and perhaps something more
16 along the lines of 1 to 225 is something that you
17 would see more commonly today.

18 MR. BURGIS: I'm actually saying
19 more municipalities, to upward of 250, that's for
20 retail. And there are a few municipalities that
21 are doing even less than that.

22 My experience over, you know, more
23 35 years, is that ordinances -- ordinance drafting
24 lags behind what's happening in the real world by
25 a good 10 years. This is a prime example of it.

1 We are seeing -- I have seen it time and time
2 again.

3 When, for example, when convenience
4 stores started to be made part of a gas station.
5 In the beginning we demanded -- everybody was
6 demanding those were use variance issues. Now I'm
7 seeing more and more ordinances that acknowledge
8 that fact, and they're starting to build, in their
9 ordinances, a provision for convenience stores as
10 part of a gas station. It's just a natural
11 evolution of land uses, and the time it takes for
12 municipalities to catch up.

13 CHAIR LIGNOS: Okay. I'll go
14 through one more time. Questions? And if you --
15 if you've heard your answer, let's just move ahead
16 so that -- because I'm sure the public has
17 questions.

18 Mayor? None.

19 Councilwoman?

20 MS. AMITAI: I have a couple. So,
21 based on the calculation of 1 for every 250 feet,
22 how many spots would be necessary for this
23 application?

24 MR. BURGIS: I don't know. I didn't
25 do that calculation.

1 MR. BASRALIAN: I can tell you.

2 MR. BURGIS: We can do it.

3 MS. AMITAI: What would that be?

4 MR. BASRALIAN: It would be, instead
5 of the 820 proposed, it would be 800 and -- I'm
6 sorry, 820 proposed, it would be 833. Thirteen
7 parking spaces shy of that ratio.

8 MS. AMITAI: Okay. Thank you. When
9 you talked about the -- the flow of the traffic in
10 the shopping center being improved. And that may
11 be so inside the shopping center. But I have real
12 concerns when it comes to the driveway exits onto
13 Homans Avenue. And you talked about methodology
14 driveway. That quote went over my head
15 completely. Could you talk about that a little
16 bit?

17 MR. BURGIS: The engineer had
18 indicated, that while the ordinance requires that
19 you measure sight distance from the driver seat of
20 the front of the vehicle, 10 feet behind the
21 right-of-way line, he chose to measure it 14 1/2
22 feet behind the extending curb line. And it makes
23 sense. Because it's the curb line that
24 represents, you know, the same drivers see out in
25 the field. If there's an imaginary right-of-way

1 line. And nobody knows. So, his experience has
2 been that that seems to be a more reasonable
3 approach that reflects the way we, as drivers, all
4 act. That's why he suggested measuring it that
5 way.

6 MS. AMITAI: And on the subject of
7 that driveway, it's going to be one way at the end
8 of phase II, from Homans in the north, going
9 south, which leaves us only one driveway exit onto
10 Homans, and that's at the eastern edge of the
11 property.

12 MR. BURGIS: Yes. But recognize
13 that on the western end -- end of the property --
14 Lewis Street? Yeah.

15 MS. AMITAI: It is Lewis Street.

16 MR. BURGIS: -- you can go out to
17 Lewis Street and then exit onto Homans that way.

18 MS. AMITAI: That's true. In
19 addition, the -- the bump out for the store, that
20 will be on the western edge of that K-mart
21 building, in your planning, is there any way that
22 bump out might have been considered for the back,
23 or for the other front yard, onto Homans, as
24 opposed to making it a more narrow area for those
25 cars to traverse?

1 MR. BURGIS: Well, in the end, you
2 still have the 24 foot wide aisle. Even with that
3 extension, 24 foot wide aisle -- excuse me, 24
4 foot wide aisle for two-way vehicular flow, which
5 is the standard dimension you need for safe and
6 efficient movement of traffic.

7 MS. AMITAI: For two lanes moving in
8 one direction?

9 MR. BURGIS: Yes. For two lanes
10 moving in two different directions.

11 MS. AMITAI: So then why is it one
12 way? I guess because of the bump out.

13 MR. BURGIS: Oh, no, the one way
14 system is designed because we've got a drive-thru
15 --

16 MS. AMITAI: Yes, the drive-thru,
17 yeah.

18 MR. BURGIS: -- at that location.
19 And because of that, it necessitates a limitation
20 on, or restriction on two-way vehicular traffic.

21 MS. AMITAI: But couldn't it have
22 been designed in a different way to place it in
23 another part of that building, the other, the back
24 end of the building on Homans?

25 MR. BURGIS: It's difficult to do

1 so, given the dimension of the rear wall in
2 relation to Homans. That right-of-way. And the
3 fact that we have the loading dock back there and
4 dumpsters, and what have you.

5 MS. AMITAI: Okay. Thank you.
6 Let's see. The other thing, you mentioned several
7 times the master plan. It does say that our
8 downtown has some charm. And it does say that one
9 area is dependent upon the other in terms of it
10 being successful. And I don't see that the
11 planning, as shown, what we've been given,
12 relates, in any way, to our traditional historic
13 downtown.

14 MR. BURGIS: Well, I'll let the
15 architect talk about that relationship. But from
16 a planning perspective, and the way the master
17 plan is constructed, the master plan doesn't talk
18 about how Closter Plaza should reflect the
19 architecture and lighting features, and everything
20 else in the central business district. It
21 specifically talks about, how, by virtue of
22 attracting people to the community, they will then
23 also use the central business district for some of
24 their shopping needs. And I think that's the
25 focus of the master plan.

1 MS. AMITAI: But it also states on
2 page 14, that, you know, he refers to other
3 shopping center developers that have molding their
4 architecture to respect local vernacular and
5 historic architecture. But we can talk about that
6 with Mr. Roncati.

7 MR. BURGIS: I was intrigued by some
8 of their examples. Some of the examples in there.
9 I worked on the -- my firm worked on the Tice site
10 in Woodcliff Lakes. The only other shopping
11 center along Chestnut Ridge Road, is one about
12 three quarters of a mile to the north, maybe half
13 a mile to the north. There's no connection
14 between the two.

15 MS. AMITAI: None. Yeah, none
16 whatsoever. But he talks also about Ridgewood
17 Montclair, Englewood. Not just Woodcliff Lake.

18 MR. BURGIS: In those examples
19 though, although they, you know, merit attention.
20 Those examples have their -- their entire central
21 business district in one concentrated area. Here
22 there's that slight physical separation between
23 the mall and the rest of the central business
24 district. Primarily by a function of the parking
25 lot. And there's other examples. You do not have

1 these large front yard parking lots that
2 distinguish the shopping center from the rest of
3 the downtown.

4 MS. AMITAI: That's true. Montclair
5 is designed a little spotty but still they try to
6 maintain --

7 MR. BURGIS: But here you don't have
8 that luxury. The building is set where it's set.

9 MS. AMITAI: Yeah. Okay. Thank you
10 very much.

11 CHAIR LIGNOS: Doctor.

12 MR. MADDALONI: Yeah, just one to
13 follow up on the councilwoman's, on one of her
14 points. Do you think it's good planning to have
15 the addition of this drive-thru on the western
16 side of K-mart at the expense of an egress from
17 the shopping plaza?

18 MR. BURGIS: If we didn't have the
19 ability to exit out on Lewis I would -- I would
20 have raised that question. But because we have
21 that, it really doesn't adversely effect
22 circulation on that part of the site at all. And
23 you're driving in an extra wide, 75, 100 feet, and
24 then you exit out Lewis, and then out onto Homans.
25 So, it's not like you're forcing people to travel

1 a great distance to maneuver that we're talking
2 about.

3 MR. MADDALONI: Okay. Thank you.

4 CHAIR LIGNOS: Do you have a
5 question? Yes or no?

6 MR. NYFENGER: No.

7 CHAIR LIGNOS: Mr. Nyfenger, none.
8 Mr. Pialtos I see none. Ms. Isacoff, none.
9 Mr. Didio, Mr. Sinowitz.

10 MR. SINOWITZ: None.

11 CHAIR LIGNOS: Mr. DeNicola.

12 MR. DENICOLA: Just one follow-up
13 question on the parking. You mentioned some was
14 probably going to 1 every 200 square feet, one
15 every 250 square feet. Is there a standard
16 somewhere out there besides, you know, a couple
17 towns are doing it. Is there a standard out there
18 that's being followed nationwide or New Jersey
19 wide?

20 MR. BURGIS: I think it's ULI there
21 is a standard, or if I'm not mistaken, it's about
22 1 for every 300 now. One per 275. There is
23 another publication, whose name escapes me, but,
24 you know, they talk specifically about 1 to 250.

25 MR. DENICOLA: Okay. And 1 to 250

1 is what?

2 MR. BURGIS: Four per thousand.

3 MR. DENICOLA: Right, I think that's
4 what Mr. Basralian said it would 300 -- 13 more
5 spots.

6 MR. BASRALIAN: It would be 13
7 spaces.

8 MR. DENICOLA: Thirteen more spaces.
9 Okay. That was it.

10 CHAIR LIGNOS: Mr. Chagaris. Okay,
11 I'd like to open up to --

12 MR. BASRALIAN: Mr. Chairman, I had
13 a follow up question, which was actually, I think
14 precipitated by a remark that you made.

15 Mr. Burgis, you're familiar with the
16 zoning ordinances of Closter. There is a
17 provision in article 9 that says, for example,
18 that all master plans must be approved, not only
19 by the -- site plans rather; must be approved, not
20 only by the planning board, but by the mayor and
21 the -- mayor and council. That provision seems to
22 be an acronym, and could you explain why that may
23 or may not be an appropriate provision to be in a
24 zoning ordinance?

25 MR. BURGIS: Correct. As I said

1 earlier, it sometimes takes time for ordinances to
2 catch up to today's reality. In 1976, or prior to
3 1976, the then municipal land use law, under
4 certain circumstances, didn't require the
5 governing body to hear site plans. It's the
6 advent of the new municipal land use law in 1976
7 that was stricken. And then here we are, close to
8 40 years later, and you still have that in your
9 ordinance. It has never been changed. You know,
10 there are those anomalies, and you're not the only
11 one, you know, there's many municipalities that
12 have these kinds of outdated provisions that need
13 updating.

14 I can tell you a story. In 1978 I
15 did a comprehensive new ordinance for the Town of
16 Carmel in Upstate New York. And the funniest
17 thing that I found was that they still had on the
18 books the requirement that when you drove your
19 automobile through their central business district
20 you had to have someone walk in front of the car
21 carrying a light. It was written in 1908. And
22 they were concerned about this new fangled machine
23 called an automobile.

24 CHAIR LIGNOS: We just struck that
25 from our's.

1 MR. BASRALIAN: I guess -- I guess
2 my final question on that, is, the governing body
3 has no authority to review master -- I'm sorry,
4 site plans that are approved by a planning board,
5 is that not the case?

6 MR. BURGIS: That is correct.

7 MR. BASRALIAN: Thank you.

8 CHAIR LIGNOS: Okay. Now, members
9 of the --

10 MR. BASRALIAN: Can we take a break?

11 CHAIR LIGNOS: You want to take a
12 break right now?

13 MR. BASRALIAN: Sure.

14 CHAIR LIGNOS: Okay. The board will
15 take a break. The time now is 9:33. We're going
16 to resume at 9:45.

17 (A recess was taken.)

18 CHAIR LIGNOS: Okay. The time now,
19 according to our computer is 9:45. We are all
20 back. And if the board has no objection, I'd like
21 to open up this portion of the meeting to the
22 public. I see no objection. I hear none. And,
23 therefore, any member of the public who has a
24 question of this witness. Yes, sir. Can you
25 please step forward.

1 MR. ROSENBLUME: Sure. Jessie
2 Rosenblume, 65 Knickerbocker Road.

3 Shopping centers come in different
4 classifications. How would you classify this
5 property?

6 MR. BURGIS: As a community shopping
7 center.

8 MR. ROSENBLUME: Okay. Do you know
9 if there are any other shopping centers in
10 Closter?

11 MR. BURGIS: Yes.

12 MR. ROSENBLUME: And where would
13 that be?

14 MR. BURGIS: Down the road.

15 MR. ROSENBLUME: Okay. What
16 distinguishes a shopping center from, let's say,
17 Main Street, a block on Main Street, would that be
18 considered a shopping center?

