PLANNING BOARD
BOROUGH OF CLOSTER, NEW JERSEY
Minutes of Special Meeting
November 14th, 2013
8:00 P.M.

Prepared & Submitted by:
Rose Mitchell
Planning Board Coordinator

PLANNING BOARD
BOROUGH OF CLOSTER, NEW JERSEY
Special Meeting
Thursday,
November 14th, 2013

Mr. Lignos, Chairman called the Special Meeting of the Planning Board of the Borough of Closter, New Jersey held on Thursday, November 14th, 2013 in the Council Chambers of the Borough Hall to order at 8:04 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
Mr. Lignos, Chair
Dr. Maddaloni
Mr. Baboo
Mr. Sinowitz
 Ms. Isacoff
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:
Councilwoman Amitai
Mr. DiDio

 Mr. Lignos read the correspondence list and asked if any members had any comments. There were no comments at this time.

Item # 1

Block 1607 Lot 1 (BL 1310/ L 2)	Applicant: Closter Marketplace (EBA), LLC
19 Ver Valen Street (7 Campbell Ave.)	Centennial AME Zion Church
Application # P-2013-03	Attorney: Mr. Basralian

*Refer to attached transcript.

Motion was made by Dr. Maddaloni & seconded by Mr. Nyfenger to adjourn meeting. Meeting was adjourned at 10:02 PM.

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 1                                    STATE OF NEW JERSEY
                                      COUNTY OF BERGEN
 2                                    BOROUGH OF CLOSTER
       IN THE MATTER OF               SPECIAL MEETING
 3     The Application of:
                                              TRANSCRIPT OF
 4                                            PROCEEDINGS
       CLOSTER MARKETPLACE (EBA), LLC.,
 5     CENTENNIAL AME ZION CHURCH, BLOCK
       1607, LOT 1 (BLK 1310/L 2) 19 VER
 6     VALEN STREET (7 CAMPBELL AVE.)
       APPLICATION #P-2013-03
 7     - - - - - - - - - - - - - - - - - - - X
 8           BOROUGH OF CLOSTER MUNICIPAL BUILDING
                    295 Closter Dock Road
 9                    Closter, New Jersey
                      November 14th, 2013
10                    8:00 p.m., Volume XII
11     B E F O R E:
12             PLANNING BOARD
               JOHN LIGNOS, CHAIRMAN
13             SOPHIE HEYMANN, MAYOR
               MARK MADDALONI, BOARD MEMBER (8:02)
14             DAVID BABOO, BOARD MEMBER (8:01)
               IRENE STELLA, BOARD MEMBER
15             LEONARD SINOWITZ, BOARD MEMBER
               ADRIENNE ISACOFF, BOARD MEMBER
16             DEAN PIALTOS, BOARD MEMBER
               PAUL NYFENGER, BOARD MEMBER
17             ARTHUR CHAGARIS, ESQ., BOARD ATTORNEY
               NICK DENICOLA, P.E., BOARD ENGINEER
18             ROSE MITCHELL, BOARD SECRETARY
19     A P P E A R A N C E S:
       WINNE, BANTA, HETHERINGTON, BASRALIAN & KAHN, P.C.
20     ATTORNEYS FOR THE APPLICANT
       BY:  JOSEPH L. BASRALIAN, ESQ.
21
       SEGRETO, SEGRETO & SEGRETO, ESQS.
22     ATTORNEYS FOR THE OBJECTORS
       BY:  JOHN J. SEGRETO
23
       GINA M. LAMM, CSR/RPR, Court Reporter
24
25        Job No. NJ1755206
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1   CHAIR LIGNOS: I call to order this

2   special meeting of the planning board of the

3   Borough of Closter, New Jersey, being held on this

4   day, Thursday, November the 14th, year 2013 in the

5   council chambers of the borough hall.

6   This meeting has been duly

7   advertised in accordance with the Open Public

8   Meetings Act of the State of New Jersey. It is

9   commencing, according to our computer, at

10 8:04 p.m. The planning board adheres to a 12

11 o'clock midnight curfew. No new matters will be

12 considered after 11 p.m.

13   Please join the board in the Pledge

14 of Allegiance.

15   I thank you all very much.

16   Ms. Mitchell, would you kindly take

17 attendance.

18   MS. MITCHELL: Mayor Heymann.

19   MAYOR HEYMANN: Here.

20   MS. MITCHELL: Councilwoman Amitai.

21 Dr. Maddaloni.

22   MR. MADDALONI: Here.

23   MS. MITCHELL: Mr. Baboo.

24   MR. BABOO: Here.

25   MS. MITCHELL: Ms. Stella.

1   MS. STELLA: Here.

2   MS. MITCHELL: Mr. Lignos.

3   CHAIR LIGNOS: Here.

4   MS. MITCHELL: Mr. Chagaris.

5   MR. CHAGARIS: Here.

6   MS. MITCHELL: Mr. DeNicola.

7   MR. DENICOLA: Here.

8   MS. MITCHELL: Mr. Sinowitz.

9   MR. SINOWITZ: Here.

10   MS. MITCHELL: Mr. Didio.

11 Ms. Isacoff.

12   MS. ISACOFF: Here.

13   MS. MITCHELL: Mr. Pialtos.

14   MR. PIALTOS: Here.

15   MS. MITCHELL: Mr. Nyfenger.

16   MR. NYFENGER: Here.

17   CHAIR LIGNOS: Let the record show

18 that the board has received the following

19 correspondence as they relate to the Closter Plaza

20 application. On the 12th, Atlantic Traffic and

21 Design Engineers, on the subject of traffic

22 engineering services. And on the 14th of

23 November, from Mr. Tim Sack on the Closter Plaza

24 redevelopment.

25   No outgoing correspondence has gone

1   out from this board.

2   Any members of the board wishing to

3   discuss any piece of correspondence?

4   I see and hear none. And,

5   therefore, we go right into item No. 1, block

6   1607, lot 1, 19 Vervalen Street, application

7   P2013-03. Applicant is the Closter Market Place,

8   LLC, Centennial AME Zion Church. Mr. Basralian is

9   the attorney.

10   Again, this is a subdivision, site

11 plan, soil movement application, received back on

12 May the 16th. It was deemed perfected with

13 mentioned stipulations on June the 5th. The

14 application was continued and received final

15 perfection at June 27th regular monthly meeting,

16 and now hearings have taken place July 11th and

17 18th, August 7th, 8th and 29th, September 12th,

18 October 2nd, 10th, 17th and 21st, and this

19 application will continue here this evening at

20 this November 14th special meeting.

21   Mr. Basralian, welcome.

22   MR. BASRALIAN: Good evening. At

23 the last meeting on the 21st of October the

24 applicant concluded its direct testimony,

25 reserving all rights for rebuttal, should it be

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 1   necessary.  This meeting was scheduled for

 2   Mr. Segreto to present his witnesses.  I

 3   understand that at 5 o'clock, or a little after 5

 4   today, received an email that the own only witness

 5   he had available was Mr. Kauker, his planner.  His

 6   engineer and traffic consultant are not available

 7   this evening.

 8                    MR. CHAGARIS:  Could we have that

 9   put on the record, Mr. Segreto.

10                    MR. SEGRETO:  Yes.  That's accurate.

11   That was the email that I sent also to you

12   Mr. Chagaris, as well as Mr. Basralian.

13                    MR. CHAGARIS:  And what was the

14   reason as to their unavailability, just for the

15   record, please?

16                    MR. SEGRETO:  Mr. Simoff indicated

17   to me that he had four other meetings and he was

18   trying to get coverage.  And, obviously, trying to

19   come to this meeting.  But me just couldn't do it.

20   Same thing with the engineer.  The engineer had a

21   number of other matters.  So, I could not -- I

22   could not get them here.

23                    MR. CHAGARIS:  And when did you

24   first learn about this?

25                    MR. SEGRETO:  I first learned about
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1 it probably on Monday. I didn't think it was

2 significant to, you know, I wasn't going ask for

3 the hearing to be adjourned. I mean we had the

4 special hearing. And I had Mr. Kauker.

5   MR. CHAGARIS: So, I assume you wish

6 to present Mr. Kauker at this time, and wish to

7 proceed at the next meeting, at another meeting

8 for the other witnesses.

9   MR. SEGRETO: Yes, that would be my

10 request.

11   MR. CHAGARIS: And it's your request

12 that we proceed next Thursday, a week from today?

13   MR. SEGRETO: Well, I had in my

14 notes that we were talking about the 21st. So,

15 that's what I was talking about.

16   MR. CHAGARIS: And you will be able

17 to produce those witnesses at that time?

18   MR. SEGRETO: Yes.

19   CHAIR LIGNOS: Okay. Members of the

20 board, being -- having heard that, can I have a

21 show of hands of which members would be available

22 for a meeting, special meeting, next Thursday.

23 One, two.

24   MR. SINOWITZ: It's Hanukkah.

25   CHAIR LIGNOS: I don't have a

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 1   quorum.

 2              MR. CHAGARIS:  Well, we don't know

 3   when Mr. Didio and --

 4              MR. PIALTOS:  What

 5   about councilwoman?  Councilwoman.

 6              MR. CHAGARIS:  And councilwoman.

 7              MR. DENICOLA:  When is Vicky coming

 8   back, Sophie?

 9              MAYOR HEYMANN:  I'll be coming back

10   Friday morning because it's dark when I come --

11              MR. DENICOLA:  No, Vicky.  Vicky.

12              MR. CHAGARIS:  Vicky.  Vicky.

13              MAYOR HEYMANN:  Vicky will be back.

14              MR. DENICOLA:  For Thursday?

15              MAYOR HEYMANN:  She will be back.

16              MR. BASRALIAN:  By the way, I

17   thought Hanukkah starts Thanksgiving.

18              MR. DENICOLA:  That's what I

19   thought.

20              MR. BASRALIAN:  Following week,

21   Thanksgiving.  It coincides with Thanksgiving.

22              CHAIR LIGNOS:  Lenny, are you

23   available next Thursday, which is not Thanksgiving

24   or Hanukkah or any other holiday that I know of?

25              Are you available?
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1   MR. SINOWITZ: Yeah.

2   CHAIR LIGNOS: Okay. I have a

3   quorum. So, here's what I need to do. I need to

4   be assured that you three gentlemen will be here

5   on next Thursday. And Dr. Maddaloni, that you

6   will definitely be here, short of any catastrophic

7   event in our lives.

8   MR. MADDALONI: Short of any

9   catastrophic event in our lives.

10   CHAIR LIGNOS: So there'll be at

11   least --

12   MR. DENICOLA: Mr. Baboo.

13   CHAIR LIGNOS: No, Mr. Baboo is not

14   available. I asked.

15   MR. MADDALONI: And possibly we'll

16   have the councilwoman and Mr. Didio.

17   CHAIR LIGNOS: But at least I know I

18   have five here. Somebody like to make a motion --

19   wait a minute.

20   Mr. Basralian, are you -- is your --

21   the applicant available for next?

22   MR. BASRALIAN: We will be here.

23   CHAIR LIGNOS: You will be here.

24   Okay.

25   MR. CHAGARIS: And I assume you

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1    would consent to any extension of time necessary

2    for this board to act?

3                    MR. BASRALIAN:  Yes, sir.

4                    CHAIR LIGNOS:  Can I have a motion

5    to have a meeting Wednesday at 8:00?

6                    MR. DENICOLA:  Next Thursday.

7                    CHAIR LIGNOS:  Next Thursday at

8    8:00.  Dr. Maddaloni makes the motion.  Seconded

9    by Mr. Pialtos.  Discussion?  None.  Ms. Mitchell

10   please poll the board.

11                   MS. MITCHELL:  Mayor Heymann.

12                   MAYOR HEYMANN:  Yes.

13                   MS. MITCHELL:  Dr. Maddaloni.

14                   MR. MADDALONI:  Yes.

15                   MS. MITCHELL:  Mr. Baboo.

16                   MR. BABOO:  Yes.

17                   MS. MITCHELL:  Ms. Stella.

18                   MS. STELLA:  Yes.

19                   MS. MITCHELL:  Mr. Lignos.

20                   CHAIR LIGNOS:  Yes.

21                   MS. MITCHELL:  Mr. Sinowitz.

22                   MR. SINOWITZ:  Yes.

23                   MS. MITCHELL:  I'm sorry.

24                   MR. SINOWITZ:  Yeah.

25                   MAYOR HEYMANN:  Ms. Isacoff.
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 1                 MS. ISACOFF:  I'm going to abstain.

 2                 MS. MITCHELL:  Mr. Pialtos.

 3                 MR. PIALTOS:  Yes.

 4                 MS. MITCHELL:  Mr. Nyfenger.

 5                 MR. NYFENGER:  Yes.

 6                 CHAIR LIGNOS:  Okay.  So, members of

 7    the public, anyone who is here for this

 8    application, this hearing, and the public hearing

 9    will continue next Wednesday.

