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
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.
STATE OF NEW JERSEY
COUNTY OF BERGEN
BOROUGH OF CLOSTER

IN THE MATTER OF

SPECIAL MEETING

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

BEFORE:

PLANNING BOARD
JOHN LIGNOS, CHAIRMAN
SOPHIE HEYMANN, 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

APPEARANCES:

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

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

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

Mr. Basralian, welcome.

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

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

MR. BASRALIAN: No.
MR. BURGIS: No, I have not.

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

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

MR. BURGIS: I do.

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

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

MR. BASRALIAN: Thank you.

EXAMINATION BY MR. BASRALIAN:

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

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

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

A I have been a licensed planner since 1980, and I've been a planner, initially working in New
York, since 1975.

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

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

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

MR. BURGIS: Yes, I have.

CHAIR LIGNOS: Any member of the board --

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

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

MR. BASRALIAN: Thank you.

BY MR. BASRALIAN:
Q     Mr. Burgis, are you familiar with
the Closter Plaza shopping center?
A     Yes, I am.
Q     And are you familiar with the
proposed development? And since you are familiar
with the Closter Plaza shopping center, would
you -- and you're familiar with the proposed
development, would you please give the board, and
everyone else here, your overview of the project
as proposed by the applicant.
A     Okay. Certainly. I know you've been
going through this for an extended period of time.
Once before as well. So, I'm just going to focus
on what I perceive as the significant planning
issues, because that will then seg-way directly
into my testimony on the variances that are being
requested.

As I'm presuming everybody, by now, is
aware, the site presently contains 211,553 square
feet of floor area. It also contains 720 parking
spaces, for a ratio of 1 parking space for every
294 square feet. Looking at it another way, it's
3.4 parking spaces per thousand square feet.
I'll use the word, for the most recent
master plan, it indicates the project, as a site,
is in a rundown condition. Simply put, it has seen better days.

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

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

This actually represents a slight reduction in the ratios. We would end up with a ratio of 1 space for every 333 square feet.

Excuse me. 3.3 parking spaces per thousand square feet.

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

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

MR. BURGIS: Yes.

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

At the same time we are increasing the number of
parking spaces to 820, increasing the ratios to 1 parking space for every 254 square feet, or, again, looking at it another way, we would have 3.94 parking spaces per thousand square feet.

BY MR. BASRALIAN:

Q Now, the reduction at the end of phase II, how does that compare to the square footage of the existing center?
A Well, it actually represents a reduction of 3,216 square feet. And the ratios will increase to 1 parking space for every 254 square feet, as I mentioned, or that 3.94 spaces per thousand.

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

Q And that refers specifically to Closter Plaza?
A Yes, it does. As I think we can all agree, the site has a very limited architectural
appeal at present, and that would be replaced with
a design that emphasizes varied rooflines,
attractive signage, and canopies. There will be a
change from a site that has virtually no
landscaping on site at present, and that would be
replaced with landscaping in the parking lot, and
improved perimeter landscape material along the
streets and the streetscape.

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

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

So, in summary we're making substantive
improvements to the site. And that is important because of, A; the number of variances that are being sought and exceptions from the ordinance. And, B; the relationship of those features to the Poland v. South Plainfield case. Because that case stands for the proposition that when one looks at a project such as this, you do not simply look at each individual variance and have it stand on its own, but you have to look at the application within the context of a comprehensive integrated approach through the review process. And when you hear me talk about the basis for the variance relief, you'll see what I -- I mean by that.

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

A Yes. Well, actually, I would like to
first step back and look at some of your prior
master plan documents. But they all carry
through, a set theme, is, focused to a large
degree on the issues associated with the shopping
center. Even going back to your 1981 land use
plan, then looking at the various, you know, 1996
re-examination report, the 2002 re-examination
report, as well as your current 2009 document,
they all have the same basic recommendations and
the same basic goals and objectives. The one
caveat to that statement, is that, as you read
through to the most current document, it's a much
more, for lack of a better word, hard hitting
document, in terms of its characterization of the
subject site, and what needs to be done to make
improvements here. But all of the documents have
a basic land use recommendation, designates the
site for business use.

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

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

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

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

Now, the plan also pointed out that in the
prior master plan documents where those master
plan documents talked about circulation
improvements in the central business district,
facade improvements in the central business
district, and streetscape improvements in the central district -- central business district. All of those issues equally apply to the subject site. And I think that's informative for this discussion, when we talk about the variance relief being sought, because in every one of those instances, this application affirms and reinforces those issues, and to a large degree, implements those recommendations.

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

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

Now, there was a number of other issues that that master plan pointed out. And I think it's very instructive, because of some of the discussions, that I understand have taken place
here. One, is that the plan specifically said
that the fear of allowing any big box retailer is
unfounded. It went on to say that limiting the
store's -- any store size, may "interfere with the
natural market forces which are needed to drive
this site's redevelopment." And it could, "stimy
development all together, leaving the site "to
drag along in its current obsolescent state." And
the culsion -- the conclusion to all of this,
resulted in a number of recommendations contained
in that plan. It specifically calls for a
strategy that encouraged a commercial center,
anchored by a supermarket. It also called for the
establishment of a market driven plan that has
focused on quality of design, which would thereby
allow the market to determine tenancy and the size
of the stores. There was very strongly worded,
since it's your document, I assume you all know
about this, but it was very strong in its wording,
that suggested that store size should not be the
driving force, and quality of design and character
should be the driving force to get back tenants
into this mall.

Q With respect to the zone in which
this property is located, the district 3 business
zone, would you just briefly review the zoning, the permitted uses, and -- and how this project falls well within -- entirely within the definition of the district 3 business zone.

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

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

A  Certainly. There are six individual
variance requests that are being made here. One regards the maximum impervious coverage of the shopping center lot. The ordinance permits up to 80 percent of the site can be covered by impervious material, and that includes building and paved surfaces. The existing condition already does not comply to that requirement. The existing site has 93.7 percent of its area covered by impervious material.

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

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

A    Yes, it is. That's one of the intriguing aspects of this part of the application, while we're slightly reducing the amount of impervious coverage on site, we are still able to gain a total of 100 additional parking spaces over and above what exists today. There is a parking
shortfall on the site today, as everybody knows, in terms of code standards. So, this is a significant feature. And, to a large degree, that is, that ability to provide additional parking is a function of the internal redesign that is being proposed. We're going from a, you know, the one-way circulation system that you're all familiar with, to a two-way vehicular flow, with conforming 24 foot wide aisles, and by virtue of the redesign we find space to provide the additional 100 spaces.

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

A I said there were 6 variances. Actually there's 2 related to impervious coverage. The second variance is the impervious coverage for that subdivided lot. Again, the ordinance permits 80 percent. That lot has an 83 percent impervious coverage factor. And, obviously, because no
development is being proposed at this time, that factor flows through, both, phase I and phase II.

Q     So, it's currently at 83 percent.

And would remain at 83 percent?

A       Correct.

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

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

Q     Well --

A       That represents just about 6 percent of the total linear dimension of the wall facing Homans Avenue.
Q    And, so, in setting forth the
variances that are required, you take the worst
case scenario. So, even if 1 foot of that ramp
encroaches within the 10-foot setback we would
still require a variance?
A     That is correct.
Q    And are you familiar with the length
of the entire structure or building along that
side, so as a percentage of the total, would you
be able to tell the board, if not a percentage, as
compared to the 73 square feet that you said of
the total ramp, 40 some odd feet --
A     Yeah, 40 feet -- 42 feet to be precise.
Q    -- because the rest of it would be
conforming then out of the setback.
A     And out of a 960 foot linear dimension
along that wall facing Homans.
Q    So, it is only the 40 feet, 40 some
odd feet that it encroaches on?
A     Correct. Yeah, it's unfortunate when you
see these kind of statistics in a public notice,
for example, the impression is that the entirety
would be 4 feet away from -- or away from the
front property line. It's only 42 feet of the 960
foot linear dimension.
Q     Thank you. Would you also review
the other variances that are being requested in
connection with the application.
A       There's a variance being requested for the
number of principal buildings on site. At
present -- well, the ordinance permits 1 principal
building on the site. The site presently contains
four. And in both phases I and phase II we are
reducing that number to 3. And in addition to
that, the ordinance limits the maximum retail area
of any individual store, to 45,000 square feet.
As you know, the existing K-mart is 84,020 square
feet. That will continue through phase I. But in
phase II that structure will be reduced to 73,040
square feet.

And then finally, building height. The
ordinance permits a maximum building height of
25 feet. The K-mart building, at present, is
29.88 feet in height. The theater is 33.79 feet
in height. By virtue of the redesign -- well, the
theater stays the same. That doesn't get changed.
But the K-mart structure will be reduced to 27 1/2
feet. And then the grocery building will be at
27. I said 27 1/2 feet. It's 27 feet --
Q     Five inches.
A -- 5 inches. And the same holds true for the grocery store.

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

A That is correct.

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

A Correct.

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

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

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

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

MR. BASRALIAN: Right. Just to reiterate, there's the impervious coverage for
Closter Plaza. Then there is the impervious coverage for proposed lot 1.01. And that's the 6 variances.

MR. CHAGARIS: Got it.

BY MR. BASRALIAN:

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

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

Q And that will be --

A Corrected.

Q -- corrected, and as set forth in the plans submitted, as well as the landscape design plans, submitted by, and testified to by
Mr. Hamilton?

A That is correct.

Q Thank you.

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

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

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

Q That will be increased then from 720 to 820?

A Yes.

Q Thank you.