19 MR. BURGIS: That's considered a
20 central business district. And the distinguishing
21 characteristics include, you know, small lot
22 arrangement, size, you know, no side yards in
23 buildings, on-street parking, sometimes a
24 municipal parking lot.

25 MR. ROSENBLUME: Okay. You

1 described this property or shopping center, as
2 being tired. Could you elaborate why you call it
3 tired?

4 MR. BURGIS: Actually it's the
5 community's master plan that used that term but --

6 MR. ROSENBLUME: Your opinion?

7 MR. BURGIS: Yeah, I would agree
8 with it. The characteristics of the site, are
9 oftentimes 40, 50 years-old. You know, the
10 architectural design from another era. The sign,
11 that free-standing sign is reminiscent of the
12 Jetson's cartoon.

13 MR. ROSENBLUME: Is it that bad? Is
14 it that bad?

15 MR. BURGIS: I didn't -- well, the
16 tiredness of it, yes. I was joking about the
17 sign.

18 MR. ROSENBLUME: Would you call --
19 yeah, would you call the Williamsburg area, that
20 project, would you call that tired?

21 MR. BURGIS: I don't know what
22 you're referring to.

23 MR. ROSENBLUME: It's like colonial
24 days.

25 MR. BURGIS: Oh, Williamsburg,

1 Virginia.

2 MR. ROSENBLUME: Yeah. Would you
3 call that tired?

4 MR. BURGIS: No, that's been kept up
5 very well. You know, I haven't been there in
6 years, but I understand it's been kept up very
7 well. And it's thriving and active. And I
8 wouldn't call this an active mall by any means.

9 MR. ROSENBLUME: Well, why not?

10 MR. BURGIS: Because it's --

11 MAYOR HEYMANN: Tired.

12 MR. BURGIS: It's tired. Because,
13 you know, no one really wants to locate in there.
14 Because, you know, all of the negative
15 characteristics of it. And the poor architectural
16 design. You've got bad circulation. You've got a
17 parking lot needs physical improvements.

18 MR. ROSENBLUME: Okay. If the Stop
19 and Shop store was not vacant, would the Closter
20 Plaza be still tired?

21 MR. BURGIS: If it was not vacant?

22 MR. ROSENBLUME: Yeah. In other
23 words, the stores were all there and high
24 occupancy rate.

25 MR. BURGIS: Architecturally

1 speaking it still looks tired. In terms of the
2 circulation design, it needs improvement there,
3 which is being proposed.

4 MR. ROSENBLUME: Okay. As a
5 planner, looking at a shopping center, is
6 financial success a criteria?

7 MR. BURGIS: It is for them. Not
8 for me.

9 MR. ROSENBLUME: No, but as a
10 planner, do you consider it in any way?

11 MR. BURGIS: No. I look at it in
12 the context of the municipal land use law.
13 Municipal land use law doesn't focus on financial
14 aspect of things. The municipal land use law
15 focuses primarily on the physical characteristics.

16 MR. ROSENBLUME: Okay. Closter
17 Plaza has been there for over 50 years. Does that
18 mean it wasn't a successful project, or it just
19 got tired with age?

20 MR. BURGIS: I don't know what it
21 was 60 years ago.

22 MR. ROSENBLUME: But it's still
23 here, that's the point.

24 MR. BURGIS: When I -- when I moved
25 to this area. I have been here for probably 30

1 years. It wasn't the most active mall even then.

2 MR. ROSENBLUME: Okay. In answer to
3 a question from Mr. DeNicola, there are two
4 structures connected by a facade and an overhang.
5 And you said that is one building?

6 MR. BURGIS: Yes.

7 MR. ROSENBLUME: Okay. If you have
8 two structures connected by a skywalk, how many
9 buildings do you have?

10 MR. BURGIS: You still have one.

11 MR. ROSENBLUME: Are you familiar
12 with the Bergen County courthouse administration
13 building?

14 MR. BURGIS: Yes.

15 MR. ROSENBLUME: They have a
16 skywalk. That's one in your mind?

17 MR. BURGIS: Yes.

18 MR. ROSENBLUME: Okay. Homans
19 Avenue is a short street. So is Vervalen. How
20 does that effect the planning of this particular
21 project?

22 MR. BURGIS: The focus, from a
23 planning perspective, is the relationship of the
24 on-site condition to the adjacent street. Here,
25 you know, the existing condition, you know, lacks

1 any landscape amenity along the street edge. In
2 the rear -- in the Homans Avenue side, I think
3 historically that was created at the rear of the
4 building. By virtue of its redesign, you know,
5 we're providing the landscape amenity along the
6 street to visually enhance it. The circulation
7 works well because if you stand at the placement
8 where the driveways are, you do have a very good
9 vision clearance looking up and down the street.
10 So, you know, this is the kind of planning issues
11 you look at. And, that is, you know, the site
12 works, the site functions.

13 MR. ROSENBLUME: Right. Have you
14 looked at the definition of lot, L-O-T, in the
15 Closter code?

16 MR. BURGIS: I can't say that I have
17 recently.

18 MR. ROSENBLUME: Okay. Well,
19 basically it states that a lot shall have only one
20 building. Is that one of those archaic code items
21 that you were referring to?

22 MR. BURGIS: Not necessarily.

23 MR. ROSENBLUME: Okay.

24 MR. BURGIS: You have to recognize
25 it, in this particular zone, this zone only

1 requires a 7,500 square foot lot.

2 MR. ROSENBLUME: Right.

3 MR. BURGIS: I think the zoning for
4 this site, is unusual, because the size of it,
5 7,500 square feet makes no sense.

6 MR. ROSENBLUME: Right. So, why
7 didn't --

8 MR. BURGIS: You're on a 7,500
9 square foot lot. Because your ordinances, you
10 know, build around its definition. On a 7,500
11 square foot lot, you know, limiting it to one
12 building, you know, sounds appropriate, sounds
13 reasonable.

14 MR. ROSENBLUME: So, after all of
15 these years, why didn't Closter change the code?

16 MR. BASRALIAN: It's not a question
17 that's really appropriate for him to answer. That
18 would be addressed to the governing body.

19 MR. DENICOLA: I don't think they
20 could answer it either.

21 MR. CHAGARIS: This witness was not
22 on the governing body.

23 MR. ROSENBLUME: No, I'm looking for
24 the answer that he gave before, that the code is
25 archaic.

1 MR. CHAGARIS: Well, I don't think
2 he said that but --

3 MR. ROSENBLUME: Would you use those
4 terms, that the code is out of date?

5 MR. CHAGARIS: Why don't you
6 rephrase -- rephrase the question.

7 MR. BURGIS: Not necessarily. There
8 are certain aspects of the code that need to be
9 updated.

10 MR. ROSENBLUME: Okay.

11 MR. BURGIS: Now, in municipalities
12 that we represent, we advocate, on a regular
13 basis, examining the code, and tweeking it to make
14 sure that it's contemporary and current.

15 MR. ROSENBLUME: Great. Thank you.

16 MR. BURGIS: You're welcome.

17 CHAIR LIGNOS: Yes, sir. Please
18 step forward.

19 MR. ISACCON: Steve Isaacson, 97
20 Columbus. Was that your letter in the newspaper
21 this week?

22 MR. BASRALIAN: Oh, yeah, the one
23 about the dunes, yes.

24 MS. AMITAI: Oh, I saw that too.

25 MR. ISACCON: Infamous. Basically

1 the master plan, from what I recall, deals with
2 housing, as well, trying to increase housing in
3 the downtown area. Do you feel that this plaza
4 would lead to housing? Because if you go north of
5 us in Norwood, that's what they're doing with the
6 shopping center there, they're putting housing
7 above what's supposed to be a Trader Joe's, or a
8 large thing. Your opinion, do you feel that this
9 shopping center would lend to housing?

10 MR. BURGIS: That would have
11 necessitated this application being made to the
12 zoning board of adjustment. So, it's in the
13 context of the municipality's ordinances, one
14 can -- you know, one wouldn't necessarily do that.
15 On the other hand, I have been an advocate of, you
16 know, at-grade retail with apartments above.

17 MR. ISACSON: Okay. And also just
18 a point, you called Closter Plaza being, looking
19 tired. Maybe it's just dated. I mean some people
20 like the historic look of a 60's, you know. I
21 mean my brother was an art deco dealer. I like
22 things that look like the 30's, and the 20's. You
23 know, so, it's personal taste. Also, just
24 curious, if you felt that the parking is not
25 necessary anymore because of internet shopping,

1 then why is Edens spending so much money on the
2 shopping center?

3 MR. BURGIS: Well, I didn't say
4 that.

5 MR. ISACCCSON: I believe you said
6 that one of the reasons why parking is not needed
7 is because -- one of the results is because of
8 internet shopping.

9 MR. BURGIS: No, that's not what I
10 said.

11 MR. ISACCCSON: Okay.

12 MR. BURGIS: I was asked,
13 specifically whether the amount of parking
14 required by this code is necessary. And if not,
15 why not. And I responded by saying, one of the
16 reasons why you don't need such a dramatic parking
17 standard is because internet shopping has reduced
18 the volume of traffic going to the mall, but you
19 still need parking.

20 MR. ISACCCSON: Okay. But, once
21 again, there is a huge investment being made in
22 this shopping center. So, I would disagree with
23 the statement a little bit. You stated that, I
24 believe the facades of these buildings will be
25 27 feet 5 inches, and the roof was going to be --

1 MR. BURGIS: No.

2 MR. ISACCCSON: Is that the maximum?

3 MR. BURGIS: That's the maximum.

4 But it's only where Whole Foods and the K-mart
5 building.

6 MR. ISACCCSON: The other buildings
7 would be?

8 MR. BURGIS: Everything else will be
9 25 feet.

10 MR. ISACCCSON: Okay. And how high
11 would the roof be itself? Two and half feet?

12 MR. BURGIS: Lower.

13 MR. BASRALIAN: I think that was --
14 if I could interject. That was testified to by
15 the architect, that the roof height is going to
16 be, along with the facade, but it depends upon the
17 use of the type of building, type of tenants that
18 goes into it.

19 MR. ISACCCSON: Okay. And let's say
20 it's a 25-foot roof, do you feel that that on the
21 inside they could build two stories?

22 MR. BURGIS: I would defer to the
23 architect. I'm not an architect.

24 MR. ISACCCSON: Okay. Thank you.
25 Now, also, you know, I just want to quote Max

1 Learners, when you chose the lesser of two evils
2 always remember that it's still an evil. I
3 appreciate the fact that you're reducing the
4 building sizes, and you're reducing the impervious
5 a little bit. But it's just the lesser of the two
6 evils. We're not really making a big jump. Even
7 at its best our parking is still 600 spaces below
8 what the ordinance requires, which brings me to my
9 question. Do you feel that public transportation
10 is a good thing for the shopping center?

11 MR. BURGIS: I think public
12 transportation is a good thing for Bergen County
13 as a whole. I would take issue with your
14 statement that this is the lesser of two or more
15 evils, because I think there are so many
16 beneficial aspects to this application that they
17 really can be overlooked. This center needs help.
18 This center, you know -- you've all lived with it
19 for a long time. I've driven by it. And, you
20 know, I've witnessed it myself, many, many times,
21 for many, many years. And when you think about
22 all the improvements that I've kicked off during
23 my testimony, you know, I don't see where the evil
24 is. Because if you're going to suggest that this
25 parking shortage, and you did suggest it, that

1 that the parking shortage is the "evil" the
2 reality is, it's existing 211,000 square feet has
3 a dramatic shortfall. We're reducing the amount
4 of floor space and increasing the amount of
5 parking. So, at a minimum, we're addressing, to a
6 certain degree, the biggest concern you had.
7 We're improving that condition, along with all the
8 other things we're improving.

9 MR. ISACSON: Well -- so -- so, in
10 other words, in your opinion, this is not a
11 perfect application. A perfect project. There is
12 room for improvement.

13 MR. BURGIS: You know, in -- in
14 terms of the context of the site constraints, you
15 know, this is a dramatic improvement. You know,
16 you're not going to get the full amount of
17 parking. That's just not going to happen. But
18 recognizing that, you are dramatically reducing
19 the shortfall of the parking. And that's
20 compounded by the fact -- or not compounded, but
21 the issue is that your parking standard, that you
22 suggested is 600 spaces short, you're parking
23 standard dramatically overemphasizes a need for
24 more cars on this site. If you use the standard
25 that I was suggesting, and I believe the engineer

1 had previously used similar standards, all you are
2 is short 13 parking spaces. That's all you'll be
3 short. And I would suggest to you that on any
4 given day during the peak shopping period, you
5 know, you'll get a variation in vehicular flow of
6 more than 13 cars.