10                 MS. MITCHELL:  Next Thursday.

11                 CHAIR LIGNOS:  I'm sorry.  I did it

12    again. I am so sorry.

13                 MR. BASRALIAN:  We can do Wednesday

14    and Thursday.  I'll be here.

15                 CHAIR LIGNOS:  We can't.  I wanted

16    to do Wednesday but the room is taken.  Next

17    Thursday.  Next Thursday at 8:00 p.m.  Okay?

18    So --

19                 MR. CHAGARIS:  Madam secretary

20    you'll publish in the newspaper and the Open

21    Public Meetings Law?

22                 MS. MITCHELL:  Yes.

23                 CHAIR LIGNOS:  Okay.  Mr. Segreto, I

24    think the floor is all your's.  Or at least the

25    table.
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1   MR. SEGRETO: Good evening

2 Mr. Chairman, members of the board, board

3 professionals, for the record, John Segreto on

4 behalf of the objectors, A&P. And I have with me

5 tonight, Mr. Kauker, who is our professional

6 planner.

7   Mr. Chairman, I have premarked

8 exhibits. Objector's Exhibits.

9   CHAIR LIGNOS: Your witness.

10   MR. CHAGARIS: Can you raise your

11 right hand. Do you swear to tell the truth, the

12 whole truth and nothing but the truth?

13   MR. KAUKER: Yes, I do.

14   MR. CHAGARIS: And can you give us

15 your name and your business address.

16   MR. KAUKER: Michael F. Kauker.

17 That's spelled K-A-U-K-E-R. Address is 356

18 Franklin Avenue, in Wykoff, New Jersey.

19   MR. SEGRETO: All right. As I

20 indicated, Mr. Chairman, I did premark a number of

21 exhibits. I've made -- I've given Mr. Basralian a

22 copy. I have some extra copies for the board.

23   MR. CHAGARIS: Do you have a set for

24 us? Is there a report?

25   MR. SEGRETO: No, there's no report

 1   by Mr. Kauker. And I'll just go over the

 2   exhibits.

 3   MR. CHAGARIS: Well, as he goes over

 4   each -- he is going to go over each, I presume,

 5   Mr. Segreto, as you're introducing the evidence,

 6   you'll be going over the item.

 7   MR. SEGRETO: Well, Mr. Kauker is

 8   going to refer to some of these, but all of these

 9   exhibits do not need anyone to testify. They're

10   all documents that should speak for themselves.

11   Though one is a copy of sheet 6 of the Omland

12   plans and that is the 2012 plan. And that shows

13   the --

14   MR. BASRALIAN: Excuse me. There

15   are no plans that we submitted in connection with

16   this application for 2012. They're all dated

17   2013.

18   MR. SEGRETO: I know. The 2012

19   application was the same applicant. It's the

20   application that was withdrawn. And the 0-1 is

21   sheet 6 of the Omland overall plan and the purpose

22   of the exhibit is to show where they proposed a

23   new freestanding building G in the parking lot.

24   MR. BASRALIAN: Excuse me. I would

25   like to know what the relevancy is of referring to

1   a plan in 2012 for an application that was

2   withdrawn and is not before the board.

3   MR. SEGRETO: It goes hand-in-hand

4   with Exhibit O-2, which is Arthur Chagaris' letter

5   of January 21, 2013, to Mr. Basralian, wherein

6   Arthur Chagaris opines that, because of that

7   freestanding building, the board did not have

8   jurisdiction.

9   MR. BASRALIAN: Again, what's the

10   relevancy, since that dealt with an application

11   which was withdrawn?

12   MR. SEGRETO: It has absolute

13   relevancy to the jurisdiction of this board with

14   regard to this application. It's intimately

15   related. 0-3 --

16   MR. BASRALIAN: I object to the

17   submission of anything that was -- that deals with

18   --

19   MR. CHAGARIS: Let's have him go

20   through it and then we'll go back to each one.

21   MR. SEGRETO: Right. 0-3 is a deed

22   from the Ironny's to Valley Savings and Loan. It

23   was a subdivision from 1985. They subdivided a

24   piece of their property off, that is the Closter

25   Plaza property. That deed is dated June 26th,

1 1985. O-4 is an agreement between the Borough of

2 Closter, Closter Plaza Inc., Grand Union and

3 Citizens National Bank. It is a recorded

4 agreement dated April 11th, 1973. It deals with

5 what can or cannot be done on this property. O-5

6 is, again, another recorded document recorded in

7 Bergen County. It's a memorandum of amended and

8 restated lease between this applicant and the

9 Whole Foods.

10   MR. BASRALIAN: What's the date on

11 that?

12   MR. CHAGARIS: Recorded November

13 26th, 2012.

14   MR. SEGRETO: Right.

15   MR. BASRALIAN: Is that the

16 memorandum of lease?

17   MR. SEGRETO: Memorandum of amended

18 and restated lease. And I believe it has,

19 attached to it, the first memorandum of lease.

20   Those are our exhibits.

21   MR. CHAGARIS: Well, they're marked

22 for identification. And when we proceed see if

23 they are entered into evidence.

24   MR. SEGRETO: Well, I don't need --

25 I believe I don't need any witness to testify

1 regarding these exhibits. They're recorded

2 documents. One is an agreement with the town

3 concerning this property. One is a memorandum of

4 lease, which is a recorded document. O-2 is your

5 letter --

6   MR. CHAGARIS: No, but the question

7 is whether it's relevant to the application. I

8 understand we're not talking about the

9 authentication. I'm talking about whether or not

10 they're admissible in evidence. But let's proceed

11 and see where we go.

12   MR. BASRALIAN: But the first two,

13 the first two exhibits he referred to, which is

14 the Omland site plan, 2012, and Mr. Chagaris'

15 letter dated January 21st, 2013, are not recorded

16 documents.

17   MR. SEGRETO: No, they're not

18 recorded documents.

19   MR. BASRALIAN: And, so, they would

20 require --

21   MR. CHAGARIS: They're actually --

22 yeah, they're not -- they're not -- these plans,

23 the plans, the '01 is not a plan that's being

24 considered by the board. And O-2 refers to the

25 O-1, which, of course, is not being consider by

1   the board either. So, how is it relevant to this

2   application?

3   MR. SEGRETO: It's relevant because

4   it goes to jurisdiction. And it's our contention

5   that the mere fact that they are now removed

6   building B, eliminated it, and proposed to

7   subdivide the property for purposes of a later

8   date, putting a building G, makes it quite

9   relevant to the issue of jurisdiction.

10   MR. CHAGARIS: That's just a

11 conclusion. What's the -- what's the relevance?

12 What does that -- in other words, one could argue

13 that they're all -- their opinion was that with

14 the building there would be a jurisdictional issue

15 and so they took the building away. So, then

16 what?

17   MR. SEGRETO: And by proposing a

18 subdivision where they proposed that freestanding

19 building, does not change anything. At least

20 that's our legal position. So, for purposes of

21 having a clear record.

22   MR. CHAGARIS: Why does it change

23 anything. It's a totally different application.

24   MR. SEGRETO: It's not a totally

25 different application.

1   MR. CHAGARIS: Sure it is. With a

2   building or without a building.

3   MR. SEGRETO: Yeah, I know. If

4   you're not going to allow O-1 and O-2 to go in

5   evidence, that's fine. We have marked it for

6   identification. I put my position on the record.

7   If you don't allow it to go into evidence we'll

8   talk about it, obviously, on another day. But I

9   have the right to mark these and demonstrate to

10 the court that I wanted to do that and I thought

11 it relevant.

12   MR. CHAGARIS: They're marked for

13 identification. Okay. You can proceed.

14   MR. SEGRETO: All right, I call

15 Mr. Kauker.

16 EXAMINATION BY MR. SEGRETO:

17   Q   Mr. Kauker you have been sworn in,

18 is that correct?

19   MR. SEGRETO: Yes, he is.

20   Q   All right, Mr, Kauker, can you

21 please do us a favor and give us your educational

22 as well as your professional qualifications.

23 A   I'm a licensed planner in the State of New

24 Jersey. I received my license in 1970. I'm a

25 principal in the firm of Kauker and Kauker. We

1 are municipal planners. We serve approximately 12

2 municipalities in northern New Jersey and New York

3 State. We also do a substantial amount of

4 testimony and work before boards such as this, and

5 zoning boards of adjustments, related to use

6 variance applications and site -- major site plan

7 applications.

8   CHAIR LIGNOS: Have you ever

9 testified here?

10   MR. KAUKER: Yes, sir, last year.

11   CHAIR LIGNOS: Before the planning

12 board?

13   MR. KAUKER: On this particular

14 matter.

15   CHAIR LIGNOS: You have?

16   MR. KAUKER: Yes.

17   CHAIR LIGNOS: Does anyone have any

18 objection to Mr. Kauker's qualifications? I don't

19 see or hear any. So, I think that we can move to

20 accept Mr. Kauker's qualifications.

21   MR. SEGRETO: And we're offering

22 him, obviously, as a professional planner.

23   CHAIR LIGNOS: As a professional

24 planner.

25 BY MR. SEGRETO:

1   Q   All right, Mr. Kauker, will you

2   please tell us what you reviewed for purposes of

3   coming before this board to testify.

4   A   I reviewed the current site plans. I took

5   a look at the 2012, Omland site plan. I reviewed

6   the zoning ordinance and site plan ordinance,

7   transcripts of the past several meetings,

8   particularly the meeting at which Joe Burgis

9   testified. I reviewed the architectural plans and

10   prior master plan documents. I have reviewed the

11   report of your planner, Francis Banisch, and

12   evaluated that, in the light of my testimony.

13   Essentially those are all the documents that I

14   reviewed.

15   Q   All right. And as the chairman

16   indicated, with regard to the 2009 application

17   made by -- for redevelopment of Closter Plaza,

18   you, in fact, reviewed that 2009 plan, is that

19   correct?

20   A   Yes, I did.

21   Q   And you testified here before this

22   board?

23   A   I did.

24   Q   Now, Mr. Kauker, can you please go

25   through the pre-existing nonconformities on this

1   property.

2   A   Firstly, it is our position, as was my

3   position at last year's hearing, that the

4   restriction on the number of buildings on any

5   given lot in this zone renders this particular

6   entity, the shopping center, not a permitted use

7   in the zone. Shopping centers, by their very

8   nature, have multiple dwellings and multiple

9   structures on them. And, respectfully, I do not

10 view this particular shopping center as

11 contemplated as a permitted use within the zone.

12   Second major restriction that has a

13 bearing on this application is the maximum size of

14 any one given building, as per ordinance 2009,

15 1036, which sets that maximum square footage at

16 45,000 square feet. Those are the two particular

17 nonconformities on this property, which I think

18 are relevant to the presentations made in support

19 of the application.

20   Q   All right, the K-mart building is

21 84,000 square feet. So, that is nonconforming, is

22 that correct?

23 A   That is correct.

24   Q   All right, now, building B, that's

25 the, sometimes we refer to that building as the

1   one having the old Stop & Shop. What is the size

2   of that building?

3   A   67,000 square feet. 519 to be exact.

4   That was confirmed by Mr. Roncati on his

5   testimony.

6   Q   All right. So, that building is

7   nonconforming, is that correct?

8   A   Yes, it is.

9   Q   What about -- what about parking

10 spaces?

11 A   The current parking ratio, standard,

12 within the borough, is 1 space per 175 square

13 feet. That would produce a approximate total

14 number of required spaces for the center as it

15 exists, at 1,500 spaces. Only 720 spaces are

16 existing with, I believe, phase I, adding 10

17 spaces, for a total of 730 spaces. That certainly

18 is well short of the standards set by the

19 municipality.

20   Q   And what about the height of the

21 K-mart building, does that conform or not?

22 A   The height of the K-mart building is an

23 existing nonconforming height situation, because,

24 in deed, it exceeds by several feet. A few feet.

25 The maximum height is 25 feet.

1   Q   Now, I want to turn the page and go

2   to the issue of jurisdiction. You have indicated

3   that you read Mr. Banisch's report, is that

4   correct?

5   A   Yes, I did.

6   Q   Do you agree with Mr. Banisch's

7   opinion with regard to the planning board having

8   jurisdiction over this application?

9   A   No, I do not. Mr. Banisch correctly makes

10   the board, and all of us aware of the fact that

11   the situations where nonconforming structures

12   are -- are present, which in deed is a condition

13   we have here. That a subsection C variance would

14   be required, as long as the use is a permitted

15   use. And it's our contention that this particular

16   shopping center is not effectively a permitted use

17   within the zone. Mr. Banisch also calls out a

18   test, as set forth in Cox, of several criteria,

19   that he notes and sets forth on page 17 of his

20   report, and it's entitled 'Application of the Cox

21   Jurisdictional Test for Closter Plaza's

22   Application.' And in that, he lists five

23   particular questions that need to be answered in

24   the negative, if in fact his position is to be

25   supported, and his position certainly --

1   MR. BASRALIAN: If I could just

2   interject, there's no page 17 in Mr. Banisch's

3   report.