A And in phase II, the ordinance would
require a slight reduction down to 1,461 spaces.
Well, there's that reduction, we're increasing the
amount of spaces, as I said to 820 stalls.
For the church, there are 16 parking
spaces required. There will be 14 on site.
Q     And how many are there currently?
A     Thirteen. No, no, there are 16 on site now.
Q     No.
A     I'm sorry. There are 0 provided under the
existing conditions.
Q     So, just to clarify, there are 16
required. There are none. But at the conclusion
of phase I there will be 14 spaces, including 1
handicapped space?
A     Correct.
Q     Okay. Thank you.
A     The length of the parking spaces is also
at issue. The ordinance requires the length of
parking spaces to be 20 feet. And we are
proposing 18 feet.
Q     Now --
A     And that is for the --
Q     That's for the church.
A     That's for the church. For the shopping
center, the ordinance, again, in this instance, requires a 10 X 20 foot stall. In many instances we are proposing 9 X 16 and 9 X 18-foot stalls. So, a variance -- a waiver from, or exception is required for that. The church parking stalls do comply.

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

MR. BASRALIAN: Right --

MR. DENICOLA: I just want to reiterate that.

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

MR. BURGIS: Thank you. I was saving that for the argument. I appreciate that. The width of the two-way driveway is also in issue. The ordinance requires a 30 -- a 50 foot dimension. We are proposing 24 to 26 foot dimension.
Sidewalks are required around the building. We are providing, in some areas, but not in other's. The sidewalk has to be 6 feet above pavement. And, in some instances, it's right flat at the table tops.

MR. DENICOLA: Extension.

MR. BURGIS: Yes.

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

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

BY MR. BASRALIAN:

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

A Yes.

Q Thank you.

A Now, the location of the loading spaces is also necessitates relief. They are permitted in the side or the rear yard only. Seven are being proposed in the front yard and 8 are being
proposed -- in phase I and 8 are proposed in phase II. This is obviously a function of the fact that we have 2 front yards on this lot and we can't get around that fact.

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

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

MR. DENICOLA: Okay.

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

A  That is correct. There's a number of waivers associated with the signage. One relates to the provision of ground signs. One is permitted. One exists today. Five are being proposed in phase I and phase II. The size of the
sign, the code permits -- it's in relationship of 2 linear feet of the linear dimension of the store front, and -- with a cap of 36 square feet. What we are recommending, is, a varied schedule. That, for those store fronts that have up to 50 linear feet, they would be capped at 36 square feet. For those that go up to then 100 linear feet, they would be capped at 75 square feet. And anything above 100 linear feet would be capped at 150 square feet.

Q     So, those signs on facades of 50 square feet or less would be compliant then with the code?
A       That is correct.
Q     Thank you.
A       The height of the ground sign is limited by your ordinance to 15 linear feet. Excuse me, 15 feet. The existing sign on site is 45.3 feet in height. In the proposal the height is going to be 23 -- 23 feet in height.
Q     That's in phase I. And in phase II it reduces to 22 feet.
A       Twenty-two feet.
Q     Twenty-two feet. Thank you.

MR. SINOWITZ: What will the square
footage of the face of the sign be?

MR. BURGIS: Pardon me.

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

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

MR. BURGIS: Which one?

MR. BASRALIAN: Which one are you talking --

MR. SINOWITZ: Your large ground sign.

MR. BASRALIAN: That's on the --

MR. BURGIS: The ground sign?

MR. BASRALIAN: It's on the plans.

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

MR. SINOWITZ: Yeah.

MR. BASRALIAN: It's on the plan.

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

MR. BURGIS: There's one that's 23 feet X 11 feet 2 inches, if you do the math. And this is sign A, that would be 255 square feet in
size. There's a second sign of 80 square feet.
And then there's a real -- rear wall sign along --
on the Homans Avenue side of the site, which will
be 100 square feet.

MR. SINOWITZ: Okay. Thank you.

BY MR. BASRALIAN:

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

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

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

A Okay. Certainly. There are two aspects
to these kinds of variance reliefs that the
municipal land use law identifies. One, is the positive criteria in the statute. And the other is the negative criteria of the statute. And for bulk variances there is three different approaches that the applicant can take on the positive criteria.

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

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

    If you recall, at the outset of my testimony, I referenced the Poland v. South Plainfield case. Because in that case there was an application to develop a site for retail use. It was formerly a car lot, if I recall correctly. And in the end, the court said, this case will
stand for the proposition that when you're dealing with a C-2 variance relief, you're not limited to the benefits derived from each individual variance. You can look at the totality of the project as a whole and make some determinations about the benefits that would be derived from the entire proposal, and evaluate the relief being sought within that context.

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

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

Now, all of that differs when we deal with waivers; the design standards of the ordinance. There, a planning board can grant exceptions from site plan requirements. It may be reasonable for the general purposes and intent of the site plan review process, and the statute talks about, if
the literal enforcement of the ordinance is impractical or it will exact an undue hardship because of peculiar conditions pertaining to the site in question.

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

Q     Yes, if you would.
A     In terms of the positive criteria, I would like to go through the individual variance.

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

And I think some of you have heard me say in the past, planning is a balance of competing interests. And, here, we have a variance being requested, albeit it's with a reduction in impervious coverage. It's with an increase in the number of parking spaces by 100. It's with an increase in the amount of landscape amenity on
site. And that landscape amenity is being placed in such a manner that will have a significant positive visual impact on the site. Because it's not only along the frontage of the property, but it's also within the parking lot itself. So, there is a number of benefits associated with that.

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

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

Q With respect to the other variances that are requested, I assume by the way, with impervious coverage, that applies also to proposed lot 1.01?
A Yes.

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

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

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

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

Q     With respect to the variance being
sought for the front yard setback from Homans, by
virtue of the ramp, is the variance sought,
consistent with the same concept of the master
plan, given, in fact, that the property has, in
effect, two front yards?
A     Yeah, that obviously is a limiting factor.
Your ordinance doesn't take into account the fact
that certain lots can be a through lot. So, in
this instance, we do have two front yards.

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

Q     Thank you. The shopping center
currently consists of four structures. The
ordinance limits it to one structure. The
applicant seeks to reduce the buildings from four
to three, all of which are existing structures.
How does that fall within the variance requests
and has it any adverse effect or substantial
effect of the zone plan or the zoning ordinances?

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

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

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

So, consequently, the physical features of
the existing site condition, with the elongated
building is one thing, but we're providing a safe
and efficient circulation out to Homans from
multiple points now. And that's the benefit.

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

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

Q     And would you say that the design is
proposed with the access, the northeast corner of
the property, is consistent with good planning and what is proposed under the master plan in terms of improving of circulation?

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

Q Now, with respect to the height, there are several structures which exceed the maximum height permitted now. One is the K-mart building. And one is the theater building. A variance is being requested, certainly for the theater building, which is existing and not going to change. A variance is also requested for K-mart and the grocery store building. Would you please address those in terms of the plan, again, and comparing it with, or bringing into it, if you will, the master plan, and its -- its desire to improve facades and the esthetics of the center, in particular, Closter Plaza.
A       Well, the master plan makes that specific
comment. Interestingly enough, one of the
purposes of the municipal land use law is also to
enhance the visual characteristics of site. One
of the benefits, and I'll talk about this in the
context of C2 variance relief. One of the
benefits of having it at varied heights, is that
it provides more visual interest in the site as a
whole.

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

Q       Well, you testified that the K-mart
building is currently 29.88 feet. And in phase II
it will be reduced, both in size, and in height.
And in such, in reducing the height of the
building, it would be reduced to 27 feet 5 inches.
The theater building, you testified, would remain
the same at 33.79 feet, which is a pre-existing
condition on it. Even though you've just said it,
are the designs that are proposed by the applicant
for the K-mart building, 27 feet 5 inches, and the
grocery store at 27 feet 5 inches, again,
consistent with the good design and the esthetics,
which the master plan talks about?
A       Yes, I would say it is. The master plan
talks about the poor quality of the existing
design, and it talks about encouraging design
elements which will enhance the visual impression
of the building. And, obviously, that's what this
does.

Q     Thank you. There is a limitation,
within the ordinance, of a maximum of 45,000
square feet. The K-mart building, once it's
reduced in size, will be replaced with a smaller
building, which is currently, since there are no
tenants for it, would, at that end of phase II, be
greater than 45,000 square feet. Would you
address the grandfathering of that aspect of it.
Again, in context of the master plan with respect
to store sizes.
A       Well, there's two aspects. One is there
is an existing condition of over 80,000 square
feet there. It will be reduced somewhat so the
magnitude of the existing variances, in fact,
being reduced. But beyond that, your master plan is very explicit in terms of its statements regarding the unfounded fear, to use its words, that are associated with concern about larger buildings on this site. It has a lot of language about why a larger building would be appropriate here, because it would help encourage the redevelopment of the shopping center. And it points out that from a planning perspective, there really are no issues associated with the larger building that would result in any adverse planning to consider.

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

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

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

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

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

Q    That also includes, for example,
elimination of the narrow driveway between the
K-mart building and the grocery store that
currently exists. Would that enhance the --

enhance the very criteria you were talking about?

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

Q       Thank you.

A       In terms of the second prong of the
negative criteria, I've already touched upon this
in some detail. The statute asks that you show
there is no substantial impairment to the intent
of the master plan. And the word substantial is
not just coming from me, it's right out of the
statute. Not only is there no substantial
impairment to the intent of the plan, but in so
many ways this application affirms your master
plan's recommendation, and affirms your master
plan's goals and objectives. I'm not going to
repeat them all, but suffice it to say, all that I said earlier, falls into play right in this section.

Q  Thank you. Couple more questions.

Were you present during the hearing at which the board's planner, Mr. Banisch, testified to, as to jurisdiction? And if you were, do you concur with his conclusion or have any additions to the statements he made at that time?

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

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

In this particular instance, your ordinance doesn't limit the site to less than what's being proposed, other than through parking and coverage factors, that the only way you can actually limit the amount of floor space that one
is entitled to, is take it over to a D variance, is through floor area ratio.

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

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

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

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

Q     Mr. Banish also came to the

conclusion that the structures were -- would

contain all permitted uses so that there was no --

no jurisdictional issue as to uses. And, further,

that the structures were being reduced from 4 in

number to 3 in number. And that diminished the

nonconformity, visive, the structures, all of

which is grandfathered from previous approval, is

that the case?