7 MR. ISACSON: No, I appreciate
8 that. And there was one other point, but I can't
9 remember what it was. Oh, no, it was also the
10 fact that, the thing that concerned me, was that
11 you had stated that this -- you -- well, I got the
12 impression that you feel that this mall is going
13 to become a lot more active than where it is
14 today, is that not true?

15 MR. BURGIS: Certainly, yes, that is
16 true.

17 MR. ISACSON: Okay. So, wouldn't
18 this increase in activity increase the demand in
19 parking?

20 MR. BURGIS: Yes. Look how few
21 parking spaces are occupied today.

22 MR. ISACSON: Go there on a
23 Saturday or Sunday. Active and there's nobody
24 there. Thank you very much.

25 CHAIR LIGNOS: Okay, any other

1 member of the public wishing to speak? Sir. Yes.

2 MR. SEGRETO: Thank you.

3 CROSS-EXAMINATION BY MR. SEGRETO:

4 Q Good evening, Mr. Burgis.

5 A Good evening.

6 Q Mr. Burgis, I want to talk about
7 the -- some of the nonconformities on this lot.
8 The number of buildings: You, as well as all the
9 other experts, in this application, keep
10 indicating that there are four existing buildings
11 in this shopping center. And my recollection,
12 from the 2009 application, is that all the
13 experts, including you, testified that there were
14 five buildings. So, has one of the buildings been
15 removed since 2009?

16 MR. BASRALIAN: I'm going to object
17 to that question because we're talking about a
18 different application and the determination as to
19 the number of buildings was made by the
20 municipality, not by the applicant, in this
21 application as a matter of fact.

22 MR. CHAGARIS: Well, I agree that
23 this application doesn't -- didn't mention
24 anything about five buildings. However, the only
25 point I would suggest, is, that did Mr. Burgis, in

1 the prior application, indicate in any report that
2 he presented, that there were five buildings. I
3 don't recall that. Do you recall that?

4 MR. BURGIS: Well, I didn't go over
5 my notes from that.

6 MR. SEGRETO: I can tell you in his
7 testimony on October 1, 2009 on page 41, line 11
8 through 21, he did in fact say that there were
9 five buildings.

10 MR. CHAGARIS: Can we take a look at
11 that?

12 MR. BASRALIAN: I don't see the
13 relevance to this application. It was
14 Mr. DeNicola who made the determination there were
15 not five. There were four. And that, I assume,
16 that application was incorrect.

17 MR. CHAGARIS: I understand. But I
18 mean if the witness can substantiate --

19 BY MR. SEGRETO:

20 Q Take a look at the box portion.
21 Didn't you testify, before this board, and said
22 that there was five buildings?

23 A I did. The only thing that that shows is
24 that, if that is the case, we have a more dramatic
25 reduction in number than I previously testified.

1 Q Well, do me a favor, and show me
2 where the four buildings are, because I'm very
3 confused about the number of buildings.

4 MR. BASRALIAN: The existing
5 conditions. The one behind that, Joe. Just
6 refer, if you would, to the -- the exhibit number
7 that's up there.

8 A A-10, you got the large building in the
9 western portion of the site where the K-mart is.
10 You got the, I'll call it the central building,
11 small building right off off Vervalen, and the
12 L-shaped building, including the theater, in the
13 lower left-hand corner of the site.

14 Q K-mart, the central building, the
15 L-shaped building which includes the theater,
16 correct, that's three, right?

17 A Yes.

18 Q And the freestanding bank is four?

19 A Yes.

20 Q On that -- on that plan that you
21 just looked at, there was, what was known prior,
22 as building C, and that's being removed in this
23 application, isn't that correct? Is that where
24 the five came in?

25 A I'm not sure what building C is. You have

1 to show me.

2 Q The building that sticks out in
3 front of the central building near the L-shaped
4 building.

5 A Yes.

6 Q That was the fifth building?

7 A Yes.

8 MR. BASRALIAN: Excuse me. That was
9 the fifth building, you're referring to the prior
10 application?

11 MR. SEGRETO: Yes.

12 Q And that building is still there now
13 when we talk about the existing buildings, right?
14 It's still there?

15 A Yes.

16 Q So, aren't we going from five
17 buildings to four buildings?

18 A I think we're going from five buildings to
19 three. And you just enhanced our argument. Thank
20 you.

21 Q And the five includes the existing
22 bank?

23 A Yes.

24 Q Or does that make it six?

25 A No. That was five.

1 Q All right. All right. Let's talk
2 about the K-mart is 84,000 square feet and you're
3 reducing it to 73,000 square feet, correct?

4 A And change, yes.

5 Q All right. So, with respect to the
6 K-mart building, you're doing what the law
7 requires, and that is to bring that building more
8 into conformity with the ordinance, isn't that
9 correct?

10 MR. BASRALIAN: I object to the
11 statement, the law requires it. The law doesn't
12 require that building to be reduced in size, since
13 it's pre-existing. The applicant is proposing to
14 reduce it in size from 84 to 73,000. It's a
15 distinction, please.

16 MR. CHAGARIS: Sustained.

17 MR. SEGRETO: Even though he
18 answered, yes, he agreed with me?

19 MR. CHAGARIS: Sustained.

20 MR. BURGIS: No, actually I didn't
21 finish my answer but --

22 MR. SEGRETO: But you did agree with
23 me. What's the explanation?

24 MR. BURGIS: Well, the explanation
25 would have been pretty much what Mr. Basralian

1 just identified.

2 BY MR. SEGRETO:

3 Q All right. Let's talk about that
4 building you say is the central building. That's
5 the building with the existing Stop and Shop
6 space, is that correct?

7 A Yes.

8 Q And that Stop and Shop space is
9 roughly 27,000 square feet?

10 A I believe so.

11 Q And do you know how big the
12 remaining part of that central building is?

13 A No, I don't.

14 Q Is the applicant expanding any part
15 of that central building in phase I?

16 A No, there is a reduction. No, excuse me,
17 I'm not certain.

18 Q Fine. Is it essentially staying the
19 same size?

20 A Yes.

21 Q So, it's roughly 41,000 square feet,
22 the remaining part of that central building,
23 right?

24 A You're talking about the grocery store
25 building?

1 Q Well, I'm talking about the building
2 you described as the central building, which
3 contains the grocery store, and more, right?
4 27,000 square feet of that central building is the
5 supermarket space, right, the empty supermarket
6 space?

7 A Yes.

8 Q And then there's the remaining
9 41,000 square feet, right?

10 A Okay.

11 Q So, that building, that central
12 building then, is it 68,000 square feet, right?

13 A If your math is correct.

14 Q Well, 27,000 and 41,000.

15 A I don't have these numbers at my finger
16 tips.

17 MR. CHAGARIS: Could you get to the
18 point. Because he didn't really testify about the
19 size. I'm sure you're getting some place.

20 MR. SEGRETO: Oh, yeah, we're
21 getting some place. Of course. Of course we are.

22 MR. CHAGARIS: All right, let's hear
23 it.

24 Q In phase I, that central building is
25 being -- the square footage is being increased, is

1 it not?

2 A I believe so. Let me get the maps in
3 front of me so I can --

4 MR. BASRALIAN: Well, you know, his
5 testimony wasn't anything about the size. It
6 was -- it really dealt with zoning. And the
7 questions you're asking really should have been
8 addressed to the architect or the engineer. If
9 it's a zoning question that's within the purview
10 of his testimony, then please ask that. Not the
11 size of buildings. That's been hashed and
12 rehashed in the previous seven hearings.

13 MR. SEGRETO: Oh, this is not hash
14 and rehash.

15 MR. CHAGARIS: Well, are you laying
16 a foundation for a point that you -- or a question
17 that you want to make?

18 MR. SEGRETO: Oh, yes.

19 MR. CHAGARIS: Okay, cause why don't
20 you got to that point in the question.

21 BY MR. SEGRETO

22 Q You're expanding the square footage
23 in this central building, are you not?

24 MR. BASRALIAN: Could you -- could
25 you -- could I ask that the question be repeated?

1 Maybe you could read that back, please.

2 Mr. Burgis, just hold on until the
3 question is read back, please.

4 (Whereupon, the requested portion of
5 the testimony is read back by the
6 reporter.)

7 MR. BASRALIAN: The supermarket is
8 not a separate building and it keeps being
9 referred to as a building. And that's an
10 incorrect characterization.

11 MR. SEGRETO: I'm not characterizing
12 it as a separate building. He told us it was one
13 central building.

14 MR. BASRALIAN: You refer -- excuse
15 me, you referred to it as the supermarket
16 building. It is not a freestanding building.

17 MR. SEGRETO: Yeah, I understand
18 that.

19 MR. MADDALONI: Could I ask for just
20 a point of clarification here. The planner
21 testified about the total square footage after
22 phase I and phase II. So, he made no mention
23 about the individual buildings.

24 MR. CHAGARIS: No, you're right.
25 You're right. That's why I was assuming

1 Mr. Segreto was laying a foundation to a question.
2 That's why I keep asking him: What is the point
3 that you want to make, as opposed to --

4 MR. SEGRETO: It currently is a
5 68,000 square foot building and they're increasing
6 it to an 85,000 square foot building. Don't you
7 think that that's significant from a legal
8 standpoint?

9 MR. CHAGARIS: That's not what his
10 testimony was.

11 MR. DENICOLA: They're connecting
12 the buildings.

13 MR. CHAGARIS: They're connecting
14 the buildings and they're keeping the total square
15 footage the same. So, I don't know -- there may
16 be intermittent changes, but that's not the end
17 result. That's what not what we're approving.
18 We're approving -- if there's going to be an
19 approval, that's not the application. The
20 application is for --

21 MR. MADDALONI: The total square
22 footage.

23 MR. CHAGARIS: -- the total
24 structure. Not the fact that --

25 MR. SEGRETO: I know you think

1 that's what the criteria is. Okay. But you're
2 wrong. and I know you're wrong, Arthur. And I
3 have to establish a record. And I have to ask the
4 question. If you're not going to allow me to ask
5 the questions that are relevant to the legal
6 issues, then just tell me that, Arthur, and we'll
7 move on.

8 MR. CHAGARIS: I'm allowing you to
9 ask questions that are relevant to legal issues.
10 But this witness did not testify as to how many
11 square feet in that so-called central building.
12 He didn't testify about that. So, how can you
13 cross-examine about that.

14 MR. SEGRETO: He's the planner
15 testifying about jurisdiction of this board.

16 MR. CHAGARIS: It has nothing to do
17 with the square footage.

18 MR. SEGRETO: And he's testifying
19 about all the variances.

20 MR. CHAGARIS: It has nothing to do
21 with the square footage you're talking about.

22 MR. SEGRETO: Oh, it doesn't?

23 MR. CHAGARIS: No, it does not.

24 MR. SEGRETO: Oh, come on Arthur,
25 please.

1 MR. CHAGARIS: No, c'mon. He didn't
2 say one word about an inter -- interim square
3 footage. He talked about the totality.

4 MR. SEGRETO: It doesn't matter if
5 he testified as to the interim square footage.

6 MR. CHAGARIS: Yes, it does matter.

7 MR. SEGRETO: He's the planner for
8 the project.

9 MR. CHAGARIS: He's not the engineer
10 or the architect.

11 MR. SEGRETO: It has nothing to do
12 with engineering or architecture.

13 MR. CHAGARIS: Yes, it does.

14 MR. SEGRETO: It has to do with
15 planning issues. Absolutely, positively without
16 question. My question to him, simply is: Are you
17 expanding the square footage in that central
18 building from 68,000 square feet to 85,000 square
19 feet. That's my question.

20 MR. BASRALIAN: All right. Now I'm
21 going to object to the question.

22 MR. CHAGARIS: Go ahead, what's your
23 objection.

24 MR. BASRALIAN: Because that's not
25 what he testified to. He testified to the

1 totality of the existing center and the ultimate
2 reduction to a lesser center by some 3,800 square
3 feet. That's what he testified to. Not about
4 individual components of the building.