4   MR. KAUKER: I apologize. Page 3.

5   At the bottom of page 3.

6   MR. BASRALIAN: Let's see, 14 pages.

7   CHAIR LIGNOS: No, you're saying

8   there were five questions that needed to be

9   answered.

10   MR. KAUKER: In the affirmative.

11   CHAIR LIGNOS: In the negative you

12   had mentioned.

13   MR. KAUKER: All of those, they need

14   to be answered in the negative. For instance, the

15   first is, does it involve a use not permitted in

16   the zone. In deed, Mr. Banisch takes position

17   that the answer to that question is, no, because

18   he feels that the proposed uses are permitted.

19   They may be permitted individually, retail, but

20   they're not permitted in the aggregate, because

21   this in fact is a shopping center not contemplated

22   by that particular regulation, which effectively

23   states that you can only have one building on any

24   given lot within the zone.

25   MR. CHAGARIS: That ordinance

1 doesn't say you can only have one use within a

2 zone though, right?

3   MR. KAUKER: Building and use in the

4 eyes of the municipal land use law are essentially

5 synonomous.

6   MR. CHAGARIS: I would take issue

7 with that legal conclusion, but there's -- it

8 doesn't say that they can't have more than one use

9 in a lot though, right?

10   MR. KAUKER: That's correct. You

11 can have multiple uses but they need to be in one

12 building. The second question: Does it involve a

13 principal structure not permitted in the zone.

14 There -- and he answers, "no". I disagree with

15 his conclusion. Because there are several

16 principal structures that are proposed, four in

17 number. And the answer to that question is,

18 essentially, in my view, respectfully, should be

19 yes. So, that in the light of those particular

20 tests, I agree with item C, sub-item D, in terms

21 of his answer. And sub-item C. By virtue of the

22 fact that it is our respectful position that two

23 of those, A and B --

24   CHAIR LIGNOS: Can you repeat your

25 position on item two, please.

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1   MR. KAUKER: Yes, sir. Would be

2   item two, would be subsection B, does it involve a

3   principal structure not permitted in the zone.

4   And my answer to that question, that it does

5   involve a principal structure not permitted

6   because there are not only one, but two, three and

7   four structures. So, structures, essentially

8   No. 2, 3 and 4, are not contemplated and permitted

9   within the zone because it limits any given lot to

10 one principal use and/or structure. That is the

11 basis for my disagreement, aside from --

12   MR. BASRALIAN: Excuse me. That's

13 contradictory to what he just said, whether

14 multiple uses are permitted. Now he said only one

15 use is permitted. It just makes no sense.

16   MR. CHAGARIS: I agree.

17   MR. KAUKER: Multiple uses are

18 permitted but not multiple structures.

19   MR. CHAGARIS: Let me ask you this

20 though: Do you agree that this application

21 reduces the number of structures from four to

22 three?

23   MR. KAUKER: I believe -- well,

24 yeah, four to three, yes, it does.

25   MR. CHAGARIS: It does reduce.

1   MR. KAUKER: Yes, it does.

2   MR. SINOWITZ: Excuse me. I think

3   it would be clearer, and more accurate to say --

4   MR. KAUKER: Yes, sir.

5   MR. SINOWITZ: -- as the ordinance

6   reads, it doesn't speak of structures. You know,

7   an air conditioning unit is a structure. A

8   driveway is a structure. It says, in all the

9   districts the number of principal buildings per

10   lot --

11   MR. KAUKER: Buildings.

12   MR. SINOWITZ: -- shall be limited

13   to one.

14   MR. KAUKER: Yes, sir. Yes, sir.

15   MR. SINOWITZ: A building is a

16   structure.

17   MR. KAUKER: Yes, it is. Yes.

18   MR. SINOWITZ: This is speaking of

19   buildings. Not structures.

20   MR. KAUKER: You're absolutely

21   correct. A building is the dispositive word.

22   BY MR. SEGRETO:

23   Q   All right. Now, Mr. Kauker, with

24   regard to the fact that this applicant is

25   proposing a subdivision, in your opinion does that

1 have any effect on the board's jurisdiction?

2 A   The existing array of uses on this site

3 are essentially nonconforming, in the several

4 respects that I testified to, in terms of number

5 of buildings, and parking deficiency. And in that

6 context, when you have a nonconforming situation,

7 and a reduce for the size of the lot that supports

8 that nonconforming condition, it increases the

9 intensity of use on the site, and, therefore,

10 change -- changes the degree of nonconformity. It

11 increases the degree of nonconformity. Municipal

12 land use law and accepted planning principles take

13 the view that nonconforming conditions, within a

14 given development situation, are encouraged to be

15 minimized and reduced, if not made into

16 conformity. That is a goal and objective and a

17 principle set forth in municipal planning

18 practice. When you have a situation that

19 essentially reduces the size of the parcel upon

20 which supports the nonconforming condition, that

21 results in a change in the degree of

22 nonconformity, or an intensification of the use on

23 the site.

24   Q   Now, Mr. Banisch, in his report,

25 discussed two decisions, the Rasberry and Nuckel

1 decision. Do you agree with his analysis with

2 regard to those decisions and specifically what

3 you're talking about, and that is, decreasing the

4 size of a property where there is nonconformities?

5 A   No, I do not. And I believe that Rasberry

6 and Nuckel are directly relevant to this

7 application.

8   Q   All right. Now, I want to talk to

9 you, specifically, about building B, and that's

10 the building where the new Whole Foods is going to

11 be situated. According to Mr. Roncati the

12 building is going to go from 67,500 square feet to

13 85,200 square feet. Now, with regard to the

14 increase of that building, does that have any

15 effect on the jurisdiction of this board to hear

16 this application?

17 A   I believe that that change in increase, in

18 the size of the building, essentially which is

19 guided and controlled by the 45,000 square foot

20 maximum, obviously in that particular instance

21 where you're increasing the size of the building,

22 in that particular instance for building B, you're

23 increasing the degree of nonconformity, which is

24 opposite -- in the opposite direction that good

25 planning practice suggests that you go.

1   Q   Now that at least part of the new

2   Whole Foods is going to be constructed where there

3   presently is a driveway, does that have any effect

4   on the issue of jurisdiction in the issues we have

5   been talking about?

6   A   Well, that essentially merges those two

7   structures as they are now separated by driveway

8   and, obviously, increases the size of that single

9   particular building. And, again, renders it far

10 in excess of the max size of 45,000 square feet.

11   Q   The expansion into that driveway

12 where no building exists, is that the -- is that

13 the same -- the same reason reasoning that

14 Mr. Chagaris used in '02 when he had an opinion

15 with regard to that freestanding building G?

16 A   Essentially it does, yes.

17   CHAIR LIGNOS: I'm sorry. One more

18 time. I didn't understand the question. Nor did

19 I understand where it's going.

20   Q   Mr. Chagaris, in the controversial

21 0-2, that we marked tonight, today, indicated that

22 the board did not have jurisdiction over that

23 application because the applicant was proposing a

24 new building G, where no building G previously

25 existed. Now this applicant is proposing to

1   expand building B into that driveway area where no

2   building now exists. It's our position that for

3   the same reasoning that this board did not have

4   jurisdiction in 2012, they're doing the exact same

5   thing with regard to building B, and that is

6   substantially expanding that building well beyond

7   45,000 square feet. And they're doing so in an

8   area where there exists no building. So, for the

9   same reasons that Mr. Chagaris stated that the

10   board didn't have jurisdiction in 2012, the same

11   reasoning should apply here.

12   MR. DENICOLA: You're saying the

13   building is 45,000 square feet, is that what

14   you're saying? I didn't understand what -- I'm

15   not clear, 45,000 square foot building you're

16   saying.

17   MR. SEGRETO: There's only --

18   there's only permitted, 45,000 square foot -- one

19   45,000 square foot principal building.

20   MR. DENICOLA: No, that's not what

21   it says. It's right here. Retail store size.

22   Not a building.

23   MR. SEGRETO: All right. Well --

24   MR. DENICOLA: I just want to make

25   sure we're clear on what we're talking about.

1 Because this is store size.

2   MR. SEGRETO: Yeah, I'm -- I'm --

3 I'm very clear what I'm talking about.

4   MR. DENICOLA: Okay. You're

5 claiming the code says, building?

6   MR. SEGRETO: I'm not claiming

7 anything, and I don't want to get into an

8 argument.

9   MR. DENICOLA: I am trying to

10 understand what variance you're talking about.

11   MR. SEGRETO: Well, I think -- I

12 think the issue is very, very clear. And I think

13 respectfully you're trying to cloud the issue.

14   MR. DENICOLA: No, I'm actually

15 reading from the code.

16   MR. BASRALIAN: Excuse me, shouldn't

17 the question be directed to Mr. Kauker rather than

18 Mr. Segreto?

19   MR. SEGRETO: Yeah, that's --

20   MR. DENICOLA: Mr. Kauker, it's

21 true, is it -- I think we're interchanging

22 building and store size. Do you see the

23 difference?

24   MR. KAUKER: No, I do not. And I'll

25 tell you why.

1   MR. DENICOLA: Okay.

2   MR. KAUKER: If the ordinance didn't

3 limit development to one building on one lot, you

4 would be correct. But by virtue of the fact that

5 only one building is limited on a lot, with the

6 maximum size of any permitted retail in that

7 building, being 45,000 square feet, there is one.

8 It's in play.

9   MR. DENICOLA: So, you can't have

10 two -- you can't have two stores in one building?

11   MR. KAUKER: Yes, you can. But they

12 cannot exceed 45,000 square feet.

13   MR. DENICOLA: The building can't?

14   MR. KAUKER: That's correct.

15 Because under -- under -- when you read the

16 ordinance in its entirety, you take into account,

17 and take note of the fact that only one building

18 is permitted on a given lot. That's the standard.

19   MR. DENICOLA: I understand but --

20   MR. KAUKER: And then you apply --

21   MR. DENICOLA: You're not answering

22 my question. My question is: Regarding the size

23 of the building. We're not talking about the

24 number of buildings. I'm talking about the size

25 of the building. You're claiming the maximum size

1 of the building is 45,000 square feet.

2   MR. KAUKER: That's correct.

3   MR. DENICOLA: Where are you getting

4 that from the code?

5   MR. KAUKER: It's maximum -- the

6 maximum is -- applies to this site because you can

7 only have one building on the site.

8   MR. DENICOLA: No, no, no, I'm

9 talking about the size of the building. You're

10 claiming the maximum size of the building is

11 45,000 square feet. Where are you getting that

12 from?

13   MR. SINOWITZ: Maximum size of the

14 store.

15   MR. DENICOLA: No, no, he's saying

16 building. I'm not sure where the building is

17 again. Where is the building coming from? I tell

18 you what the requirement is, if you want to look

19 at the requirement. It's in the zoning code on

20 schedule A. If you want to look at it and just

21 take a look at it real quick.

22   MR. KAUKER: Well, I believe you.

23 However, if the maximum size of any retail entity

24 is 45,000 square feet, okay, and you can only have

25 one building on the site --

1   CHAIR LIGNOS: You can have one

2   building on the site but not necessarily --

3   MR. KAUKER: You can have one

4   building greater than 45,000, as long as any

5   separate building. But any separate building

6   can't be --

7   MR. DENICOLA: We're not talking

8   about buildings. We're talking about -- we're

9   talking about -- we're talking about -- right now

10   we're talking about --

11   CHAIR LIGNOS: We just want to get a

12   clarification on the retail aspect.

13   MR. KAUKER: Yeah, I understand.

14   MR. DENICOLA: We are discussing

15   terms here and it's very confusing. So, there is

16   no limit for a building size. Just to set the

17   record straight.

18   MR. SEGRETO: That is incorrect.

19   MR. DENICOLA: Okay. Can you show

20   me where you're getting that from?

21   MR. SEGRETO: It's our -- we

22   obviously there's going to be a legal issue

23   involved in this case. And the legal issue

24   concerns exactly what we're talking about.

25   CHAIR LIGNOS: Mr. Segreto, we're

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 1   trying to make it so there isn't a legal issue.
 2   We're trying to actually help --
 3                   MR. DENICOLA:  You're providing
 4   testimony on something we're trying to clarify.
 5                   MR. SEGRETO:  You're not going to be
 6   able to resolve this issue as a board.
 7                   MR. DENICOLA:  Oh, okay.
 8                   CHAIR LIGNOS:  You've already
 9   determined that for the record?
10                   MR. DENICOLA:  Yes, he did.
11                   MR. SEGRETO:  Yeah, I determined
12   that, yes.  Yeah, I did.
13                   CHAIR LIGNOS:  That we can't help in
14   getting this resolved?
15                   MR. SEGRETO:  Nope.  That's right.
16                   MR. MADDALONI:  Could I ask a
17   clarifying question.  So, how many acres is this
18   site?
19                   CHAIR LIGNOS:  It's 15.
20                   MR. MADDALONI:  Fifteen acres.  So,
21   Mr. Kauker, is it your opinion, as a professional,
22   that this site should be developed with retail
23   space, no -- not more -- not exceeding more than
24   45,000 square feet on 15 acres?
25                   MR. KAUKER:  No, it's not.  But I
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1   believe --

2   MR. MADDALONI: But it sounds like

3   that's exactly what you're saying. It sounds

4   exactly what you're saying.