MR. SEGRETO: I object to the

question.

MR. CHAGARIS: And the basis is of

your objection?

MR. SEGRETO: I am objecting to the

form of the question and he is paraphrasing what

Mr. Banisch said. And I don't think he's

paraphrasing correctly what he said.

MR. CHAGARIS: Well, Mr. --

MR. BASRALIAN: I believe I asked

the question properly, and it's appropriate, but I

will rephrase the question in any case.

MR. CHAGARIS: Okay.

Q     You indicated you were present

during Mr. Banisch's testimony. Do you concur
with his conclusions with respect to the permitted uses that would be contained in the buildings, and that none of those rose to the level of a use variance or a D variance. That's the first part of the question.

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

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

A       Yes.

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

A       That is correct, yes.

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

CHAIR LIGNOS: Okay. Members of the board, questions of this witness? Okay. Let me see if I can -- I'll start over on one side and
then I'll go around. Mayor, do you have a question?

MAYOR HEYMANN: I'll pass now.

CHAIR LIGNOS: Councilwoman.

MS. AMITAI: I'm thinking about it.

Let me go through --

CHAIR LIGNOS: Mr. -- Dr. Maddaloni.

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

A It's my understanding that the work will
begin shortly thereafter. Although I'm really not
the one you should be asking that question of.
But that's my understanding.

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

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

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

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

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

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

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

MR. BASRALIAN: It depends upon a
lot of things. It's all not going to happen
simultaneously, because you're going to start on
one side and move down the line. A lot depends on
when we're able to commence construction. But it
is the intent to do that as soon as that building
is available. And we're permitted to go forward
with construction. So, there's not intended to be
a year -- years and years delay in that aspect of
it. The desire of the applicant has stated early
on they would move forward as soon as they were
able to do so. I don't control, necessarily, when
we're going to be able to start depending upon the
procedure and where we go from here, but as --

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

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

MS. AMITAI: Two years?

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

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

MR. MADDALONI: Yes, that's all for
now. Thank you.

CHAIR LIGNOS: Ms. Stella.

MS. STELLA: No questions.

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

MR. NYFENGER: No.

CHAIR LIGNOS: Mr. Pialtos, questions?

MR. PIALTOS: No questions.

CHAIR LIGNOS: Ms. Isacoff, questions?

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

MR. BURGIS: Oh, thank you.

CHAIR LIGNOS: Mr. DiDio?

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

CHAIR LIGNOS: Mr. Sinowitz.

MR. SINOWITZ: No, sir.

CHAIR LIGNOS: Mr. -- Mr. Boswell.

MR. DENICOLA: Yes. Couple of things. The buildings that are being removed, in terms of certain buildings being removed, greater than 50 percent, does that affect the number of buildings remaining on site? Because it is a
variance. So, if greater than 50 percent of the
building is being removed, does that constitute
the removal of that particular structure?

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

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

MR. BURGIS: I thought you just did.

MR. DENICOLA: No.

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

MR. DENICOLA: No. Being removed.

If greater than 50 percent -- well, it is a
variance. Because number of buildings on site is
a variance, over the -- over the -- over 1. If
removal of 50 percent of a structure is considered
removal of that structure, and you're putting that
structure back, is that in itself a variance?

MR. BURGIS: No.

MR. DENICOLA: No. Okay.

MR. CHAGARIS: Could you explain
your answer?

MR. BURGIS: I believe there's case
law to that effect. And usually that -- that
issue relates to matters where there is a fire or
a structure burned down. Not redevelopment of the site.

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

MR. BURGIS: That is correct.

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

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

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

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

MR. SEGRETO: Right.

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

MR. BURGIS: No, not that I'm aware of, no.
CHAIR LIGNOS: Mr. DeNicola, do you have any other question? Hold on a second.

Mr. DeNicola.

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

MR. BURGIS: Yes.

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

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

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

CHAIR LIGNOS: Mr. Chagaris.

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

MR. BURGIS: I'm not sure what you're referring to.
MR. CHAGARIS: The context is a --
in other words, would you -- how would you
characterize this structure, this shopping center
structure?

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

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

MR. BURGIS: Oh, yeah, certainly.

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

MR. BURGIS: Correct.

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

MR. BURGIS: No, not at all.

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

MR. BURGIS: In planning, and in the
context of the municipal land use law, there is
something to be said about developing large
parcels, and I'll identify this as a large parcel,
in a comprehensive and integrated way. Oftentimes
you will see it in multiple buildings. Sometimes
you see it in one large building. You know, but
oftentimes you do see multiple buildings on a
site. But they're developed together, in one
fashion, to create a coordinated esthetic, a
coordinated parking arrangement, a coordinated
utility infrastructure system, and the like. And
that's what we have here. And that's typical.
It's very common.

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

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

MR. CHAGARIS: Larger lot.

MR. BURGIS: No, it does not.

MR. CHAGARIS: Could you explain?

MR. BURGIS: Yeah. First of all,
the ordinance only requires a minimum 7,500 square
foot lot in this zone. And the size lot is
obviously much larger than that. It's 636,000
plus square feet. So, within the context of your
own ordinance, you know, this is a reasonable
developable lot that stands on its own, even with
the subdivision.

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

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

It all started with the Coventry
case back in 1988, which was a Supreme Court case
regulating multi-family development as a
conditional use. And it's my one Supreme Court
case. So, I know it very well. In that instance
the applicant was required to have a front yard
setback as a condition of a conditional use,
equivalent to 1/3rd of the depth of the lot. And
most of the zone had, you know, 200 foot depth.
That particular lot had a 1200 foot depth. So, it
needed, basically a 400 foot front yard. We
argued before the board that, A, that was a
ridiculous standard. But, B, the real approach
that you should look at, is, does the site
function well irrespective of not meeting that
condition. The Supreme Court agreed with us,
that, in fact that that should be the law of the
land regulating conditional uses.

Fast forward a couple of years
later, there was a density variance. It went up
to -- it was an Appellate Division case. And they
said, the Coventry process should be applied to
density. And then they turned around,
subsequently, and said, the Coventry process
should apply to FAR. And then separately they
said the same thing about building height. So,
they adjusted the process. But the one thing
they've done, is always focused on intensity
issues. Not the other control for other types of
D variances.
MR. CHAGARIS: Thank you. Now, there's no conditional use being required for this site at all?

MR. BURGIS: No, not at all.

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

MR. BURGIS: Yes, it is.

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

MR. BURGIS: That is correct.

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

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

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

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

MR. BURGIS: Well, there's other's but --
MR. CHAGARIS: Right. And a number of them.

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

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

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

MR. DENICOLA: Height, height, height.

MR. CHAGARIS: Height, I'm sorry.

MR. BASRALIAN: No. Permitted height he means.

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

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

MR. CHAGARIS: Now, as to the parking issue, I believe you testified that approximately 1,400 square -- I'm sorry, 1400 --
1500 spaces are currently required under the ordinance?

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

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

MR. BURGIS: Correct.

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

MR. BURGIS: Those --

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

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

MR. CHAGARIS: Okay. What is that opinion?

MR. BURGIS: You require 1 space for every 175 square feet of floor space. That is a very outmoded standard. You rarely see it in a zoning ordinance today. It used to be that ordinances are being changed to 1 per 200. Now we're seeing 1 per 225. And even 1 per 250 for retail.
In many instances, in Paramus, where I spent a lot private development work and at one time was their planner, we were seeing and granting -- getting relief granted for the equivalent of 3. -- 1 space for every 300 square feet in recognition of reduced -- this is an excessive standard. It overstates the case dramatically.

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

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

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

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

MR. CHAGARIS: Right.

MR. BURGIS: So, effectively they're 9 X 18. And that is the standard parking stall that is recommended throughout the industry today.
Again, the only times you see a 10 X 20-foot stall seems to be in older ordinances that have not been updated over the past ten years or so.

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

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

MR. BASRALIAN: I do have a question.

BY MR. BASRALIAN:

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

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

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

A I believe it's 178.3 or 5.

MR. BASRALIAN: Thank you. I have
no other questions at this point.

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

MR. DENICOLA: One follow-up.

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

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

MR. BURGIS: 175.

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

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

My experience over, you know, more 35 years, is that ordinances -- ordinance drafting lags behind what's happening in the real world by a good 10 years. This is a prime example of it.
We are seeing -- I have seen it time and time again.

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

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

Mayor? None.

Councilwoman?

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

MR. BURGIS: I don't know. I didn't do that calculation.
MR. BASRALIAN: I can tell you.

MR. BURGIS: We can do it.

MS. AMITAI: What would that be?

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

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

MR. BURGIS: The engineer had indicated, that while the ordinance requires that you measure sight distance from the driver seat of the front of the vehicle, 10 feet behind the right-of-way line, he chose to measure it 14 1/2 feet behind the extending curb line. And it makes sense. Because it's the curb line that represents, you know, the same drivers see out in the field. If there's an imaginary right-of-way
line. And nobody knows. So, his experience has been that that seems to be a more reasonable approach that reflects the way we, as drivers, all act. That's why he suggested measuring it that way.

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

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

MS. AMITAI: It is Lewis Street.

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

MS. AMITAI: That's true. In addition, the -- the bump out for the store, that will be on the western edge of that K-mart building, in your planning, is there any way that bump out might have been considered for the back, or for the other front yard, onto Homans, as opposed to making it a more narrow area for those cars to traverse?
MR. BURGIS: Well, in the end, you still have the 24 foot wide aisle. Even with that extension, 24 foot wide aisle -- excuse me, 24 foot wide aisle for two-way vehicular flow, which is the standard dimension you need for safe and efficient movement of traffic.

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

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

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

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

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

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

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

MR. BURGIS: It's difficult to do
so, given the dimension of the rear wall in
relation to Homans. That right-of-way. And the
fact that we have the loading dock back there and
dumpsters, and what have you.