5 MR. SEGRETO: It doesn't matter what
6 he testified to. He is testifying about
7 jurisdiction and all of the variances that are
8 required. And this goes to the variances as well
9 as the issue of jurisdiction. It's an absolutely
10 proper question. And it's simple. He just says,
11 yes, they're expanding it.

12 MR. BASRALIAN: I submit that that
13 was -- ask the questions about variances and
14 jurisdiction, but nothing relevant to the size of
15 any particular portion of the totality of it.

16 MR. CHAGARIS: No, I sustain the
17 objection.

18 BY MR. SEGRETO:

19 Q Mr. Burgis, the supermarket use on
20 this property is going from 27,000 square feet to
21 41,256, is that correct?

22 MR. BASRALIAN: Excuse me just --

23 A Yes.

24 MR. BASRALIAN: -- for
25 clarification, there is no supermarket use on the

1 property currently.

2 MR. CHAGARIS: Could you rephrase
3 the question, sir.

4 MR. SEGRETO: Yes.

5 Q There was a old Stop and Shop/Grand
6 Union on this site, correct?

7 A Yes.

8 Q And it operated in the central
9 building that you pointed out to us, isn't that
10 correct?

11 A Correct.

12 Q And that space has been vacant now
13 for a long time, isn't that true?

14 A My understanding.

15 Q And that space is going to be taken
16 up by a new Whole Foods, correct?

17 A It's going to be taken up, as labeled, as
18 a grocery store.

19 Q But it's going to be a Whole Foods,
20 isn't it?

21 A I don't think the application has
22 specified that.

23 Q And that new supermarket is going to
24 be 41,256 square feet, right?

25 A Correct.

1 Q And it's going to have a mezzanine
2 of 3,000 square feet, right?

3 A That is not correct.

4 Q It's not going to have a mezzanine?

5 A No. It's a mechanical equipment area of
6 approximately 3,000 square feet. It's not a
7 mezzanine.

8 Q Well, on page 6 of the Omland plans
9 it says, retail A, grocery store plus or minus
10 41,256 square feet. Mechanical mezzanine, 3,000
11 square feet. Do you know something different than
12 Omland knows?

13 A No. You have an incorrect use of
14 terminology you can call it.

15 Q What's going to be -- what's going
16 to be in this mechanical area that you're telling
17 me about?

18 A Just that. Mechanicals. There's no
19 retail. There's no office space. It's just for
20 mechanicals.

21 Q How do you know that, if you don't
22 even know what the supermarket chain is?

23 A I know that from my client.

24 Q And did the client tell you that
25 Whole Foods is going to have a mechanical

1 mezzanine of 3,000 square feet?

2 A They told me that the grocery area will
3 have a mechanical area, roughly 3,000 square feet.

4 Q And you don't count that 3,000
5 square feet in your overall square footage for the
6 shopping center, right?

7 A I believe that's correct.

8 Q And you'll agree with me that all
9 the mechanicals that are going to go in the 3,000
10 square feet mezzanine, if the mezzanine was not
11 located there in the building, that those
12 mechanicals would have to take up retail space,
13 which would reduce the amount of retail area?

14 MR. BASRALIAN: I'm going to object
15 to the question. Because, first of all, he
16 asked -- excuse me. He asked you to -- you asked
17 if he would agree with you, and he's not the
18 architect. All he did was testify as to what's on
19 the plan. That's a mechanical area. Period.

20 MR. CHAGARIS: Sustained.

21 Q All right. You'll agree with me,
22 anyway, that the supermarket use that was on the
23 property is 27,000 square feet and now it's going
24 to be over 41,000 square feet, isn't that true?

25 A I will confirm that the figure of the

1 new -- the proposed grocery area is 41,256. I'm
2 not exactly sure of the exact square footage for
3 the Stop and Shop.

4 Q You'll agree with me that the
5 supermarket is the greatest generator of traffic
6 of any retail, isn't that correct?

7 A I don't know that for a fact.

8 Q Would you say it's one of the
9 greatest generators?

10 A It's a traffic generator.

11 MR. BASRALIAN: You know, he didn't
12 talk about any particular unit being a generator.
13 Those questions really were addressed by
14 Mr. Keller, who will be here next week, and that's
15 where they should properly be addressed.

16 MR. SEGRETO: He's a planning
17 expert. C'mon. What's the ruling, Arthur?

18 MR. CHAGARIS: I think he already
19 answered the question. But I understand
20 Mr. Basralian's comments and I agree with them
21 actually. But he did answer the question. So,
22 ask him another question.

23 Q All right. I want you to take a
24 look at Mr. Roncati's demolition exhibit, A-18.

25 MR. BASRALIAN: Relevance for that

1 question for him to review the demolition plan.

2 MR. CHAGARIS: Well, he just said
3 get it out. I don't know -- what is your question
4 going to be? Let's hear the question. Let's hear
5 the testimony.

6 MR. SEGRETO: They have a
7 nonconforming building and they are removing all
8 of the building. So, I want to ask some questions
9 about the planning and the legal significance of
10 it.

11 MR. BURGIS: I don't see that
12 exhibit here.

13 MR. SEGRETO: Can somebody get the
14 exhibit out so I can look at it.

15 MR. BASRALIAN: All the exhibits
16 were left here. Refer to the exhibit number so
17 that Mr. Segreto can ask questions with respect to
18 a specific exhibit.

19 MR. BURGIS: This is A-18. What was
20 your question, I'm sorry.

21 BY MR. SEGRETO:

22 Q Yeah, on Exhibit A-18, the central
23 building, and it's been represented that the pale
24 color represents the portion of the central
25 building that's going to be demolished. Do you

1 agree with me that the majority of the central
2 building is going to be demolished?

3 A This exhibit depicts that the portion of
4 that building to be removed is more than the
5 portion of the building to remain, yes.

6 Q And Mr. Roncati indicated to us that
7 the green portion there is the Dollar Tree, and
8 the only reason that's not going to be demolished
9 is because they have an existing lease, and he
10 can't demolish that part of the building.

11 A I believe that's correct.

12 Q And he indicated that when Dollar
13 Tree moves out that that portion of the building
14 is going to be demolished.

15 MR. BASRALIAN: I don't believe he
16 said that at all. He didn't say that. Incorrect.

17 Q He said that the demolition of
18 majority of building B, and then rebuilding it to
19 85,000 square feet, has any significance from a
20 planning standpoint.

21 A Not from my perspective in the context of
22 which I testified this evening.

23 Q Is there any significance to the
24 increase from 67,000 square feet to 85,000 square
25 feet?

1 A Same answer.

2 Q Aren't you increasing the
3 nonconformity if you increase it by 21,000 square
4 feet?

5 A No.

6 Q The K-mart building is 84,000 square
7 feet. If you were proposing to make that, let's
8 say 95,000 square feet, would you need a use
9 variance for that?

10 MR. CHAGARIS: I'm going to sustain
11 the objection.

12 MR. SEGRETO: Can't ask a -- can't
13 ask an expert a hypothetical?

14 MR. CHAGARIS: That's not what he
15 testified to.

16 MR. SEGRETO: Yeah, I understand, I
17 can't ask the expert a hypothetical question.

18 MR. CHAGARIS: Not that
19 hypothetical. It has nothing to do with this
20 application.

21 MR. SEGRETO: He can't answer that
22 question?

23 MR. CHAGARIS: No.

24 Q Don't you need a use variance to,
25 after you demolish building B, to add 21,000

1 square feet to building B?

2 MR. CHAGARIS: Well, you can answer
3 that question.

4 A Absolutely not.

5 Q You sure about that?

6 A I am a hundred percent certain.

7 Q Now, the subdivision of the lot in
8 front of the K-mart building, why is the applicant
9 subdividing that lot off and not including it in
10 his plan?

11 MR. CHAGARIS: It doesn't make any
12 difference why.

13 MR. SEGRETO: Doesn't make a
14 difference?

15 MR. CHAGARIS: No, it doesn't. It
16 doesn't make any difference. Sustain the
17 objection.

18 Q Are you familiar with the 2012 plans
19 that were submitted by this applicant for this
20 property?

21 A Yeah. These plans, yes.

22 Q No, these. The -- I mean the ones
23 from 2012, the ones that were withdrawn.

24 A No.

25 Q You're not familiar with that?

1 A No.

2 Q You don't believe that by reducing
3 the size of this lot with all of its
4 nonconformities, it's not an intensification of
5 all of those nonconformities?

6 A No. The -- the ordinance, as I said
7 earlier, permits a lot as small as 7,500 square
8 feet on this property, and that subdivision is
9 consistent with that standard.

10 Q I want you to assume that the 2012
11 plans showed a new retail building, a new
12 building.

13 MR. BASRALIAN: Objection. They're
14 not before -- the 2012 plans are not before the
15 board.

16 MR. SEGRETO: I understand. Let me
17 get the question out.

18 MR. CHAGARIS: You can get the
19 question out.

20 Q The 2012 plans did not have this
21 section subdivided off, but it had -- it was part
22 of their plans, and it showed a freestanding 6,000
23 square foot building on it.

24 MR. BASRALIAN: Objection.

25 MR. CHAGARIS: Sustained.

1 Q Aren't you increasing the
2 nonconformities when you are reducing the size of
3 the lot, and in phase I you are increasing the
4 square footage of the buildings?

5 MR. CHAGARIS: That's a compound
6 question.

7 MR. SEGRETO: That's not a compound
8 question.

9 MR. CHAGARIS: Yeah, it is. Because
10 if you're reducing the lot, and in phase II, when
11 you use the word and, that makes it a compound
12 question.

13 MR. SEGRETO: No, it's not a
14 compound question.

15 MR. CHAGARIS: It is. You're asking
16 two questions --

17 MR. SEGRETO: It's one question.

18 MR. CHAGARIS: -- right, connected
19 by the word and.

20 Q Aren't you increasing the intensity
21 of the use on this property when you reduce the
22 size of the lot and you increase the square
23 footage of the buildings in phase I?

24 MR. BASRALIAN: It's -- it's --
25 it's -- just ask it in two questions. Two

1 sections. It's a compound question. Ask the
2 first part and then ask the second one and I won't
3 object to the question.

4 MR. CHAGARIS: Let's hear the
5 question before --

6 Q The question involves both things
7 going on. So, it's not a compound question. The
8 question is: Aren't you increasing the intensity
9 of the use by reducing the size of the lot and
10 increasing the square footage? Now, that's not a
11 compound question. It's one question.

12 MR. CHAGARIS: Wait a minute. Wait a
13 minute. If your intention, by that question, is
14 to show the total result, then the total result
15 is, not just phase I. You have to include phase
16 II. So, your question is: By subdividing --

17 MR. SEGRETO: I'm asking about phase
18 I, Arthur.

19 MR. CHAGARIS: Wait a minute. Wait
20 a minute. Wait a minutes. Wait a minute. Wait a
21 minute. I'm speaking now. Mr. Segreto, I'm
22 speaking. I didn't interrupt you. You're not
23 allowed to interrupt me.

24 MR. SEGRETO: You interrupted me
25 throughout my entire cross-examination.

1 MR. CHAGARIS: In response to an
2 objection I sustained. Objections, yes. But if
3 you're asking him, by virtue of the subdivision of
4 lot 1.02, and the increasing of the size of the
5 structures in phase I, and then reducing them to
6 the -- in phase II, does that create an
7 intensification; then that is a proper question.

8 MR. SEGRETO: That's not my
9 question.

10 MR. CHAGARIS: Then I'm sustaining
11 the objection on the other question.

12 Q Phase I is, there's going to be a
13 temporary condition, is that correct?

14 A That is correct.

15 Q All right. How long is that
16 temporary condition going to last?

17 A It had been indicated, earlier, it may be
18 as early as August of 2015. It might even be
19 earlier, if that user were to vacate earlier than
20 that.

21 Q You'll agree with me, by subdividing
22 that lot off, you are removing a substantial part
23 of the lot that could go towards parking, isn't
24 that true?

25 A You are removing a portion of the existing

1 lot. I wouldn't use the word substantial.

2 Q That could be used for parking?

3 A Could be used for building. It could be
4 used for a lot of things. That's -- that's -- you
5 know, the ordinance allows one to subdivide this
6 property. And that's what the applicant is doing.
7 Consistent with code.