5   MR. KAUKER: The amount of square

6   footage on this site is controlled by other

7   regulations.

8   MR. MADDALONI: That's not what

9   you're saying.

10   MR. DENICOLA: That's not what

11 you're saying.

12   CHAIR LIGNOS: Okay. Let's keep

13 going. All right. We have that one area that

14 we're trying to resolve. I understand. Let's go

15 on.

16 BY MR. SEGRETO:

17   Q   All right, Mr. Kauker, I walk to

18 talk to you about the K-mart building and the

19 proposed subdivision right in front of that K-mart

20 building. Am I correct that there's a substantial

21 deficiency in the parking as a result of that

22 subdivision?

23 A   Parking proximate to the K-mart building,

24 consistent with good design practice is deficient.

25   Q   And you'll agree with me that if

1   the -- if the applicant did not propose to

2   subdivide that property off, it could be used for

3   parking, isn't that correct?

4   A   Yes, it could. You could more than likely

5   get 40 to 50 spaces within that half acre. The

6   area is .541 acres I believe.

7   Q   Now, with regard to the new uses,

8   the applicant has indicated it may be three to

9   four new uses in the K-mart building, compared to

10 the present K-mart use. Is there going to be any

11 kind of intensification of that use of that

12 building?

13 A   Yes, there would.

14   Q   All right. I want to talk to you

15 about Mr. Roncati's testimony, and the indication

16 that there's going to be substantial demolition of

17 buildings, and how that relates, again, to the

18 issue of nonconformities and jurisdiction. Now,

19 with regard to building B, Mr. Roncati testified

20 that the existing square footage is 67,500 square

21 feet. They will be demolishing 52,900 square

22 feet. Approximately about 78 percent. Does

23 the -- after demolishing the building, does this

24 applicant have the right to rebuild and expand

25 that building?

1   A   When that building is demolished the

2   nonconformity is extinguished, and the

3   nonconforming rights attributable to that building

4   disappear. They go away because the building has

5   been taken away. It's demolished. And that

6   increases the burden upon this applicant to prove

7   to the board that that -- essentially that degree

8   of nonconformity has a reason to be reconstructed,

9   as proposed by the applicant. So, it's a brand

10   new deviation. It's a brand new variance as

11   opposed to modifying an existing structure, either

12   reducing or increasing its size. But -- and

13   certainly demolishing and putting in a new

14   structure is certainly not a bad thing. But

15   technically and legally when you remove a

16   building, in its entirety, and then completely

17   rebuild it, essentially you're giving up your

18   nonconforming use rights.

19   MR. DENICOLA: I though you said it

20   was 78 percent.

21   MR. KAUKER: Seventy-eight percent

22   demolished.

23   MR. DENICOLA: That's not the

24   entirety.

25   MR. KAUKER: Well, that -- that 78

1 percent you're giving up. And what you're

2 retaining is the differential, which would be

3 22 percent.

4   MR. DENICOLA: You said when a

5 building is demolished in its entirety you said.

6   MR. KAUKER: No, I take that back.

7 I take that back. When you're demolishing that

8 area which you've taken away in its entirety,

9 ceases to have nonconforming rights.

10   MR. DENICOLA: So, any time you

11 demolish a portion of building you cannot get that

12 portion of the building back?

13   MR. KAUKER: Unless you renew the

14 variance necessary to rebuild the structure. And

15 I know -- I understand that's an integral part of

16 this application. But the burden of replacing a

17 building that doesn't exist, from a portion of a

18 building that doesn't exist on the site, is a

19 brand new variance.

20   MR. DENICOLA: And where do you cite

21 that requirement that, you know, a portion of the

22 building is demolished can't be reconstructed?

23   MR. KAUKER: When you reconstruct

24 any of the multiple buildings on this site,

25 because a shopping center use is not permitted,

1 you need a variance in order to rebuild it.

2 BY MR. SEGRETO:

3   Q   Does this board have jurisdiction

4 over the variance that's needed?

5 A   No.

6   Q   To construct a building over 45,000

7 square feet, in your opinion?

8 A   No, it does not.

9   Q   Now, same thing with regard to

10 building D; Mr. Roncati indicated that the

11 existing square footage is 56,900. They're

12 demolishing 42,900. That's -- they're demolishing

13 about 75 percent of building D. Do they have the

14 rights, in your opinion, to rebuild, once they

15 demolish, without a variance?

16 A   No, they do not.

17   Q   And a variance is not from this

18 planning board, is that correct?

19 A   That's correct.

20   Q   Now, with regard to the K-mart

21 building, again, Mr. Roncati indicated that the

22 existing square footage is 84,000 square feet,

23 approximately. They're demolishing 15,500 square

24 feet.

25 A   And that computes out to 18 percent of

1 that total structure.

2   Q   But after they demolish that 15,400

3 square feet, Mr. Roncati indicated that they are

4 going to build an additional 4,500 square feet

5 after demolition. Do they have the right to do

6 that without a variance?

7 A   No, they do not.

8   Q   And what type of variance do they

9 need for that?

10 A   They would need a D variance.

11   Q   Okay. And that's from the board of

12 adjustment, is that correct?

13 A   That's correct.

14   Q   Now, let's go to their variance

15 request as well as their waiver requests. Can you

16 just go through briefly what variances they're

17 asking for.

18 A   They are asking for a variance to permit

19 multiple structures on the site.

20   CHAIR LIGNOS: May I ask one

21 question before you get off of that topic, which

22 is important to me. When you take all the

23 buildings that are on the site and you calculate

24 the amount of demolition for all the buildings as

25 one entity, as one enterprise.

1   MR. KAUKER: In the aggregate?

2   CHAIR LIGNOS: In the aggregate.

3   MR. KAUKER: Yes, sir.

4   CHAIR LIGNOS: What is the

5   percentage that you find, as far as demolition,

6   percentage-wise, to the aggregate?

7   MR. KAUKER: 52.7 percent in the

8   aggregate.

9   CHAIR LIGNOS: Of 52 --

10   MR. KAUKER: When you add all of

11   those numbers together and do the calculations.

12   MR. CHAGARIS: Fifty-two percent is

13   being demolished?

14   MR. KAUKER: Fifty-two percent of in

15   the aggregate of the total square footage of

16   building B, D and K-mart, are proposed to be

17   demolished, and reconstructed under the

18   application.

19   MR. DENICOLA: Is that with or

20   without E? The movie theater.

21   CHAIR LIGNOS: Excuse me one second,

22   please. If you don't mind, I just want to, as

23   part of this complex, or this enterprise, there is

24   a bank.

25   MR. KAUKER: Yes.

1   CHAIR LIGNOS: Does that in your

2   calculations --

3   MR. KAUKER: No, it was not in our

4   calculations. Just the three buildings that are

5   affected by demolition.

6   CHAIR LIGNOS: With that bank, would

7   it reduce the amount of demolition's percentage of

8   the aggregate?

9   MR. KAUKER: Yes, it would.

10   CHAIR LIGNOS: Does your total

11   include the movie theater?

12   MR. KAUKER: No.

13   CHAIR LIGNOS: If you were to

14   include the movie theater would it further reduce

15   the percentage of demolition? Reduce the

16   percentage of demolition?

17   MR. KAUKER: Yes, it would.

18   CHAIR LIGNOS: Okay. Thank you.

19   I'm sorry, Mr. Segreto, you can continue.

20   MR. SEGRETO: Yeah, I just want --

21   that's all right. I just want to do a little

22   numbers myself.

23   BY MR. SEGRETO:

24   Q   Just so the record could be clear,

25   if you take Mr. Roncati's number as to how much is

1   going to be demolished of building B, D, and the

2   K-mart, it adds up to 111,300 square feet, the

3   total site, which includes the bank, as well as

4   the theater is 211,553 and that is more than 50

5   percent.

6   A   Yeah. I apologize. The aggregate that I

7   used to create that 52.7 percent was the proposed

8   after phase II, total amount of square footage

9   proposed on the site. Total. And I do apologize.

10   That includes the bank. It does include the bank.

11   Because the bank is an integral part of phase I.

12   And it does include the theater. So that the

13   total number, in this equation, in this

14   calculation is 211,337 square feet under the

15   111,424 square feet, which is the total of the

16   three buildings to be demolished. So, that the

17   52.7 percent is in fact in the aggregate.

18   CHAIR LIGNOS: Okay. So, let me

19   then -- that's an important clarification. I

20   thank you. If that 52 was to be 49, does it

21   change your opinion as to --

22   MR. KAUKER: Less than 50 percent

23   demolition?

24   CHAIR LIGNOS: Yeah.

25   MR. KAUKER: No. In the back of my

1 mind I know that's a concept as it relates to

2 ability to rebuild on some -- in a non -- to

3 rebuild a nonconforming structure, if it's less

4 than -- I think the standard is less than 50

5 percent.

6   CHAIR LIGNOS: Right.

7   MR. KAUKER: I don't believe that is

8 the same as what we're talking about here. What

9 we're talking about here is a portion of a

10 structure being completely removed before it's

11 completely rebuilt. And when you do that,

12 legally, you are extinguishing your nonconforming

13 use rights attributed to that portion of the

14 building.

15   CHAIR LIGNOS: All right. Just

16 attribute -- I'm sorry. I'm trying to get this

17 for myself, because it's an important -- it's an

18 important issue. If -- on this site sits one

19 enterprise that we know as Closter Plaza.

20   MR. KAUKER: Yes.

21   CHAIR LIGNOS: If that Closter Plaza

22 was to be demolished less than 50 percent for

23 improvements to be made, does its nonconformity

24 change if it's demolished less than 50 percent, as

25 a whole, on the site, as a whole?

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 1                    MR. KAUKER:  I don't believe it
 2    does.  If it were less than 50 percent.
 3                    CHAIR LIGNOS:  Right.  It
 4    maintains -- it could maintain it's nonconformity.
 5                    MR. KAUKER:  No, I don't believe --
 6    that's in event of fire or -- I don't think --
 7                    MR. DENICOLA:  And in the event of
 8    fire --
 9                    MR. SEGRETO:  I don't believe that
10    there is anything -- because I know, but you are
11    getting into legal issues.
12                    CHAIR LIGNOS:  Well, no, I'm going
13    into planning issues.
14                    MR. DENICOLA:  These are planning
15    issues.  These are planning issues.
16                    MR. SEGRETO:  When there's no case
17    and there's no statute that talks about a certain
18    percentage as to when you can rebuild and when you
19    cannot rebuild.
20                    MR. DENICOLA:  That's exactly right.
21                    MR. CHAGARIS:  That's right.  And
22    the point is, the statute says, if it's a complete
23    demolition.  And this is not.  I'd like to ask
24    Mr. Kauker that question.  Certainly, we're
25    talking about percentages.  But it's certainly
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1   your opinion, is it not, that this is not a

2   complete demolition of the structures on the site.

3   MR. SEGRETO: And my objection to

4   the question the statute does not talk about

5   demolition. The statute, and specifically that

6   we're talking about is 40:55(B)68: Says, any

7   nonconforming use or structure can be continued,

8   and such structure may be restored or repaired in

9   the event of partial destruction.

10   MR. CHAGARIS: Okay. So --

11   MR. SEGRETO: It doesn't talk about

12 demolition.

13   MR. CHAGARIS: Okay. I stand

14 corrected.

15   MR. SEGRETO: This is -- this is

16 destruction by design.

17   MR. CHAGARIS: This is not a -- this

18 is not a complete destruction or demolition, is

19 it?

20   MR. KAUKER: That is correct, it's

21 not a complete demolition.

22   MR. CHAGARIS: Okay.

23   MR. DENICOLA: Okay. Good.

24   MR. KAUKER: Although --

25   MR. SEGRETO: And my -- and my

1   objection is that you have two substantial

2   buildings out of the four that are being

3   substantially demolished, 78 percent and 75

4   percent.

5   MR. CHAGARIS: Okay. Well, the

6   witness answered.

7   MR. SEGRETO: That's not a partial

8   destruction. That's substantial.

9   MR. CHAGARIS: I don't know that --

10   MR. SEGRETO: I know but these

11   issues --

12   CHAIR LIGNOS: That's fine. That's

13   fine.

14   MR. CHAGARIS: It's a legal argument

15   for a later date.

16   MR. KAUKER: There is one final

17   aspect or result as a product of the demolition

18   that I haven't mentioned to the board.