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

MR. BURGIS: Well, I'll let the
architect talk about that relationship. But from
a planning perspective, and the way the master
plan is constructed, the master plan doesn't talk
about how Closter Plaza should reflect the
architecture and lighting features, and everything
else in the central business district. It
specifically talks about, how, by virtue of
attracting people to the community, they will then
also use the central business district for some of
their shopping needs. And I think that's the
focus of the master plan.
MS. AMITAI: But it also states on page 14, that, you know, he refers to other shopping center developers that have molding their architecture to respect local vernacular and historic architecture. But we can talk about that with Mr. Roncati.

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

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

MR. BURGIS: In those examples though, although they, you know, merit attention. Those examples have their -- their entire central business district in one concentrated area. Here there's that slight physical separation between the mall and the rest of the central business district. Primarily by a function of the parking lot. And there's other examples. You do not have
these large front yard parking lots that
distinguish the shopping center from the rest of
the downtown.

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

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

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

    CHAIR LIGNOS: Doctor.

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

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

MR. MADALONI: Okay. Thank you.

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

MR. NYFENGER: No.

CHAIR LIGNOS: Mr. Nyfenger, none.

Mr. Pialtos I see none. Ms. Isacoff, none.

Mr. Didio, Mr. Sinowitz.

MR. SINOWITZ: None.

CHAIR LIGNOS: Mr. DeNicola.

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

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

MR. DENICOLA: Okay. And 1 to 250
is what?

MR. BURGIS: Four per thousand.

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

MR. BASRALIAN: It would be 13 spaces.

MR. DENICOLA: Thirteen more spaces.

Okay. That was it.

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

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

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

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

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

CHAIR LIGNOS: We just struck that
from our's.
MR. BASRALIAN: I guess -- I guess my final question on that, is, the governing body has no authority to review master -- I'm sorry, site plans that are approved by a planning board, is that not the case?

MR. BURGIS: That is correct.

MR. BASRALIAN: Thank you.

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

MR. BASRALIAN: Can we take a break?

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

MR. BASRALIAN: Sure.

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

(A recess was taken.)

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

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

MR. BURGIS: As a community shopping center.

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

MR. BURGIS: Yes.

MR. ROSENBLUME: And where would that be?

MR. BURGIS: Down the road.

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

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

MR. ROSENBLUME: Okay. You
described this property or shopping center, as being tired. Could you elaborate why you call it tired?

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

MR. ROSENBLUME: Your opinion?

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

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

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

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

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

MR. ROSENBLUME: It's like colonial days.

MR. BURGIS: Oh, Williamsburg,
Virginia.

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

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

MR. ROSENBLUME: Well, why not?

MR. BURGIS: Because it's --

MAYOR HEYMANN: Tired.

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

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

MR. BURGIS: If it was not vacant?

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

MR. BURGIS: Architecturally
speaking it still looks tired. In terms of the
circulation design, it needs improvement there,
which is being proposed.

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

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

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

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

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

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

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

MR. BURGIS: When I -- when I moved
to this area. I have been here for probably 30
years. It wasn't the most active mall even then.

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

MR. BURGIS: Yes.

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

MR. BURGIS: You still have one.

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

MR. BURGIS: Yes.

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

MR. BURGIS: Yes.

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

MR. BURGIS: The focus, from a planning perspective, is the relationship of the on-site condition to the adjacent street. Here, you know, the existing condition, you know, lacks
any landscape amenity along the street edge. In the rear -- in the Homans Avenue side, I think historically that was created at the rear of the building. By virtue of its redesign, you know, we're providing the landscape amenity along the street to visually enhance it. The circulation works well because if you stand at the placement where the driveways are, you do have a very good vision clearance looking up and down the street. So, you know, this is the kind of planning issues you look at. And, that is, you know, the site works, the site functions.

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

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

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

MR. BURGIS: Not necessarily.

MR. ROSENBLUME: Okay.

MR. BURGIS: You have to recognize it, in this particular zone, this zone only
requires a 7,500 square foot lot.

    MR. ROSENBLUME: Right.

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

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

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

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

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

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

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

    MR. ROSENBLUME: No, I'm looking for the answer that he gave before, that the code is archaic.
MR. CHAGARIS: Well, I don't think he said that but --

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

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

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

MR. ROSENBLUME: Okay.

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

MR. ROSENBLUME: Great. Thank you.

MR. BURGIS: You're welcome.

CHAIR LIGNOS: Yes, sir. Please step forward.

MR. ISACCSON: Steve Isaacson, 97 Columbus. Was that your letter in the newspaper this week?

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

MS. AMITAI: Oh, I saw that too.

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

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

MR. ISACCSON: Okay. And also just a point, you called Closter Plaza being, looking tired. Maybe it's just dated. I mean some people like the historic look of a 60's, you know. I mean my brother was an art deco dealer. I like things that look like the 30's, and the 20's. You know, so, it's personal taste. Also, just curious, if you felt that the parking is not necessary anymore because of internet shopping,
then why is Edens spending so much money on the shopping center?

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

MR. ISACCSON: I believe you said that one of the reasons why parking is not needed is because -- one of the results is because of internet shopping.

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

MR. ISACCSON: Okay.

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

MR. ISACCSON: Okay. But, once again, there is a huge investment being made in this shopping center. So, I would disagree with the statement a little bit. You stated that, I believe the facades of these buildings will be 27 feet 5 inches, and the roof was going to be --
MR. BURGIS: No.

MR. ISACCSON: Is that the maximum?

MR. BURGIS: That's the maximum.

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

MR. ISACCSON: The other buildings would be?

MR. BURGIS: Everything else will be 25 feet.

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

MR. BURGIS: Lower.

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

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

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

MR. ISACCSON: Okay. Thank you.

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

MR. BURGIS: I think public transportation is a good thing for Bergen County as a whole. I would take issue with your statement that this is the lesser of two or more evils, because I think there are so many beneficial aspects to this application that they really can be overlooked. This center needs help. This center, you know -- you've all lived with it for a long time. I've driven by it. And, you know, I've witnessed it myself, many, many times, for many, many years. And when you think about all the improvements that I've kicked off during my testimony, you know, I don't see where the evil is. Because if you're going to suggest that this parking shortage, and you did suggest it, that
that the parking shortage is the "evil" the reality is, it's existing 211,000 square feet has a dramatic shortfall. We're reducing the amount of floor space and increasing the amount of parking. So, at a minimum, we're addressing, to a certain degree, the biggest concern you had. We're improving that condition, along with all the other things we're improving.

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

MR. BURGIS: You know, in -- in terms of the context of the site constraints, you know, this is a dramatic improvement. You know, you're not going to get the full amount of parking. That's just not going to happen. But recognizing that, you are dramatically reducing the shortfall of the parking. And that's compounded by the fact -- or not compounded, but the issue is that your parking standard, that you suggested is 600 spaces short, you're parking standard dramatically overemphasizes a need for more cars on this site. If you use the standard that I was suggesting, and I believe the engineer
had previously used similar standards, all you are
is short 13 parking spaces. That's all you'll be
short. And I would suggest to you that on any
given day during the peak shopping period, you
know, you'll get a variation in vehicular flow of
more than 13 cars.

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

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

MR. ISACCSON: Okay. So, wouldn't
this increase in activity increase the demand in
parking?

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

MR. ISACCSON: Go there on a
Saturday or Sunday. Active and there's nobody
there. Thank you very much.

CHAIR LIGNOS: Okay, any other
CROSS-EXAMINATION BY MR. SEGRETO:

Q     Good evening, Mr. Burgis.

A       Good evening.

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

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

MR. CHAGARIS: Well, I agree that
this application doesn't -- didn't mention
anything about five buildings. However, the only
point I would suggest, is, that did Mr. Burgis, in
the prior application, indicate in any report that
he presented, that there were five buildings. I
don't recall that. Do you recall that?

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

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

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

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

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

BY MR. SEGRETO:

Q Take a look at the box portion.

Didn't you testify, before this board, and said
that there was five buildings?

A I did. The only thing that that shows is
that, if that is the case, we have a more dramatic
reduction in number than I previously testified.
Q    Well, do me a favor, and show me
where the four buildings are, because I'm very
confused about the number of buildings.

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

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

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

A     Yes.

Q     And the freestanding bank is four?

A     Yes.

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

A     I'm not sure what building C is. You have
to show me.

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

    A Yes.

    Q That was the fifth building?

    A Yes.

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

    MR. SEGRETO: Yes.

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

    A Yes.

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

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

    Q And the five includes the existing
    bank?

    A Yes.

    Q Or does that make it six?

    A No. That was five.
Q     All right. All right. Let's talk
about the K-mart is 84,000 square feet and you're
reducing it to 73,000 square feet, correct?
A     And change, yes.
Q     All right. So, with respect to the
K-mart building, you're doing what the law
requires, and that is to bring that building more
into conformity with the ordinance, isn't that
correct?

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

MR. CHAGARIS: Sustained.

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

MR. CHAGARIS: Sustained.

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

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

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

BY MR. SEGRETO:

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

A Yes.

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

A I believe so.

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

A No, I don't.

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

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

Q Fine. Is it essentially staying the same size?

A Yes.

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

A You're talking about the grocery store building?
Q     Well, I'm talking about the building you described as the central building, which contains the grocery store, and more, right?

27,000 square feet of that central building is the supermarket space, right, the empty supermarket space?

A       Yes.

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

A       Okay.

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

A       If your math is correct.

Q     Well, 27,000 and 41,000.

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

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

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

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

Q     In phase I, that central building is being -- the square footage is being increased, is
it not?
A I believe so. Let me get the maps in
front of me so I can --

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

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

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

MR. SEGRETO: Oh, yes.

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

BY MR. SEGRETO

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

MR. BASRALIAN: Could you -- could
you -- could I ask that the question be repeated?
Maybe you could read that back, please.

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

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

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

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

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

MR. SEGRETO: Yeah, I understand that.