8 Q As the -- as the -- has the owner of
9 the property previously subdivided a portion of
10 this property off?

11 MR. BASRALIAN: Objection. Not
12 relevant.

13 MR. SEGRETO: It's what, irrelevant?

14 MR. BASRALIAN: Not relevant.

15 MR. SEGRETO: Not relevant. Oh.

16 MR. CHAGARIS: Sustained.

17 MR. SEGRETO: You sustained that
18 one?

19 Q In phase I you're adding about
20 10,764 square feet. But you're only adding a
21 retail space, and you're only adding 10 spaces.
22 If you're increasing the square footage by that
23 much, the parking criteria requires you to have 62
24 spaces for that 10,000 square feet. Do you agree
25 with me on that?

1 A I will assume your math is correct.

2 Q So, aren't you increasing the
3 nonconformity in phase I, by only providing 10
4 spaces when you're -- when you should be adding 62
5 spaces?

6 A In that -- for that temporary situation,
7 that is correct.

8 Q Now, go back to Exhibit A-18.
9 Mr. Roncati shows that you're completely
10 demolishing what used to be known as building C.
11 That's the building that jettisons out, is that
12 correct?

13 A I don't know the building references by
14 letters.

15 Q The problem is it's not identified
16 on this.

17 A A-12, I don't see a reference to a
18 building C. So, I don't know what building you're
19 referring to.

20 Q This one here.

21 MR. CHAGARIS: Let the record
22 reflect that the --

23 MR. BASRALIAN: Okay. Now, --

24 MR. CHAGARIS: Let the record
25 reflect that the objector is pointing to a portion

1 of the, what we call the movie theater building
2 that is in orange colored or pale colored that is,
3 appears to be demolished. To be demolished.

4 MR. BASRALIAN: It is not a separate
5 building and Mr. Segreto seems to --

6 MR. CHAGARIS: It's a portion of the
7 building.

8 MR. BASRALIAN: It's a portion of
9 the existing building. It's not a separate
10 building. It's part of a structure.

11 MR. SEGRETO: 2009 was a separate
12 building. I forgot. Okay.

13 MR. CHAGARIS: That area --

14 Q But in any event -- in any event,
15 you'll agree with me, that the L shaped building,
16 again, the majority of that building seems to
17 be -- is going to be demolished, isn't that
18 correct?

19 A As depicted in A-18, yes, that is correct.

20 Q Again, with regard to that building,
21 from a planning standpoint, or let's stick with a
22 planning standpoint, that you believe that's not
23 significant?

24 A That is not significant at all. And, you
25 know, an applicant is entitled to redevelop a site

1 without kicking it over into what you suggested
2 earlier, would become a use variance. These are
3 all permitted uses, allowed as of right, in this
4 zone and on this site.

5 Q But they're nonconforming buildings,
6 right?

7 A There's a setback nonconformity, but that
8 doesn't go to the heart of what you're suggesting.
9 The uses are all permitted. And, consequently,
10 they're entitled to occupy this space or knock
11 some of it down, or knock all of it down and still
12 stay before this board with a site plan.

13 Q And that -- and that holds true for
14 the central building B?

15 A It holds true for every one of these
16 buildings on the site.

17 Q And one of the nonconformities of
18 central building B is that it's 67,000 square
19 feet, right?

20 A So what. It doesn't matter. You're
21 allowed to knock down portions or all of existing
22 buildings and occupy them with permitted uses.
23 And if they're occupied by permitted uses, you
24 stay before this planning board for site plan
25 approval.

1 Q So, if I have -- strike that. All
2 right, I want to take a look at the -- at the
3 parking. And I want to go to parking in front of
4 the K-mart building. The K-mart building is
5 84,000 square feet. And in phase I it will stay
6 84,000 square feet, correct? You're not touching
7 the -- you're not touching the K-mart space --

8 A I believe that's correct, yes.

9 Q And by subdividing the lot out,
10 you're removing parking spaces, are you not, from
11 the parking lot?

12 A We are increasing the number of parking
13 spaces from existing conditions, during phase I,
14 by 10 spaces.

15 Q Where are you going to put those?
16 Where are those 10 spaces being added? Any idea?

17 A No, I couldn't tell you that. They're
18 distributed over an entire lot.

19 Q You'll agree with me that the
20 existing K-mart, 84,000 square feet, requires 480
21 parking spaces, right?

22 A I will assume your math is correct.

23 Q And I took it upon myself to use
24 Omland page 6, to count the parking spaces that
25 are currently available, with the lot being

1 subdivided. And it's only 173 parking spaces.
2 You'll agree with me that that's a substantial
3 deficiency, is it not?

4 A In using your flawed analysis, yes. But
5 the reality is, in a comprehensive integrated
6 shopping center design, one doesn't go to a
7 shopping center and say, if I'm going to this
8 grocery store, for example, and can't park
9 directly in front, I'm going back home. You park
10 where ever the space is available. The entire lot
11 is designed to be used by anyone who shops in the
12 center.

13 Q The applicant has indicated that
14 they, in the northern portion of the K-mart
15 building, there's a potential for a pharmacy,
16 that's with the drive-up window pharmacy.

17 A A permitted use, yes.

18 Q A permitted use. You don't expect
19 someone who wants to shop at the, let's say the
20 CVS, to park by the theater, do you? They are
21 going to park by the theater and then go get a
22 toothbrush and toothpaste at the CVS?

23 MR. MADDALONI: Well, I would.

24 A Let me explain my --

25 Q Dr. Maddaloni will do that. That's

1 one.

2 CHAIR LIGNOS: He'd go to Harmons.

3 A And I'm two. And I'm two, Mr. Segreto.
4 Because the reality is, the whole thrust -- well,
5 one of the thrusts and focuses of this design is
6 that you created an experience for people to shop
7 and experience the character of the overall
8 center. So, you can park anywhere along the
9 entirety of the center. And if you have to go to
10 CVS you might decide to window shop and shop
11 elsewhere.

12 Q Now, the -- in phase II --

13 A That goes -- and let me just finish.
14 That's consistent with what the master plan talks
15 about. The master plan talks about encouraging
16 that kind of pedestrian activity.

17 Q The K-mart, phase II is going to be
18 reduced to 73,000 square feet. And you're going
19 to add parking spaces, right?

20 A Yes.

21 Q So, that's 73,000 square feet. It
22 requires 417 parking spaces, right? If my math is
23 correct.

24 MR. BASRALIAN: Except -- except
25 we're talking about shopping in totality. Not use

1 by use. Or store. Or part of a structure. And I
2 object to the relationship of trying to tie the
3 existing K-mart, whether it's 84,000 square feet,
4 or reduced to 73,000, as having its own parking
5 requirement. The parking requirement is for the
6 entire center. Not a particular portion of any
7 structure.

8 MR. CHAGARIS: This is with the
9 Poland versus South Plainfield.

10 MR. BASRALIAN: Right. That's
11 exactly right.

12 MR. CHAGARIS: Sustained.

13 MR. MADDALONI: Again, I'll just
14 clarify that this witness testified to the total
15 number of parking spots. Not, which ones were
16 assigned for which parts of the shopping center.

17 MR. BASRALIAN: That was my
18 objection, Doctor.

19 MR. SEGRETO: So, I can't ask any
20 questions about the parking spaces that are
21 immediately adjacent to these uses?

22 MR. CHAGARIS: Well, I think the
23 traffic engineer is going to be here next time.
24 That's probably the best witness.

25 MR. SEGRETO: Well, I want to

1 talk -- I want to talk about it with the planner.

2 MR. BURGIS: Well, you can talk
3 about planning -- questions about planning with
4 the planner.

5 MR. SEGRETO: These are all planning
6 issues, Arthur, that I'm talking about, I can
7 assure you.

8 MR. CHAGARIS: Well, he talked about
9 the parking and the totality. Not store by store.

10 MR. SEGRETO: All right. I want
11 to -- I want to talk about the parking area
12 that -- that's immediately adjacent to the central
13 building, and the L shaped building, and the
14 theater, which also has the existing bank on it.
15 Do you know what the parking requirement for the
16 remainder of the central building is?

17 MR. BASRALIAN: It goes --

18 MR. CHAGARIS: No, again --

19 MR. BASRALIAN: Objection. It goes
20 back to the same issue. We're talking about
21 totality. Not portions of the structures.

22 MR. CHAGARIS: Sustained.

23 MR. SEGRETO: I want to ask him
24 questions about the restaurant use in building D
25 and B as well as the theater and the bank. And I

1 want to ask him questions about the total amount
2 of spaces that's needed for those uses and those
3 buildings, and I'm not allowed to ask him that?
4 It's irrelevant?

5 MR. CHAGARIS: You can -- ask him
6 about the use of the structure for the restaurant
7 and how it fits into the planning. But when
8 you're talking about the parking, that's really
9 parking engineering as opposed to the planner.

10 MR. SEGRETO: They need a variance
11 for their parking. He testified --

12 MR. CHAGARIS: No, they don't. It's
13 a design waiver.

14 MR. SEGRETO: They need a waiver, as
15 you say, even though I think it's a variance.
16 They need a waiver, right?

17 MR. CHAGARIS: Right.

18 MR. SEGRETO: There's certain proofs
19 that they need to put in the record, planning
20 proofs, with regard to why they need a waiver,
21 right?

22 MR. CHAGARIS: Correct.

23 MR. SEGRETO: So, I can't ask him
24 questions about the deficiency of the parking lot
25 in this area, compared with the uses that the

1 applicant is proposing?

2 MR. CHAGARIS: Why don't you pose
3 your questions and let's see where it goes.

4 MR. SEGRETO: The applicant has told
5 us that there will be 20,000 square feet of
6 restaurant, and they will be located in building B
7 and building D. Okay.

8 MR. BASRALIAN: The applicant said
9 that it would have up to 20,000 square feet of
10 restaurant. Not that it would have 20,000.

11 BY MR. SEGRETO:

12 Q All right. It says 20,000 square
13 feet of restaurant. What's the parking
14 requirement, Mr. Burgis?

15 A For a restaurant?

16 Q Yes. Well, if they have 20,000
17 square feet of restaurant.

18 A Well, the ordinance is based upon seats.
19 One parking space for every two seats. Plus one
20 --

21 Q All right. I've indicated there
22 will be 650 seats maximum. Do you agree with me
23 that's 260 seats? Because they also indicate 70
24 employees.

25 A If that maths works out, yes.

1 Q Building B, I'm not counting the
2 supermarket, but the remainder, the 40,000 square
3 feet, as well as building D, has 41,000 square
4 feet --

5 MR. BASRALIAN: Excuse me. That's
6 not correct. That's all in -- even in phase I
7 that structure is all one structure. It's not
8 separate buildings.

9 MR. SEGRETO: I'm not talking about
10 separate buildings. I'm talking about separate
11 uses.

12 MR. BASRALIAN: No, you said
13 building -- you said building B will have X square
14 feet. It is the entirety of the building that
15 includes everything that's on the Homans side of
16 the property. It's not -- they're not separate
17 buildings.

18 Q All right, Mr. Burgis, let me give
19 you -- I'm going to give you -- I'm going to try
20 to formulate a question here to speed it up a
21 little bit. My calculations for all the uses that
22 are proposed in building B, D and the theater, as
23 well as the bank, and that's the section of the
24 parking lot we're talking about, is that the
25 required spaces, under the ordinance, would be 773

1 spaces. And there is only 247 provided on the
2 plans.

3 MR. BASRALIAN: Excuse me.
4 Objection again. We talked about totality. Not
5 individual sections. And Mr. Segreto keeps trying
6 to pigeon hole certain portions of the shopping
7 center to a parking area and saying, we need X,
8 you need X number of parking spaces versus what
9 you're providing. It's only in the totality.
10 It's not separated into various portions of the
11 property.

12 MR. SEGRETO: I know that it's the
13 applicant's position that no one can look at this
14 individually, and you have to look at it as an
15 integrated project. But that's a legal position.
16 And I want to ask certain questions. If I'm not
17 going to be permitted to ask those questions, just
18 say, sustained. I have to establish a record. I
19 wanted to ask a question. I want to ask about
20 each building and the use and the parking lots,
21 and the deficiencies, not based upon this big
22 integrated project, the way you want to look at
23 it, but I want to look at it individually. If
24 you're not going to allow me to do that, then just
25 say so.

1 MR. CHAGARIS: You can ask --

2 MR. SEGRETO: I put on the record
3 that that's what I want to ask this witness
4 questions about. And if I can't ask him
5 questions, just say that. I will move on. That's
6 what I want to ask him questions about.