19   Mr. Chagaris' prior opinion, relative to what

20   happens when you construct a new building on the

21   site, would essentially tend to place the

22   jurisdiction of that kind of an application with

23   another board, zoning board. In essence, what's

24   happening here, when you demolish and extinguish

25   and remove that part of the structure, you're

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 1   building a new structure on that pad, on that

 2   area, or on an area slightly related or

 3   substantially related to that pad.  And I believe

 4   that that falls within the category of the kinds

 5   of activities that would trigger a zoning board

 6   jurisdiction, as opposed to a planning board,

 7   consistent with Mr. Chagaris' prior opinion

 8   related to a prior application.

 9               MR. CHAGARIS:  But you're in

10   agreement though that the opinion before had to do

11   with a totally --

12               MR. KAUKER:  New building.

13               MR. CHAGARIS:  -- new structure, all

14   four walls.

15               MR. KAUKER:  Right.  Right.

16               MR. CHAGARIS:  But that's not what's

17   happening in this circumstance.

18               MR. KAUKER:  Well, this in fact is a

19   new structure on an area that has been vacated.

20   So, generically, and very simply, there's --

21   there's an absolute comparison, a parallel between

22   the two.

23               MR. CHAGARIS:  All right.  That's

24   your opinion that's -- we can move on.

25   BY MR. SEGRETO:
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1   Q   All right. I want to go to the

2 issue of what the applicant calls their waivers.

3 Now, they are asking for a substantial amount of

4 waivers, is that correct?

5 A   Yes, they are. Or variances?

6   Q   Well, I want to talk about waivers

7 first. They're indicating that the number of

8 parking spaces, or waivers, the number of loading

9 spaces, parking setbacks, driveway widths, size of

10 spaces, that they're all waivers. Do you agree

11 that the relief that they're seeking is waivers

12 and not variances?

13 A   No, I do not.

14   Q   All right. Tell us -- tell the

15 board why, please.

16 A   The zoning ordinance has a particular

17 section in it that incorporates, by reference, the

18 parking standards that are located, legally and

19 physically within the site plan ordinance. When

20 you incorporate by reference, and I'll give you

21 the section in a minute, when you incorporate by

22 reference, a standard that exists in another

23 ordinance, it essentially becomes an integral part

24 of the ordinance, which implements the

25 incorporation, so that those regulations are as

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 1   much as, legally, as much in functionally within

 2   the zoning ordinance, as they are in the site plan

 3   ordinance.  So, they're in both ordinances.  And

 4   in that cont --

 5              CHAIR LIGNOS:  Is that your planning

 6   opinion or is that a legal opinion that you're

 7   giving because I'm a little confused.

 8              MR. DENICOLA:  Yeah, what is it?

 9              MR. KAUKER:  Well, it's a

10   combination thereof because as municipal planners,

11   we're able to craft ordinances in concert with a

12   legal partnership, so-to-speak.  And incorporation

13   by reference is a common mechanism.  In this

14   particular instance it may have been crafted, as

15   Mr. Burgis observed, to make the planners or the

16   administrators of the zoning ordinance, aware that

17   there's -- that there's a parallel -- that the

18   criteria for parking, the parking standards,

19   resides in another ordinance.  That may have been

20   the intent.  And I agree with Mr. Burgis in terms

21   of his observation.  But the legal import of that,

22   and the legal result, is that -- that by that

23   incorporation, it becomes an integral part of the

24   zoning ordinance.  And, therefore, any deviation

25   from the parking standards, effectively, is a
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1 | variance as opposed to a waiver.

2 | MR. CHAGARIS: What do you base that

3 | on? Or is it just your conclusion that because --

4 | MR. KAUKER: Well, there's a chapter

5 | in the zoning ordinance that essentially is

6 | integral to the zoning ordinance. It's section

7 | 200-32. It's entitled, 'Off-Street Parking."

8 | It's on page 200-25 of the zoning code. And it

9 | simply says that there shall be provided,

10 | off-street parking, as required by this ordinance.

11 | But it also says that in accordance with the

12 | requirements of the site plan ordinance of the

13 | Borough of Closter, all off-street service

14 | entrances for loading or unloading shall be in the

15 | rear yard. That raises a question as to the two

16 | front yards that have been testified to in this

17 | application.

18 | MR. BASRALIAN: Excuse me. Can I

19 | have the citation? Really, I don't have a

20 | citation for which you're referring to.

21 | MR. SEGRETO: 200-32.

22 | MR. KAUKER: 200-32.

23 | MR. SINOWITZ: 32 what?

24 | MR. DENICOLA: 32. That's it.

25 | MR. CHAGARIS: Of the zoning code.

 1   MR. KAUKER: Entitled, 'Off Street

 2   Parking.' It's on page 200- or :25.

 3   MR. SINOWITZ: But isn't that under

 4   article 4, district 4-B, officiary of 4 --

 5   officiary B. And 200-25 through 200-33

 6   encompasses that article specifically. It doesn't

 7   include other articles or other districts.

 8   MR. DENICOLA: Yeah, it's in a

 9   different zone.

10   MR. SINOWITZ: Other zones. So,

11   that would be applicable to article 4 district 4-B

12   officiary B.

13   MR. SEGRETO: Well, then that would

14   mean that every other zone in this town does not

15   have any kind of off-street parking requirements

16   because --

17   MR. DENICOLA: No, it doesn't.

18   MR. SINOWITZ: It means that there

19   are specific language --

20   MR. DENICOLA: Site plan code. Site

21   plan ordinance.

22   MR. SEGRETO: I understand.

23   MR. SINOWITZ: It means that the

24   specific language you're speaking of only

25   reference to article 9.

1   MR. KAUKER: It's kind of odd that

2   they would place that chapter --

3   MR. SINOWITZ: That's why it was

4   written.

5   MR. KAUKER: You're certainly

6   correct that's where -- that's where it is. But

7   it's kind of odd that they would place it just for

8   that one zone when all the other zones need

9   parking. So, it raises a question in my mind.

10   MR. MADDALONI: Maybe we can get

11   a -- I certainly would like a clarification,

12   perhaps our counsel, on distinguishing between a

13   waiver and a variance. Because we have had

14   numerous parking waivers in front of this board

15   over the years. And why it's now being described

16   as a variance, it begs an explanation to me.

17   MR. DENICOLA: It's his opinion.

18   That's all.

19   MR. CHAGARIS: It's his opinion.

20   MR. MADDALONI: All right even --

21   MR. CHAGARIS: Because there's one

22   section of the zoning code that references

23   off-street parking. He's saying that therefore

24   it's a zoning issue.

25   MR. MADDALONI: Okay. And we've

1   been wrong all these years.

2   MR. SINOWITZ: Even though it's a

3   zoning office, it would still, I would think is

4   construed as a waiver.

5   MR. CHAGARIS: Well, yeah, it

6   doesn't even apply to this district.

7   CHAIR LIGNOS: Okay. Can we

8   continue, please.

9   BY MR. SEGRETO:

10   Q   Mr. Kauker, since we're talking

11   about waivers, there is the Municipal Land Use Act

12   does have a provision that deals specifically with

13   the burden of proof with regard to waivers, isn't

14   that correct?

15   A   Yes, it does.

16   Q   Do you know what that section is?

17   A   It's N.J.S.A. 40:55(D)-51.

18   Q   And what does the land use, the

19   municipal land use specifically say about waivers,

20   and when they should be granted?

21   A   They should be granted only when their --

22   their denial would exact an undue hardship because

23   a particular peculiar condition pertaining to the

24   land in question.

25   Q   Do you know of any kind of

1   impracticality or undue hardship or peculiar

2   condition pertaining to this specific piece of

3   property that prohibits this applicant from

4   complying with all of the off-street parking

5   requirements, whether they're site plan

6   requirements or whether they're, like we say,

7   zoning ordinance requirements?

8   A   There are -- the property is relatively

9   flat. And certainly there are no physical

10   constraints that would prevent a situation where

11   you would have less building and more parking so

12   that you would be able to come closer to the

13   standards set forth by the Borough.

14   Q   Do you agree with me that if the

15   applicant, since they are demolishing substantial

16   parts of building B and building D, if they did

17   not rebuild all that they demolished, and that

18   they reduced, substantially, the square footage of

19   all of their buildings, that they would be able to

20   comply with the off-street parking requirements?

21   A   You could come closer to compliance.

22   Ideally, which may not be a reasonable or

23   practicable or exact some degree of hardship on

24   the -- on the property itself as it now exists, if

25   the level of demolition, at 52 percent,

1   coincidentally matches the shortfall in parking,

2   which is about 50 percent. So, ideally the ideal

3   situation for complete compliance would be to

4   essentially replace that demolished area. And I

5   could certainly understand that that -- that

6   that's an ideal situation, and that's one that

7   would be in full conformity with the ordinance.

8   Q   Actually I want you --

9   CHAIR LIGNOS: I'm sorry.

10   MR. SEGRETO: Yeah, I'm sorry.

11   CHAIR LIGNOS: When you say ideal --

12   MR. KAUKER: Well, ideally in the

13   eyes of the ordinance it would be fully

14   conforming.

15   CHAIR LIGNOS: You said non

16   practicable before.

17   MR. KAUKER: Well, I think the

18   applicant can make a reasonable case, based upon

19   contemporary parking standards, as Mr. Burgis has

20   attempted to do in his testimony, to convince the

21   board that maybe the 175 standard is a very

22   stringent standard, as opposed to say 1 per 200,

23   which is commonly the average standard that's in

24   play in most updated ordinances. And in that

25   context, one would, obviously, in order to comply

1   with that, you would still be short by

2   approximately 300 spaces. But that would

3   certainly be more compliant than the 50 percent

4   shortfall.

5   CHAIR LIGNOS: Now, as the

6   planner --

7   MR. KAUKER: Yes, sir.

8   CHAIR LIGNOS: -- this is under the

9   parking issue.

10   MR. KAUKER: Yes.

11   CHAIR LIGNOS: As a planner, have

12   you come across a standard that we have been given

13   here, that is more commonly used with --

14   MR. KAUKER: Retail.

15   CHAIR LIGNOS: -- with retail and

16   shopping centers at 4 cars per thousand?

17   MR. KAUKER: Yes, sir.

18   CHAIR LIGNOS: Would you consider

19   that practicable? Again, a word that you used,

20   which I guess is a good word.

21   MR. KAUKER: I would consider the

22   most appropriate standard at 1 per 200 because

23   that's common for retail. When you -- the 1 per

24   250, which is a lesser standard, it usually comes

25   into play for regional shopping centers, larger

1 scale. I don't know whether this, at 200,000

2 square feet, fits into that category. I think

3 it's more in the category of a large shopping

4 center as opposed to a regional center.

5   CHAIR LIGNOS: But there is the

6 moment of impracticality I understand.

7   MR. KAUKER: Well, I understand the

8 case that the applicant has made. And I don't --

9 I don't -- and I would -- and I don't -- I think

10 it's unreasonable. But, nonetheless, there is a

11 substantial shortfall. So, something has to give.

12   CHAIR LIGNOS: Okay. Thank you.

13 BY MR. SEGRETO:

14   Q   All right, lastly, Mr. Kauker, I

15 would like you to talk about the 2009 master plan

16 reexamination report, and its relationship to this

17 application.

18 A   One of the reasons cited in that

19 particular master plan, for, at least from the

20 view of the writers, as to the obsolescent

21 conditions and degree of vacancies and the age of

22 this shopping center, is that they threw out the

23 theory, or the possibility that that might be the

24 case in part because of the fact that there's too

25 much retail to serve this community and

1   surrounding communities, and that is so noted in

2   the master plan. Giving rise to a kind of a

3   position or attitude that retail should in fact be

4   reduced as opposed to increased, and that's simply

5   what that --

6   CHAIR LIGNOS: Would you be --

7   that's important to me. Could you please show me

8   that on the master plan? Can you restate that,

9   please.

10   MR. KAUKER: They opined that one of

11   the reasons why, maybe contributory to conditions

12   on this site, and the problem associated with this

13   site, in terms of tenancies, is that there may

14   well be too much retail. And those were the words

15   in quote, "Too much retail within the community."

16   CHAIR LIGNOS: Was the "May be" as

17   part of that as well or --

18   MR. KAUKER: No, it was a statement.

19   It was a statement in that -- in that master plan.

20   I don't have it with me. And I'd be pleased to

21   give you the cite.

22   CHAIR LIGNOS: I'd love to have that

23   -- I wish I -- we could read that. Okay. Okay.

24   I'm sorry. You can continue. I'm sure there was

25   more on the master plan than just --

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 1                    MR. KAUKER:  Well, that's the only

 2      aspect of the master plan that stands out in my

 3      view, as it -- as it may relate to the way in

 4      which a board might view this application.

 5                    CHAIR LIGNOS:  Was there anything in

 6      the master plan that said that -- that the area of

 7      Piermont Road looking to get some --

 8                    MR. KAUKER:  Infield development?

 9                    CHAIR LIGNOS:  Yes.

10                    MR. KAUKER:  Yes, sir.

11                    CHAIR LIGNOS:  Infield development.

12                    MR. KAUKER:  Yes.

13                    CHAIR LIGNOS:  Would that be --

14      would this application go, to some degree, to

15      fulfill that request of the master plan, or that

16      observation of the master plan?