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

MR. CHAGARIS: No, you're right.

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

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

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

MR. DENICOLA: They're connecting the buildings.

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

MR. MADDALONI: The total square footage.

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

MR. SEGRETO: I know you think
that's what the criteria is. Okay. But you're wrong. and I know you're wrong, Arthur. And I have to establish a record. And I have to ask the question. If you're not going to allow me to ask the questions that are relevant to the legal issues, then just tell me that, Arthur, and we'll move on.

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

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

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

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

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

MR. SEGRETO: Oh, it doesn't?

MR. CHAGARIS: No, it does not.

MR. SEGRETO: Oh, come on Arthur, please.
MR. CHAGARIS: No, c'mon. He didn't say one word about an interim square footage. He talked about the totality.

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

MR. CHAGARIS: Yes, it does matter.

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

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

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

MR. CHAGARIS: Yes, it does.

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

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

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

MR. BASRALIAN: Because that's not what he testified to. He testified to the
totality of the existing center and the ultimate reduction to a lesser center by some 3,800 square feet. That's what he testified to. Not about individual components of the building.

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

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

MR. CHAGARIS: No, I sustain the objection.

BY MR. SEGRETO:

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

MR. BASRALIAN: Excuse me just --

A    Yes.

MR. BASRALIAN: -- for clarification, there is no supermarket use on the
MR. CHAGARIS: Could you rephrase the question, sir.

MR. SEGRETO: Yes.

Q There was a old Stop and Shop/Grand Union on this site, correct?
A Yes.

Q And it operated in the central building that you pointed out to us, isn't that correct?
A Correct.

Q And that space has been vacant now for a long time, isn't that true?
A My understanding.

Q And that space is going to be taken up by a new Whole Foods, correct?
A It's going to be taken up, as labeled, as a grocery store.

Q But it's going to be a Whole Foods, isn't it?
A I don't think the application has specified that.

Q And that new supermarket is going to be 41,256 square feet, right?
A Correct.
Q    And it's going to have a mezzanine
of 3,000 square feet, right?
A     That is not correct.
Q    It's not going to have a mezzanine?
A     No. It's a mechanical equipment area of
approximately 3,000 square feet. It's not a
mezzanine.
Q    Well, on page 6 of the Omland plans
it says, retail A, grocery store plus or minus
41,256 square feet. Mechanical mezzanine, 3,000
square feet. Do you know something different than
Omland knows?
A     No. You have an incorrect use of
terminology you can call it.
Q    What's going to be -- what's going
to be in this mechanical area that you're telling
me about?
A     Just that. Mechanicals. There's no
retail. There's no office space. It's just for
mechanicals.
Q    How do you know that, if you don't
even know what the supermarket chain is?
A     I know that from my client.
Q    And did the client tell you that
Whole Foods is going to have a mechanical
mezzanine of 3,000 square feet?
A       They told me that the grocery area will
have a mechanical area, roughly 3,000 square feet.
Q       And you don't count that 3,000
square feet in your overall square footage for the
shopping center, right?
A       I believe that's correct.
Q       And you'll agree with me that all
the mechanicals that are going to go in the 3,000
square feet mezzanine, if the mezzanine was not
located there in the building, that those
mechanicals would have to take up retail space,
which would reduce the amount of retail area?
MR. BASRALIAN: I'm going to object
to the question. Because, first of all, he
asked -- excuse me. He asked you to -- you asked
if he would agree with you, and he's not the
architect. All he did was testify as to what's on
the plan. That's a mechanical area. Period.
MR. CHAGARIS: Sustained.
Q       All right. You'll agree with me,
anyway, that the supermarket use that was on the
property is 27,000 square feet and now it's going
to be over 41,000 square feet, isn't that true?
A       I will confirm that the figure of the
new -- the proposed grocery area is 41,256. I'm not exactly sure of the exact square footage for the Stop and Shop.

Q    You'll agree with me that the supermarket is the greatest generator of traffic of any retail, isn't that correct?
A    I don't know that for a fact.
Q    Would you say it's one of the greatest generators?
A    It's a traffic generator.

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

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

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

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

MR. BASRALIAN: Relevance for that
question for him to review the demolition plan.

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

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

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

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

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

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

    BY MR. SEGRETO:

        Q Yeah, on Exhibit A-18, the central building, and it's been represented that the pale color represents the portion of the central building that's going to be demolished. Do you
agree with me that the majority of the central
building is going to be demolished?

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

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

A I believe that's correct.

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

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

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

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

Q Is there any significance to the
increase from 67,000 square feet to 85,000 square
feet?
A       Same answer.
Q     Aren't you increasing the
nonconformity if you increase it by 21,000 square
feet?
A       No.
Q     The K-mart building is 84,000 square
feet. If you were proposing to make that, let's
say 95,000 square feet, would you need a use
variance for that?

MR. CHAGARIS:  I'm going to sustain
the objection.
MR. SEGRETO:  Can't ask a -- can't
ask an expert a hypothetical?
MR. CHAGARIS:  That's not what he
testified to.
MR. SEGRETO:  Yeah, I understand, I
can't ask the expert a hypothetical question.
MR. CHAGARIS:  Not that
hypothetical. It has nothing to do with this
application.
MR. SEGRETO:  He can't answer that
question?
MR. CHAGARIS:  No.
Q     Don't you need a use variance to,
after you demolish building B, to add 21,000
square feet to building B?

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

A Absolutely not.

Q You sure about that?

A I am a hundred percent certain.

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

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

MR. SEGRETO: Doesn't make a difference?

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

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

A Yeah. These plans, yes.

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

A No.

Q You're not familiar with that?
A No.

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

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

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

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

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

MR. CHAGARIS: You can get the question out.

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

MR. BASRALIAN: Objection.

MR. CHAGARIS: Sustained.
Q     Aren't you increasing the
nonconformities when you are reducing the size of
the lot, and in phase I you are increasing the
square footage of the buildings?

MR. CHAGARIS:  That's a compound
question.

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

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

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

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

MR. SEGRETO:  It's one question.

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

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

MR. BASRALIAN:  It's -- it's --
it's -- just ask it in two questions. Two
sections. It's a compound question. Ask the first part and then ask the second one and I won't object to the question.

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

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

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

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

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

MR. SEGRETO: You interrupted me throughout my entire cross-examination.
MR. CHAGARIS: In response to an objection I sustained. Objections, yes. But if you're asking him, by virtue of the subdivision of lot 1.02, and the increasing of the size of the structures in phase I, and then reducing them to the -- in phase II, does that create an intensification; then that is a proper question.

MR. SEGRETO: That's not my question.

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

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

A That is correct.

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

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

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

A You are removing a portion of the existing
lot. I wouldn't use the word substantial.

Q     That could be used for parking?

A       Could be used for building. It could be

used for a lot of things. That's -- that's -- you

know, the ordinance allows one to subdivide this

property. And that's what the applicant is doing.

Consistent with code.

Q     As the -- as the -- has the owner of

the property previously subdivided a portion of

this property off?

MR. BASRALIAN: Objection. Not

relevant.

MR. SEGRETO: It's what, irrelevant?

MR. BASRALIAN: Not relevant.

MR. SEGRETO: Not relevant. Oh.

MR. CHAGARIS: Sustained.

MR. SEGRETO: You sustained that

one?

Q     In phase I you're adding about

10,764 square feet. But you're only adding a

retail space, and you're only adding 10 spaces.

If you're increasing the square footage by that

much, the parking criteria requires you to have 62

spaces for that 10,000 square feet. Do you agree

with me on that?
A       I will assume your math is correct.

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

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

Q     Now, go back to Exhibit A-18.

Mr. Roncati shows that you're completely
demolishing what used to be known as building C.
That's the building that jettisons out, is that
correct?

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

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

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

Q     This one here.

MR. CHAGARIS: Let the record

reflect that the --

MR. BASRALIAN: Okay. Now, --

MR. CHAGARIS: Let the record

reflect that the objector is pointing to a portion
of the, what we call the movie theater building
that is in orange colored or pale colored that is,
appears to be demolished. To be demolished.

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

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

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

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

    MR. CHAGARIS: That area --

Q    But in any event -- in any event,
you'll agree with me, that the L shaped building,
again, the majority of that building seems to
be -- is going to be demolished, isn't that
correct?
A    As depicted in A-18, yes, that is correct.

Q    Again, with regard to that building,
from a planning standpoint, or let's stick with a
planning standpoint, that you believe that's not
significant?
A    That is not significant at all. And, you
know, an applicant is entitled to redevelop a site
without kicking it over into what you suggested earlier, would become a use variance. These are all permitted uses, allowed as of right, in this zone and on this site.

Q    But they're nonconforming buildings, right?
A    There's a setback nonconformity, but that doesn't go to the heart of what you're suggesting. The uses are all permitted. And, consequently, they're entitled to occupy this space or knock some of it down, or knock all of it down and still stay before this board with a site plan.

Q    And that -- and that holds true for the central building B?
A    It holds true for every one of these buildings on the site.

Q    And one of the nonconformities of central building B is that it's 67,000 square feet, right?
A    So what. It doesn't matter. You're allowed to knock down portions or all of existing buildings and occupy them with permitted uses. And if they're occupied by permitted uses, you stay before this planning board for site plan approval.
So, if I have -- strike that. All right, I want to take a look at the -- at the parking. And I want to go to parking in front of the K-mart building. The K-mart building is 84,000 square feet. And in phase I it will stay 84,000 square feet, correct? You're not touching the -- you're not touching the K-mart space --

A I believe that's correct, yes.

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

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

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

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

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

A I will assume your math is correct.

Q And I took it upon myself to use Omland page 6, to count the parking spaces that are currently available, with the lot being
subdivided. And it's only 173 parking spaces. You'll agree with me that that's a substantial deficiency, is it not? A In using your flawed analysis, yes. But the reality is, in a comprehensive integrated shopping center design, one doesn't go to a shopping center and say, if I'm going to this grocery store, for example, and can't park directly in front, I'm going back home. You park wherever the space is available. The entire lot is designed to be used by anyone who shops in the center.