7 MR. CHAGARIS: What I'm saying, is,
8 I sustained the objection because those questions
9 can be asked of the traffic engineer, who is to
10 testify next time. But you can ask this witness
11 about the design waiver for parking in general.
12 Because he did testify about that.

13 BY MR. SEGRETO:

14 Q All right, Mr. Burgis, are you
15 familiar with section 200-32 of the zoning
16 ordinance?

17 A Let me get my ordinance in front of me.
18 It's the section entitled: "Off Street Parking."
19 You want me to read it?

20 Q Well, it says, that there shall be
21 provided off street parking, right, in accordance
22 with the site plan ordinance?

23 A Correct.

24 Q See chapter 173.

25 A Correct.

1 Q Doesn't that section of the
2 ordinance incorporate section 173, and thereby,
3 make all of the off street parking requirements
4 variances and not waivers?

5 A I don't read this ordinance that way. I
6 have never read an ordinance that refers to
7 another ordinance and it incorporates --

8 Q You never saw it incorporate it by
9 reference? You never saw that before?

10 A Not -- not the way this is worded.
11 Certainly not. This doesn't say, it's
12 incorporated. It says, you have to meet the
13 parking standards that are set forth in the site
14 plan ordinance. It doesn't say that -- and those
15 site plan -- excuse me. And those parking
16 standards are hereby incorporated as part of a
17 zone, of the zoning ordinance. I have seen that.
18 But I haven't seen it here.

19 Q What would the purpose be of having
20 that section there if it's not incorporating those
21 sections into the zoning ordinance?

22 A The purpose is to make certain that
23 everyone is aware that the parking standards are
24 in a physically separate and distinct ordinance
25 from zoning.

1 Q Won't you agree with me that the
2 cases say that off street parking requirements are
3 variance issues and not waivers? Aren't there
4 cases to that effect?

5 A There are, where the parking standards are
6 set forth in the zoning ordinance. I have seen
7 zoning ordinances where they have a parking
8 schedule set forth in the ordinance. You don't
9 have that here. It's a major distinction. They
10 purposely made a distinction to keep it separate.
11 So, thereby, the area and bulk -- or excuse me.
12 The regulation in the municipal land use law
13 governing variances wouldn't apply. And that's
14 pursuant to the statutes.

15 Q Does this applicant have to comply
16 with the provisions of article 9 of the zoning
17 ordinance?

18 A That's the article that I had mentioned
19 earlier, because article 9, article 9 is the
20 district 4B office zone requirement.

21 Q All right. Take a look at section
22 200-63E. Do you see the title of that section?

23 A No. Hold on a second. That section is
24 entitled "Special Use Regulations For All
25 Districts" And section --

1 Q Not special. Specific.

2 A What did I say?

3 Q You said special.

4 A Oh, I'm sorry. "Specific Use Regulations
5 For All Districts."

6 Q And that includes the district 3
7 business district, right?

8 A Right. And subsection E says two
9 interesting things. One, "No building shall be
10 erected, constructed, or altered for any non
11 residential use or purpose unless the provisions
12 of article 9 shall have been followed. And until
13 the site plan has therein set forth shall have
14 been approved by the planning board and by the
15 mayor and council." So, when you look at article
16 9, you find that that references -- that is the
17 office zone district of the municipality. And a
18 clear reading of this section would indicate that
19 if all buildings, or any non residential use, has
20 to meet the provisions of article 9, and article 9
21 says that you cannot have any retail use in any
22 retail zone, it sort of guts the entirety of all
23 your business zone districts. It guts --

24 Q Right, what are you telling me, that
25 there is an error?

1 A Clearly. The same way I'm saying, or said
2 earlier, that there was an error when the same,
3 very same section says that the site plan has to
4 also be approved by the governing body. That's
5 clearly inconsistent.

6 Q One of those archaic sections?

7 A Yeah. That's clearly inconsistent with
8 the municipal land use law. Because the governing
9 body does not have any power in the municipal land
10 use law to approve a site plan. So, this whole
11 section is basically from another time. Pre 1976.
12 And I would suggest that the first portion of this
13 section that talks about, you know, you can't have
14 any retail use in any retail zone, is wrong, wrong
15 headed, and probably there was an incorrect
16 reference when it referenced the office zone
17 district.

18 Q Do any of the proposed signs comply
19 with the ordinance?

20 A Yes.

21 Q Which ones?

22 A Those that will be less than -- located
23 with the store which has less than a 50 foot
24 linear dimension, shall be capped at 36 square
25 feet, which is what the ordinance speaks to.

1 Q And how many of those stores will
2 there be?

3 A That I don't know.

4 Q There will be 5 pylon signs, is that
5 correct?

6 A Some are monument signs and some are pylon
7 signs.

8 Q Now, you talked about --

9 A There's actually 1 pylon sign.

10 Q There's 5 large signs, right, on the
11 property?

12 A No. There are 5 freestanding signs.

13 Q That's what I meant, freestanding
14 signs. Now, you talked about that this -- this
15 plan is going to create a desirable visual
16 environment, is that correct?

17 A Yes.

18 Q Couldn't that same desirable visual
19 environment be made, even if you reduced the
20 square footage of the buildings to let's say
21 150,000 square feet?

22 MR. BASRALIAN: Excuse me. Is this
23 another hypothetical?

24 MR. SEGRETO: Yes, another
25 hypothetical for an expert, yeah. That you know,

1 Joe, and I know, that we do it all the time, but
2 for some reason Arthur suggests that we can't ask
3 hypothetical questions.

4 MR. CHAGARIS: Well, it's got to be
5 related to this application that he testified to.
6 Could you repeat the question, please.

7 Q Could you create the same desirable
8 visual environment with a completely refurbished
9 Closter Plaza, with 150,000 square feet, as
10 opposed to 208,000 square feet?

11 MR. CHAGARIS: Are you able to
12 answer that question?

13 MR. BASRALIAN: It is a hypothetical
14 because that's not what the application is about.
15 The application is, in fact, about the existing
16 center, and how it's proposed to be renovated,
17 albeit slightly smaller. It's not about a 150,000
18 square foot or 100,000 square foot or a 300,000
19 square foot center. It's about a particular
20 center. And that's what he testified to.

21 MR. CHAGARIS: But I believe the
22 question -- I mean, physically there's nothing
23 barring you from creating a smaller center.

24 MR. BASRALIAN: That wasn't even the
25 question. The question was: Could you have that,

1 you know, that environment that --

2 Q Could you create the same desirable
3 visual environment with 150,000 square foot
4 revitalized Closter Plaza as you can with a
5 208,000 square foot revitalized redeveloped
6 Closter Plaza?

7 MR. CHAGARIS: He can answer that,
8 if you're able to answer the question, go ahead,
9 and answer the question.

10 A In the purely theoretical sense that may
11 be true.

12 Q Why does it have to be purely
13 theoretical?

14 MR. CHAGARIS: Well, let him finish.
15 He was in the middle of a sentence.

16 Q I'm asking about actual.

17 MR. CHAGARIS: No, he didn't -- he
18 didn't --

19 A Well, there's not an actual plan for
20 150,000 square feet. There's an actual plan for a
21 little over 200,000 square feet. And the benefit
22 of the 200,000 square feet, which is linear
23 dimension, is it gives a certain visual imagery
24 along the street. If you reduce it down to a
25 150,000 square feet you may not, depending on the

1 design, have that visual impact.

2 Q How about if you take -- if you take
3 a substantial portion of square footage along
4 Homans Avenue, out, so that you can put a
5 beautiful landscape buffer back there, wouldn't
6 that create a better desirable visual environment
7 than what you're proposing?

8 A Not necessarily.

9 Q Why? Landscaping is not good?

10 A No. Because I think you can't live in the
11 kind of fantasy world that you're suggesting,
12 because the reality is there's 211,500 square feet
13 on site. And why, why would someone remove 60,
14 65,000 square feet of that, when they have the
15 right to just skim the existing 211,500 square
16 foot and make due with that.

17 Q You're demolishing most of the
18 central building and building D, aren't you?

19 A I'm offering -- I'm offering what you
20 suggested. It's example. And no one, I don't
21 think, would take an existing building, and remove
22 that amount of floor space, when they have the
23 right to use 211,500 square feet today and
24 tomorrow.

25 Q But you're demolishing most of the

1 building.

2 A Well I'm suggesting that if they chose not
3 to demolish, they could take this space, the
4 existing space, and use it.

5 Q That's correct. And what makes
6 you -- where -- where -- where is it stated that
7 you can have a nonconforming building like the
8 buildings here, demolish them, and then rebuild
9 them to the same size when they're nonconforming?

10 A Well, that's not what I'm suggesting in my
11 example. My example suggested, once you take the
12 existing floor space and simply do facade
13 improvements, and don't do anything else, don't
14 make the improvements -- put the landscape
15 amenities, don't do the improvements to the
16 parking lot design, don't do the improvements to
17 the infrastructure on site, that these people have
18 chosen to do all of that, and I think that has to
19 be taken into consideration when the board takes
20 action on the application.

21 Q You're planning 6 variances and how
22 many waivers? Six waivers and 19 waivers, right?

23 A Again, if your math is correct. But
24 planning is not just a -- an enumeration of a
25 number of waivers or variance relief that's being

1 requested. I think you have to look at the sum
2 and substance of what's being proposed. And for
3 all --

4 Q Could you re --

5 A I'm not finished. For all these positive
6 benefits that accrue from this particular design,
7 those benefits, in terms of public benefits, and
8 that's what the statute talks about, their public
9 benefits are significant. And that's what this
10 board should be considering.

11 Q You'll agree with me that if you
12 reduce the amount of square footage, you're
13 reducing the parking deficiency, are you not?

14 A Again, in that theoretical sense, that is
15 correct. But why would one, when they don't have
16 to. They are actually reducing the amount of
17 floor space in the end, by about 3,200 square
18 feet. But in return, they're getting all these
19 very positive benefits, even with the variances
20 and the waivers that are being requested.

21 Q By decreasing the amount of square
22 footage you could also create more space for
23 landscaping, isn't that true?

24 A That's what they've done, they are
25 reducing it by 3,200 square feet, reconfiguring

1 the parking lot, and getting all the enhanced
2 landscape amenities that you just mentioned.

3 Q They're reducing the impervious
4 coverage by .62 percent, right?

5 A Yes.

6 Q That's less than 1 percent reduction
7 in impervious coverage, right?

8 A But --

9 Q -- on a 15-acre site.

10 A Right.

11 Q And you think that's significant,
12 from a planning standpoint?

13 A Yeah. Because --

14 Q It is?

15 A It is. Because --

16 MR. CHAGARIS: He said it is.

17 MR. SEGRETO: I want to make sure it
18 was on the record.

19 A Because that existing doesn't begin to
20 identify the manner in which the circulation, the
21 parking lot and circulation plan is being
22 reconfigured to provide the landscape feature
23 that's being proposed along the streets, the
24 interior of the site, and at the same time make
25 the other improvements that I mentioned. Again,

1 you just -- you know, planning is not just a game
2 of numbers and inches. You know, there's a lot
3 more to it than that. And I think that's what
4 you're whole argument lies. Doesn't seem to
5 understand.

6 Q You could reduce the proposed
7 shopping center on the site in the front of it,
8 see where it jettisons out? See where the
9 supermarket space jettisons out into the parking
10 lot?

11 A When you say, jettison out, I'm not sure
12 what you're referring to.

13 Q Come with me.

14 A I am following.

15 MR. BASRALIAN: Just refer to the
16 exhibit number, please.

17 Q Yes, this is Exhibit A-12. See
18 where it says, retail A grocery store?

19 A Yes.

20 Q If you took that grocery store, and
21 instead of extending it out into the parking lot,
22 like it is, you see how it jettisons out? You and
23 I are in agreement?

24 A No, we're not.

25 Q We're not. Okay.

1 A No. Because I say that this building
2 configuration is designed to reflect an attractive
3 curvature in the road, in front of the driveway in
4 front of it, which adds a certain appeal to this
5 site.

6 Q You agree with me that if you drew a
7 line from the K-mart retail F, and drew it
8 straight across to the first door, and what's
9 known as retail D, you could remove that portion
10 of the building, right -- if you wanted to, in a
11 theoretical world --

12 MR. CHAGARIS: Wait, wait, wait,
13 wait. No, wait. No, that's not -- he's the
14 planner. He's not an engineer. He's not a
15 contractor.