17                    MR. KAUKER:  Well, in the light of

18      the fact that that there is a view expressed in

19      the master plan, there may be too much retail, and

20      as I recall that section, that talks about the

21      extension, they talked about other uses, office

22      support uses, and things of that nature.  And

23      retail, they talked about.  And, of course if you

24      have too much on any one given site, than you're

25      going to impede the ability of those particular
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 1  target areas that you mentioned, to be -- to move

 2  in that direction.

 3              CHAIR LIGNOS:  And in particular,

 4  the -- the master plan was talking about the

 5  plaza, and not the commons, in your -- in your

 6  opinion?

 7              MR. KAUKER:  Well it -- it -- it --

 8  it used the word --

 9              CHAIR LIGNOS:  You know, the commons

10  is that piece --

11              MR. KAUKER:  I understand the

12  commons.  And the commons is part of that -- part

13  of that -- part of that statement.  But that

14  particular section of that paragraph was talking

15  specifically about conditions on this particular

16  site.

17              CHAIR LIGNOS:  Okay.  Thank you.

18              MR. SEGRETO:  I have no further

19  questions of Mr. Kauker.

20              CHAIR LIGNOS:  No further questions.

21  Can I ask -- I want to continue on that.  Would

22  you be so kind, this is the master plan, if you

23  would -- if you think you can just -- I would just

24  like to read it while I'm -- members of the board

25  does anyone have a question?  We are going to do
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1   this in a systematic way again. We'll go from the

2   mayor over.

3   First of all, Mr. Basralian -- how

4   does this work? Mr. Basralian goes first I guess.

5   MR. BASRALIAN: That's a change in

6   the way you've done things before.

7   CHAIR LIGNOS: No, I'll go last

8   then. I'll let you go. Yeah. I was just -- you

9   know something, this is all new to me. Because

10 normally I look over there. Now I have to look

11 over there. So, it's getting complex.

12   Mayor.

13   MAYOR HEYMANN: I pass.

14   CHAIR LIGNOS: You pass. Dr.

15 Maddaloni.

16   MR. MADDALONI: So, Mr. Kauker, you

17 testified that the requirement, the parking

18 requirement, as the ordinance exist, are how many

19 vehicles for this?

20   MR. KAUKER: One -- one space per

21 each 175 square feet.

22   MR. MADDALONI: Right. So, how many

23 would that be for the -- for the --

24   MR. KAUKER: About 1,540 I believe

25 exactly.

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 1                    MR. MADDALONI:  And they have how

 2    many?

 3                    MR. KAUKER:  730.

 4                    MR. MADDALONI:  Okay.  So, they're

 5    over 800 spots deficient?

 6                    MR. KAUKER:  Short, yeah.

 7                    MR. MADDALONI:  And then you

 8    testified that if they didn't subdivide that lot

 9    you would be able to add another 30 to 40 parking

10    spots, correct?

11                    MR. KAUKER:  That's correct.  No,

12    sir.  About 50, 40 to 50.  That half acre.  It's a

13    half acre.

14                    MR. MADDALONI:  Okay.  So, about 40

15    to 50.  So, that's roughly about 5 -- that reduces

16    the deficiency by about 5 percent.  Is that -- do

17    you see that as a significant reduction in the

18    parking problem?

19                    MR. KAUKER:  I think any time you

20    can come closer to what's required in the standard

21    is --

22                    MR. MADDALONI:  I'm asking if it's

23    significant.  If you added one --

24                    MR. KAUKER:  -- is a good thing.

25    It's not --
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 1   MR. MADDALONI: If you added one

 2   spot it comes closer. But I'm asking if it's

 3   significant.

 4   MR. KAUKER: It's not significant.

 5   As it relates to the proportion of the shortfall.

 6   MR. MADDALONI: Right. It's about

 7   5 percent. Okay. Thank you.

 8   CHAIR LIGNOS: Mr. Baboo.

 9   MR. BABOO: I'm trying to understand

10   the phrase, not a permitted use in the zone.

11   MR. KAUKER: Yes, sir.

12   MR. BABOO: I just, if you could

13   shed some light on that. I don't quite understand

14   what you meant by that.

15   MR. KAUKER: Shopping centers are

16   usually recognized and regulated in most

17   municipalities as separate entities because they

18   do have certain unique characteristics. And no

19   such recognition exists, nor any such word as,

20   shopping centers, in the current ordinance, but

21   for the fact that retail uses are permitted on the

22   site.

23   This shopping center has, as

24   evidenced in the prior testimony and discussion

25   before the board, predated the current ordinance.

1   And in that context it exists as a nonconforming

2   use.

3   My respectful observation is that --

4   MR. BABOO: Once second, when you

5   say, predated an ordinance, which ordinance are

6   you talking about?

7   MR. KAUKER: I'm talking about the

8   ordinance, the current zoning ordinance, as

9   written.

10   MR. BABOO: Okay.

11   MR. KAUKER: Was written after this

12 center was built essentially. I think it was

13 early 50's or 60's, as I recall. This ordinance

14 was crafted, I believe in the 70's. So, that it

15 placed the shopping center in a category, a legal

16 use category, as a nonconforming use.

17   It in fact is not a permitted use.

18 Shopping centers are not contemplated, identified

19 or individually identified as a permitted use.

20   The integral parts of what are on

21 site, retail and other types of activities, are,

22 in fact, permitted. But a shopping center that

23 takes on its own special separate identity, as

24 opposed to the kinds of activities and uses that

25 exist in this central business area, which are a

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 1   number of different individual retail or

 2   commercial entities on separate lots.

 3                  MR. BABOO:  So, if the mall didn't

 4   exist, or let's say there's no mall, and it's just

 5   a piece of land --

 6                  MR. KAUKER:  Yes, sir.

 7                  MR. BABOO:  And it's zoned the same

 8   way it's zoned now --

 9                  MR. KAUKER:  Right.

10                  MR. BABOO:  -- you're saying that

11   you wouldn't be able to build anything on it?

12                  MR. KAUKER:  You can't -- you can't

13   rebuild on this site without a certain kind of a

14   variance.  And my respectful view is that that

15   variance is a D variance, to be considered and

16   granted by the zoning board, as opposed to a

17   planning board.

18                  CHAIR LIGNOS:  May I?

19                  MR. BABOO:  Okay.

20                  CHAIR LIGNOS:  The building that's

21   to the left of the shopping center, there is a

22   bank facility, there's a doctor's office, there

23   are offices.  The building on the corner of Lewis

24   and Vervalen.

25                  MR. KAUKER:  Right.  Okay.
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 1                    CHAIR LIGNOS:  So, if there's one
 2   retail facility, it's a single facility.  When
 3   there are two, what is that called, when there are
 4   two retail functions within a building?
 5                    MR. KAUKER:  Multiple use within a
 6   structure.
 7                    CHAIR LIGNOS:  And when there's
 8   three?
 9                    MR. KAUKER:  The same thing.
10                    CHAIR LIGNOS:  And when there's ten?
11                    MR. KAUKER:  Same.
12                    CHAIR LIGNOS:  When does something
13   become a mall or shopping center?  Is there some
14   magic pixie dust that has to be sprinkled on this
15   building to make it --
16                    MR. KAUKER:  Well, not pixie dust
17   but general standards that recognize certain size
18   of single commercial entities.
19                    CHAIR LIGNOS:  Okay.  And that's
20   what --
21                    MR. KAUKER:  But it's not written in
22   stone.
23                    MR. NYFENGER:  In our code?
24                    MR. CHAGARIS:  I don't think -- it's
25   not in our code.
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 1   CHAIR LIGNOS: Right. You're not

 2   suggesting that's in our code, right?

 3   MR. KAUKER: No, it's not. Those

 4   standards that differentiate.

 5   CHAIR LIGNOS: Right. So, where can

 6   we find that?

 7   MR. KAUKER: In part you can find it

 8   by the limitation to one structure on a site.

 9   Shopping centers are usually designed to

10   accommodate multiple structures, particularly this

11   day and age when --

12   CHAIR LIGNOS: Multiple structures

13   meaning multiple retail?

14   MR. KAUKER: Multiple buildings.

15   Multiple buildings.

16   CHAIR LIGNOS: Multiple buildings

17   that can house even more multiple retail

18   functions.

19   MR. KAUKER: Well, multiple

20   buildings within a given one property. Multiple

21   buildings on one property. In most instances in

22   the central business area here you have

23   essentially one building on each property, on

24   average I would say. On -- in the majority.

25   CHAIR LIGNOS: So, if this owner --

1   MR. KAUKER: So, size and multiple

2 building characteristic would give rise to one's

3 ability to identify Closter Plaza entity as a

4 shopping center, as commonly regulated, identified

5 and referred to in other ordinances. That level

6 of detail and definition is not within Closter's

7 ordinance. Mainly because Closter's ordinance was

8 written to relate, more particularly, it appears

9 to me, to the character and identity of Closter

10 center. This center. Smaller lots. I think the

11 minimum lot size is 6,000 square feet. Obviously

12 this is 15 acres. So, we're -- we're talking

13 about two different --

14   CHAIR LIGNOS: No, I understand

15 that. But, again, I'd like to focus back on that

16 building again on the corner of Lewis.

17   MR. KAUKER: Right. It's a single

18 building with multiple uses.

19   CHAIR LIGNOS: With multiple uses.

20   MR. KAUKER: And that fits the

21 ordinance because the ordinance says one building

22 on a lot.

23   CHAIR LIGNOS: So, this -- this

24 whole thing could be a non issue if the plaza came

25 back with one building?

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 1                    MR. KAUKER:  Yes, sir.

 2                    CHAIR LIGNOS:  Connected it all and

 3    made it one very large building?

 4                    MR. KAUKER:  It would then adhere to

 5    that.  It would comply with that limitation.

 6                    CHAIR LIGNOS:  If we made this plaza

 7    one building --

 8                    MR. KAUKER:  Right.

 9                    CHAIR LIGNOS:  It may not suit life

10    safety issues like circulation for, you know, fire

11    trucks, and things like that.  Or it might.  Who

12    knows.  But if it was one building --

13                    MR. KAUKER:  It could be a donut

14    building with the core amenities and parking

15    contained within the -- within the center.

16                    CHAIR LIGNOS:  Okay.  Mr. Baboo, I'm

17    sorry, go ahead.

18                    MR. BABOO:  Okay.  I'm sorry, it

19    doesn't -- your supposition doesn't make any sense

20    to me.  But let's go into the retail store.  But I

21    ask anyway, you're also saying that the 45,000

22    maximum size applies to everything or every

23    building?  I'm just trying to get some more

24    clarification on that.  Basically, specifically

25    I'm reading in here, it says it's for retail
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1   stores.

2   MR. KAUKER: The thing that

3   triggers, it gives rise to my view, even though it

4   seems impracticable, and in error, or difficult to

5   understand, is, I associate the two regulations,

6   the one building concept, and the 45,000 square

7   feet, as being intimately related. And only on

8   that basis do I end up with the view that the

9   limit essentially is 25,000. Because you could

10   have one retail in one building on one site.

11   MR. CHAGARIS: Forty.

12   CHAIR LIGNOS: Forty-five.

13   MR. KAUKER: 45,000. So, when I --

14   when I -- when I pull all that together that's how

15   I arrive at that view.

16   CHAIR LIGNOS: So, we could have a

17   million square foot building, but I can have a

18   45,000 -- as long as I don't go over 45,000 in its

19   one retail function?

20   MR. KAUKER: Yes, you could.

21   CHAIR LIGNOS: Okay.

22   MR. SINOWITZ: It's one store.

23   CHAIR LIGNOS: One store 45.

24   MR. BABOO: Okay. Thank you.

25   CHAIR LIGNOS: Ms. Stella.

1   MS. STELLA: Pass.

2   CHAIR LIGNOS: Mr. Nyfenger.

3   MR. NYFENGER: I don't want to beat

4   a dead horse, but my question was the exact same

5   one as Mr. Baboo.

6   CHAIR LIGNOS: Was it answered?

7   MR. NYFENGER: Well, I'm not sure

8   I'm satisfied with the answer. Is a square a

9   rectangle?

10   MR. KAUKER: Well, you're going back

11   to geometry. I believe it is.

12   MR. NYFENGER: A square is a type of

13   rectangle.

14   MR. KAUKER: Yes.

15   MR. NYFENGER: A shopping center is

16   a type of retail use?

17   MR. KAUKER: That's correct.

18   MR. NYFENGER: I don't know that our

19   founding fathers in the 70's needed to worry about

20   putting the exact type of retail that the existing

21   plaza was at the time.