Q The applicant has indicated that they, in the northern portion of the K-mart building, there's a potential for a pharmacy, that's with the drive-up window pharmacy. A A permitted use, yes.

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

MR. MADDALONI: Well, I would.

A Let me explain my --

Q Dr. Maddaloni will do that. That's
CHAIR LIGNOS: He'd go to Harmons.

A And I'm two. And I'm two, Mr. Segreto.

Because the reality is, the whole thrust -- well, one of the thrusts and focuses of this design is that you created an experience for people to shop and experience the character of the overall center. So, you can park anywhere along the entirety of the center. And if you have to go to CVS you might decide to window shop and shop elsewhere.

Q Now, the -- in phase II --

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

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

A Yes.

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

MR. BASRALIAN: Except -- except we're talking about shopping in totality. Not use
by use. Or store. Or part of a structure. And I object to the relationship of trying to tie the existing K-mart, whether it's 84,000 square feet, or reduced to 73,000, as having its own parking requirement. The parking requirement is for the entire center. Not a particular portion of any structure.

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

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

MR. CHAGARIS: Sustained.

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

MR. BASRALIAN: That was my objection, Doctor.

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

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

MR. SEGRETO: Well, I want to
talk -- I want to talk about it with the planner.

    MR. BURGIS: Well, you can talk

about planning -- questions about planning with
the planner.

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

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

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

    MR. BASRALIAN: It goes --

    MR. CHAGARIS: No, again --

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

    MR. CHAGARIS: Sustained.

    MR. SEGRETO: I want to ask him
questions about the restaurant use in building D
and B as well as the theater and the bank. And I
want to ask him questions about the total amount
of spaces that's needed for those uses and those
buildings, and I'm not allowed to ask him that?
It's irrelevant?

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

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

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

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

MR. CHAGARIS: Right.

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

MR. CHAGARIS: Correct.

MR. SEGRETO: So, I can't ask him
questions about the deficiency of the parking lot
in this area, compared with the uses that the
MR. CHAGARIS: Why don't you pose your questions and let's see where it goes.

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

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

BY MR. SEGRETO:

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

A For a restaurant?

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

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

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

A If that maths works out, yes.
Q Building B, I'm not counting the supermarket, but the remainder, the 40,000 square feet, as well as building D, has 41,000 square feet --

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

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

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

Q All right, Mr. Burgis, let me give you -- I'm going to give you -- I'm going to try to formulate a question here to speed it up a little bit. My calculations for all the uses that are proposed in building B, D and the theater, as well as the bank, and that's the section of the parking lot we're talking about, is that the required spaces, under the ordinance, would be 773
spaces. And there is only 247 provided on the plans.

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

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

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

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

BY MR. SEGRETO:

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

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

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

A Correct.

Q See chapter 173.

A Correct.
Q Doesn't that section of the ordinance incorporate section 173, and thereby, make all of the off street parking requirements variances and not waivers?

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

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

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

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

A The purpose is to make certain that everyone is aware that the parking standards are in a physically separate and distinct ordinance from zoning.
Q     Won't you agree with me that the cases say that off street parking requirements are variance issues and not waivers? Aren't there cases to that effect?
A       There are, where the parking standards are set forth in the zoning ordinance. I have seen zoning ordinances where they have a parking schedule set forth in the ordinance. You don't have that here. It's a major distinction. They purposely made a distinction to keep it separate. So, thereby, the area and bulk -- or excuse me. The regulation in the municipal land use law governing variances wouldn't apply. And that's pursuant to the statutes.
Q     Does this applicant have to comply with the provisions of article 9 of the zoning ordinance?
A       That's the article that I had mentioned earlier, because article 9, article 9 is the district 4B office zone requirement.
Q     All right. Take a look at section 200-63E. Do you see the title of that section?
A       No. Hold on a second. That section is entitled "Special Use Regulations For All Districts" And section --
Q Not special. Specific.
A What did I say?
Q You said special.
A Oh, I'm sorry. "Specific Use Regulations For All Districts."
Q And that includes the district 3 business district, right?
A Right. And subsection E says two interesting things. One, "No building shall be erected, constructed, or altered for any non residential use or purpose unless the provisions of article 9 shall have been followed. And until the site plan has therein set forth shall have been approved by the planning board and by the mayor and council." So, when you look at article 9, you find that that references -- that is the office zone district of the municipality. And a clear reading of this section would indicate that if all buildings, or any non residential use, has to meet the provisions of article 9, and article 9 says that you cannot have any retail use in any retail zone, it sort of guts the entirety of all your business zone districts. It guts --
Q Right, what are you telling me, that there is an error?
A       Clearly. The same way I'm saying, or said
earlier, that there was an error when the same,
very same section says that the site plan has to
also be approved by the governing body. That's
clearly inconsistent.

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

Q     Do any of the proposed signs comply
with the ordinance?
A       Yes.

Q     Which ones?
A       Those that will be less than -- located
with the store which has less than a 50 foot
linear dimension, shall be capped at 36 square
feet, which is what the ordinance speaks to.
Q     And how many of those stores will there be?
A     That I don't know.
Q     There will be 5 pylon signs, is that correct?
A     Some are monument signs and some are pylon signs.
Q     Now, you talked about --
A     There's actually 1 pylon sign.
Q     There's 5 large signs, right, on the property?
A     No. There are 5 freestanding signs.
Q     That's what I meant, freestanding signs. Now, you talked about that this -- this plan is going to create a desirable visual environment, is that correct?
A     Yes.
Q     Couldn't that same desirable visual environment be made, even if you reduced the square footage of the buildings to let's say 150,000 square feet?
MR. BASRALIAN: Excuse me. Is this another hypothetical?
MR. SEGRETO: Yes, another hypothetical for an expert, yeah. That you know,
Joe, and I know, that we do it all the time, but for some reason Arthur suggests that we can't ask hypothetical questions.

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

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

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

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

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

MR. BASRALIAN: That wasn't even the question. The question was: Could you have that,
you know, that environment that --

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

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

A    In the purely theoretical sense that may be true.

Q    Why does it have to be purely theoretical?

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

Q    I'm asking about actual.

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

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

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

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

Q    You're demolishing most of the
central building and building D, aren't you?
A     I'm offering -- I'm offering what you
suggested. It's example. And no one, I don't
think, would take an existing building, and remove
that amount of floor space, when they have the
right to use 211,500 square feet today and
tomorrow.

Q    But you're demolishing most of the
building.

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

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

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

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

A       Again, if your math is correct. But
planning is not just a -- an enumeration of a
number of waivers or variance relief that's being
requested. I think you have to look at the sum and substance of what's being proposed. And for all --

Q     Could you re --

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

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

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

Q     By decreasing the amount of square footage you could also create more space for landscaping, isn't that true?

A     That's what they've done, they are reducing it by 3,200 square feet, reconfiguring
the parking lot, and getting all the enhanced
landscape amenities that you just mentioned.
Q     They're reducing the impervious
coverage by .62 percent, right?
A     Yes.
Q     That's less than 1 percent reduction
in impervious coverage, right?
A     But --
Q     -- on a 15-acre site.
A     Right.
Q     And you think that's significant,
from a planning standpoint?
A     Yeah. Because --
Q     It is?
A     It is. Because --
MR. CHAGARIS: He said it is.
MR. SEGRETO: I want to make sure it
was on the record.
A     Because that existing doesn't begin to
identify the manner in which the circulation, the
parking lot and circulation plan is being
reconfigured to provide the landscape feature
that's being proposed along the streets, the
interior of the site, and at the same time make
the other improvements that I mentioned. Again,
you just -- you know, planning is not just a game of numbers and inches. You know, there's a lot more to it than that. And I think that's what you're whole argument lies. Doesn't seem to understand.

Q    You could reduce the proposed shopping center on the site in the front of it, see where it jettisons out? See where the supermarket space jettisons out into the parking lot?

A    When you say, jettison out, I'm not sure what you're referring to.

Q    Come with me.

A    I am following.

MR. BASRALIAN: Just refer to the exhibit number, please.

Q    Yes, this is Exhibit A-12. See where it says, retail A grocery store?

A    Yes.

Q    If you took that grocery store, and instead of extending it out into the parking lot, like it is, you see how it jettisons out? You and I are in agreement?

A    No, we're not.

Q    We're not. Okay.
A Yes. Because I say that this building
configuration is designed to reflect an attractive
curvature in the road, in front of the driveway in
front of it, which adds a certain appeal to this
site.

Q You agree with me that if you drew a
line from the K-mart retail F, and drew it
straight across to the first door, and what's
known as retail D, you could remove that portion
of the building, right -- if you wanted to, in a
theoretical world --

MR. CHAGARIS: Wait, wait, wait, wait. No, wait. No, that's not -- he's the
planner. He's not an engineer. He's not a contractor.

MR. DENICOLA: Or architect.

MR. CHAGARIS: Or an architect. So, I mean maybe he could take a knife and cut it, but
that's not what his testimony is about. His
testimony, he just testified to, is that it cannot
be reduced because it would interfere with the
esthetics of that site. That's what he testified
to. That's why he can't cut it off.

Q I'm talking about -- I'm talking
about circulation. If you remove that portion,
would it affect your circulation to the site?

A  One of the benefits of this --

Q  Just answer that question.

MR. CHAGARIS: No, wait, wait, wait, wait, wait, wait, wait, wait, wait. Let him answer the

question.

A  I'm answering your question. One of the

benefits of this configuration is that instead of

just a very straight roadway, you've got this

curvature in the road. It adds esthetic appeal.

MR. DENICOLA: And traffic common.

MR. BURGIS: And, also, yes, thank

you and traffic common.

MR. SEGRETO: Thank you,

Mr. DeNicola. Now we have the board expert to

help out the witness on cross-examination.