16 MR. DENICOLA: Or architect.

17 MR. CHAGARIS: Or an architect. So,
18 I mean maybe he could take a knife and cut it, but
19 that's not what his testimony is about. His
20 testimony, he just testified to, is that it cannot
21 be reduced because it would interfere with the
22 esthetics of that site. That's what he testified
23 to. That's why he can't cut it off.

24 Q I'm talking about -- I'm talking
25 about circulation. If you remove that portion,

1 would it affect your circulation to the site?

2 A One of the benefits of this --

3 Q Just answer that question.

4 MR. CHAGARIS: No, wait, wait ,
5 wait, wait, wait, wait, wait. Let him answer the
6 question.

7 A I'm answering your question. One of the
8 benefits of this configuration is that instead of
9 just a very straight roadway, you've got this
10 curvature in the road. It adds esthetic appeal.

11 MR. DENICOLA: And traffic common.

12 MR. BURGIS: And, also, yes, thank
13 you and traffic common.

14 MR. SEGRETO: Thank you,
15 Mr. DeNicola. Now we have the board expert to
16 help out the witness on cross-examination.
17 Wonderful.

18 MR. BASRALIAN: He made a comment --
19 excuse me. For the record, Mr. DeNicola made a
20 comment under his breath, that was heard, but he
21 is not -- he's not --

22 MR. SEGRETO: He didn't make it
23 under his breath.

24 MR. BASRALIAN: He's not-- he's not
25 helping or hindering, okay. He's fulfilling his

1 position as an engineer for the board. And your
2 characterization that he's helping is incorrect.

3 Q Any part of the proposed landscaping
4 on Vervalen in the right-of-way?

5 MR. BASRALIAN: Excuse me. For the
6 record, the landscape architect testified that a
7 portion of the landscaping is in the right-of-way
8 and you can ask him that question because he's
9 coming back next week as well.

10 Q Is that good planning to have your
11 required landscaping to be in the right-of-way?
12 Is that good planning, Mr. Burgis?

13 MR. BASRALIAN: Excuse me.
14 Objection that -- there's no portion of that
15 landscaping that's included in the landscape
16 design for the shopping center itself.

17 MR. SEGRETO: I don't know what that
18 means.

19 MR. BASRALIAN: They're putting
20 grass in the right-of-way but it's not calculated
21 as part of the application -- applicant's own
22 landscaped area.

23 Q All right, Mr. Burgis, you indicated
24 that this lot has two front yards, right? One on
25 Homans and one on Vervalen?

1 A Yes.

2 Q Take a look at the definition of
3 rear yard in the zoning ordinance.

4 A What section are you referring to?

5 Q Definition section. Right in the
6 beginning.

7 MR. BASRALIAN: Section number would
8 be helpful.

9 Q 205. 200-5.

10 MS. ISACOFF: (Board member yawns.)

11 MR. SEGRETO: Is that more
12 commentary?

13 MS. ISACOFF: No, I'm just tired. I
14 wasn't commenting on the question.

15 MR. BURGIS: This is missing a page.

16 MR. SEGRETO: That's right, Mr.
17 Burgis we're all getting paid.

18 MR. CHAGARIS: 200:11.

19 MR. BURGIS: No, I said this is
20 missing a page.

21 MR. CHAGARIS: 200:11.

22 MR. SEGRETO: All right, here, why
23 don't you take a look at mine. I don't want to
24 waste time. Look at mine. Take a look at rear
25 yard.

1 MR. BURGIS: An open space, except
2 for permitted accessories, building from the same
3 lot with the main building, situated between the
4 rear wall of the building or projection therefrom,
5 in excess of 18 inches extends to the sidelines of
6 the lot and the rear line of the lot. Corner
7 lots, the rear yard shall be opposite the lot line
8 contiguous when there's an arterial street. In
9 the event that the street is being contiguous to
10 the lot line or the parcel are of the same
11 classification. And in such event the rear yard
12 shall be opposite the main entrance of the
13 structure facing either of such streets.

14 BY MR. SEGRETO:

15 Q All right. Doesn't that mean that
16 the rear yard on this site is the Homans Avenue,
17 and it's not a front yard?

18 A Not necessarily.

19 Q Tell me why.

20 A In the event that the streets being
21 contiguous to the lot line of a parcel, are of the
22 same classification. And I don't recall that
23 these streets are -- have the same classification
24 as arterial and equal roadways.

25 Q That's your explanation? All right.

1 Give me it back.

2 A Yes.

3 Q The central building E, which is
4 85,000 square feet, is that an existing variance?

5 A What variance are you referring to?

6 Q Well, you're asking for a variance
7 for the K-mart building because it's 84,000 square
8 feet. And only 45,000 square feet are permitted,
9 right?

10 MR. BASRALIAN: No, we didn't -- --
11 excuse me. That's not true. That's not asking
12 for a variance for that.

13 MR. CHAGARIS: That's existing,
14 pre-existing.

15 MR. BASRALIAN: That's existing.

16 MR. SEGRETO: Well, there's a list
17 of variances and he went over the variance.

18 MR. BASRALIAN: We listed -- it was
19 listed because it is a pre-existing variance. But
20 you list them all, even if they're pre-existing,
21 because that's what the law requires you to do.
22 But we're not asking for a variance for 84,000
23 square feet because we already have that right.

24 Q When was the variance granted for
25 the K-mart, sir?

1 A That I don't know.

2 Q When was the variance granted for
3 the central building, central building D that's
4 68,000 square feet?

5 A That I don't know.

6 Q How can it be an existing variance
7 then, in your application, and in your testimony,
8 if you don't know when those variances were
9 granted? Maybe they were never granted, right?

10 MR. CHAGARIS: They may not have
11 been a variance because the structures pre-existed
12 the ordinance. The building is there now.
13 There's no violation. There's no summons.

14 MR. SEGRETO: Who says there's no
15 violations, Arthur?

16 MR. CHAGARIS: Is there any
17 violations of record that you're aware of? They
18 couldn't file this application if there was a
19 violation.

20 MR. SEGRETO: My understanding is,
21 is that when an applicant comes before a board and
22 alleges that it has pre-existing nonconforming use
23 or that it has their existence by virtue of a
24 previous variance, that they must -- they have the
25 burden of proof to demonstrate that to the board.

1 Maybe I have a misunderstanding of the law once
2 again. But, you don't know about any previous
3 variances for this site, right?

4 A Correct.

5 Q Is it your testimony --

6 MR. CHAGARIS: Excus --

7 Q Is it your testimony that -- that
8 this -- that these buildings predate the zoning
9 ordinance?

10 MR. CHAGARIS: Just for the record,
11 the section of ordinance at issue, which is
12 section -- the zoning ordinance, section 200-69
13 capital E, was added to the ordinance on April 21,
14 1980. And I believe the application indicates
15 that the structures were erected in 1960's.

16 MR. BASRALIAN: That's correct.

17 MR. BURGIS: That's correct.

18 MR. CHAGARIS: So, there was no
19 variance ever granted because it pre-exists the
20 ordinance.

21 Q A number of buildings on this site
22 pre-exist the ordinance that says that you can
23 only have one building per lot?

24 A I believe that is correct also.

25 Q Do you know when the ordinance was

1 adopted that sets forth that definition for a lot?

2 A I believe --

3 Q Would it surprise you if I told you
4 it was adopted in 1940, well before any of these
5 buildings were built?

6 MR. BASRALIAN: Mr. Segreto is
7 taking it out of context. Because it was adopted
8 for a residential standard. Not for a standard --
9 not for the commercial standard -- the commercial
10 buildings in the municipality.

11 MR. SEGRETO: The definition of a
12 lot doesn't apply to commercial buildings?

13 MR. CHAGARIS: It's not a question
14 of definition of a lot. It's a question of the
15 provision of the ordinance that says, in all
16 districts the number of principal buildings per
17 lot shall be limited to one. So, the number of
18 buildings per lot was enacted in 1980.

19 MR. SEGRETO: Are you sure about
20 that, Arthur?

21 MR. CHAGARIS: It says it right in
22 the code itself.

23 MR. SEGRETO: What section are you
24 looking at?

25 MR. CHAGARIS: I have 200-69 capital

1 E.

2 MR. BASRALIAN: As a matter of
3 record, the first structure erected on this
4 property was in the late 50's. It even pre-dated
5 that ordinance by almost 30 years.

6 MR. SEGRETO: Definition of lot --

7 MR. CHAGARIS: I'm not talking about
8 lot. I'm talking about the number of buildings.

9 MR. SEGRETO: Yeah, I know, but the
10 definition of lot says that you can only have one
11 structure on it.

12 MR. CHAGARIS: Well, obviously that
13 definition was not clear enough, because there
14 is --

15 MR. SEGRETO: Please Arthur.

16 MR. CHAGARIS: It says a building.
17 It doesn't say one building.

18 MR. SEGRETO: May be occupied by a
19 building and accessory buildings.

20 MR. BASRALIAN: That's not the
21 prohibition in the definition. In what a lot, the
22 prohibition exists in the ordinance that was
23 adopted in 1980.

24 MR. SEGRETO: We'll argue that at
25 another date.

1 CHAIR LIGNOS: Mr. Segreto, do you
2 have any other questions?

3 MR. SEGRETO: Yes, yes, yes.

4 CHAIR LIGNOS: Because I'm afraid
5 we're going to have a board of pumpkins pretty
6 soon.

7 MR. SEGRETO: All right.

8 Q Well, the front yard parking
9 setback, you can't meet the 10 feet setback
10 requirement?

11 A No. As I testified, that's where the ramp
12 is in place, where a 42 foot linear dimension --

13 Q No, I'm talking about Vervalen. On
14 Vervalen you have 5 feet.

15 A It's an existing condition.

16 Q Well, the existing condition is 0
17 according to your document. And you're proposing
18 5 feet?

19 A Right. So, we are reducing the magnitude
20 of that.

21 Q The question is: Why can't you
22 comply with the requirement of 10 feet? What's
23 happening -- what's happening there, right near
24 Vervalen, that you can't comply with a lousy
25 10-foot setback? What's happening there that you

1 can't comply?

2 A I believe it has to do with the internal
3 design of the building.

4 Q I'm talking about at the end of the
5 parking lot and where it meets Vervalen.

6 A I know where you're talking about.

7 Q It has something to do with the
8 buildings?

9 A Yeah, in terms of --

10 Q It has to do with the size of the
11 buildings and the requirement for parking, right?
12 You need that space for parking?

13 A Well, the reality is that we are reducing
14 the magnitude of nonconformity.

15 Q You can't comply with the 10 foot
16 requirement because you need it for parking,
17 right?

18 A That's not what I said.

19 Q I know. But what do you need it
20 for? What's over there that you can't put another
21 5 feet of nice grass and bushes and trees so it
22 looks nice?

23 MR. BASRALIAN: It's really
24 argumentative at this point. He's asked the
25 question, responded, and now it's an argumentative

1 issue.

2 MR. CHAGARIS: Sustained.

3 Q And what's preventing the applicant
4 from complying with the 200 square foot parking
5 space requirement of the ordinance?

6 A Well, I guess you weren't listening when I
7 was talking about the statutory test, that an
8 applicant has to prove --

9 Q I just want -- I just want you to
10 know --

11 A -- and the reality -- I'm answering the
12 question now. And the statute says that you can
13 show that there's physical features that affect
14 your ability to comply, or alternatively that
15 there's certain public benefits that accrue from
16 the grant of the variance. And pursuant to
17 Poland, the ruling says very clearly, says that
18 you have to look at the magnitude of the
19 improvements being proposed to determine the
20 propriety of the application and whether relief
21 should be granted. And I think, based on all of
22 the public benefits that accrue from this
23 application, and consistent with Poland, we've met
24 our statutory burden.

25 Q What is the public benefit to having

1 830 parking spaces that don't comply with the
2 zoning ordinance? What's the public benefit?

3 A The public benefit is the 100 space
4 increase that helps the applicant to achieve. The
5 public benefit is that they require 10 X 20 foot
6 stall, which is a downloaded standard, does
7 nothing but reduce the number of parking spaces
8 that could otherwise be provided, and could be
9 provided in a manner in which is consistent with
10 safe and efficient design criteria.