22   MR. KAUKER: Let me give you an

23   example. If I were, objectively, as a planner,

24   asked to look at the dichotomy between Closter

25   Plaza and the downtown center, for which I believe

1   the ordinance was written, I would create two

2   zones instead of having the personality and nature

3   of one zone, essentially limit and not relate to a

4   macro use, such as Closter Plaza, that deserves,

5   or should be regulated within an entirely

6   different zoning -- set of zoning regulations.

7   Maybe that gives you a perspective on the -- on

8   the problems that I had with this application.

9   CHAIR LIGNOS: Mr. Nyfenger, do you

10   have anything else?

11   MR. NYFENGER: No.

12   CHAIR LIGNOS: Mr. Pialtos.

13   MR. PIALTOS: Nothing.

14   CHAIR LIGNOS: Ms. Isacoff.

15   MS. ISACOFF: No.

16   CHAIR LIGNOS: Mr. Sinowitz.

17   MR. SINOWITZ: No.

18   CHAIR LIGNOS: Mr. DeNicola.

19   MR. DENICOLA: No.

20   CHAIR LIGNOS: Mr. Chagaris.

21   MR. CHAGARIS: No.

22   CHAIR LIGNOS: I have nothing

23   further. Mr. Basralian.

24   MR. BASRALIAN: Is there anyone in

25   the audience?

1   CHAIR LIGNOS: Oh, I actually asked

2   them. Well, anyone in the audience that has a

3   question of this witness?

4   MR. ISACCSON: Sure. Why not.

5   CHAIR LIGNOS: I could tell you a

6   lot of reasons why not.

7   MR. ISACCSON: Steve Isaacson, 97

8   Columbus. Are all shopping centers the same? I

9   mean does the law sort of make it like all

10 shopping centers?

11   MR. KAUKER: No, they're not all

12 exactly alike, but they do have common

13 characteristics.

14   MR. ISACCSON: Right. Because I go

15 up to Tice Corners a lot, where the apple store

16 is, and there's no supermarket there.

17   MR. KAUKER: Right.

18   MR. ISACCSON: Their traffic flow,

19 their parking needs are different from the parking

20 needs of a shopping center with a supermarket,

21 correct?

22   MR. KAUKER: Not really. Retail is

23 retial, and that's a broad category, and that's a

24 common category that is assigned a certain parking

25 ratio. For instance, parking ratio differentiated

1   among an office category would typically require

2   more parking for a doctor's office as opposed to

3   an attorney's office. But retial is retail.

4   MR. ISACCSON: So, you don't feel

5   that a supermarket needs more parking than a

6   retail store? Just a regular -- I mean like if

7   you have a Sleepy's, that place that's filled with

8   mattresses, and maybe there's two people that go

9   in there everyday.

10   MR. KAUKER: Well --

11   MR. ISACCSON: Or a furniture store

12 that maybe 15 people go in a day.

13   MR. KAUKER: Most supermarkets are

14 significant from a point of view that they are

15 multiple times larger than virtually any other

16 comparable retail use. That's why they are

17 identified, in many ordinances, as a separate

18 entities, i.e., shopping centers.

19   MR. ISACCSON: And also, in your

20 opinion, do you feel -- I mean I know it's been

21 talked here that Whole Foods is not a regional

22 supermarket. But would you feel that the draw for

23 a supermarket, such as Whole Foods, extends beyond

24 a 4-mile area?

25   MR. KAUKER: That's kind of a

1   marketing question. And I'm, you know, hard

2   pressed to be able to give you an informed expert

3   answer to that question.

4   MR. ISACCSON: Okay. Okay. Thank

5   you.

6   CHAIR LIGNOS: Anyone else in the

7   audience have any questions of this witness?

8   Mr. Basralian.

9   THE REPORTER: Can we take five

10 minutes?

11   CHAIR LIGNOS: We'll take five

12 minutes, if it's okay, if we take five minutes.

13   MR. BASRALIAN: Sure.

14   CHAIR LIGNOS: Okay, the time now is

15 9:27. We're gonna be back here at 9:35.

16   (A recess was taken.)

17   CHAIR LIGNOS: The time now is 9:35,

18 and I call this meeting back to order. Before I

19 hand it over to Mr. Basralian, Mr. Kauker, what I

20 wanted to do --

21   MR. KAUKER: Yes.

22   CHAIR LIGNOS: And I thank you very

23 much for outlining the pages during the recess,

24 you handed back to me the master plan, and it is

25 exactly how I remembered it. You outlined page 13

1 first, based upon the condition of retail uses

2 throughout Closter, it is evident that Closter may

3 have an imbalance --

4   MR. KAUKER: Yes.

5   CHAIR LIGNOS: -- between the

6 residentially zoned land, and the land zoned for

7 retail use, with too much land zoned for retail

8 use. This, though, sir, speaks specifically to

9 Piermont Road between High Streets and Homans,

10 more in keeping with what is in our town, an Annie

11 Sez, a bank and our Closter Commons.

12   MR. KAUKER: Right.

13   CHAIR LIGNOS: So, I didn't remember

14 it, being that I have had the pleasure of serving

15 on this board for 18 years, I don't re -- I didn't

16 remember that the plaza itself was cited for

17 having too much retail. But I do remember the

18 plaza being cited for being aged and just kind of

19 run down.

20   MR. KAUKER: Right. Obsolescent.

21   CHAIR LIGNOS: Exactly the word used

22 here. So, I thank you, and I'm glad we're able to

23 clarify it. Thank you.

24   Mr. Basralian, it's all your's.

25   MR. BASRALIAN: Thank you,

1   Mr. Chairman.

2   CROSS-EXAMINATION BY MR. BASRALIAN:

3   Q   Mr. Kauker, based upon what the

4   chairman just read from the master plan at page

5   24, than your statement was incorrect as to too

6   much retail, as it related to Closter Plaza?

7   A   It was misdirected, that's correct.

8   Q   Thank you.

9   Mr. Kauker, would you tell me the

10 definition of building, as defined by the

11 municipal land use law.

12 A   If you have it in front of you. I don't

13 have an absolute recall.

14   Q   Okay. Referring to section

15 40:55(D)3, definition, subsection A to C. Right

16 here.

17 A   It reads, a combination of materials to

18 form a construction adapted to permanent,

19 temporary or continuous occupancy and having a

20 roof.

21   Q   Where, in that definition, do you

22 see any reference to the word use?

23 A   There is none.

24   Q   You kept saying, throughout your

25 testimony, that Closter Plaza consists of a

1 nonconforming use.

2 A   Yes, sir.

3   Q   Can you show me where any of the

4 uses in Closter Plaza do not conform with the

5 zoning ordinance for retail, as provided in that

6 ordinance?

7 A   I don't believe there are nonconformities,

8 as they're -- as related to the individual uses

9 that are within Closter Plaza. I think they're

10 all permitted as uses.

11   Q   Doesn't the municipal land use law

12 define nonconforming use, as one which is not

13 permitted in the zone for which it's located?

14 A   That's correct.

15   Q   And the Closter Plaza contains uses

16 which are within the zone?

17 A   Yes, it does.

18   Q   You referred to demolition. And in

19 your opinion that demolition, as proposed by the

20 applicant, would put the application before the

21 board of adjustment. Show me in the Closter

22 zoning ordinance where there are limitations on

23 what percentage of the building can be demolished

24 in connection with redevelopment.

25 A   I'm not familiar with that section if it

1 does exist.

2   Q   Wouldn't there be a requirement that

3 exists that an applicant would have to adhere to?

4 A   Not necessarily. I think -- I think the

5 position that I've taken is based upon good

6 planning principles existing in municipal land use

7 law, and prior cases where demolition has been

8 viewed to essentially create a clean slate. And

9 any prior nonconforming rights associated with

10 that portion, or with that demolition, essentially

11 are extinguished.

12   Q   Well --

13 A   But it doesn't necessarily have to be

14 essentially explicated within Closter's ordinance

15 in order for that -- that -- that principle to be

16 applicable.

17   Q   Mr. Kauker, you testified you're a

18 planner for 1970, 43 years. The testimony which

19 you referred to, that you were familiar with,

20 about what would be demolished, left a portion of

21 each building up, did it not?

22 A   That's correct.

23   Q   Isn't the rule of thumb in the

24 courts, generally that so long as a part of a

25 building has been demolished, remained, that the

1   rule of thumb utilizes that the rest can be

2   reconstructed?

3   MR. SEGRETO: I object to the form

4   of the question.

5   MR. CHAGARIS: It's

6   cross-examination. He can ask it.

7   MR. SEGRETO: I know but there's no

8   case that talks about demolition. It talks about

9   partial destruction. And in partial destruction,

10   the cases specifically talk about, by design or by

11   accident, fire, or some other kind of tragedy.

12   MR. BASRALIAN: I'm amazed that you

13   have every case at your disposal, if there is none

14   that refers to it --

15   MR. SEGRETO: No, I don't have every

16   case.

17   MR. BASRALIAN: Then you're

18   incorrect in your statement.

19   MR. CHAGARIS: All right, let's not

20   have cross argument.

21   MR. SEGRETO: Believe me, I have

22   researched the subject and none of them talk about

23   criteria about how much you're going to demolish

24   or not demolish.

25   MR. CHAGARIS: He can answer the

1 question.

2   MR. SEGRETO: He talks about partial

3 destruction and total destruction. That's what

4 our cases talk about. That's my objection.

5   MR. CHAGARIS: Your objection is

6 noted for the record.

7 A   I'm not familiar with those particular

8 cases, Mr. Basralian.

9   Q   Now, you said you were familiar with

10 the proposed renovations to Closter Plaza. Today

11 the shopping center exists as a shopping center

12 with four distinct buildings.

13 A   That's correct.

14   Q   Consisting and totaling 211,000

15 square feet with 720 parking spaces. Could that

16 shopping center remain just the way it is and

17 function as a shopping center if it were leased up

18 with retail, with permitted uses within the zone?

19 A   Yes, it could.

20   Q   You also indicated that the

21 reconstruction of a shopping center has proposed,

22 you were familiar with.

23 A   Mm-mm.

24   Q   Are you familiar by the size of the

25 shopping center as proposed with the

1 reconstruction?

2 A   Yes, I am.

3   Q   And is it being reduced in size or

4 increased in size?

5 A   I think it's being, in the aggregate, at

6 the end of round -- phase II, slightly reduced, as

7 I recall.

8   Q   You also indicated the parking

9 spaces would be increased from 720 to 730.

10 A   Yes.

11   Q   At the end of phase II, which is

12 part of the application, are you aware that the

13 number of parking spaces will be increased by 100,

14 from the current 720 to 820?

15 A   Yes, I am.

16   Q   That goes to diminishing any

17 nonconformity with respect to parking?

18 A   That is correct. But also it's affected

19 by the, taking away the area which could support

20 say 40 or 50 spaces on the subdivided lot.

21   Q   Well, I'm glad you raised that. You

22 kept talking about an intensification of use.

23 Doesn't intensification of use go to

24 intensification of nonconforming uses, whereas

25 what is being proposed really is a planning

1 element?

2 A   It goes to intensification of

3 nonconforming uses, which I believe this use is.

4   Q   Your position is that the shopping

5 center is a nonconforming use, and, therefore,

6 subdividing out about approximately 22,000 square

7 feet constitutes a intensification?

8 A   Increases the degree of nonconformity,

9 yes. Because the existing building mass has less

10 land to support it.

11   Q   Well, are you familiar with the

12 ratio that's permitted under the zoning ordinance

13 for buildings, building coverage?

14 A   I don't recall that here.

15   Q   Well, building coverage is maxed out

16 at 35 percent.

17 A   Mm-mm.

18   Q   Do you know what the building

19 coverage is after completion of phase II?

20 A   No, I do not. I don't recall.

21   Q   If it were -- if you reviewed the

22 plans, you indicated you were familiar with them,

23 building coverage at the completion of phase II

24 will be 32.3 percent in accordance with the Omland

25 plans submitted in connection with the

1   application. Now, for maximum permitted is 35

2   percent. And even with a subdivided lot, when

3   it's completed will be 32.3 percent. How does

4   that constitute intensification?

5   A   It doesn't, as it relates to that

6   particular requirement. But it reflects a minor

7   reduction in aggregate, the overall size of the

8   square footage on the property.

9   Q   But the building coverage is less

10   than the maximum permitted --

11   A   I had no issue with the building coverage.

12   Q   Okay. Then if the building doesn't

13   exceed the 35 maximum, how does that constitute an

14   intensification?

15   A   It constitutes an intensification because

16   you still have the nonconformity as it relates to

17   parking, which is produced as a product. There's

18   an imbalance between the amount of building on the

19   property, not withstanding the allowance of 35

20   percent, and it's ability to meet other key

21   requirements of the ordinance, such as parking.

22   Q   Even though the parking is increased

23   by 200 -- a hundred parking spaces with a reduced

24   size building over the current shopping center?

25   A   You bring it into closer conformity but

1   there's still a substantial shortfall.

2   Q   You also indicated tonight, I must

3   admit that I didn't follow, necessarily, your

4   rational, but that the zoning ordinance talks

5   about, not building size, but the maximum size of

6   any retail store.