Wonderful.

MR. BASRALIAN: He made a comment --

excuse me. For the record, Mr. DeNicola made a

comment under his breath, that was heard, but he

is not -- he's not --

MR. SEGRETO: He didn't make it

under his breath.

MR. BASRALIAN: He's not -- he's not

helping or hindering, okay. He's fulfilling his
position as an engineer for the board. And your characterization that he's helping is incorrect.

Q     Any part of the proposed landscaping on Vervalen in the right-of-way?

MR. BASRALIAN: Excuse me. For the record, the landscape architect testified that a portion of the landscaping is in the right-of-way and you can ask him that question because he's coming back next week as well.

Q     Is that good planning to have your required landscaping to be in the right-of-way?

Is that good planning, Mr. Burgis?

MR. BASRALIAN: Excuse me. Objection that there's no portion of that landscaping that's included in the landscape design for the shopping center itself.

MR. SEGRETO: I don't know what that means.

MR. BASRALIAN: They're putting grass in the right-of-way but it's not calculated as part of the application -- applicant's own landscaped area.

Q     All right, Mr. Burgis, you indicated that this lot has two front yards, right? One on Homans and one on Vervalen?
A      Yes.
Q     Take a look at the definition of rear yard in the zoning ordinance.
A     What section are you referring to?
Q     Definition section. Right in the beginning.
MR. BASRALIAN: Section number would be helpful.
Q     205.  200-5.
MS. ISACOFF: (Board member yawns.)
MR. SEGRETO: Is that more commentary?
MS. ISACOFF: No, I'm just tired. I wasn't commenting on the question.
MR. BURGIS: This is missing a page.
MR. SEGRETO: That's right, Mr. Burgis we're all getting paid.
MR. CHAGARIS: 200:11.
MR. BURGIS: No, I said this is missing a page.
MR. CHAGARIS: 200:11.
MR. SEGRETO: All right, here, why don't you take a look at mine. I don't want to waste time. Look at mine. Take a look at rear yard.
MR. BURGIS: An open space, except for permitted accessories, building from the same lot with the main building, situated between the rear wall of the building or projection therefrom, in excess of 18 inches extends to the sidelines of the lot and the rear line of the lot. Corner lots, the rear yard shall be opposite the lot line contiguous when there's an arterial street. In the event that the street is being contiguous to the lot line or the parcel are of the same classification. And in such event the rear yard shall be opposite the main entrance of the structure facing either of such streets.

BY MR. SEGRETO:

Q    All right. Doesn't that mean that the rear yard on this site is the Homans Avenue, and it's not a front yard?
A    Not necessarily.
Q    Tell me why.
A    In the event that the streets being contiguous to the lot line of a parcel, are of the same classification. And I don't recall that these streets are -- have the same classification as arterial and equal roadways.
Q    That's your explanation? All right.
Give me it back.
A Yes.
Q The central building E, which is 85,000 square feet, is that an existing variance?
A What variance are you referring to?
Q Well, you're asking for a variance for the K-mart building because it's 84,000 square feet. And only 45,000 square feet are permitted, right?

MR. BASRALIAN: No, we didn't -- -- excuse me. That's not true. That's not asking for a variance for that.
MR. CHAGARIS: That's existing, pre-existing.
MR. BASRALIAN: That's existing.
MR. SEGRETO: Well, there's a list of variances and he went over the variance.
MR. BASRALIAN: We listed -- it was listed because it is a pre-existing variance. But you list them all, even if they're pre-existing, because that's what the law requires you to do. But we're not asking for a variance for 84,000 square feet because we already have that right.
Q When was the variance granted for the K-mart, sir?
A That I don't know.

Q When was the variance granted for the central building, central building D that's 68,000 square feet?

A That I don't know.

Q How can it be an existing variance then, in your application, and in your testimony, if you don't know when those variances were granted? Maybe they were never granted, right?

MR. CHAGARIS: They may not have been a variance because the structures pre-existed the ordinance. The building is there now. There's no violation. There's no summons.

MR. SEGRETO: Who says there's no violations, Arthur?

MR. CHAGARIS: Is there any violations of record that you're aware of? They couldn't file this application if there was a violation.

MR. SEGRETO: My understanding is, is that when an applicant comes before a board and alleges that it has pre-existing nonconforming use or that it has their existence by virtue of a previous variance, that they must -- they have the burden of proof to demonstrate that to the board.
Maybe I have a misunderstanding of the law once
again. But, you don't know about any previous
variances for this site, right?
A       Correct.
Q     Is it your testimony --
MR. CHAGARIS:  Excus --
Q     Is it your testimony that -- that
this -- that these buildings predate the zoning
ordinance?

MR. CHAGARIS:  Just for the record,
the section of ordinance at issue, which is
section -- the zoning ordinance, section 200-69
capital E, was added to the ordinance on April 21,
1980. And I believe the application indicates
that the structures were erected in 1960's.

MR. BASRALIAN:  That's correct.
MR. BURGIS:  That's correct.
MR. CHAGARIS:  So, there was no
variance ever granted because it pre-exists the
ordinance.

Q     A number of buildings on this site
pre-exist the ordinance that says that you can
only have one building per lot?
A       I believe that is correct also.
Q     Do you know when the ordinance was
adopted that sets forth that definition for a lot?

A    I believe --

Q    Would it surprise you if I told you it was adopted in 1940, well before any of these buildings were built?

MR. BASRALIAN: Mr. Segreto is taking it out of context. Because it was adopted for a residential standard. Not for a standard -- not for the commercial standard -- the commercial buildings in the municipality.

MR. SEGRETO: The definition of a lot doesn't apply to commercial buildings?

MR. CHAGARIS: It's not a question of definition of a lot. It's a question of the provision of the ordinance that says, in all districts the number of principal buildings per lot shall be limited to one. So, the number of buildings per lot was enacted in 1980.

MR. SEGRETO: Are you sure about that, Arthur?

MR. CHAGARIS: It says it right in the code itself.

MR. SEGRETO: What section are you looking at?

MR. CHAGARIS: I have 200-69 capital
E.

MR. BASRALIAN: As a matter of record, the first structure erected on this property was in the late 50's. It even pre-dated that ordinance by almost 30 years.

MR. SEGRETO: Definition of lot --

MR. CHAGARIS: I'm not talking about lot. I'm talking about the number of buildings.

MR. SEGRETO: Yeah, I know, but the definition of lot says that you can only have one structure on it.

MR. CHAGARIS: Well, obviously that definition was not clear enough, because there is --

MR. SEGRETO: Please Arthur.

MR. CHAGARIS: It says a building. It doesn't say one building.

MR. SEGRETO: May be occupied by a building and accessory buildings.

MR. BASRALIAN: That's not the prohibition in the definition. In what a lot, the prohibition exists in the ordinance that was adopted in 1980.

MR. SEGRETO: We'll argue that at another date.
CHAIR LIGNOS: Mr. Segreto, do you have any other questions?

MR. SEGRETO: Yes, yes, yes.

CHAIR LIGNOS: Because I'm afraid we're going to have a board of pumpkins pretty soon.

MR. SEGRETO: All right.

Q Well, the front yard parking setback, you can't meet the 10 feet setback requirement?

A No. As I testified, that's where the ramp is in place, where a 42 foot linear dimension --

Q No, I'm talking about Vervalen. On Vervalen you have 5 feet.

A It's an existing condition.

Q Well, the existing condition is 0 according to your document. And you're proposing 5 feet?

A Right. So, we are reducing the magnitude of that.

Q The question is: Why can't you comply with the requirement of 10 feet? What's happening -- what's happening there, right near Vervalen, that you can't comply with a lousy 10-foot setback? What's happening there that you
can't comply?

A I believe it has to do with the internal
design of the building.

Q I'm talking about at the end of the
parking lot and where it meets Vervalen.

A I know where you're talking about.

Q It has something to do with the
buildings?

A Yeah, in terms of --

Q It has to do with the size of the
buildings and the requirement for parking, right?

You need that space for parking?

A Well, the reality is that we are reducing
the magnitude of nonconformity.

Q You can't comply with the 10 foot
requirement because you need it for parking,
right?

A That's not what I said.

Q I know. But what do you need it
for? What's over there that you can't put another
5 feet of nice grass and bushes and trees so it
looks nice?

MR. BASRALIAN: It's really
argumentative at this point. He's asked the
question, responded, and now it's an argumentative
issue.

MR. CHAGARIS: Sustained.

Q     And what's preventing the applicant from complying with the 200 square foot parking space requirement of the ordinance?

A     Well, I guess you weren't listening when I was talking about the statutory test, that an applicant has to prove --

Q     I just want -- I just want you to know --

A     -- and the reality -- I'm answering the question now. And the statute says that you can show that there's physical features that affect your ability to comply, or alternatively that there's certain public benefits that accrue from the grant of the variance. And pursuant to Poland, the ruling says very clearly, says that you have to look at the magnitude of the improvements being proposed to determine the propriety of the application and whether relief should be granted. And I think, based on all of the public benefits that accrue from this application, and consistent with Poland, we've met our statutory burden.

Q     What is the public benefit to having
830 parking spaces that don't comply with the zoning ordinance? What's the public benefit?
A The public benefit is the 100 space increase that helps the applicant to achieve. The public benefit is that they require 10 X 20 foot stall, which is a downloaded standard, does nothing but reduce the number of parking spaces that could otherwise be provided, and could be provided in a manner in which is consistent with safe and efficient design criteria.

Q Isn't it better for the public to have 10 X 20 spaces so that when they're putting the groceries in a car they don't have to watch when they open the door that they're hitting the other car which is so close to it? Isn't having that extra foot a public benefit?
A No. The reality is that a 9 X 18-foot stall represents a reasonable design standard that exceeds the very thing that you just commented upon.

Q Tell me why, on the subdivided lot, that the applicant can't comply with the 80 percent impervious coverage.
A In the future he may be able to. But right now all we are doing is subdividing out that
lot. We're not making any improvements to it.