11 Q Isn't it better for the public to
12 have 10 X 20 spaces so that when they're putting
13 the groceries in a car they don't have to watch
14 when they open the door that they're hitting the
15 other car which is so close to it? Isn't having
16 that extra foot a public benefit?

17 A No. The reality is that a 9 X 18-foot
18 stall represents a reasonable design standard that
19 exceeds the very thing that you just commented
20 upon.

21 Q Tell me why, on the subdivided lot,
22 that the applicant can't comply with the 80
23 percent impervious coverage.

24 A In the future he may be able to. But
25 right now all we are doing is subdividing out that

1 lot. We're not making any improvements to it.

2 Q Why can't you eliminate 3 percent of
3 impervious coverage, put a couple of nice trees,
4 or some grass, or something like that, to comply?

5 A Because it's my understanding of the law
6 that one does not have to immediately improve a
7 lot based upon the grant of a subdivision
8 approval.

9 Q But you're asking for a subdivision
10 and you're asking for a variance, and it's so easy
11 to eliminate the variance. Why should you get it?

12 MR. BASRALIAN: Objection. The
13 application is for what it is. It's at 83 percent
14 now. It's intended to be 83 percent. He's
15 testified as to the variance and the board will
16 have to act on it when it reaches the end of the
17 hearing. He's answered the question 3 times. And
18 it's the same answer.

19 MR. CHAGARIS: Sustained.

20 MR. SEGRETO: Just a couple more
21 questions.

22 Q With regard to the variance for that
23 setback on Homans Avenue, again, you're
24 considering that front yard, right?

25 A Yes.

1 Q And you indicated that there's going
2 to be a loading ramp, right, that extends into the
3 required setback area?

4 A Correct.

5 Q All right. It's about 6 feet,
6 right? The requirement for the setback is 10 and
7 you're providing a 4-foot.

8 A A 4-foot dimension.

9 Q So, that's 6 feet, right? And it's
10 42 feet long, that ramp?

11 A Well, the ramp is 73 feet long, but a 42
12 foot portion extends into the front yard setback
13 requirement.

14 Q Can't you simply bring that ramp
15 into the building, that is, eliminate square
16 footage in the building, bring that ramp in, to
17 comply with the 10-foot setback?

18 A That's an architectural question. Not a
19 planning one.

20 Q I know. But you can do it, can't
21 you?

22 A No.

23 Q You can't slice off 6 feet of the --

24 MR. CHAGARIS: You're just being
25 argumentative.

1 Q You can't slice off 6 feet of
2 building straight across the back of the proposed
3 new supermarket so that you can comply with the
4 setback requirement?

5 A Again, that's an architectural question.
6 Not a planning one.

7 Q Well, I'm asking you from a
8 planner's standpoint.

9 A From a planner's standpoint I think we've
10 met the statutory burden, and I think I said that
11 10 times over tonight.

12 Q That having it -- having only a
13 4-foot setback is a better zoning and planning
14 alternative to the property, is that your
15 testimony?

16 A Yeah.

17 Q And moving that 6 feet in, so that
18 it complies, is bad planning?

19 A That I didn't say.

20 Q It's not as good, zoning and
21 planning alternative.

22 A I didn't say that either. but that's not
23 the test.

24 Q That's not the test? You told me
25 that was the test --

1 MR. CHAGARIS: Don't argue with the
2 witness. Just ask him questions.

3 MR. SEGRETO: Oh, stop it Arthur.

4 Q The council here in Closter amended
5 the district 3 zoning, did they not, recently?
6 They increased the square footage from 40 to
7 45,000 square feet?

8 MR. BASRALIAN: Excuse me. That
9 isn't -- that isn't a question. If you're asking
10 if they're adopting an ordinance to do something,
11 be specific, please.

12 Q In 2009, isn't it true, Mr. Burgis,
13 that the council amended the zoning for the
14 business street district and increased the square
15 footage allowable for a store, from 40,000 square
16 feet to 45,000 square feet, you're familiar with
17 that, right?

18 A I believe that's correct.

19 Q So, the council had the opportunity,
20 in 2009, to take a look at this business district,
21 right?

22 MR. BASRALIAN: That's -- how would
23 he -- objection. How would he know that?

24 MR. SEGRETO: Well, because they did
25 in fact take a look at it, right?

1 MR. CHAGARIS: They passed an
2 ordinance. What's the question?

3 Q Well, while they were looking at the
4 business district they could have changed the
5 parking criteria, right?

6 MR. BASRALIAN: That's -- objection.

7 Q To the modern, you know, 1 per
8 250,000 square feet, right?

9 MR. BASRALIAN: Objection.

10 MR. CHAGARIS: No, that's an
11 objection. Not necessarily.

12 MR. BASRALIAN: And how would he
13 know what they could do or didn't do?

14 MR. SEGRETO: When I submit my brief
15 in court, Arthur, I think you're going to be very
16 surprised when you read all those cases that I
17 cite. You're going to say, wow, wow, I've been
18 missing a lot in the land use field. I have no
19 further questions.

20 MR. CHAGARIS: You know what, just
21 the other day Judge Della Cruz thought you were
22 missing a lot when she ruled against you in your
23 ordinance challenge.

24 MR. SEGRETO: Yeah, I know, that's
25 why they have an appellate division, Arthur.

1 I have no further questions.

2 MR. BASRALIAN: Thank you.

3 CHAIR LIGNOS: Okay. Thank you very
4 much. Are there -- anyone else in the audience
5 that has a question?

6 Can you -- I'm just going to,
7 please, just move this along.

8 MR. ROSENBLUME: It won't take long.
9 The applicant proposes to reface the store wall on
10 Homans Avenue. And the applicant is going to, you
11 know, tear down space and rebuild. Would it be
12 advantageous, on this 50 year shopping center to
13 level everything and start from scratch?
14 Basically is there an obstacle that prevents the
15 applicant from tearing everything down? Because
16 you have 50 year-old utilities, plumbing, you name
17 it.

18 MR. BASRALIAN: Excuse me. Before
19 you answer, I have an objection to that question
20 because it's another hypothetical. And that is
21 not what the application is about, Mr. Rosenblume.
22 It's not.

23 MR. CHAGARIS: And this witness
24 didn't testify about tearing down the building.
25 He testified about what the application is.

1 MR. ROSENBLUME: Okay. The
2 testimony shows that the plaza is going to undergo
3 major renovations, you know, renovations cost more
4 money than new.

5 MR. CHAGARIS: I haven't heard any
6 testimony to that effect.

7 MR. ROSENBLUME: Okay. Would you
8 consider the subdivided lot to be a flag lot?

9 MR. BURGIS: No.

10 MR. ROSENBLUME: And why?

11 MR. BURGIS: It's a, I believe a
12 23,000 square foot individual lot. A flag lot is
13 defined as a narrow stem extending from the
14 street, for some distance, to a larger portion of
15 the site. That's clearly not the condition.

16 MR. ROSENBLUME: Will this
17 subdivided lot, does it have its own access?

18 MR. BURGIS: It will.

19 MR. ROSENBLUME: Isn't it using the
20 plaza as access?

21 MR. BURGIS: Well, it could. Even
22 if it does that, and it could, it's not a flag
23 lot.

24 MR. ROSENBLUME: Why not? It's
25 using somebody else's property to make an entry.

1 MR. CHAGARIS: You can't --

2 MR. BURGIS: That's not a flag lot.

3 MR. ROSENBLUME: In the Closter
4 code, under uses, business uses, you mentioned
5 supermarket, and a variety of other retail uses.
6 It doesn't mention shopping centers. Is that
7 archaic that it left it off?

8 MR. BURGIS: No. Shopping center in
9 and of itself is not a defined.

10 MR. ROSENBLUME: Well, should it be
11 defined?

12 MR. BURGIS: No. Because the issue
13 is what is the shopping occupying, that in this
14 instance it's retail uses, and that's a line item.

15 MR. ROSENBLUME: Right. Do other
16 codes, other towns use -- add the word super --
17 shopping centers as a use?

18 MR. BURGIS: There are a few that I
19 seen that do that. They go on to say comprising,
20 you know, retail and service commercial uses,
21 restaurants. So --

22 MR. ROSENBLUME: Okay. Thank you.

23 CHAIR LIGNOS: Okay. I think I see
24 no more people in the public wanting to speak.

25 And, therefore, I close this portion --

1 MR. BASRALIAN: Well -- I'm sorry.

2 CHAIR LIGNOS: -- of the meeting to
3 the public. Now, our next meeting is next
4 Thursday.

5 MR. BASRALIAN: Yes. That's
6 correct. I do -- I did bring Mr. Roncati back
7 because there were two specific questions that
8 were asked about the square footage being
9 demolished in the various structures and the new
10 square footage that's going to be added. And
11 while he had testified to it in general terms, I
12 think the board wanted the specific square
13 footage. And I have him available to do that. I
14 have three questions to ask him, only. And I
15 would like to get those -- that over with so I
16 don't have to bring him back for another night.

17 CHAIR LIGNOS: Well, I'm going to
18 ask the board, because it is after 11 o'clock.
19 And no matters will be considered after 11
20 o'clock.

21 MR. BASRALIAN: This isn't a new
22 matter. It's part of the --

23 CHAIR LIGNOS: No, it's absolutely a
24 new matter. It's absolutely a new matter because
25 it's a different nuance.

1 MR. CHAGARIS: Only because you have
2 a new witness, and then there'll be
3 cross-examination --

4 CHAIR LIGNOS: And in the
5 cross-examination we're going to go past the 3
6 questions. But I'll ask the board. Does the
7 board want to remain and listen to 3 questions?
8 The general consensus, Mr. Basralian, is I think
9 that we are -- I think we've reached our end this
10 evening. But you're welcome to bring him first
11 thing at next Thursdays meeting. It's the -- this
12 meeting will now -- this application will continue
13 to the 17th, at which time, I understand, you also
14 have traffic coming back.

15 MR. BASRALIAN: Yes, I have the --
16 finishing up on cross-examination by Mr. Segreto,
17 of Mr. Hamilton, and the landscape architect, and
18 I will be bringing back Mr. Keller in connection
19 with the questions, or cross-examination on his
20 testimony.

21 CHAIR LIGNOS: Right. Now,
22 Mr. DeNicola you're going to have our traffic
23 engineer to ask any questions of him?

24 MR. DENICOLA: Correct.

25 CHAIR LIGNOS: Okay. Do we need to

1 say anything further, that this application will
2 be carried and continued at the next meeting,
3 which is next Thursday, 10/17, starting at 8 p.m.

4 MR. CHAGARIS: One other point.
5 Will Mr. Roncati be available on the 17th also?

6 MR. BASRALIAN: I don't know, I have
7 to ask him I guess.

8 MR. CHAGARIS: And then we still
9 have the Dec. -- I'm sorry October --

10 MR. BASRALIAN: October 21st.

11 MR. CHAGARIS: 21st. I don't know
12 if -- well, we'll see what happens on the 17th.
13 We may not be finished with the witnesses on the
14 17th. And if we're not -- if we are finished then
15 Mr. Segreto will begin on the 21st.

16 MR. BASRALIAN: That's correct.
17 Since you asked me what witnesses I would be
18 preparing to bring to the board at the very first
19 hearing, the same question might be asked of
20 Mr. Segreto so there's a timing knowledge of where
21 we're at.

22 MR. CHAGARIS: I believe he did --
23 he represented -- you represented before that
24 you're going to have an architect, planner, and a
25 traffic person?

1 MR. SEGRETO: Engineer, traffic and
2 planner.

3 CHAIR LIGNOS: Okay. So, if the
4 board has no other business the chair will
5 entertain a motion. By Dr. Maddaloni. Mr. DiDio
6 second. All in favor?

7 THE BOARD: Aye.

8 CHAIR LIGNOS: I see no objection
9 and, therefore, this meeting is adjourned at
10 11:26.

11 (Deposition concluded.)

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C E R T I F I C A T E

I, GINA MARIE VERDEROSA-LAMM, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, certify that the foregoing is a true and accurate transcript of the deposition of said witness(es) who were first duly sworn by me, on the date and place hereinbefore set forth.

I FURTHER CERTIFY that I am neither attorney, nor counsel for, nor related to or employed by, any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed in this action, nor am I financially interested in this case.

GINA MARIE VERDEROSA-LAMM, C.S.R.
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