7   A   Yes.

8   Q   And schedule A, which is referred to

9   by Mr. DeNicola, says that maximum size of any

10 retail store, square feet is 45,000. Are you

11 familiar with it?

12 A   Yes, I am.

13   Q   Yet you continue to maintain that it

14 was 45,000 square feet for a building.

15 A   Only because only one building is

16 permitted on a site. And that really is what

17 leads me to that position. Even as -- as

18 difficult to understand, as it may be. But when

19 you view the two requirements in combination with

20 one another, the reality of the development on

21 this site, as a shopping center, is that it has

22 multiple buildings. Multiple buildings are not

23 permitted in the zone.

24   Q   But that you just told me that there

25 are four buildings now. They're validly

1 nonconforming buildings in terms of number, and

2 they could continue to exist the way they are.

3 A   If they're not changed in any way.

4   Q   If the three proposed buildings were

5 connected, and deemed to be one building under the

6 zoning ordinance, would that satisfy your

7 criteria?

8 A   Yes.

9   MR. SEGRETO: I object to the form

10 of the question. He's asking hypotheticals of my

11 witness, and I thought those were off limits for

12 experts.

13   MR. CHAGARIS: Can you rephrase the

14 question.

15   MR. BASRALIAN: I've heard a hell of

16 a lot of hypothetical answers tonight. So, I'm

17 trying to get Mr. Kauker to at least respond to

18 one of them.

19 BY MR. BASRALIAN:

20   Q   Mr. Kauker, the proposed

21 redevelopment of the shopping center consists of

22 three buildings. In your opinion, is the manner

23 in which conformance with the code they could be

24 made into one building?

25   MR. SEGRETO: At their current

1 sizes? Is that what you're trying to say?

2   MR. CHAGARIS: I'm sorry, the

3 question is very clear I think.

4   MR. BASRALIAN: That's not the

5 question.

6 A   That could be done. That could be done.

7   Q   Would that satisfy all of your

8 concerns, and all of your statements, and all of

9 your opinions, regarding whether or not this board

10 has jurisdiction?

11 A   No, it would not. You still have a

12 parking shortage.

13   Q   How does that go to jurisdiction to

14 the board?

15 A   Oh, relative to the jurisdictional issue?

16   Q   Right.

17 A   Wow. Okay. I believe it would.

18   Q   You referred to, through your

19 testimony, to section 200-32 off-street parking.

20 A   Yes.

21   Q   And as I understood your testimony,

22 because that section referred to the site plan

23 ordinance, you said that it really incorporated

24 the site plan ordinance provision into the zoning

25 ordinance. And, therefore, this should be a

1   variance.

2   A   Variance, yes. I recall that.

3   Q   Now, if that same section also

4   referred to compliance with DEP regulations, and

5   health and safety regulations, would all of the

6   DEP regulations and safety regulations, and safety

7   incorporated by reference into the zoning

8   ordinance, because it said, by the way, parking is

9   under -- or parking or DEP regulations or health

10 regulations or refer to someplace else?

11   MR. SEGRETO: Objection. The

12 ordinance doesn't state that. It talks

13 specifically about incorporating your site plan

14 requirements.

15   MR. CHAGARIS: Yeah but actually

16 though the ordinance itself incorporates the

17 parking into totally a different zone. I don't

18 know why we're going into this area. It has

19 nothing to do with this zone at all. If you can

20 answer the question, answer the question.

21 A   That's a separate jurisdiction. I don't

22 know if your example is applicable.

23   Q   How about local department of health

24 provisions under the ordinance?

25   MR. SEGRETO: Same objection.

1   A   That would be separate. They have the

2   separate jurisdictional powers. The zoning code

3   is the zoning code. Development regulations

4   include; site plan and zoning code. And that --

5   that kind of distinguishes the situation, even

6   though it is in fact prescribed for one zone, the

7   incorporation, and that's clear in the ordinance.

8   Q   Well, it seems to me you raised the

9   issue, and you're the one who said that, by virtue

10 of its reference it should be incorporated under

11 the zoning ordinance, and, therefore, a variance.

12 Why wouldn't all of those other things be

13 incorporated if they were ever referenced? You

14 raised the issue. Not me.

15   MR. SEGRETO: And my objection is

16 that your zoning ordinance doesn't talk about DEP

17 regulations or health regulations. The section

18 that we're talking about specifically talks about

19 the parking requirements as set forth in chapter

20 173.

21   MR. CHAGARIS: I think the point is

22 made. Everyone understands what the issue is.

23   MR. BASRALIAN: No further

24 questions.

25   CHAIR LIGNOS: Mr. Segreto, anything

1   further?

2   MR. SEGRETO: No.

3   CHAIR LIGNOS: Okay. At this point,

4   we have concluded our witness for this evening.

5   Sir -- I already have -- I opened up

6   the meeting for the public for questions prior to

7   this.

8   MR. ROSENBLUME: But on this

9   dialogue?

10   CHAIR LIGNOS: How does that work?

11   MR. CHAGARIS: You really need to --

12   go ahead, ask the question. If you have a

13   question.

14   MR. ROSENBLUME: Jessie Rosenblume,

15   65 Knickerbocker Road.

16   CHAIR LIGNOS: You're asking it of

17   the witness?

18   MR. ROSENBLUME: Yeah.

19   CHAIR LIGNOS: Okay.

20   MR. ROSENBLUME: Mr. Kauker, if I

21   told you that most of the structures, buildings on

22   Main Street, were pre-1940, would you believe

23   that?

24   MR. CHAGARIS: That really has no

25   relevance. We're not talking about buildings on

```
 1   Main Street.  We're talking about this

 2   application.

 3                MR. ROSENBLUME:  Okay.

 4                Mr. Kauker, the zoning ordinance was

 5   adopted in December 1940.  Have you looked at the

 6   definition of lot, L-O-T?  It's in section 200-5.

 7                MR. KAUKER:  No, I haven't.

 8                MR. ROSENBLUME:  Okay.  If I told

 9   you that it states, a lot shall have only one

10   building, do you know of other towns that have

11   such a restriction?

12                MR. KAUKER:  Typically they do, yes.

13   But for many ordinances that recognize and

14   regulate shopping centers have different criteria.

15                MR. ROSENBLUME:  Right.  Because

16   I've noticed that also.

17                MR. KAUKER:  Right.

18                MR. ROSENBLUME:  So, what would

19   be -- as a planner, what would be the significance

20   of having a 1940 ordinance that says, one building

21   per lot, and then you have Closter shopping center

22   being built in 1960, 20 years later, and

23   completely ignoring the 1940 ordinance for lot,

24   which was never changed.  Although reviewed many

25   times, it was never changed.  How would you
```

1   explain that?

2   MR. KAUKER: I can't explain it.

3   MR. CHAGARIS: That's really not

4   before the board.

5   MR. KAUKER: I can't explain it. I

6   can't explain it.

7   MR. ROSENBLUME: You can't explain

8   it because --

9   MR. CHAGARIS: No, no, no, no, you

10 can only ask questions. You can't give an answer.

11   MR. ROSENBLUME: Okay. Therefore,

12 wouldn't you consider that plaza to be, not a

13 prior nonconforming, but an illegal nonconforming?

14   MR. KAUKER: It's a possibility, but

15 based upon -- based upon the criteria that's set

16 forth --

17   MR. ROSENBLUME: Right. So,

18 basically, how can one explain why the plaza was

19 built with multiple buildings despite the

20 ordinance stating only one building per lot?

21   MR. KAUKER: I honestly don't know

22 because I wasn't there at the time.

23   MR. CHAGARIS: That's not before the

24 board here.

25   MR. ROSENBLUME: But my point is,

1   the board, according to many cases in law, the

2   board is supposed to know their own regulations.

3   MR. CHAGARIS: But -- Jessie,

4   Mr. Rosenblume, the definition of lot in the

5   zoning code of the Borough of Closter says, a

6   partial land occupied, which may be occupied by a

7   building and accessory buildings, and including

8   open space required by this chapter. It doesn't

9   say, one building.

10   MR. ROSENBLUME: I don't want to

11   talk law, but case law states "a" means one.

12   MR. CHAGARIS: Just ask the question

13   of the witness though.

14   MR. ROSENBLUME: Okay. Okay. Well,

15   in the way you read it --

16   CHAIR LIGNOS: Mr. Rosenblume.

17   Mr. Rosenblume, hold on. Please hold on for a

18   second here. Because everything was going well

19   until the insinuation that the board must know

20   their regulations, and being that I'm the chairman

21   of such board, I have to tell you that I took a

22   deep breathe and now I can answer. Are you trying

23   to tell me that this board, or any board that

24   followed, prior to this, did not give an approval

25   for this plaza?

 1   MR. ROSENBLUME: I would like to

 2   know --

 3   CHAIR LIGNOS: Historically.

 4   MR. ROSENBLUME: -- how could they

 5   have done it --

 6   MR. CHAGARIS: Wait, wait, you're --

 7   CHAIR LIGNOS: Hold on. Hold on.

 8   Hold on.

 9   MR. CHAGARIS: -- you're going

10   really far afield. That's not before this board.

11   That application is not before -- the history is

12   not before the board.

13   CHAIR LIGNOS: Mr. Chagaris, I

14   understand that perfectly. But the witness said

15   that it could have been done illegally. Hold on.

16   He could -- he didn't say it was -- so, my point

17   is, did you know, sir, for a fact, did you know

18   that this board, or a board, a planning board in

19   this town did not grant approval for that plaza?

20   MR. KAUKER: No. What I was

21   referring to was a prior testimony set forth on

22   the record, that seemed to suggest that the plaza

23   was constructed in the 50's, late 50's. I'm

24   trying to recall. Because it's in the transcript.

25   It might have been information promulgated by

1   yourself. And based upon that, it appears to me,

2   that that would be prior to the date of the

3   history of the ordinance, which essentially is

4   12/22/67.

5   CHAIR LIGNOS: So, therefore, sir,

6   that -- those regulations that Mr. Rosenblume --

7   MR. KAUKER: I don't know where he

8   comes from, from 1940.

9   CHAIR LIGNOS: Okay. Thank you.

10   That's all I want to put that on. Thank you.

11   MR. ROSENBLUME: Again, you're

12   looking at -- your question is a little off the

13   mark because we're not saying it was illegal.

14   Many boards --

15   CHAIR LIGNOS: No, sir, you used

16   actually that word.

17   MR. ROSENBLUME: Yeah, but many

18   boards have approved something without thinking

19   about it. They did it in error.

20   CHAIR LIGNOS: I can't tell you what

21   a board did in the past. I'm sorry. But as far

22   as I'm concerned, I'm worrying about this

23   application at this time.

24   Any other questions of this witness,

25   sir?

```
 1                     MR. ROSENBLUME:  No.

 2                     CHAIR LIGNOS:  Thank you.  Okay.

 3                     MR. BASRALIAN:  If you would be so

 4   kind, since we've concluded, announce that we will

 5   meet on next Thursday, the 21st.

 6                     CHAIR LIGNOS:  As I said at the

 7   beginning of the meeting, that this matter will

 8   continue at our next meeting, which will be next

 9   Thursday.

10                     Now, Mr. Segreto, at 8 o'clock you

11   will have those two witnesses next week?

12                     MR. SEGRETO:  Yes.  They have

13   indicated to me, yes.

14                     MR. CHAGARIS:  Okay.  Well, we're

15   giving you a reasonable opportunity --

16                     MR. SEGRETO:  Yeah, I -- I

17   understand that.  Of course.  Okay.  I wanted to

18   have him here tonight.

19                     CHAIR LIGNOS:  No, I understand.  So

20   you understand that we're trying to get all these

21   people here.  I want to make sure that their --

22                     MR. SEGRETO:  I understand that.

23                     CHAIR LIGNOS:  Okay.  Thank you.  If

24   there's no further business before the board, the

25   chair will entertain a motion to adjourn.  Made so
```

1   by Dr. Maddaloni. Seconded by Mr. Nyfenger. Any

2   discussion? Seeing none. All in favor? I see no

3   objection, therefore, this meeting is now

4   adjourned at 10:02.

5   (Meeting adjourned.)

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1   C E R T I F I C A T E

2

3   I, GINA MARIE VERDEROSA-LAMM, a Certified

4   Shorthand Reporter and Notary Public of the State of

5   New Jersey, certify that the foregoing is a true and

6   accurate transcript of the deposition of said

7   witness(es) who were first duly sworn by me, on the

8   date and place hereinbefore set forth.

9   I FURTHER CERTIFY that I am neither attorney,

10   nor counsel for, nor related to or employed by, any of

11   the parties to the action in which this deposition was

12   taken, and further that I am not a relative or employee

13   of any attorney or counsel employed in this action, nor

14   am I financially interested in this case.

15

16   _____

                GINA MARIE VERDEROSA-LAMM, C.S.R.

17   LICENSE NO. XI2043

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