Q    Why can't you eliminate 3 percent of
impervious coverage, put a couple of nice trees,
or some grass, or something like that, to comply?
A    Because it's my understanding of the law
that one does not have to immediately improve a
lot based upon the grant of a subdivision
approval.

Q    But you're asking for a subdivision
and you're asking for a variance, and it's so easy
to eliminate the variance. Why should you get it?

MR. BASRALIAN: Objection. The
application is for what it is. It's at 83 percent
now. It's intended to be 83 percent. He's
testified as to the variance and the board will
have to act on it when it reaches the end of the
hearing. He's answered the question 3 times. And
it's the same answer.

MR. CHAGARIS: Sustained.

MR. SEGRETO: Just a couple more
questions.

Q    With regard to the variance for that
setback on Homans Avenue, again, you're
considering that front yard, right?
A    Yes.
Q     And you indicated that there's going
to be a loading ramp, right, that extends into the
required setback area?
A     Correct.
Q     All right. It's about 6 feet,
right? The requirement for the setback is 10 and
you're providing a 4-foot.
A     A 4-foot dimension.
Q     So, that's 6 feet, right? And it's
42 feet long, that ramp?
A     Well, the ramp is 73 feet long, but a 42
foot portion extends into the front yard setback
requirement.
Q     Can't you simply bring that ramp
into the building, that is, eliminate square
footage in the building, bring that ramp in, to
comply with the 10-foot setback?
A     That's an architectural question. Not a
planning one.
Q     I know. But you can do it, can't
you?
A     No.
Q     You can't slice off 6 feet of the --
MR. CHAGARIS: You're just being
argumentative.
Q  You can't slice off 6 feet of building straight across the back of the proposed new supermarket so that you can comply with the setback requirement?
A    Again, that's an architectural question. Not a planning one.
Q    Well, I'm asking you from a planner's standpoint.
A    From a planner's standpoint I think we've met the statutory burden, and I think I said that 10 times over tonight.
Q    That having it -- having only a 4-foot setback is a better zoning and planning alternative to the property, is that your testimony?
A    Yeah.
Q    And moving that 6 feet in, so that it complies, is bad planning?
A    That I didn't say.
Q    It's not as good, zoning and planning alternative.
A    I didn't say that either. but that's not the test.
Q    That's not the test? You told me that was the test --
MR. CHAGARIS: Don't argue with the witness. Just ask him questions.

MR. SEGRETO: Oh, stop it Arthur.

Q The council here in Closter amended the district 3 zoning, did they not, recently? They increased the square footage from 40 to 45,000 square feet?

MR. BASRALIAN: Excuse me. That isn't -- that isn't a question. If you're asking if they're adopting an ordinance to do something, be specific, please.

Q In 2009, isn't it true, Mr. Burgis, that the council amended the zoning for the business street district and increased the square footage allowable for a store, from 40,000 square feet to 45,000 square feet, you're familiar with that, right?

A I believe that's correct.

Q So, the council had the opportunity, in 2009, to take a look at this business district, right?

MR. BASRALIAN: That's -- how would he -- objection. How would he know that?

MR. SEGRETO: Well, because they did in fact take a look at it, right?
MR. CHAGARIS: They passed an ordinance. What's the question?

Q    Well, while they were looking at the business district they could have changed the parking criteria, right?

MR. BASRALIAN: That's -- objection.

Q    To the modern, you know, 1 per 250,000 square feet, right?

MR. BASRALIAN: Objection.

MR. CHAGARIS: No, that's an objection. Not necessarily.

MR. BASRALIAN: And how would he know what they could do or didn't do?

MR. SEGRETO: When I submit my brief in court, Arthur, I think you're going to be very surprised when you read all those cases that I cite. You're going to say, wow, wow, I've been missing a lot in the land use field. I have no further questions.

MR. CHAGARIS: You know what, just the other day Judge Della Cruz thought you were missing a lot when she ruled against you in your ordinance challenge.

MR. SEGRETO: Yeah, I know, that's why they have an appellate division, Arthur.
I have no further questions.

MR. BASRALIAN: Thank you.

CHAIR LIGNOS: Okay. Thank you very much. Are there -- anyone else in the audience that has a question?

Can you -- I'm just going to, please, just move this along.

MR. ROSENBLUME: It won't take long.

The applicant proposes to reface the store wall on Homans Avenue. And the applicant is going to, you know, tear down space and rebuild. Would it be advantageous, on this 50 year shopping center to level everything and start from scratch?

Basically is there an obstacle that prevents the applicant from tearing everything down? Because you have 50 year-old utilities, plumbing, you name it.

MR. BASRALIAN: Excuse me. Before you answer, I have an objection to that question because it's another hypothetical. And that is not what the application is about, Mr. Rosenblume. It's not.

MR. CHAGARIS: And this witness didn't testify about tearing down the building. He testified about what the application is.
MR. ROSENBLUME: Okay. The testimony shows that the plaza is going to undergo major renovations, you know, renovations cost more money than new.

MR. CHAGARIS: I haven't heard any testimony to that effect.

MR. ROSENBLUME: Okay. Would you consider the subdivided lot to be a flag lot?

MR. BURGIS: No.

MR. ROSENBLUME: And why?

MR. BURGIS: It's a, I believe a 23,000 square foot individual lot. A flag lot is defined as a narrow stem extending from the street, for some distance, to a larger portion of the site. That's clearly not the condition.

MR. ROSENBLUME: Will this subdivided lot, does it have its own access?

MR. BURGIS: It will.

MR. ROSENBLUME: Isn't it using the plaza as access?

MR. BURGIS: Well, it could. Even if it does that, and it could, it's not a flag lot.

MR. ROSENBLUME: Why not? It's using somebody else's property to make an entry.
MR. CHAGARIS: You can't --

MR. BURGIS: That's not a flag lot.

MR. ROSENBLUME: In the Closter code, under uses, business uses, you mentioned supermarket, and a variety of other retail uses. It doesn't mention shopping centers. Is that archaic that it left it off?

MR. BURGIS: No. Shopping center in and of itself is not a defined.

MR. ROSENBLUME: Well, should it be defined?

MR. BURGIS: No. Because the issue is what is the shopping occupying, that in this instance it's retail uses, and that's a line item.

MR. ROSENBLUME: Right. Do other codes, other towns use -- add the word super -- shopping centers as a use?

MR. BURGIS: There are a few that I seen that do that. They go on to say comprising, you know, retail and service commercial uses, restaurants. So --

MR. ROSENBLUME: Okay. Thank you.

CHAIR LIGNOS: Okay. I think I see no more people in the public wanting to speak. And, therefore, I close this portion --
MR. BASRALIAN: Well -- I'm sorry.

CHAIR LIGNOS: -- of the meeting to
the public. Now, our next meeting is next
Thursday.

MR. BASRALIAN: Yes. That's
correct. I do -- I did bring Mr. Roncati back
because there were two specific questions that
were asked about the square footage being
demolished in the various structures and the new
square footage that's going to be added. And
while he had testified to it in general terms, I
think the board wanted the specific square
footage. And I have him available to do that. I
have three questions to ask him, only. And I
would like to get those -- that over with so I
don't have to bring him back for another night.

CHAIR LIGNOS: Well, I'm going to
ask the board, because it is after 11 o'clock.
And no matters will be considered after 11
o'clock.

MR. BASRALIAN: This isn't a new
matter. It's part of the --

CHAIR LIGNOS: No, it's absolutely a
new matter. It's absolutely a new matter because
it's a different nuance.
MR. CHAGARIS: Only because you have a new witness, and then there'll be cross-examination --

CHAIR LIGNOS: And in the cross-examination we're going to go past the 3 questions. But I'll ask the board. Does the board want to remain and listen to 3 questions? The general consensus, Mr. Basralian, is I think that we are -- I think we've reached our end this evening. But you're welcome to bring him first thing at next Thursdays meeting. It's the -- this meeting will now -- this application will continue to the 17th, at which time, I understand, you also have traffic coming back.

MR. BASRALIAN: Yes, I have the -- finishing up on cross-examination by Mr. Segreto, of Mr. Hamilton, and the landscape architect, and I will be bringing back Mr. Keller in connection with the questions, or cross-examination on his testimony.

CHAIR LIGNOS: Right. Now, Mr. DeNicola you're going to have our traffic engineer to ask any questions of him?

MR. DENICOLA: Correct.

CHAIR LIGNOS: Okay. Do we need to
say anything further, that this application will
be carried and continued at the next meeting,
which is next Thursday, 10/17, starting at 8 p.m.

MR. CHAGARIS: One other point.
Will Mr. Roncati be available on the 17th also?

MR. BASRALIAN: I don't know, I have
to ask him I guess.

MR. CHAGARIS: And then we still
have the Dec. -- I'm sorry October --

MR. BASRALIAN: October 21st.

MR. CHAGARIS: 21st. I don't know
if -- well, we'll see what happens on the 17th.
We may not be finished with the witnesses on the
17th. And if we're not -- if we are finished then
Mr. Segreto will begin on the 21st.

MR. BASRALIAN: That's correct.
Since you asked me what witnesses I would be
preparing to bring to the board at the very first
hearing, the same question might be asked of
Mr. Segreto so there's a timing knowledge of where
we're at.

MR. CHAGARIS: I believe he did --
he represented -- you represented before that
you're going to have an architect, planner, and a
traffic person?
MR. SEGRETO: Engineer, traffic and planner.

CHAIR LIGNOS: Okay. So, if the board has no other business the chair will entertain a motion. By Dr. Maddaloni. Mr. DiDio second. All in favor?

THE BOARD: Aye.

CHAIR LIGNOS: I see no objection and, therefore, this meeting is adjourned at 11:26.

(Deposition concluded.)
CERTIFICATE

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.

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GINA MARIE VERDEROSA-LAMM, C.S.R.
LICENSE NO. XI2043
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